EXECUTIVE ORDERS

CHAPTER 1

EXO 2011-01

EXECUTIVE ORDERS

EXECUTIVE REORGANIZATION ORDER 2011-01

WHEREAS, Article IV, Section 8, of the constitution of the state of South Dakota provides that, "Except as to elected constitutional officers, the Governor may make such changes in the organization of offices, boards, commissions, agencies and instrumentalities, and in allocation of their functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the Legislature within five legislative days after it convenes, and shall become effective, and shall have the force of law, within ninety days after submission, unless disapproved by a resolution concurred in by a majority of all the members of either house"; and

WHEREAS, this executive order has been submitted to the 86th Legislative Assembly on the 2nd legislative day, being the 12th day of January, 2011;

IT IS, THEREFORE, BY EXECUTIVE ORDER, directed that the executive branch of state government be reorganized to comply with the following sections of this order.

GENERAL PROVISIONS

Section 1. This executive order shall be known and may be cited as the "Executive Reorganization Order 2011-01".

Section 2. Any agency not enumerated in this order, but established by law within another agency which is transferred to a principal department under this order, shall also be transferred in its current form to the same principal department and its functions shall be allocated between itself and the principal department as they are now allocated between itself and the agency within which it is established.

Section 3. "Agency" as used in this order shall mean any board, authority, commission, department, bureau, division or any other unit or organization of state government.

Section 4. "Function" as used in this order shall mean any authority, power, responsibility, duty or activity of an agency, whether or not specifically provided for by law.

Section 5. Unless otherwise provided by this order, division directors shall be appointed by the head of the department or bureau of which the division is a part, and shall be removable at the pleasure of the department or bureau head, provided, however, that both the appointment and removal of division directors shall be subject to approval by the Governor.

Section 6. It is the intent of this order not to repeal or amend any laws relating to functions performed by an agency, unless the intent is specifically expressed in this order or unless there is an irreconcilable conflict between this order and those laws.

Section 7. If a part of this order is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this order is invalid in one or more of its applications, the part remains in effect in all valid applications.

Section 8. Except when inconsistent with the other provisions of this order all rules, regulations and standards of the agencies involved in executive reorganization in effect on the effective date of this order, shall continue with full force and effect until they are specifically altered, amended, or revoked in the manner provided by law, unless the statutory authority for such rules is superseded by this order.

Section 9. It is hereby declared that the sections, clauses, sentences and parts of this executive order are severable, are not matters of mutual essential inducement, and any of them may be excised by any court of competent jurisdiction if any section, clause, sentence or part of this executive order would otherwise be unconstitutional or ineffective.

Section 10. In the event that it has been determined that a function of a transferred agency, which has not been eliminated by this order, and its associated records, personnel, equipment, facilities, unexpended balances or appropriations, allocations or other funds have not been clearly allocated to an agency, the Governor shall specify by interim procedures the allocation of the function and its associated resources. At the next legislative session following the issuance of such interim procedures, the Governor shall make recommendations concerning the proper allocation of the functions of transferred agencies which are not clearly allocated by this order. Any interim procedures issued in conjunction with this section shall be filed with the Secretary of State.

Section 11. The rights, privileges and duties of the holders of bonds and other obligations issued, and of the parties to contracts, leases, indentures, and other transactions entered into, before the effective date of this order, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by abolition of an agency in this order. The agency to which functions of another agency are transferred is substituted for that agency and succeeds to its rights and leases, indentures, and other transactions.

Section 12. No judicial or administrative suit, action or other proceeding lawfully commenced before the effective date of this order by or against any agency or any officer of the state, in his official capacity or in relation to the discharge of his official duties, shall abate or be affected by reason of the taking effect of any reorganization under the provisions of this order. The court may allow the suit, action or other proceeding to be maintained by or against the successor of any agency or any officer affected by this order.

Section 13. If any part of this order is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency or a political subdivision, that part of this order has no effect and the Governor may by executive order make necessary changes to this order to receive federal aid, and the changes will remain in effect until the last legislative day of the next legislative session or until the Legislature completes legislation addressed to the same question, whichever comes first.

Section 14. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to make the name and title changes necessary to correlate and integrate the organizational changes made by this Executive Reorganization Order into the South Dakota Codified Laws.

Section 15. Any provisions of law in conflict with this order are superseded.

Section 16. Whenever a function is transferred by this order, all personnel, records, property, unexpended balances of appropriations, allocations or other funds utilized in performing the function are also transferred by this order.

Section 17. The effective date of this Executive Reorganization Order #2011-01 shall be ninety days after its submission to the Legislature.

Department of the Military created

Section 18. There is hereby created a Department of the Military. The head of the Department of the Military is the Adjutant General who shall be appointed and serve pursuant to the provisions of the Constitution of the State of South Dakota, Article IV, § 9.

Department of the Veterans Affairs created

Section 19. There is hereby created a Department of Veterans Affairs. The head of the Department of the Veterans Affairs is the Secretary of Veterans Affairs who shall be appointed and serve pursuant to the provisions of the Constitution of the State of South Dakota, Article IV, § 9.

Section 20. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to designate a new Title 33A, entitled Veterans Affairs, to transfer chapters 33-16, 33-17, 33-17A, 33-18 and 33-19 to that Title and that all references to "the Department of Military and Veterans Affairs" in those chapters be amended to "the Department of Veterans Affairs".

Department of Military and Veterans Affairs abolished, functions of former Department of Military and Veterans Affairs transferred to other departments

Section 21. The Department of Military and Veterans Affairs is hereby abolished. The position of Secretary of the Department of Military and Veterans Affairs is hereby abolished.

Section 22. The Veterans Commission and its functions in the former Department of Military and Veterans Affairs are transferred to the Department of Veterans Affairs created by this Executive Reorganization Order. The Secretary of Veterans Affairs shall perform the functions of the former Secretary of Department of Military and Veterans Affairs, relating to the Veterans Commission.

Section 23. The Division of Veterans Affairs created by chapter 1-46 and its functions in the former Department of Military and Veterans Affairs are transferred to the Department of Veterans Affairs created by this Executive Reorganization Order. The Secretary of Veterans Affairs shall perform the functions of the former Secretary of Department of Military and Veterans Affairs, relating to the Division of Veterans Affairs.

Section 24. The State Veterans Home created by chapter 33-18 and its functions in the former Department of Military and Veterans Affairs are transferred to the Department of Veterans Affairs created by this Executive Reorganization Order. The Secretary of Veterans Affairs shall perform the functions of the former Secretary of Department of Military and Veterans Affairs, relating to the State Veterans Home.

Section 25. The Office of the Adjutant General created by chapter 1-46 and its functions in the former Department of Military and Veterans Affairs are transferred to the Department of the Military created by this Executive Reorganization Order. The Adjutant General shall perform the functions of the former Secretary of Department of Military and Veterans Affairs, relating to the Office of Adjutant General.

Section 26. The Board of Military Affairs created by chapter 33-1 and its functions in the former Department of Military and Veterans Affairs are transferred to the Department of the Military created by this Executive Reorganization Order. The Adjutant General shall perform the functions of the former Secretary of the Department of Military and Veterans Affairs, relating to the Board of Military Affairs.

Section 27. The National Guard and its functions in the former Department of Military and Veterans Affairs are transferred to the Department of the Military created by this Executive Reorganization Order. The Adjutant General shall perform the functions of the former Secretary of Department of Military and Veterans Affairs, relating to the National Guard.

Department Tribal Relations created

Section 28. There is hereby created a Department of Tribal Relations. The head of the Department of Tribal Relations is the Secretary of Tribal Relations who shall be appointed and serve pursuant to the provisions of the Constitution of the State of South Dakota, Article IV, § 9.

Section 29. The Office of Tribal Government Relations established by chapter 1-4 and its functions is hereby transferred to the Department of Tribal Relations.

Section 30. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to designate a new chapter 1-54, entitled Department of Tribal Relations.

Department of Labor abolished. Department of Labor and Regulation created. Functions of former Department of Labor transferred to Department of Labor and Regulation

Section 31. The Department of Labor established pursuant to chapter 1-37 is abolished. The position of Secretary of Labor is abolished.

Section 32. There is hereby created a Department of Labor and Regulation. The head of the Department of Labor and Regulation is the Secretary of Labor and Regulation who shall be appointed and serve pursuant to the provisions of the Constitution of the State of South Dakota, Article IV, § 9.

Section 33. The functions and programs of the former Department of Labor and the duties of the Secretary of Labor are transferred to the Department of Labor and Regulation and the Secretary of Labor and Regulation.

Department of Revenue and Regulation abolished. Department of Revenue created. Functions of former Department of Revenue and Regulation transferred to other Departments

Section 34. The Department of Revenue and Regulation established pursuant to chapter 10-1 is abolished. The position of Secretary of Revenue and Regulation is abolished.

Section 35. There is hereby created a Department of Revenue. The head of the Department of Revenue is the Secretary of Revenue who shall be appointed and serve pursuant to the provisions of the Constitution of the State of South Dakota, Article IV, § 9.

Section 36. The Division of Banking created by chapter 51A-2 and its functions in the former Department of Revenue and Regulation are transferred to the Department of Labor and Regulation created by this Executive Reorganization Order. The Secretary of Labor and Regulation shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of Banking.

Section 37. The South Dakota State Banking Commission created by 51A-2 and its functions in the former Department of Revenue and Regulation are transferred to the Department of Labor and Regulation created by this Executive Reorganization Order. The Secretary of Labor and Regulation shall perform the functions of the former Secretary of Revenue and Regulation, relating to the South Dakota State Banking Commission.

Section 38. The Division of Securities and its functions in the former Department of Revenue and Regulation are transferred to the Department of Labor and Regulation created by this Executive Reorganization Order. The Secretary of Labor and Regulation shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of Securities.

Section 39. The Division of Insurance created by chapter 58-2 and its functions in the former Department of Revenue and Regulation are transferred to the Department of Labor and Regulation created by this Executive Reorganization Order. The Secretary of Labor and Regulation shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of Insurance.

Section 40. The Insurance Fraud Prevention Unit created by chapter 58-4A and its functions in the former Department of Revenue and Regulation are transferred to the Attorney General except for the Division's assessment authority set out in 58-4A-14 which shall remain with the Division of Insurance. The Attorney General shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Insurance Fraud Prevention Unit.

Section 41. The Real Estate Commission, created by chapter 36-21A, and its functions in the former Department of Revenue and Regulation are transferred to the Department of Labor and Regulation created by this Executive Reorganization Order. The Secretary of Labor and Regulation shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Real Estate Commission.

Section 42. The Abstractors Board of Examiners, created by chapter 36-13, and its functions in the former Department of Revenue and Regulation are transferred to the Department of Labor and Regulation created by this Executive Reorganization Order. The Secretary of Labor and Regulation shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Abstractors Board of Examiners.

Section 43. The Appraiser Certification Program, created by chapter 36-21B, and its functions in the former Department of Revenue and Regulation are transferred to the Department of Labor and Regulation created by this Executive Reorganization Order. The Secretary of Labor and Regulation shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Appraiser Certification Program.

Section 44. All functions of the Petroleum Release Compensation Board under chapter 34A-13 including budgeting and administrative support for the petroleum release fund in the former Department of Revenue and Regulation are transferred to the Department of Environment and Natural Resources created by chapter 1-40. The Secretary of Environment and Natural Resources shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Petroleum Release Compensation Board. The petroleum release compensation fund board shall continue as an advisory board to the Secretary of Department of Environment and Natural Resources on issues concerning petroleum inspection and release compensation.

Section 45. All functions of the Department of Transportation under chapter 34A-13 are transferred to the Department of Environment and Natural Resources created by chapter 1-40. The Secretary of Environment and Natural Resources shall perform the functions of the former Secretary of Transportation, relating to chapter 34A-13.

Section 46. The Division of the Secretariat and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive Reorganization Order. The Secretary of Revenue shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of the Secretariat.

Section 47. The Division of Business Tax and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive

Reorganization Order. The Secretary of Revenue shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of Business Tax.

Section 48. The Division of Motor Vehicles and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive Reorganization Order. The Secretary of Revenue shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of Motor Vehicles.

Section 49. The Division of Property and Special Taxes and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive Reorganization Order. The Secretary of Revenue shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of Property and Special Taxes.

Section 50. The Division of Audits and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive Reorganization Order. The Secretary of Revenue shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Division of Audits.

Section 51. The Division of Lottery, created by chapter 42-7A and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive Reorganization Order. The Secretary of Revenue shall perform the functions of the Executive Director of the Lottery and the former Secretary of Revenue and Regulation, relating to the Division of Lottery.

Section 52. The Lottery Commission, created by chapter 42-7A and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive Reorganization Order. The Secretary of Revenue shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Lottery Commission.

Section 53. The Commission on Gaming, created by chapter 42-7B and its functions in the former Department of Revenue and Regulation are transferred to the Department of Revenue created by this Executive Reorganization Order. The Secretary of Revenue shall perform the functions of the former Secretary of Revenue and Regulation, relating to the Commission on Gaming.

Department of Tourism created

Section 54. There is hereby created a Department of Tourism. The head of the Department of Tourism is the Secretary of Tourism who shall be appointed and serve pursuant to the provisions of the Constitution of the State of South Dakota, Article IV, § 9.

Governor's Office of Economic Development created

Section 55. There is hereby created a Governor's Office of Economic Development within the Department of Executive Management. The head of the Governor's Office of Economic Development is the Commissioner of the Governor's Office of Economic Development who shall be appointed and serve pursuant to the provisions of the Constitution of the State of South Dakota, Article IV, § 9.

Section 56. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to designate a new chapter 1-53, entitled Governor's Office of Economic Development and that § 1-52-3.2, 1-52-3.3, 1-52-3.4, 1-52-3.5, 1-52-13 be transferred to that chapter.

Department of Tourism and State Development abolished. Functions of former Department of Tourism and State Development transferred to other Departments

Section 57. The Department of Tourism and State Development is hereby abolished. The position of Secretary of the Department of Tourism and State Development is hereby abolished.

Section 58. The Governor's Office of Economic Development referenced in chapter 1-52 and its functions in the Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of Department of Tourism and State Development relating to the activities of the Governor's Office of Economic Development.

Section 59. The Office of Research Commerce and its functions in the Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of Department of Tourism and State Development relating to the activities of the Office of Research Commerce.

Section 60. The Economic Development Finance Authority created by Chapter 1-16B and its functions in the Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of Department of Tourism and State Development relating to the activities of the Economic Development Finance Authority.

Section 61. The Board of Economic Development created by Chapter 1-16G and its functions in the Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of Department of Tourism and State Development relating to the activities of the Board of Economic Development.

Section 62. The South Dakota Housing Development Authority created by chapter 11-11, and its functions in the former Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of the Department of Tourism and State Development, relating to the South Dakota Housing Development Authority.

Section 63. The South Dakota Science and Technology Authority created by chapter 1-16H and its functions in the Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of Department of Tourism and State Development relating to the activities of the South Dakota Science and Technology Authority.

Section 64. The South Dakota Energy Infrastructure Authority created by chapter 1-16I and its functions in the Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of Department of Tourism and State Development relating to the activities of the South Dakota Energy Infrastructure Authority.

Section 65. The South Dakota Ellsworth Development Authority created by chapter 1-16J and its functions in the Department of Tourism and State Development are transferred to the Governor's Office of Economic Development created by this Executive Reorganization Order. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the former Secretary of Department of Tourism and State Development relating to the activities of the South Dakota Ellsworth Development Authority.

Section 66. The Office of Tourism and its functions in the former Department of Tourism and State Development are transferred to the Department of Tourism created by this Executive Reorganization Order. The Secretary of Tourism shall perform the functions of the former Secretary of Tourism and State Development, relating to the Office of Tourism.

Section 67. The Board of Tourism created by chapter 1-52 and its functions in the former Department of Tourism and State Development are transferred to the Department of Tourism created by this Executive Reorganization Order. The Secretary of Tourism shall perform the functions of the former Secretary of Tourism and State Development, relating to the Board of Tourism.

Section 68. The South Dakota Arts Council, created by chapter 1-22, and its functions in the former Department of Tourism and State Development are transferred to the Department of Tourism created by this Executive Reorganization Order. The Secretary of Tourism shall perform the functions of the former Secretary of Tourism and State Development, relating to the South Dakota Arts Council.

Section 69. The Office of History in the former Department of Tourism and State Development and its functions are transferred to the Department of Tourism created by this Executive Reorganization Order. The Secretary of the Department of Tourism shall perform the functions of the former Secretary of Tourism and State Development, relating to the Office of History.

Certain Divisions of the Department of Human Services transferred to the Department of Social Services, Mental Health Division

Section 70. The Division of Alcohol and Drug Abuse created by chapter 1-36A is hereby transferred from the Department of Human Services to the Mental Health Division, Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the former Secretary of the Department Human Services, relating to the Division of Alcohol and Drug Abuse.

Section 71. The Human Services Center, Yankton, created by chapter 1-36A is hereby transferred from the Department of Human Services to the Mental Health Division, Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the Secretary of the Department Human Services, relating to the Human Services Center, Yankton.

Section 72. The Division of Mental Health created by chapter 1-36A is hereby transferred from the Department of Human Services to the Mental Health Division, Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the Secretary of the Department of Human Services, relating to the Division of Mental Health.

Section 73. The Board of Social Work Examiners, created by chapter 36-26, and its functions in the former Department of Human Services are transferred to the Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the Secretary of the Department of Human Services, relating to the Board of Social Work Examiners.

Section 74. The Board of Examiners of Psychologists, created by chapter 36-27A, and its functions in the former Department of Human Services are transferred the Department of Social Services. The Secretary the Department of Social Services shall perform the functions of the Secretary of the Department of Human Services, relating to the Board of Examiners of Psychologists.

Section 75. The Board of Counselor Examiners, created by chapter 36-32, and its functions in the former Department of Human Services are transferred the Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the Secretary of the Department of Human Services, relating to the Board of Counselor Examiners.

Section 76. The Certification Board for Alcohol and Drug Professionals created by chapter 36-34, and its functions in the former Department of Human Services are transferred the Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the Secretary of the Department of Human Services, relating to the Certification Board for Alcohol and Drug Professionals.

Section 77. The Mental Health Planning and Coordination Advisory Board and its functions in the former Department of Human Services are transferred the Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the Secretary of the Department of Human Services, relating to the Mental Health Planning and Coordination Advisory Board.

Section 78. The Drug and Alcohol Abuse Advisory Council and its functions in the former Department of Human Services are transferred the Department of Social Services. The Secretary of the Department of Social Services shall perform the functions of the Secretary of the Department of Human Services, relating to the Drug and Alcohol Abuse Advisory Council.

Other Reorganization Provisions

Section 79. The authority of the State Brand Board to employ law enforcement officers pursuant to SDCL 40-18-14 and related functions are transferred to the Office of the Attorney General, Division of Criminal Investigation. The Attorney General of the State of South Dakota shall perform the functions relating to the enforcement of the provisions of chapters 40-19 to 40-22, inclusive, and chapter 40-29.

Section 80. That § 1-4-1 be transferred to chapter 1-54 and amended to read as follows:

1-4-1. The ~~Office~~ Department of Tribal ~~Governmental~~ Relations ~~is hereby established to~~ shall aid in securing and coordinating federal, state, and local resources to help solve ~~Indian~~ problems and to serve as an advocate ~~of the Indian~~ for Native American people.

Section 81. That § 1-4-1.1 be repealed.

Section 82. That § 1-4-25 be transferred to chapter 1-54.

Section 83. That § 1-4-26 be transferred to chapter 1-54.

Section 84. That §1-16B-10 be amended to read as follows:

1-16B-10. The ~~secretary of tourism and state development~~ Commissioner of the Governor's Office of Economic Development shall serve as the chief administrative officer and direct and supervise the administration and technical affairs of the authority.

Section 85. That §1-16G-1 be amended to read as follows:

1-16G-1. There is created a Board of Economic Development and the Governor may appoint up to thirteen members to consult with and advise the Governor and the ~~secretary of tourism and state development~~ Commissioner of the Governor's Office of Economic Development in carrying out the functions of the office. The members of the board shall be appointed by the Governor for four-year terms of office so arranged that no more than four members' terms expire in any given year. Not all members may be from the same political party. The Governor shall designate the terms at the time of appointment. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve only the unexpired portion of the term.

Section 86. That §1-16G-24 be amended to read as follows:

1-16G-24. Earnings on the revolving economic development and initiative fund and the value added agriculture subfund may be used for the administrative costs of the Division of Finance of the Governor's Office of Economic Development. Such earnings shall be expended in accordance with the provisions of Title 4 on warrants drawn by the state auditor on vouchers approved by the ~~secretary of tourism and state development~~ Commissioner of the Governor's Office of Economic Development. Eligible expenses may not exceed total interest earnings during the previous fiscal year prior to the deduction of loan losses for the same fiscal year.

Section 87. That §1-16H-38 be amended to read as follows:

1-16H-38. The authority is attached to the ~~Department of Tourism and State~~ Governor's Office of Economic Development for reporting purposes. The authority shall submit such records, information, and reports in the form and at such times as required by the ~~secretary~~ commissioner. However, the authority shall report at least annually.

Section 88. That §1-16I-38 be amended to read as follows:

1-16I-38. The authority is attached to the ~~Department of Tourism and State~~ Governor's Office of Economic Development for reporting purposes. The authority shall submit such records, information, and reports in the form and at such times as required by the ~~secretary~~ commissioner. However, the authority shall report at least annually.

Section 89. That §1-16J-3 be amended to read as follows:

1-16J-3. The authority is attached to the ~~Department of Tourism and State~~ Governor's Office of Economic Development for reporting purposes. The authority shall submit such records, information, and reports in the form and at such times as required by the ~~secretary~~ commissioner of the ~~Department of Tourism and State~~ Governor's Office of Economic Development. However, the authority shall report to the Governor at least annually.

Section 90. That §1-18-1.1 be repealed.

Section 91. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting "and State Development":

1-18-2; 1-18-2.2; 1-18-3; 1-18-20; 1-18-32.1; 1-18B-1; 1-18C-3; 1-18C-6; 1-19-2.1; 1-19B-8; 1-19-A-2; 1-19C-2.1; 1-20-19; 1-20-20; 1-22-5.1; 1-52-1; 1-52-14; 1-52-17; 5-15-49; 31-2-23; 31-29-62.

Section 92. That §1-22-2.3 be amended to read as follows:

1-22-2.3. The arts council shall continue, with all its functions, in the Department of Tourism ~~and State Development~~. The secretary of the Department of Tourism ~~and State Development~~ shall perform the functions formerly exercised by the former secretary of the

Department of ~~Education and Cultural Affairs~~ Tourism and State Development, relating to the arts council.

Section 93. That §1-32-2 be amended to read as follows:

1-32-2. For the purposes of achieving reorganization under the terms of S.D. Const., Art. IV, § 8, the following principal departments are established:

(1) Department of Executive Management;

(2) Department of Public Safety;

(3) Department of Social Services;

(4) Department of Labor and Regulation;

(5) Department of Education;

(6) Department of Environment and Natural Resources;

(7) Department of Game, Fish and Parks;

(8) Department of Health;

(9) Department of Agriculture;

(10) Department of Transportation;

(11) Department of the Military ~~and Veterans Affairs~~;

(12) Department of Revenue ~~and Regulation~~;

(13) Department of Human Services;

(14) Department of Tourism ~~and State Development~~;

(15) Department of Veterans Affairs;

(16) Department of Tribal Relations.

Section 94. That § 1-32-7 be amended to read as follows:

1-32-7. The secretaries of the Departments of Health, Agriculture, Public Safety, Revenue ~~and Regulation~~, Labor and Regulation and Human Services are hereby authorized to enter into mutual agreements, transferring among the departments any health or consumer protection inspection function assigned to any one of the three departments so as to promote the effectiveness and efficiency of such functions. Any such mutual agreements shall be approved by the Governor and shall be filed in the Office of the Secretary of State.

Section 95. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting "Department of Tourism and State Development", and inserting "Governor's Office of Economic Development":

1-33B-14; 1-33B-14; 1-33B-15; 6-18-1; 6-18-1; 11-11-1.

Section 96. That § 1-33-3 be amended to read as follows:

1-33-3. The Department of Executive Management consists of the Bureau of Finance and Management, the Bureau of Intergovernmental Relations, the Bureau of Administration, the Bureau of Personnel, ~~and~~ the Bureau of Information and Telecommunications, the Governor's Office of Economic Development and any other agencies created by administrative action or law and placed under the Department of Executive Management.

Section 97. That § 1-33B-22 be amended to read as follows:

1-33B-22. Disbursements from the energy conservation special revenue fund shall be paid on warrants drawn by the state auditor on vouchers approved by the ~~secretary of the Department of Tourism and State~~ commissioner of the Governor's Office of Economic Development.

Section 98. That § 1-42-17.6 be repealed.

Section 99. That § 1-35-4 be amended to read as follows:

1-35-4. The Department of ~~Revenue~~ Labor and Regulation shall, under the direction and control of the secretary of ~~Revenue~~ Labor and Regulation, perform all administrative functions (as defined in § 1-32-1) of the following divisions:

(1) The Division of Banking, created by chapter 51A-2;

(2) The Division of Securities~~, created by § 47-31A-406(c)~~;

(3) The Division of Insurance, created by chapter 58-2.

This section does not apply to the special budgetary functions (as defined in § 1-32-1) of the State Banking Commission created by chapter 51A-2.

Section 100. That § 1-36A-1.3 be amended to read as follows:

1-36A-1.3. The Department of Human Services shall consist of the following agencies:

(1) The Division of Developmental Disabilities~~, to be created from the Office of Developmental Disabilities and Mental Health in the Department of Social Services~~;

(2) South Dakota Developmental Center--Redfield;

(3) ~~The Division of Alcohol and Drug Abuse;~~

~~(4) The Division of Rehabilitation Services, to be transferred from the Department of Vocational Rehabilitation~~;

~~(5)~~(4) The Division of Service to the Blind and Visually Impaired~~, to be transferred from the Department of Vocational Rehabilitation;~~

~~(6) The Division of Mental Health, to be created from the Office of Developmental Disabilities and Mental Health in the Department of Social Services; and~~

~~(7) The South Dakota Human Services Center~~.

Section 101. That § 1-36-1.4 be repealed.

Section 102. That § 1-36A-1.5 be amended to read as follows:

1-36A-1.5. The following boards and advisory councils ~~are hereby continued and transferred to~~ shall be administered by the Department of Human Services:

(1) The planning council on developmental disabilities;

(2) ~~The mental health planning and coordination advisory board;~~

~~(3)~~ The board of vocational rehabilitation; and

~~(4) The drug and alcohol abuse advisory council; and~~

~~(5)~~(3) The board of service to the blind and visually impaired.

Section 103. That § 1-36A-1.18 be amended to read as follows:

1-36A-1.18. The Department of Human Services and the Department of Social Services may expend from any appropriation of money for the construction of any public building that may lawfully be constructed under its supervision, or from any appropriation made for such purposes, sufficient funds to purchase and secure such protection from loss by fire during the erection of such building as may be proper in the judgment of the secretary of human services or the secretary of social services.

Section 104. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by striking "Department of Human Services" and inserting "The Department of Human Services and the Department of Social Services":

1-36A-1.19; 1-36A-1.20; 1-36A-1.22; 1-36A-1.23.

Section 105. That § 1-36-7.3 be repealed.

Section 106. That §1-36A-3.1 be repealed.

Section 107. That §1-36A-3.2 be repealed.

Section 108. That §1-36A-3.3 be repealed.

Section 109. That §1-47-1 be repealed.

Section 110. That §1-47-2 be amended to read as follows:

1-47-2. The head of the Department of Revenue ~~and Regulation~~ is the secretary of revenue ~~and regulation~~ who shall be appointed by the Governor, by and with the consent of the Senate, and serve at the pleasure of the Governor.

Section 111. That § 1-47-3 be amended to read as follows:

1-47-3. The Department of Revenue ~~and Regulation~~ shall, under the direction and control of the secretary of revenue ~~and regulation~~, perform all the functions of the Department of Revenue ~~and Regulation~~ created by chapter 10-1.

Section 112. That § 1-47-5 be repealed.

Section 113. That § 1-47-6 be amended to read as follows:

1-47-6. The Division of Banking created by chapter 51A-2 and its functions in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the Department of ~~Revenue~~ Labor and Regulation. The secretary of the Department of ~~Revenue~~ Labor and Regulation shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Division of Banking.

Section 114. That § 1-47-7 be amended to read as follows:

1-47-7. The South Dakota State Banking Commission shall continue in the Department of ~~Revenue~~ Labor and Regulation. The secretary of the Department of ~~Revenue~~ Labor and Regulation shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the South Dakota State Banking Commission.

Section 115. That § 1-47-8 be amended to read as follows:

1-47-8. The Division of Securities~~, created pursuant to § 47-31A-406(c)~~ and its functions in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the Department of ~~Revenue~~ Labor and Regulation. The secretary of the Department of ~~Revenue~~ Labor and Regulation shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Division of Securities.

Section 116. That § 1-47-9 be amended to read as follows:

1-47-9. The Division of Insurance created by chapter 58-2 and its functions listed under Title 58, in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the Department of ~~Revenue~~ Labor and Regulation. The secretary of the Department of ~~Revenue~~ Labor and Regulation shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Division of Insurance. ~~All references to the former Department of Commerce and Regulation found in Title 58 are to be changed to Department of Revenue and Regulation.~~

Section 117. That § 1-47-10 be amended to read as follows:

1-47-10. The Commission on Gaming and its functions, including those functions under chapters 42-7 and 42-7B, in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the Department of Revenue~~ and Regulation~~. The secretary of the Department of Revenue ~~and Regulation~~ shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Commission on Gaming.

Section 118. That § 1-47-11 be amended to read as follows:

1-47-11. The Insurance Fraud Prevention Unit and its functions created and authorized by chapter 58-4A in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the ~~Department of Revenue and Regulation~~ attorney general. The ~~secretary of the Department of Revenue and Regulation~~ attorney general shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Insurance Fraud Prevention Unit.

Section 119. That § 1-47-12 be amended to read as follows:

1-47-12. All functions of the Petroleum Release Compensation Board under chapter 34A-13 and its functions in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the Department of ~~Revenue and Regulation created by this Executive Reorganization Order~~ Environment and Natural Resources. The secretary of the Department of ~~Revenue and Regulation~~ Environment and Natural Resources shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Petroleum Release

Compensation Fund. The petroleum release compensation fund board shall continue as an advisory board to the secretary of ~~revenue and regulation~~ environment and natural resources on issues concerning petroleum inspection and release compensation.

Section 120. That § 1-47-13 be amended to read as follows:

1-47-13. The Abstractors Board of Examiners, created by chapter 36-13, and its functions in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the Department of ~~Revenue~~ Labor and Regulation. The secretary of the Department of ~~Revenue~~ Labor and Regulation shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Abstractors Board of Examiners.

Section 121. That § 1-47-14 be amended to read as follows:

1-47-14. The Real Estate Commission created by chapter 36-21A and its functions in the former Department of ~~Commerce~~ Revenue and Regulation are transferred to the Department of ~~Revenue~~ Labor and Regulation. The secretary of the Department of ~~Revenue~~ Labor and Regulation shall perform the functions of the former secretary of the Department of ~~Commerce~~ Revenue and Regulation, relating to the Real Estate Commission.

Section 122. That § 1-52-2 be amended to read as follows:

1-52-2. The Department of Tourism ~~established pursuant to chapter 1-42~~ and State Development is abolished. The position of secretary of tourism and state development is abolished. The following functions of the former Department of Tourism and State Development are transferred to the Department of Tourism ~~and State Development created by this Executive Reorganization Order~~:

(1) Office of Tourism;

(2) Board of Tourism;

(3) Office of History;

(4) State Historical Society Board of Trustees;

(5) State Arts Council; and

such other tourism related functions as the Governor shall direct.

The secretary of the Department of Tourism ~~and State Development~~ shall perform the functions of the former secretary of the Department of Tourism and State Development related to tourism.

Section 123. That § 1-52-3 be repealed.

Section 124. That § 1-52-4 be transferred to chapter 1-53 and amended to read as follows:

1-52-4. The Economic Development Finance Authority created by Chapter 1-16B and its functions in the Governor's Office of Economic Development, Department of Executive Management are transferred to the ~~Department of Tourism and State Development created by this Executive Reorganization Order. The secretary of the Department of Tourism and State~~ Governor's Office of Economic Development. The commissioner of the Governor's Office of Economic Development shall perform the functions of the former ~~commissioner of the Governor's Office of Economic~~ secretary of Tourism and State Development relating to the activities of the Economic Development Finance Authority.

Section 125. That § 1-52-5 be transferred to chapter 1-53 and amended to read as follows:

1-52-5. The Board of Economic Development created by Chapter 1-16G and its functions ~~in the Governor's Office of Economic Development, Department of Executive Management~~ are transferred to the ~~Department of Tourism and State Development created by this Executive Reorganization Order. The secretary of the Department of Tourism and State~~ Governor's Office of Economic Development. The commissioner of the Governor's Office of Economic Development shall perform the functions of the former ~~commissioner of the Governor's Office of Economic~~ secretary of the Department of Tourism and State Development relating to the activities of the Board of Economic Development.

Section 126. That § 1-52-6 be repealed.

Section 127. That § 1-52-7 be repealed.

Section 128. That § 1-52-8 be amended to read as follows:

1-52-8. The Cultural Heritage Center~~, Division of Cultural Affairs~~ and its functions ~~in the former Department of Education and Cultural Affairs~~ are transferred to the Department of Tourism ~~and State Development created by this Executive Reorganization Order~~. The secretary of the Department of Tourism ~~and State Development~~ shall perform the functions of the former secretary of the Department of ~~Education and Cultural Affairs~~ Tourism and State Development, relating to the Cultural Heritage Center.

Section 129. That § 1-52-9 be amended to read as follows:

1-52-9. The Office of History ~~in the Division of Cultural Affairs, Department of Education and Cultural Affairs~~ and its functions are transferred to the Department of Tourism ~~and State Development created by this Executive Reorganization Order~~. The secretary of the Department of Tourism ~~and State Development~~ shall perform the functions of the former secretary of the Department of ~~Education and Cultural Affairs~~ Tourism and State Development, relating to the Office of History.

Section 130. That § 1-52-10 be transferred to chapter 1-53 and amended to read as follows:

1-52-10. The South Dakota Housing Development Authority created by chapter 11-11, and its functions in the former Department of ~~Commerce and Regulation are~~ Tourism and State Development is transferred to the ~~Department of Tourism and State Development created by this Executive Reorganization Order. The secretary of the Department of Tourism and State~~ Governor's Office of Economic Development. The commissioner of the Governor's Office of Economic Development shall perform the functions of the former secretary of the Department of ~~Commerce and Regulation~~ Tourism and State Development, relating to the South Dakota Housing Development Authority.

Section 131. That § 1-52-11 be transferred to chapter 1-54 and amended to read as follows:

1-52-11. The Office of Tribal Government Relations established by chapter 1-4 is transferred to the Department of ~~Tourism and State Development~~ Tribal Relations.

Section 132. That § 1-52-12 be transferred to chapter 1-54 and amended to read as follows:

1-52-12. The Governor shall invite and solicit the officials of the Bureau of Indian Affairs and officials of the Division of Indian Health of the United States Public Health Service, the United States Departments of Housing and Urban Development, Labor, Justice, Agriculture, and Transportation, and the United States Department of Health and Human Services, the United States Attorney's Office for the district of South Dakota and the United States Economic Development

Administration, to participate and act in an advisory capacity to the ~~Office~~ Department of Tribal ~~Governmental~~ Relations.

Any state agency, commission, board, department, or institution shall render such advice and assistance to the ~~Office~~ Department of Tribal ~~Governmental~~ Relations as the office may deem necessary in fulfillment of the provisions of this chapter.

Section 133. That subdivision (12) of § 2-14-2 be amended to read as follows:

(12) "Full-time equivalent" or "FTE," a number which designates staffing level where one full-time equivalent position is equal to the number of days, Monday through Friday, in a fiscal year, multiplied by eight hours per day. It excludes: paid overtime hours; hours paid to an employee assigned to a light duty position as approved by the commissioner of the Bureau of Personnel due to a temporary partial disability as defined in subdivision 62-1-1(8); hours paid for accumulated annual leave and sick leave upon employee termination; hours paid to patient employees of the institutions under the control of the Department of Human Services or the Department of Social Services and the Department of ~~Military and~~ Veterans Affairs; hours paid to work-study students enrolled in postsecondary educational institutions or postsecondary students employed pursuant to chapter 3-6B; hours paid to students enrolled in and employed by postsecondary educational institutions; and hours paid to members of boards and commissions pursuant to § 4-7-10.4. For purposes of salary computation a nine month or more per year full-time teaching or research faculty person, or the equivalent thereof, at the institutions under the jurisdiction of the Board of Regents shall be considered one full-time equivalent;

Section 134. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting "Department of Human Services" and inserting, "Department of Human Services or the Department of Social Services":

5-18A-22; 13-32-13; 13-53-29; 22-24B-13; 22-24B-23; 23A-10A-13; 23A-28C-5; 26-8A-12.2; 27A-3-8;

Section 135. That § 10-1-1.1 be repealed.

Section 136. That § 10-1-2 be repealed.

Section 137. That § 32-1-1.1 be repealed.

Section 138. That §33-1-2.1 be amended to read as follows:

33-1-2.1. The Office of the Adjutant General and all other powers, duties, and functions of the adjutant general shall continue in the Department of the Military ~~and Veterans Affairs~~.

Section 139. That §33-6-8 be amended to read as follows:

33-6-8. Any person desiring to use the benefits of either § 33-6-5 or 33-6-6 shall apply to the Department of the Military ~~and Veterans Affairs~~. The ~~secretary of military and veterans affairs~~ adjutant general shall determine if that person is entitled to the benefits of §§ 33-6-5 to 33-6-8, inclusive. The ~~secretary of military and veterans affairs~~ adjutant general may promulgate rules pursuant to chapter 1-26 to accomplish the purposes of §§ 33-6-5 to 33-6-8, inclusive, and to establish the procedures for determining awards, the records to be maintained and the procedure for an appeal.

Section 140. That §33-16-2.1 be repealed.

Section 141. That §33-16-3 be transferred to Title 33A and amended to read as follows:

33-16-3. Adequate office space for the ~~Division~~ Department of Veterans Affairs shall be provided in the Soldiers and Sailors Memorial Building or in other suitable space at the state capital.

Section 142. That § 33-16-4.1 be transferred to Title 33A and amended to read as follows:

33-16-4.1. The Veterans Commission shall be administered under the direction and supervision of the ~~Division~~ Department of Veterans' Affairs and the ~~director~~ secretary thereof, but shall retain the quasi-judicial, quasi-legislative, advisory, other nonadministrative and special budgetary functions (as defined in § 1-32-1) otherwise vested in it and shall exercise those functions independently of the ~~director~~ secretary of veterans affairs. ~~The commission shall nominate the director of veterans affairs to be appointed pursuant to § 1-46-7.~~

Section 143. That §33-16-8 be repealed.

Section 144. That § 33-16-9 be transferred to Title 33A and amended to read as follows:

33-16-9. The ~~director~~ secretary of the ~~Division~~ Department of Veterans Affairs shall give bond to the state in the sum of ten thousand dollars, premium on said bond to be paid out of funds of the division.

Section 145. That § 33-16-11 be transferred to Title 33A and amended to read as follows:

33-16-11. The ~~director~~ secretary of the ~~Division~~ Department of Veterans Affairs shall~~, with the approval of the Department of Military and Veterans Affairs,~~ establish and maintain a sufficient office and field force to carry out the provisions of this chapter, including representation at the veterans administration facility in this state.

Section 146. That § 33-16-12 be transferred to Title 33A and amended to read as follows:

33-16-12. The ~~director~~ secretary shall make an annual written report to the Governor which shall be open to public inspection.

Section 147. That § 33-16-13 be transferred to Title 33A and amended to read as follows:

33-16-13. All employees of the ~~Division~~ Department of Veterans Affairs below the level of ~~director~~ secretary shall be selected as provided by chapter 3-6A. However, all employees shall be veterans, if available. These employees shall perform duties assigned to them by the Department of ~~Military and~~ Veterans Affairs.

Section 148. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to transfer the following sections to Title 33A and amend the them by deleting, "Division" and inserting, "Department".

33-16-14; 33-16-16; 33-16-17; 33-16-19; 33-16-20; 33-16-21; 33-16-22; 33-16-23; 33-16-25; 33-16-26; 33-16-27.2; 33-16-28.3; 33-17-3; 33-17-6;

Section 149. That § 33-16-18 be transferred to Title 33A and amended to read as follows:

33-16-18. The ~~Division~~ Department of Veterans Affairs shall cooperate with all national, state, county, municipal, and private social agencies in securing to veterans and their dependents the benefits provided by national, state, and county laws, municipal ordinances, or public or private social agencies. To that end, the ~~division~~ department may hold schools of instruction for county service officers, or call in for instruction individual county service officers if, in the judgment of

the Department of ~~Military and~~ Veterans Affairs, the giving of such instructions or holding of such schools is in the best interest of the work of the ~~division~~ department. The ~~division~~ department may pay the actual necessary expenses of any such county service officer when attending such schools of instruction away from the officer's home county, out of the funds appropriated for the administration of the ~~Division~~ Department of Veterans Affairs. The expenses may be paid out only on duly itemized vouchers presented to the state auditor and approved by the ~~director~~ secretary of the ~~division~~ department.

Section 150. That § 33-16-24 be transferred to Title 33A and amended to read as follows:

33-16-24. The board of county commissioners of each county in this state shall employ or join with another county or counties in employing a county veterans' service officer who, before such employment takes effect, is approved by the state ~~director~~ secretary of veterans affairs. The county veteran's service officer's first appointment ends on the first Monday in January of the second year subsequent to the year of the appointment. The county veteran's service officer may be reappointed for terms of four years for each term. The appointment is subject to removal by the board or boards of county commissioners upon the recommendation of the state ~~director~~ secretary of veterans affairs or for cause.

Section 151. That § 33-16-27.1 be transferred to Title 33A and amended to read as follows:

33-16-27.1. The ~~Division of Veterans Affairs of the~~ Department of ~~Military and~~ Veterans Affairs shall establish a training program for county veterans service officers. Every county veterans service officer employed under the provisions of this chapter shall annually complete the training program established by the ~~division~~ department and successfully complete a test administered by the ~~Division of Veterans Affairs~~ department. The ~~director~~ secretary of the ~~Division~~ Department of Veterans Affairs shall certify training compliance to the board of county commissioners. The ~~director~~ secretary shall recommend against reappointment of any county veterans service officer not in compliance with the provisions of this section.

Section 152. That § 33-17-14 be transferred to Title 33A and amended to read as follows:

33-17-14. The provisions of subdivision 43-28-2(7) apply to certificates of discharge of all persons who may have served in the military forces of the United States or of any of its allies in any war in which the United States has or may hereafter engage, or who are veterans as defined in § 33-17-1. The certificates shall be recorded without charge and certified copies shall be furnished to the persons named therein or their dependents without charge if requested for the purpose of presenting or prosecuting claims for compensation or pension. Otherwise, a discharge document recorded by the recorder or a designated official may be made available only to the veteran, the veteran's parents, the veteran's next of kin, the veteran's legal representative, a county veterans service officer, a veterans' organization service officer, the Department of ~~Military and~~ Veterans Affairs, or the veteran's designee. Any person requesting a discharge document shall complete a form containing a statement specifying the person's eligibility to receive the document based upon this section. The Department of ~~Military and~~ Veterans Affairs shall provide such forms to each county register of deeds.

Section 153. That § 33-17-19 be transferred to Title 33A and amended as follows:

33-17-19. The ~~director~~ secretary shall appoint such officers and employ such clerks, assistants, and other help as may be necessary, and fix their bonds, salaries, and compensation.

Section 154. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting "Revenue and Regulation", and inserting, "Environment and Natural Resources":

34A-13-14; 34A-13-17; 34A-6-68.

Section 155. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting "Transportation" and inserting, "Environment and Natural Resources":

34A-13-18; 34A-13-27; 34A-14-7; 34A-14-9.

Section 156. That § 34A-13-49 be amended to read as follows:

34A-13-49. There is hereby created within the petroleum release compensation fund, a new program to be known as the abandoned tank removal program. Under this program, the director may provide payments for tank pulling and corrective action at abandoned sites where the owner or the person having legal custody of an abandoned site has voluntarily requested such action in the manner and time established by the ~~secretaries~~ secretary of the ~~departments of transportation and environment and natural resources~~ Department of Environment and Natural Resources and if the following criteria are met:

(1) The owner or person having legal custody of the abandoned site has submitted to the director a written request to have the tank removed. The request shall be made in the manner established by the secretary of the Department of ~~Revenue and Regulation~~ Environment and Natural Resources to include documentation of eligibility for the site to participate in the abandoned tank removal program, proof of ownership, and legal description;

(2) The owner or person having legal custody of the abandoned site has, in writing, waived all claims against the state, its officers, agents, and employees for damages resulting directly or indirectly from the tank pulling or corrective action;

(3) If the abandoned site is on private property, all property taxes are current; and

(4) The owner or person having legal custody of the abandoned site has agreed to transfer ownership of the removed tank and its contents to the state.

No tank is eligible for coverage under this program if the tank is located at the site of a commercially operational motor fuel vendor in service on or after April 1, 1988.

Section 157. That § 34A-13-53 be amended to read as follows:

34A-13-53. The ~~secretaries~~ secretary of the ~~Departments of Transportation and~~ Department of Environment and Natural Resources may promulgate, pursuant to chapter 1-26, rules regarding practices and procedures necessary to carry out the provisions of the abandoned tank removal program including the form and procedure for application for qualifying for tank pulling and corrective action.

Section 158. That § 34A-14-25 be amended to read as follows:

34A-14-25. The authority may issue a cumulative total of twenty million dollars in bonds and the authority may pledge assets of the fund that are authorized for financing purposes as additional security for the issuance of the bonds, and the secretary of ~~transportation~~ environment and natural resources may additionally ~~request the secretary of transportation to~~ pledge payment of up to four million dollars from future revenues of the inspection fee.

Section 159. That § 39-24-9 be amended to read as follows:

39-24-9. The secretary of agriculture and the ~~secretary of tourism and state development~~ commissioner of the Governor's Office of Economic Development shall consult and cooperate, and

shall exchange such services, personnel, and information as are necessary and appropriate in order to develop, administer, and market the South Dakota Certified beef program.

Section 160. That § 40-18-14 be amended to read as follows:

40-18-14. The ~~board~~ attorney general may employ four investigators for the purpose of enforcing the provisions of chapters 40-19 to 40-22, inclusive, and chapter 40-29. The investigators shall be certified law enforcement officers and shall enforce laws pertaining to inspection, sale, branding, misbranding, ownership, transportation, or theft of cattle, horses, mules, sheep, and buffalo. The investigators have all of the powers and authority of any law enforcement officer within the State of South Dakota while enforcing laws pertaining to cattle, horses, mules, sheep, and buffalo. This section does not restrict the ~~board~~ attorney general from hiring inspectors, who are not law enforcement officers.

Section 161. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting "Revenue and Regulation" and inserting "Revenue".

Title 1
1-47-15; 1-47-16; 1-16G-4; 1-50-11;

Title 10:
10-1-1; 10-1-3; 10-1-6; 10-1-6.1; 10-1-7; 10-1-9; 10-1-10; 10-1-11; 10-1-12; 10-1-13; 10-1-13.1; 10-1-14; 10-1-15; 10-1-15.1; 10-1-15.2; 10-1-16; 10-1-16.1; 10-1-17; 10-1-18; 10-1-21; 10-1-22; 10-1-23; 10-1-24; 10-1-25; 10-1-26; 10-1-27; 10-1-28; 10-1-28.1; 10-1-28.2; 10-1-28.4; 10-1-29; 10-1-31; 10-1-32; 10-1-33; 10-1-34; 10-1-35;10-1-36; 10-1-37; 10-1-38; 10-1-39; 10-1-40; 10-1-41; 10-1-44; 10-1-44.3; 10-1-45; 10-1-46; 10-3-1.1; 10-3-1.2; 10-3-5; 10-3-7; 10-3-16; 10-3-34; 10-3-36; 10-3-41; 10-4-1; 10-4-2.6; 10-4-7; 10-4-15; 10-4-20; 10-4-21; 10-4-24; 10-4-40; 10-4-41; 10-5-2; 10-5-15; 10-5-16; 10-5-17; 10-6-4; 10-6-10; 10-6-33.13; 10-6-33.29; 10-6-33.31; 10-6-33.34; 10-6-33.36; 10-6-43; 10-6-50; 10-6-51; 10-6-75; 10-6A-1; 10-6A-4; 10-6B-9; 10-9-3; 10-9-7; 10-9-11; 10-10-2; 10-10-6; 10-10-10; 10-11-8; 10-11-40; 10-11-41; 10-11-42.1; 10-11-42.2; 10-11-47; 10-11-48; 10-11-50; 10-11-51; 10-11-52; 10-11-54; 10-11-55; 10-11-57; 10-11-58; 10-11-59;10-11-60; 10-11-65; 10-12-1; 10-12-31.1;10-12-38; 10-12-39; 10-12-40; 10-12-41; 10-12-42; 10-12-43; 10-12A-1; 10-12A-4; 10-13-21; 10-13-35.13; 10-13-36; 10-13-37; 10-13-37.1; 10-13-37.2; 10-13-37.3; 10-13-38; 10-13-40; 10-13-43; 10-13-44; 10-18A-1; 10-18A-7; 10-18A-9; 10-18A-11; 10-18A-13; 10-18A-15; 10-18A-16; 10-21-1.1; 10-23-2.2; 10-26-5.1; 10-28-1; 10-28-3; 10-28-4; 10-28-5; 10-28-6; 10-28-7; 10-28-8; 10-28-9; 10-28-11; 10-28-12; 10-28-13; 10-28-14; 10-28-15; 10-28-16; 10-28-18; 10-28-21; 10-28-21.2; 10-28-25; 10-29-1; 10-29-2; 10-29-3; 10-29-4; 10-29-5; 10-29-6; 10-29-7; 10-29-8; 10-29-9; 10-29-11; 10-29-12; 10-29-14; 10-29-15; 10-29-16; 10-29-16.1; 10-29-16.2; 10-33-1; 10-33-4; 10-33-8; 10-33-9; 10-33-10; 10-33-11; 10-33-14; 10-33-14.1; 10-33-15; 10-33-16; 10-33-17; 10-33-18; 10-33-24; 10-33-25; 10-33-27; 10-33A-1; 10-33A-10.1; 10-35-1.3; 10-35-1.8; 10-35-1.10; 10-35-2; 10-35-3; 10-35-7; 10-35-8; 10-35-9; 10-35-10; 10-35-10.1; 10-35-11; 10-35-12; 10-35-13; 10-36-5; 10-36-7; 10-36-8; 10-37-3; 10-37-4; 10-37-5; 10-37-6; 10-37-7; 10-37-8; 10-37-9; 10-37-9.1; 10-37-10; 10-37-11; 10-37-12; 10-37-13; 10-38-1; 10-38-6; 10-38-8; 10-38-9; 10-38-10;10-38-13; 10-38-14; 10-38-15; 10-38-16; 10-38-17; 10-38-29; 10-38-30; 10-38-34;10-39-42; 10-39-45; 10-39-45.3; 10-39-45.5; 10-39-47; 10-39-48; 10-39-49; 10-39-50; 10-39-51; 10-39-54; 10-39-54.1; 10-39A-1.1; 10-39A-5; 10-39A-8; 10-40A-1; 10-40A-9; 10-41-1; 10-41-2; 10-41-3; 10-41-4; 10-41-5; 10-41-6; 10-41-8; 10-41-9; 10-41-10; 10-41-11; 10-41-12; 10-41-16; 10-41-17; 10-41-18; 10-41-19; 10-41-20; 10-41-22; 10-41-25; 10-41-26; 10-41-30; 10-41-32; 10-41-37; 10-41-39; 10-41-40; 10-41-41; 10-41-42; 10-41-42.1; 10-41-50; 10-41-51; 10-41-52; 10-41-53; 10-41-54; 10-41-55; 10-41-64; 10-41-56; 10-41-57; 10-41-58; 10-41-59; 10-41-64; 10-41-64.1; 10-41-65; 10-41-66; 10-41-67; 10-41-76; 10-41-77; 10-41-79; 10-41-82; 10-41-83; 10-43-30; 10-43-30.1; 10-43-31; 10-43-32; 10-43-36; 10-43-42.1; 10-43-43.1; 10-43-46; 10-43-50; 10-43-51; 10-43-51.1; 10-43-55; 10-43-60; 10-43-63; 10-43-66; 10-43-69; 10-43-70; 10-43-71; 10-43-72; 10-43-73; 10-43-75.1; 10-43-76; 10-43-77; 10-44-9.4; 10-44-9.5; 10-45-5.1;

10-45-23; 10-45-24; 10-45-25; 10-45-26; 10-45-27.3; 10-45-30.1; 10-45-30.2; 10-45-31; 10-45-35; 10-45-37; 10-45-42; 10-45-45; 10-45-47.1; 10-45-48.1; 10-45-52; 10-45-55; 10-45-61; 10-45-85; 10-45-86; 10-45-87; 10-45-99; 10-45A-1; 10-45A-2; 10-45A-4; 10-45A-7; 10-45A-8; 10-45A-10; 10-45A-11; 10-45A-12; 10-45A-14; 10-45A-16; 10-45B-1; 10-45C-3; 10-45C-5; 10-45D-9; 10-45D-10.2; 10-45D-13; 10-45D-14; 10-46-1; 10-46-4; 10-46-15; 10-46-18.3; 10-46-20; 10-46-21; 10-46-22; 10-46-23; 10-46-24; 10-46-25; 10-46-27.1; 10-46-32; 10-46-33; 10-46-35.1; 10-46-38; 10-46-39; 10-46-40; 10-46-42; 10-46-43; 10-46-44; 10-46-46; 10-46-47.1; 10-46-67; 10-46A-1.3; 10-46A-1.4; 10-46A-1.8; 10-46A-2.1; 10-46A-16; 10-46A-17; 10-46A-19; 10-46B-1; 10-46B-1.1; 10-46B-1.2; 10-46B-1.6; 10-46B-6; 10-46B-10; 10-46B-11; 10-46B-11.1; 10-46B-13; 10-46B-14; 10-46B-15; 10-46B-17; 10-46B-18; 10-46C-3; 10-46C-9; 10-46D-1; 10-46E-6; 10-46E-7; 10-46E-11; 10-47B-3; 10-47B-4; 10-47B-4; 10-47B-4.1; 10-47B-146; 10-47B-147; 10-50-1; 10-50-9; 10-50-10; 10-50-12; 10-50-15; 10-50-18; 10-50-19; 10-50-20; 10-50-20.1; 10-50-21; 10-50-25; 10-50-26; 10-50-27; 10-50-30; 10-50-34; 10-50-36; 10-50-37; 10-50-39; 10-50-40; 10-50-41; 10-50-42; 10-50-43; 10-50-45; 10-50-46; 10-50-47; 10-50-48; 10-50-49; 10-50-50; 10-50-59; 10-50-60; 10-50-77; 10-50-91; 10-50B-6; 10-50B-13; 10-52-4; 10-52-5; 10-52-9; 10-52-13; 10-52A-1; 10-52A-4.2; 10-52A-7; 10-52A-8; 10-52A-9; 10-52A-13; 10-54-1; 10-54-2; 10-55A-7; 10-55A-9; 10-56-2; 10-56-7; 10-58-4; 10-58-5; 10-58-6; 10-58-7; 10-58-8; 10-58-13; 10-59-2; 10-59-13; 10-59-26; 10-59-27; 10-59-35; 10-59-42; 10-59-43; 10-61-2; 10-61-3; 10-61-5; 10-61-6; 10-62-1; 10-62-4; 10-62-5; 10-62-6; 10-62-7;

Title 11:
11-9-1; 11-9-20; 11-9-24;

Title 13:
13-13-10.2; 13-13-73.1; 13-37-16;

Title 15:
15-2-14.4;

Title 16:
16-18-2;

Title 21:
21-41-20; 21-44-10; 21-44-11; 21-54-15; 21-54-16; 21-54-18;

Title 22:
22-25-30; 22-25-48;

Title 28
28-1-75; 28-13A-9;

Title 31:
31-2-14.3;

Title 32:
32-1-3; 32-1-5; 32-1-6; 32-3-1; 32-3-38.1; 32-3-51.7; 32-3-53; 32-3-53.2; 32-3-57; 32-3-65; 32-3A-2; 32-3A-25; 32-3A-27; 32-3A-38.7; 32-4-3; 32-4-9; 32-4-10; 32-4-10.1; 32-4-10.2; 32-5-16.3; 32-5-16.6; 32-5-16.7; 32-5-88; 32-5-107; 32-5-111; 32-5-113; 32-5-116; 32-5-119; 32-5-120; 32-5-121; 32-5-129; 32-5-130; 32-5-131; 32-5-133; 32-5-134; 32-5-135; 32-5-143; 32-5-153; 32-5A-4; 32-5B-3; 32-5B-4; 32-5B-5; 32-5B-6; 32-5B-9; 32-5B-10; 32-5B-15; 32-5B-16; 32-6B-1; 32-6B-5; 32-6B-9; 32-6B-20; 32-6B-33; 32-6B-41.1; 32-6B-60; 32-6B-63; 32-6B-69; 32-6C-3; 32-6C-6; 32-6C-14.1; 32-6C-17; 32-6D-9; 32-6E-1; 32-7A-1; 32-7A-4.3; 32-7A-5; 32-7A-6; 32-7A-8; 32-7A-9; 32-7A-10; 32-7A-12; 32-7A-14.1; 32-7B-4; 32-7B-9; 32-7B-17.1; 32-7B-20; 32-7B-25; 32-9-1; 32-9-6; 32-9-8.1; 32-9-9; 32-9-15; 32-9-15; 32-9-16.1; 32-9-22.1; 32-9-44.1; 32-9-57; 32-9-58; 32-10-1; 32-10-3; 32-10-3.1; 32-10-3.2; 32-10-4; 32-10-12; 32-10-29.1; 32-10-35; 32-11-19; 32-11-25; 32-15-1; 32-35-44; 32-35-45; 32-35-46;

32-35-47; 32-35-52; 32-35-56; 32-35-61; 32-35-62; 32-35-98; 32-35-99; 32-35-100; 32-35-102; 32-35-111;

Title 34:
34-20B-85; 34-46-18; 34-46-19; 34-49-1; 34-49-18;

Title 34A:
34A-1-58.1; 34A-1-60; 34A-2-122; 34A-2-125; 34A-3A-23; 34A-6-68; 34A-13-1.

Title 35:
35-1-1; 35-2-10.1; 35-2-24; 35-4-2.7; 35-4-94; 35-5-22; 35-10-9; 35-12-2; 35-12-4; 35-12-6; 35-12-8; 35-12-9; 35-12A-3; 35-13-1;

Title 37:
37-10-1; 37-10-6; 37-10-8; 37-10-10; 37-10-24; 37-10-26; 37-10-27; 37-10-28; 37-10-29; 37-10-32; 37-10-33; 37-10-35; 37-10-36; 37-19-2; 37-19-4; 37-19-8; 37-19-9; 37-19-10.

Title 39:
39-13-4; 39-13-13; 39-13-14; 39-13-15;

Title 42:
42-7A-2; 42-7A-3; 42-7A-50; 42-7A-64; 42-7B-6; 42-7B-58; 42-8-2;

Title 43:
43-31-31; 43-41B-31;

Title 46A:
46A-2-4;

Title 47:
47-1A-1422; 47-7-30.2;

Title 49:
49-28-1; 49-31-1; 49-31-51; 49-31-51.1; 49-34A-82;

Section 162. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting "Revenue and Regulation" and inserting "Labor and Regulation".

Title 4
4-4-4.3;

Title 10
10-44-9.1;

Title 28
28-13-32.11;

Title 36
36-13-2.1; 36-21A-16; 36-21A-71 36-21B-1; 36-21B-3; 36-21B-4; 36-21B-5; 36-21B-7; 36-21B-12;

Title 37
37-24-5.2;

Title 47

47-31B-601;

Title 51A
51A-1-2; 51A-1-18; 51A-2-1; 51A-2-2; 51A-2-3; 51A-2-4; 51A-2-5; 51A-4-43;

Title 52
52-4-12; 52-4-12;

Title 54
54-3A-24; 54-4-36; 54-14-39;

Title 58
58-1-2; 58-2-1.1; 58-2-9; 58-2-10; 58-2-11; 58-2-13; 58-2-14; 58-2-15; 58-2-16; 58-2-17; 58-2-19; 58-2-21; 58-3-9; 58-4-44; 58-4A-1; 58-4A-13; 58-11-58. 58-18B-1; 58-22-47; 58-29A-55; 58-29B-32.1; 58-29E-1; 58-33-75;

Title 59
59-10-6; 59-10-7; 59-10-8; 59-10-13; 59-10-17;

Title 62
62-2-10;

Section 163. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting references to "the Department of Human Services" or the Secretary of "Human Services" and inserting "the Department of Social Services" or the Secretary of "Social Services" as appropriate.

Title 36A
1-36A-1.12; 1-36A-1.14; 1-36A-1.15; 1-36A-1.26;

Title 23A
23A-27-38; 23A-28C-6; 23A-27-41;

Title 26
26-7A-92; 26-7A-94;

Title 27A
27A-1-1; 27A-1-3; 27A-1-7; 27A-1-8; 27A-1-9; 27A-3-1.3; 27A-3-4; 27A-3-7; 27A-4-6; 27A-4-9; 27A-5-1; 27A-5-3; 27A-5-7; 27A-5-9; 27A-7-9; 27A-3-1; 27A-3-1.1; 27A-3-1.4; 27A-3-2; 27A-3-3; 27A-3-5; 27A-3-6; 27A-3-9; 27A-3-10; 27A-4-1; 27A-4-2; 27A-4-5; 27A-4-8; 27A-5-2; 27A-5-4; 27A-5-5; 27A-5-6; 27A-5-10; 27A-13-3; 27A-13-12; 27A-13-13; 27A-13-14;

Title 28
28-18-5;

Title 34
34-20A-2; 34-20B-105; 34-23B-1; 34-23B-2; 34-23B-4; 34-23B-5;

Title 35
35-4-100;

Title 36
36-9-28; 36-26-9; 36-27A-9; 36-27A-35; 36-32-8; 36-34-8;

Title 42
42-7B-48.3;

Dated this 12th day of January, 2011.

STATE AFFAIRS AND GOVERNMENT

CHAPTER 2

(SB 2)

Bureau of Administration statutes revised.

ENTITLED, An Act to repeal, update, and make form and style revisions to certain provisions related to the Bureau of Administration.

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

Section 1. That § 1-6-24 be repealed.

Section 2. That § 1-6-25 be repealed.

Section 3. That § 1-6-26 be repealed.

Section 4. That § 1-6-27 be repealed.

Section 5. That § 1-6-28 be repealed.

Section 6. That § 1-14-1 be amended to read as follows:

1-14-1. The Bureau of Administration shall continue within the Department of Executive Management, and all its functions shall be performed by the Department of Executive Management as provided by § 1-33-6.

The bureau shall maintain a central office in ~~the capitol at~~ Pierre ~~in rooms provided for the purpose,~~ which shall be the official address of the bureau and the place for serving process or papers of any kind upon it.

~~The bureau shall have an official seal.~~

Section 7. That § 1-14-2 be amended to read as follows:

1-14-2. No person ~~shall be eligible for appointment~~ may be appointed as the commissioner of administration unless ~~he holds a baccalaureate degree from a recognized institution of higher education and~~ the person has had progressively responsible experience in administration.

Section 8. That § 1-14-3 be amended to read as follows:

1-14-3. The commissioner of administration, under the general direction and control of the Governor, shall execute the powers and discharge the duties vested by law in the Bureau of Administration. ~~He~~ The commissioner shall qualify by taking and filing with the secretary of state the constitutional oath of office.

Section 9. That § 1-14-6.1 be repealed.

Section 10. That § 1-14-6.6 be repealed.

Section 11. That § 1-14-11 be repealed.

Section 12. That § 1-14-12 be amended to read as follows:

1-14-12. ~~The Bureau of Administration shall be administered by the commissioner of administration and he shall:~~

~~(1) Keep an exact and true inventory of all property, real and personal, belonging to the State of South Dakota;~~

~~(2) Prescribe uniform rules, as far as practicable, and not inconsistent with law, governing specifications for purchase of supplies, the advertisement for bids, the opening of bids, and the making of awards;~~

~~(3) Inquire into and make inspection of all articles and material furnished any department, institution, or state agency, and work and labor performed, for the purpose of ascertaining that the price, quality, and amount of such articles or labor are fair, just, and reasonable, and that all requirements, expressed and implied, pertaining thereto have been complied with;~~

~~(4) Provide such assistance, under the rules and regulations as hereinafter provided, as shall be necessary for the efficient performance of the official duties imposed upon the various departments and divisions by this code;~~

~~(5) Supervise such central administrative services as transportation, mail and messenger services, microfilming, mimeographing and other reproduction services, typewriter and machine repair, disposal services for condemned and surplus property, and the providing of general office supplies. And whenever possible, he shall install central facilities to be used by all state agencies under such rules and regulations as the Bureau of Administration prescribes;~~

~~(6) Contract for a lease or leases not to exceed three years to provide food services, candy, beverage, and tobacco concessions in the capitol building, capitol annex, Foss Building, Anderson Building, Soldiers and Sailors Memorial Building, Insurance Building, Department of Transportation Building, Public Safety Building, Kneip Building, MacKay Building, and the law enforcement training center and to supervise the fulfillment of the provisions of any such lease or leases. The issuance of such contracts shall conform, as nearly as possible, with the requirements of chapters 5-18, 5-19, and 5-20;~~

~~(7) Adopt rules in compliance with chapter 1-26 enumerating the types and classes of public personal property that shall be included in the inventory required by § 5-24-1;~~

~~(8) Employ such staff and maintain facilities as necessary to operate a local government services program which shall provide or arrange for services for public corporations pursuant to the provisions of §§ 1-14-12, 1-14-12.12 to 1-14-12.18, inclusive, and 1-14-14 to 1-14-14.2, inclusive.~~ The commissioner of administration shall administer the Bureau of Administration. The bureau shall:

(1) Keep an exact and true inventory of all property, real and personal, belonging to the State of South Dakota and promulgate rules pursuant to chapter 1-26 enumerating the

types and classes of public personal property to be included in the inventory required by § 5-24-1;

(2) Administer the procurement of supplies, services, and public improvements as prescribed in chapters 5-18A, 5-18B, and 5-18D;

(3) Supervise such central administrative services as transportation, mail, records management, and document reproduction services, make provisions for the supplying of office supplies and furniture;

(4) Maintain the buildings and grounds of the capitol complex and install central facilities to be used by all state agencies under such rules the Bureau of Administration promulgates pursuant to chapter 1-26;

(5) Contract for the provision of food services, candy, and beverages in the capitol complex;

(6) Supervise the administration of the Office of Hearings Examiners;

(7) Administer the federal surplus property allotted to the State of South Dakota;

(8) Provide for the lease of such real property as shall be necessary for the operation of state government;

(9) Administer a program of risk management for state government;

(10) Contract for such services as are required by multiple state agencies, if such a contract improves the efficiency of state government; and

(11) Any other function as may be required by statute, executive order, or administrative action.

Section 13. That § 1-14-12.12 be repealed.

Section 14. That § 1-14-12.16 be amended to read as follows:

1-14-12.16. The operations of the Bureau of Administration in establishing and administering ~~§§ 1-14-12, 1-14-12.12 to 1-14-12.18, inclusive, and 1-14-14 to 1-14-14.2, inclusive,~~ this chapter shall be financed by means of appropriations, gifts, grants, or reimbursements for services rendered. The fees and charges for services shall be designed, to the extent practicable, to recover all operational costs incurred to carry out the provisions of the contracts between public corporations and the Bureau of Administration.

Section 15. That § 1-14-12.18 be repealed.

Section 16. That § 1-14-13 be repealed.

Section 17. That § 1-14-14.1 be amended to read as follows:

1-14-14.1. Every political subdivision of this state may contract with the Bureau of Administration pursuant to ~~§§ 1-14-12, 1-14-12.12 to 1-14-12.18, inclusive, and 1-14-14 to 1-14-14.2, inclusive,~~ this chapter for the performances of all public services and functions empowered by law for such subdivision. Each political subdivision may appropriate funds for contracts pursuant to this section.

Section 18. That § 1-14-14.3 be repealed.

Section 19. That § 1-14-14.4 be repealed.

Section 20. That § 1-27-9 be amended to read as follows:

1-27-9. ~~As~~ Terms used in §§ 1-27-9 to 1-27-18, inclusive, mean:

(1) "Local record," ~~means~~ a record of a county, municipality, township, district, authority, or any public corporation or political entity whether organized and existing under charter or under general law, unless the record is designated or treated as a state record under state law;

(2) "Record," ~~means~~ a document, book, paper, photograph, sound recording, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in §§ 1-27-9 to 1-27-18, inclusive;

(3) "State agency" or "agency" or "agencies," includes all state officers, boards, commissions, departments, institutions, and agencies of state government;

(4) "State record," ~~means~~:

(a) A record of a department, office, commission, board, or other agency, however designated, of the state government;

(b) A record of the State Legislature;

(c) A record of any court of record, whether of state-wide or local jurisdiction;

(d) Any other record designated or treated as a state record under state law.

Section 21. That § 1-27-11 be amended to read as follows:

1-27-11. There is hereby created a board consisting of the commissioner of administration, state auditor, attorney general, auditor-general, and state archivist to supervise and authorize the destruction of records. The state records manager shall also serve as an ex officio member in an advisory capacity only. No record ~~shall~~ may be destroyed or otherwise disposed of by any agency of the state unless it is determined by majority vote of ~~such~~ the board that the record has no further administrative, legal, fiscal, research, or historical value.

Section 22. That § 1-27-11.1 be amended to read as follows:

1-27-11.1. The board created by § 1-27-11 shall be administered under the direction and supervision of the Bureau of Administration and the commissioner thereof~~, but~~. The board shall retain the quasi-judicial, quasi-legislative, advisory, other nonadministrative and special budgetary functions (as defined in § 1-32-1) otherwise vested in ~~it and~~ the board. The board shall exercise those functions independently of the commissioner of administration.

Section 23. That § 1-27-13 be amended to read as follows:

1-27-13. The head of each agency shall submit to the commissioner of administration, in accordance with the rules, ~~regulations,~~ standards, and procedures established by ~~him~~ the commission, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been received by the agency.

Section 24. That § 1-27-14 be amended to read as follows:

1-27-14. The head of each agency, also, shall submit lists of state records in his or her custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal, or fiscal value to warrant further keeping for disposal in conformity with the requirements of § 1-27-11.

Section 25. That § 1-27-14.1 be amended to read as follows:

1-27-14.1. Upon termination of employment with the state, each agency head shall transfer his or her records to ~~his~~ a successor or to the state archives for appraisal and permanent retention~~, unless otherwise directed by law~~. The records of any state agency shall, upon termination of its existence or functions, be transferred to the custody of the archivist~~, unless otherwise directed by law~~.

Section 26. That § 1-27-14.2 be amended to read as follows:

1-27-14.2. ~~In any case where~~ If any material of actual or potential archival significance is determined by a state agency to be ~~in jeopardy~~ at risk of destruction or deterioration, and ~~such~~ the material is not essential to the conduct of daily business in the agency of origin, the agency head ~~shall have authority to~~ may transfer ~~said~~ the records to the physical and legal custody of the state archivist ~~whenever~~ if the archivist is willing and able to receive ~~them~~ the records.

Section 27. That § 1-27-14.3 be amended to read as follows:

1-27-14.3. ~~Records~~ Any record transferred to the physical custody of the archivist ~~remain~~ remains the legal property of the agency of origin, subject to all existing copyrights and statutory provisions regulating ~~their~~ the record's usage, until such time as the agency head formally transfers legal title to the archivist.

Section 28. That § 1-27-15 be amended to read as follows:

1-27-15. ~~Nonrecord~~ Any nonrecord material ~~or materials~~ not included within the definition of records as contained in § 1-27-9 may~~, if not otherwise prohibited by law,~~ be destroyed at any time by the agency in possession of such materials without the prior approval of the commissioner of administration.

Section 29. That § 1-27-17 be amended to read as follows:

1-27-17. Upon request, the commissioner of administration shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government ~~and~~. The commissioner may, as required by ~~them~~ each branch, provide program services similar to those available to the executive branch of state government pursuant to the provisions of §§ 1-27-9 to 1-27-16, inclusive.

Section 30. That § 1-33-8.2 be repealed.

Section 31. That § 2-7-13 be repealed.

Section 32. That § 4-8-18 be amended to read as follows:

4-8-18. There is hereby created a capitol communications systems internal service fund to encompass the operations of the capitol telephone system~~, the capitol mail system,~~ and any and all other capitol communication systems. The commissioner of the Bureau of ~~Administration is authorized to~~ Information and Telecommunications shall apportion all expenses encountered in

the operation of the capitol communications systems to all state departments, agencies, and institutions ~~who~~ that utilize such systems.

Section 33. That chapter 1-14 be amended by adding thereto a NEW SECTION to read as follows:

There is hereby created a central mail service fund to encompass the operations of the capitol central mail system. The commissioner of the Bureau of Administration shall apportion all expenses encountered in the operation of the capitol central mail system to all state departments, agencies, and institutions that utilize the system.

Section 34. That § 5-14-2 be amended to read as follows:

5-14-2. The construction of all capital improvements projects as defined in § 5-14-1 of state agencies, boards, commissions, and institutions ~~shall be~~ are under the general charge and supervision of the Bureau of Administration as provided in this chapter~~, and the funds~~. Funds appropriated shall be paid on warrants drawn by the state auditor on vouchers duly approved by the Bureau of Administration and may also be approved by the authorized representative of the agency, board, commission, or institution to which the project appropriation is made.

Section 35. That § 5-14-5 be amended to read as follows:

5-14-5. The Bureau of Administration, under the direction of the State Building Committee, shall, at the request of any state board that expects to appear before the Legislature for the purpose of asking for any appropriation for state buildings and improvements, prepare such plans and specifications and have the ~~same~~ plans and specifications ready before the Legislature meets for their information~~; providing~~. If the services of a licensed architect or engineer are deemed to be necessary for this purpose, the building committee as provided in § 5-14-3 shall designate such architect or engineer.

Section 36. That § 5-14-7 be repealed.

Section 37. That § 5-14-8 be amended to read as follows:

5-14-8. The various agencies, boards, commissions, and institutions ~~are authorized to~~ may accept and expend in addition to the amounts provided for new construction at any of the institutions under their jurisdiction, any funds which may be obtained from any gift or contribution from any source for ~~said~~ that purpose.

Section 38. That § 5-14-8.1 be amended to read as follows:

5-14-8.1. The South Dakota State Fine Arts Council, the State Building Committee provided for in § 5-14-3, and the Bureau of Administration, ~~are authorized to~~ may accept and expend for the purpose of this chapter, any funds which it may obtain from federal sources, gifts, contributions, or any other source for the acquisition and installation of works of art in state buildings in which the works of art shall be an integral part of the building, attached to the building, or capable of display in other state buildings.

Section 39. That § 5-14-9 be amended to read as follows:

5-14-9. The Bureau of Administration shall keep the original or a copy of the plans and specifications of all state buildings, of all bids submitted, and of all contracts let for their erection~~, and~~. The bureau shall prepare and keep itemized statements of the cost of construction of all such buildings.

Section 40. That § 5-14-10 be amended to read as follows:

5-14-10. No money appropriated by the state ~~shall~~ may be expended for the erection of any building upon land not previously owned by the state before title thereto ~~shall have been~~ has conveyed to the state by a deed duly executed and acknowledged, granting the title in fee, clear of all encumbrances, without any reversionary clause or condition whatever, and the attorney general ~~shall have~~ has certified that the title acquired by the state conforms to the requirements of this section.

Section 41. That § 5-14-12 be amended to read as follows:

5-14-12. The standards and specifications set forth in § 5-14-13 apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. All such buildings and facilities constructed or remodeled after January 26, 1992, shall conform to these standards.

~~These standards and specifications shall be adhered to in those buildings and facilities which were in the planning stage on January 26, 1992, and for all new constructions.~~

Section 42. That § 5-14-13.1 be amended to read as follows:

5-14-13.1. All public buildings and facilities providing facilities for the wheelchair user, including ~~but not limited to~~ entrance and exit facilities, shall display at all entrances the internationally recognized symbol for wheelchair users.

Section 43. That § 5-14-14 be amended to read as follows:

5-14-14. ~~It shall be the responsibility of the~~ The administrator in charge of, and authorized to contract for, new construction, remodeling, alteration, or addition on behalf of the political subdivision involved ~~to~~ shall enforce the provisions of §§ 5-14-12 and 5-14-13.

Section 44. That § 5-14-17 be amended to read as follows:

5-14-17. ~~Every~~ Each department or agency of state government operating and maintaining an electrical energy producing plant ~~is hereby authorized to~~ may enter into ~~such~~ a contract ~~or contracts~~ with the United States of America for the purchase of electrical energy ~~which contracts~~. The contract may include stipulations that the generation of electrical energy may be discontinued~~; and~~. The department or agency may maintain such ~~plants~~ a plant in a serviceable operating condition for standby service for the generation of electrical energy ~~when~~ if required so to do by the United States.

Section 45. That § 5-14-18 be amended to read as follows:

5-14-18. ~~Every~~ Any person who intentionally burns, destroys, or injures any public building or improvement in this state is punishable as provided in § 22-34-1.

Section 46. That § 5-14-22 be amended to read as follows:

5-14-22. The state ~~shall have power to~~ may lease or sell on a negotiated basis and ~~to~~ convey any of its real property to a municipality or county, or to a nonprofit local industrial development corporation as defined by § 5-14-23 and located therein, to be used by such grantee for an authorized public purpose or industrial development purpose as enumerated in § 9-54-1. ~~Such~~ The lease shall be authorized on the terms and in the manner provided by the Legislature. ~~Every~~ Each sale ~~shall be~~ is subject to approval by an act of the Legislature.

Section 47. That § 5-14-23 be amended to read as follows:

5-14-23. ~~"Local~~ For the purposes of § 5-14-22, the term, local industrial development corporation~~," as that term is used in § 5-14-22~~, is an enterprise incorporated under the laws of the State of South Dakota, formed for the purpose of furthering the economic development of a community and its environs, and with authority to promote and assist in the growth and development of small business concerns in the areas covered by its operation. ~~Such~~ The corporation shall be organized as a nonprofit enterprise and shall be composed of no fewer than twenty-five members. A local industrial development corporation shall be principally composed of and controlled by persons residing or doing business in the locality. Such persons shall ordinarily constitute not less than seventy-five percent of the voting control of the local development corporation. No member of the development corporation may own in excess of twenty-five percent of the voting control in the development corporation if that member or that member's affiliated interests have direct pecuniary interest in a project involving an application under § 5-14-22. The primary objective of the local industrial development corporation ~~shall be~~ is to benefit the community as measured by increased employment, payroll, business volume, and corresponding factors.

Section 48. That § 5-14-30 be amended to read as follows:

5-14-30. There is hereby established within the ~~bureau of administration~~ Bureau of Administration the state-wide maintenance and repair fund. The ~~fund shall be maintained separately and be administered by the bureau of administration~~ bureau shall administer the fund and maintain it separately in order to conduct maintenance and repair on state-owned buildings pursuant to this chapter. The projects to receive funding shall be selected from a state-wide maintenance and repair priority list developed by the bureau ~~of administration~~. The ~~board of regents~~ Board of Regents shall annually establish the priority for maintenance and repair projects involving academic and revenue project buildings under its control. Any project of the ~~board of regents~~ Board of Regents involving an academic building pursuant to § 13-51-1 may be financed from the education facilities fund established under § 13-51-2 according to the order of priority determined by the board ~~of regents~~. The ~~bureau of administration~~ Bureau of Administration shall place on the prioritized list of projects to be financed through the state-wide maintenance and repair fund any project involving an academic building that has not been financed through § 13-51-2. The ~~board of regents~~ Board of Regents shall have charge of the maintenance and repair of revenue bond project buildings as provided in chapter 13-51A. However, in order to be eligible to receive funding, in whole or in part, from the state-wide maintenance and repair fund, each agency, board, bureau, or department of state government, including the ~~board of regents~~ Board of Regents, shall submit to the ~~bureau of administration~~ Bureau of Administration a complete list of all proposed maintenance and repair projects notwithstanding other available funding sources for those projects. After the bureau ~~of administration~~ determines which projects contained in the priority list are to receive funding, those projects that are not to be funded through the state-wide maintenance and repair fund may be financed by other funding sources. The priority list may be reprioritized if an emergency arises and a written determination made by the bureau ~~of administration~~ of the basis for the emergency is included with the state-wide maintenance and repair priority list.

Section 49. That § 5-15-1 be amended to read as follows:

5-15-1. The State of South Dakota declares that it is necessary that the capitol complex in the city of Pierre be enlarged and beautified~~, and the~~. The South Dakota Capitol Complex Restoration and Beautification Commission ~~is charged with the duty of accomplishing~~ shall accomplish that purpose in the manner provided by ~~law and herein set forth~~ this chapter.

Section 50. That § 5-15-1.1 be amended to read as follows:

5-15-1.1. The Capitol Complex Restoration and Beautification Commission shall be administered under the direction and supervision of the Bureau of Administration and the commissioner thereof~~, but~~. The commission shall retain the quasi-judicial, quasi-legislative,

advisory, other nonadministrative and special budgetary functions ~~(~~, as defined in § 1-32-1~~)~~, otherwise vested in it and shall exercise those functions independently of the commissioner of administration.

Section 51. That § 5-15-2 be amended to read as follows:

5-15-2. The ~~Capitol Complex Restoration and Beautification Commission shall consist~~ commission consists of one nonappointed member, who shall be the mayor of Pierre or ~~his~~ the mayor's designee, and seven appointed members, not all of whom may be of the same political party, to be appointed by the Governor for a term of four years. ~~However, the terms of members who are first appointed after July 1, 1980, shall be: Two appointed for a term of one year; two appointed for a term of two years; and one for a term of four years, and initial terms shall be designated by the Governor.~~ Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term.

Section 52. That § 5-15-3 be amended to read as follows:

5-15-3. Each member of the ~~Capitol Complex Restoration and Beautification Commission~~ commission shall, within ten days after appointment, qualify by taking the oath of office and giving bond to the state, with corporate surety, in the penal sum of twenty-five hundred dollars, the cost to be paid by the state.

Section 53. That § 5-15-4 be amended to read as follows:

5-15-4. The ~~Capitol Complex Restoration and Beautification Commission~~ commission shall meet at least twice each year and at such additional times as may be necessary. All meetings shall be held at the state capitol, and a majority of its members ~~shall constitute~~ constitutes a quorum. The commission shall choose a ~~chairman~~ chair, and one of its members as secretary, who shall keep minutes of its meetings. ~~It~~ The commission shall make reports to the Governor on the progress of its work, and to the Legislature.

Section 54. That § 5-15-5 be amended to read as follows:

5-15-5. The per diem and expenses of ~~Capitol Complex Restoration and Beautification Commission~~ commission members shall be paid by warrant of the state auditor by funds appropriated therefor, on vouchers approved by the Bureau of Administration.

Section 55. That § 5-15-6 be amended to read as follows:

5-15-6. The Bureau of Administration shall employ such clerical and other help for the ~~Capitol Complex Restoration and Beautification Commission~~ commission as in the bureau's discretion seems necessary ~~and is hereby authorized and empowered to~~. The bureau may employ such assistance and provide such supplies and equipment as may be necessary to properly carry on the work of the commission.

Section 56. That § 5-15-7 be amended to read as follows:

5-15-7. The ~~Capitol Complex Restoration and Beautification Commission is authorized and directed to~~ commission shall make all necessary plans for the enlargement, restoration, and beautification of the capitol complex or additions thereto, including uniform plans and specifications for ~~the~~ its development ~~thereof~~.

Section 57. That § 5-15-8 be amended to read as follows:

5-15-8. The ~~Capitol Complex Restoration and Beautification Commission~~ commission shall make recommendations for the development of areas immediately adjacent to the state capitol

complex and acquaint the people of South Dakota with the need and purpose of a comprehensive long-range plan for capitol complex of sufficient and proper size to serve the future needs of the state and to secure the proper growth and expansion of the city of Pierre. The zone shall be designated the capitol area preservation zone and shall be zoned primarily for residential purposes and for governmental purposes.

Section 58. That § 5-15-9 be amended to read as follows:

5-15-9. The ~~Capitol Complex Restoration and Beautification Commission is hereby authorized and empowered to cause to be printed and distributed~~ commission may print and distribute such pamphlets and leaflets and information as is proper and necessary to further and advance the work, objects, and aims of the commission, and ~~to~~ acquaint South Dakota citizens ~~therewith, by having the same ordered and supplied through the Bureau of Administration; to~~ with the commission. The Bureau of Administration shall supply the pamphlets and leaflets for the commission. The commission may have maps, diagrams, drawings, sketches, representations, preliminary surveys, and studies made in conjunction with ~~their~~ the commission's work, and ~~to~~ do all the necessary things to effectuate the purposes and intent of §§ 5-15-1 to 5-15-23, inclusive.

Section 59. That § 5-15-10 be amended to read as follows:

5-15-10. The ~~Capitol Complex Restoration and Beautification Commission shall have the power to~~ commission may accept and receive gifts of money and contributions and donations of real and personal property from any source, including the city of Pierre, South Dakota, a municipal corporation, and the United States of America, and to use the same for the purposes of §§ 5-15-1 to 5-15-23, inclusive~~; to~~. The commission may deposit such moneys to the credit of the commission, and ~~to~~ carry on a campaign for public contribution of such funds, and ~~to~~ expend moneys necessary therefor.

Section 60. That § 5-15-11 be amended to read as follows:

5-15-11. The ~~Capitol Complex Restoration and Beautification Commission shall have the power to~~ commission may make all necessary surveys in connection with its work~~; to~~, plat and replat the area of the capitol complex acquired by the commission, or any part thereof, and ~~to~~ open and dedicate streets to the use of the public in such area, granting easements therein and use thereof to the city of Pierre, South Dakota, and to the public, for sewer, water, and electricity, and other facilities~~; to~~. The commission may vacate any streets or alleys in the manner provided by law in the areas acquired by ~~it~~ the commission or bordering on or adjacent thereto~~; to~~. The commission may make agreements with the city for replacement of its facilities in any vacated streets within the area~~;~~ and ~~to~~ grant easements for erection and maintenance of other necessary facilities and utilities.

Section 61. That § 5-15-12 be amended to read as follows:

5-15-12. The ~~Capitol Complex Restoration and Beautification Commission shall have the power to~~ commission may acquire by gift or the exercise of the power of eminent domain in the manner provided by law, ~~and not otherwise,~~ real property necessary for the state capitol complex enlarged as provided by the plans adopted by the commission, ~~and to~~ lease or manage any such property, and ~~to~~ sell excess property of the commission.

Section 62. That § 5-15-13 be amended to read as follows:

5-15-13. The city of Pierre ~~shall have the power to~~ may convey, without compensation therefor, to the state any property owned by ~~it~~ the city within the boundaries of the capitol complex as enlarged pursuant to the plan adopted, and area determined, by the ~~Capitol Complex Restoration and Beautification Commission~~ commission.

Section 63. That § 5-15-14 be amended to read as follows:

5-15-14. The acts of the ~~Capitol Complex Restoration and Beautification Commission~~ commission in its exercise of the power of eminent domain on behalf of the state and in the selection of the lands acquired in the action of condemnation heretofore brought by the commission in the circuit court for Hughes County, South Dakota, to acquire unimproved land in the area known as Hilger's Gulch in the city of Pierre adjacent to the existing capitol grounds, are hereby confirmed as if heretofore expressly conferred and ~~said~~ the action is cured, validated, and legalized from its inception.

Section 64. That § 5-15-15 be amended to read as follows:

5-15-15. The location of any building to be erected in the capitol complex shall be determined by the majority vote of a board consisting of the Governor, ~~chairman~~ chair of the ~~capitol complex restoration and beautification~~ commission, and the executive head or officer of any of the branches of state government, or the ~~chairman~~ chair, commissioner, or head of any department, board, commission or agency thereof, for which a new building is authorized to be erected.

Section 65. That § 5-15-16 be amended to read as follows:

5-15-16. The ~~Capitol Complex Restoration and Beautification Commission shall have the power to~~ commission may make and execute all contracts and other instruments which may be required in connection with the enlargement, renovation, and beautification of the state capitol grounds and other duties imposed upon the commission by §§ 5-15-1 to 5-15-23, inclusive.

Section 66. That § 5-15-17 be amended to read as follows:

5-15-17. The ~~Capitol Complex Restoration and Beautification Commission shall have the power to~~ commission may lease, manage, control, and maintain any of the property heretofore or hereafter acquired by it, and to execute lease, or rental agreements therefor as ~~it may deem~~ the commission deems advisable ~~not exceeding terms~~. No lease agreement may exceed a term of two years~~, which~~. The lease agreement shall be executed by the ~~chairman~~ chair and secretary.

Section 67. That § 5-15-18 be amended to read as follows:

5-15-18. The ~~Capitol Complex Restoration and Beautification Commission shall have the power to~~ commission may sell unneeded or excess property of the commission other than real property and ~~to~~ sever any buildings or structures from the land. The sale of any property by the commission shall be at public auction or upon sealed bids, to be held in Hughes County, South Dakota, to the highest bidder for cash. Notice of sale, containing terms of sale shall be given by the commission which shall be published in at least two of the official newspapers of ~~said~~ the county once a week for two successive weeks next before the day, on or after which the sale is to be made, which date, and the location where such auction will be held, shall be stated in the notice and shall be at least fifteen days from the first publication of notice. The right to reject any and all bids ~~shall be~~ is reserved. ~~The sale shall~~ A sale may not be made before the day set but shall be made within sixty days thereafter. ~~In the event~~ If bids or offers are used, the bids shall be in writing~~,~~ and shall be filed in the office of the chairman or secretary of the commission in Pierre.

Section 68. That § 5-15-19 be amended to read as follows:

5-15-19. The ~~Capitol Complex Restoration and Beautification Commission~~ commission may make sales of structures, material, or property severed from the land, or other personal property to the public and to other state agencies, departments, or political subdivisions. Such sales to state agencies, departments, or political subdivisions shall follow the procedures for other sales~~, except that~~. However, no notice or advertisement for bid requirements or time of sale requirements ~~shall apply~~ applies to such sale. ~~When~~ If the sale of any such property agreed to by the commission ~~shall~~

~~exceed~~ exceeds the sum of one hundred dollars, ~~such~~ the sale shall be submitted by the commission to the State Board of Finance for approval~~;~~ and, if approved, a bill of sale may be executed by the commission.

Section 69. That § 5-15-20 be amended to read as follows:

5-15-20. The ~~Capitol Complex Restoration and Beautification Commission shall also have power, as it may deem advisable, to~~ commission may dispose of, wreck, and destroy any building acquired by it, its determination therefor to be approved by the State Board of Finance.

Section 70. That § 5-15-23 be amended to read as follows:

5-15-23. The ~~Capitol Complex Restoration and Beautification Commission~~ commission may promulgate rules, pursuant to chapter 1-26, necessary and proper for the purposes of and not inconsistent with §§ 5-15-1 to 5-15-20, inclusive.

Section 71. That § 5-15-24 be amended to read as follows:

5-15-24. ~~All that~~ A portion of the capitol grounds, as now exists and lies north of ~~Broadway in the city of Pierre shall hereafter~~ Church Street located in Hilger's Gulch shall be known as the Governor's Grove. ~~It~~ The Governor's Grove shall, under the supervision of the Bureau of Administration, be properly landscaped and parked and shall contain a grove of hardy, long-lived trees, each one properly marked and maintained as a memorial grove to the past, present, and future Governors of South Dakota~~, and a~~. A new tree, as an addition to such grove, shall be set out and properly dedicated on the first Arbor Day following the election of each Governor ~~hereafter~~. This ~~park~~ grove shall be maintained as an adjunct to the ~~said~~ capitol grounds and shall be used for no other memorial purpose than as is provided for in this section~~; provided, however, that~~. However, a gateway ~~thereto~~ to the grove may be provided in which each county in the state shall be represented by a properly inscribed stone or marker.

Section 72. That § 5-15-25.1 be repealed.

Section 73. That § 5-15-25.2 be repealed.

Section 74. That § 5-15-25.3 be repealed.

Section 75. That § 5-15-26 be amended to read as follows:

5-15-26. The commissioner of administration shall be the superintendent of the state capitol~~; and~~. The commissioner shall ~~have the~~ control, ~~management~~ manage, and ~~supervision of~~ supervise the buildings and grounds~~, and the employment of such~~. The commissioner shall employ engineers, carpenters, electricians, plumbers, mechanics, watchmen, policemen, elevator operators, guides, janitors, and other laborers as ~~shall~~ may be necessary for the proper care, safety, management, and maintenance of the capitol and grounds, and the public property there kept, and for the proper protection of the ~~same~~ properties from injury and deterioration.

~~He shall, subject to chapter 3-6A, prepare and enforce the necessary rules fixing the details of service for all employees mentioned in this section.~~

Section 76. That § 5-15-31 be repealed.

Section 77. That § 5-15-32 be repealed.

Section 78. That § 5-15-33 be repealed.

Section 79. That § 5-15-34 be amended to read as follows:

5-15-34. The commissioner of administration may promulgate such rules ~~and regulations~~ pursuant to chapter 1-26 as may be necessary to promote the health, safety, and general welfare, to prohibit public intoxication, disturbances, and disorderly assemblies, to keep the peace, and to declare what ~~shall constitute~~ constitutes a nuisance within the buildings of the capitol complex and the capitol grounds. These ~~regulations~~ rules may include the regulation of hours of general public accessibility to buildings within the capitol complex and the regulation of obstruction, speed limits, and parking on the streets and alleys within the capitol grounds.

Section 80. That § 5-15-35 be amended to read as follows:

5-15-35. Any person who violates a ~~lawful order,~~ rule~~, or regulation~~ promulgated pursuant to § 5-15-34 commits a petty offense.

Section 81. That § 5-15-36 be amended to read as follows:

5-15-36. The ~~South Dakota Capitol Complex Restoration and Beautification Commission is hereby directed to~~ commission shall set policy for and oversee the restoration and beautification of the state capitol complex, Pierre, South Dakota.

Section 82. That § 5-15-36.1 be amended to read as follows:

5-15-36.1. The ~~Capitol Complex Restoration and Beautification Commission~~ commission shall approve any plan of renovation of the capitol complex before ~~such~~ the renovation may be constructed.

Section 83. That § 5-15-44 be amended to read as follows:

5-15-44. The ~~South Dakota Capitol Complex Restoration and Beautification Commission~~ commission created by § 5-15-1 shall protect and preserve the integrity of the historic areas of the state capitol building and shall, from time to time, propose restoration projects to restore historic areas to their original appearance insofar as this objective is compatible with modern use.

Section 84. That § 5-15-45 be amended to read as follows:

5-15-45. No person may alter, change, remodel, partition, cover, or conceal an historic area which is a part of the state capitol building. In addition ~~to the above~~, no person ~~shall~~ may deny access to an historic area traditionally open to the public by creating physical barriers to access by the public except as may be necessary for public health, safety, or the safety of the property, or for the orderly conduct of state business, without the approval of the ~~State Capitol Complex Restoration and Renovation Commission~~ commission. However, the commissioner of administration temporarily may deny access to any area by the public or create temporary barriers for a period up to ninety days if, in ~~his~~ the commissioner's judgment, it is necessary to do so for the public health, safety, or the safety of the property, or to permit the orderly conduct of state business.

Section 85. That § 5-15-50 be amended to read as follows:

5-15-50. The State of South Dakota accepts the gift of Mrs. Peter Norbeck of a bust of the late United States Senator Norbeck and former Governor of this state, sculptured by the late Gutzon Borglum, ~~the same~~ to be placed in a suitable place on the capitol grounds to be determined by the ~~Capitol Complex Restoration and Beautification Commission~~ commission.

Section 86. That § 5-15-51 be amended to read as follows:

5-15-51. The granite statue of General William Henry Harrison Beadle, South Dakota educator shall be permanently displayed in ~~the rotunda of~~ the state capitol on an appropriate pedestal.

Section 87. That § 5-24-2 be amended to read as follows:

5-24-2. The inventories required by §§ 5-24-1 and 5-24-1.1 shall show the actual cost for each item, or the estimated cost at the time of acquisition, if the actual cost cannot be ascertained. In the case of gifts, the estimated fair market value at the time of acquisition shall be used. The officer or employee shall retain one copy of the inventory in ~~his~~ the officer's or employee's office. The others shall be filed~~,~~ as provided in §§ 5-24-1.1 and 5-24-3.

Section 88. That § 5-24-5 be amended to read as follows:

5-24-5. ~~Whenever~~ If any article in the custody of any ~~such~~ officer or employee is lost or destroyed, ~~he~~ the officer or employee shall make a note of the ~~same~~ loss or destruction in the inventory for the current year, giving the date and circumstances of the loss or destruction.

Section 89. That § 5-24-6 be amended to read as follows:

5-24-6. ~~In the event of the disposition of any of the~~ If an officer or employee disposes of personal property ~~above mentioned, by the respective officers,~~ without complying with the requirements of this chapter, ~~such~~ the officer ~~shall~~ or employee, in addition to the penal penalty prescribed by law, ~~be~~ is liable for the value thereof as shown by the last preceding inventory, to be recovered in a civil suit.

Section 90. That § 5-24-7 be amended to read as follows:

5-24-7. ~~Every~~ Each officer enumerated in § 5-24-1, shall turn over all the public personal property in ~~his~~ the officer's possession to ~~his~~ the officer's successor in office ~~and~~. Each officer shall take the receipt of ~~his~~ the officer's successor for all property requiring inventory, as defined in rules ~~issued~~ promulgated by the commissioner of the Bureau of Administration~~, and~~. The officer shall file ~~such receipts~~ any receipt in the offices where ~~he~~ the officer is, by this chapter, required to file the inventory of the personal property in ~~his~~ the officer's possession.

~~Every~~ Each officer enumerated in § 5-24-1 shall, upon assuming office, give a receipt to his or her predecessor for all public personal property requiring inventory, as defined in rules ~~issued~~ promulgated by the commissioner of the Bureau of Administration, turned over to ~~him~~ the officer.

Section 91. That § 5-24-8 be amended to read as follows:

5-24-8. Any officer who fails to comply with any of the provisions of §§ 5-24-1 to 5-24-7, inclusive, ~~shall be~~ is guilty of a Class 2 misdemeanor.

Section 92. That § 5-24-11 be repealed.

Section 93. That chapter 1-14 be amended by adding thereto a NEW SECTION to read as follows:

The Bureau of Administration may provide a central supply program for the purpose of supplying office materials to the various departments of state government. There is created a supply internal service fund. The payment for supplies purchased for the various departments shall be made once each month to the supply internal service fund.

Section 94. That § 5-24-13 be amended to read as follows:

5-24-13. The commissioner of administration ~~shall have the duty and power to~~ shall cooperate with the United States government, the general services administration, or any other duly constituted federal agency ~~thereof~~, by expending moneys and accepting federal surplus commodities and property for care, exchange, and distribution of ~~same~~ them to all eligible

institutions. The commissioner of administration shall appoint an administrator who shall keep and maintain an accurate record of all property received and distributed~~, and the~~. The record ~~shall be~~ is subject to audit by the Department of Legislative Audit.

Section 95. That § 5-24-16 be repealed.

Section 96. That § 5-24-21 be repealed.

Section 97. That § 5-25-2 be amended to read as follows:

5-25-2. Each office, department, institution, board, and agency of this state operating a state-owned passenger ~~automobile or automobiles~~ motor vehicle shall keep and maintain in its respective office:

(1) Accurate records of its cost of operation of ~~said automobile or automobiles~~ the motor vehicle;

(2) Travel reports showing destination and miles traveled each day according to speedometer registration and the total speedometer mileage at the beginning and at the end of each travel period, together with all operating expenses incurred for that period.

A copy of such travel report shall be attached to the claim or claims presented for reimbursement of the travel expense covered thereby.

Section 98. That § 5-25-2.1 be repealed.

Section 99. That § 5-25-3 be repealed.

Section 100. That § 5-25-4 be amended to read as follows:

5-25-4. ~~Without in any manner limiting the general powers hereinbefore prescribed, the Governor is authorized to fix the rate of pay for use of privately owned vehicles when a single person is using the vehicle, and on an ascending scale when additional passengers are carried; to grant or refuse permits to travel by motor vehicle at state expense; to require payments of the expense of said travel from different departments, officers, and agencies of the state when their personnel is traveling with other motor vehicles; to set up and~~ The Bureau of Administration shall maintain an internal service fund under the supervision of the commissioner of administration to collect and disburse mileage payments and motor vehicle disbursements equitably between the several departments, agencies, and officers of the state~~; and to require travel by public conveyances when same are available~~.

Section 101. That § 5-25-5 be repealed.

Section 102. That § 5-25-6 be repealed.

Section 103. That § 5-25-7 be repealed.

Section 104. That § 23-3-2 be repealed.

Section 105. That § 1-15-10 be amended to read as follows:

1-15-10. The Department of Corrections may make contracts for service, the erection of buildings, the purchase and lease of lands, materials and supplies needed, except such supplies as are under the supervision of the Bureau of Administration as prescribed by chapter ~~5-23; and in carrying out such contracts~~ 5-18B. The department may expend money, exact and collect penalties,

and purchase, lease, and sell property within the limitations of the state and national laws to carry out such contracts.

Section 106. That § 1-18C-5.1 be amended to read as follows:

1-18C-5.1. The State Historical Society Board of Trustees shall, pursuant to chapter 1-26, promulgate rules to ~~identify the permanent public records subject to § 5-23-22.2 and to specify how the notice provided for in § 5-23-22.2 shall be displayed~~ require any state agency publishing a document meant to be a permanent public record to print the document on a permanent type of paper and to specify the type of permanent paper to be used for each document. The state agency shall note the use of such paper in each document.

Section 107. That § 1-33B-9 be amended to read as follows:

1-33B-9. Guaranteed energy savings contracts are not subject to the requirements of ~~chapters 5-18 and 5-23~~ chapter 5-18A.

Section 108. That § 1-36A-1.11 be amended to read as follows:

1-36A-1.11. The Department of Human Services may make contracts for service, the erection of buildings, the purchase and lease of lands, materials, and supplies needed, except such supplies as are under the supervision of the Bureau of Administration as prescribed by chapter ~~5-23; and in carrying out such contracts~~ 5-18B. The department may expend money, exact and collect penalties and may purchase, lease and sell property within the limitations of the state and national laws to carry out such contracts.

Section 109. That § 1-36A-7 be amended to read as follows:

1-36A-7. The Department of Human Services shall, under the direction and control of the secretary of human services, perform all the functions of the following former agencies:

(1) The Division of Service to the Blind and Visually Impaired, created by chapter 28-10;

(2) The Division of Vocational Rehabilitation, created by chapter 28-9; and

(3) ~~The committee on state purchases from service to the blind, created by chapter 5-20;~~

~~(4)~~ The disability determination services program in chapter 28-11.

Section 110. That § 2-16-7 be amended to read as follows:

2-16-7. Notwithstanding ~~chapter 5-18~~ chapters 5-18A and 5-18D, the South Dakota Code Commission may draft specifications for material authorized for publication by § 2-16-6 and advertise for and accept bids from editorial, printing, and publishing companies for production of all material authorized by this chapter. The advertisement for bids shall be published twice in at least three newspapers of general circulation in different parts of the state, and in such additional manner as the commission may determine. The terms and conditions of the bids shall be prescribed by the commission. Each contract shall be awarded to the lowest bidder which, in the opinion of the commission, is the best bid consistent with the quality of editorial services, printing, paper, binding, expeditious service and the best interests of the state. If the contract for editorial services is separate from the contract for printing, the specifications shall be drawn in such a manner as not to exclude South Dakota printing firms.

Section 111. That § 4-11-7 be amended to read as follows:

4-11-7. Nothing contained in this chapter ~~shall prevent~~ prevents a public corporation~~, as defined in § 5-18-1,~~ from employing a private accountant to examine and audit the books and accounts thereof or of any of its officers ~~whenever~~ if the governing body or authorized official ~~thereof~~ believes that the public interest requires it, ~~provided~~ and if such employment is first approved by the auditor-general ~~within his guidelines; and, except as hereinafter provided, such~~. No private audit ~~shall not~~ may be paid for before a copy thereof ~~shall have been~~ is filed with and approved by the auditor-general. The entity receiving audit services may approve progress payments proportionate to the audit work completed so long as ten percent of the amount billed is withheld pending approval by the auditor-general of the final report. The auditor-general may~~, in his discretion,~~ accept such audit in lieu of an examination otherwise required to be made by ~~him~~ the auditor-general.

Section 112. That § 6-1-2 be amended to read as follows:

6-1-2. The provisions of § 6-1-1 are not applicable if the contract is made pursuant to any one of the conditions set forth in the following subdivisions, without fraud or deceit~~; but~~;. However, the contract is voidable if the provisions of the applicable subdivision ~~were~~ are not fully satisfied or present at the time the contract was entered into:

(1) Any contract involving three thousand dollars or less regardless of whether other sources of supply or services are available within the county, municipality, township, or school district, if the consideration for such supplies or services is reasonable and just;

(2) Any contract involving more than three thousand dollars but less than the amount for which competitive bidding is required, and there is no other source of supply or services available within the county, municipality, township, or school district if the consideration for such supplies or services is reasonable and just and if the accumulated total of such contracts paid during any given fiscal year does not exceed the amount specified in ~~§ 5-18-3~~ § 5-18A-14;

(3) Any contract with any firm, association, corporation, or cooperative association for which competitive bidding is not required and where other sources of supply and services are available within the county, municipality, township or school district, and the consideration for such supplies or services is reasonable and just, unless the majority of the governing body are members or stockholders who collectively have controlling interest, or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association, in which case any such contract is null and void;

(4) Any contract with any firm, association, corporation, or cooperative association for which competitive bidding procedures are followed pursuant to chapter ~~5-18~~ 5-18A or 5-18B, and where more than one such competitive bid is submitted;

(5) Any contract for professional services with any individual, firm, association, corporation, or cooperative, if the individual or any member of the firm, association, corporation, or cooperative is an elected or appointed officer of a county, municipality, township, or school district, whether or not other sources of such services are available within the county, municipality, township, or school district, if the consideration for such services is reasonable and just;

(6) Any contract for commodities, materials, supplies, or equipment found in the state ~~price~~ contract list established pursuant to ~~§ 5-23-8.1~~ § 5-18D-6, at the price there established or below; and

(7) Any contract or agreement between a governmental entity specified in § 6-1-1 and a public postsecondary educational institution if an employee of the Board of Regents

serves as an elected or appointed officer for the governmental entity, and if the employee does not receive direct compensation or payment as a result of the contract or agreement.

Section 113. That § 7-25-7 be amended to read as follows:

7-25-7. ~~Whenever~~ If any county building is to be constructed, the board shall proceed as required by chapter ~~5-18~~ 5-18B. The time specified for opening of bids ~~must~~ shall be at one of the regular or duly adjourned sessions of the board.

Section 114. That § 7-25-9 be amended to read as follows:

7-25-9. Each bid shall contain a certified check, cashier's check, or bank money order, in the sum equal to five percent of the amount of the bid. The check or money order shall be certified or issued by either a state or national bank domiciled within this state made payable to the county or the county treasurer ~~thereof~~. In lieu of a check or money order, a bid bond for ten percent of the bid may be submitted. The bond shall be issued by a surety authorized to do business in this state and payable to the county or the county treasurer ~~thereof~~ as a guaranty that the bidder will enter into contract ~~should it be~~, if the contract is awarded to ~~him~~ the bidder, and furnish a bond as ~~herein~~ provided by this chapter. ~~Should~~ If the successful bidder ~~forfeit his~~ forfeits a check, money order, or bid bond, the proceeds of the ~~same~~ check, money order, or bid bond shall be turned into the county general fund. The ~~checks, money orders or bid bonds of all the unsuccessful bidders~~ check, money order, or bid bond of each unsuccessful bidder shall be, by the board, immediately returned to the ~~respective makers thereof~~ bidder. No more time may elapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder, or the rejection of all bids presented than is permitted in ~~§ 5-18-7~~ subdivision 5-18A-5(7).

Section 115. That § 9-39-20 be amended to read as follows:

9-39-20. The provisions of chapter ~~5-18~~ 5-18A relating to advertisement for bids and §§ 6-1-1 to 6-1-4, inclusive, relative to participation in contracts by members of the governing body, ~~shall~~ apply to contracts of and members of municipal utility boards.

Section 116. That § 9-41-1.1 be amended to read as follows:

9-41-1.1. Notwithstanding the provisions of chapter ~~5-18~~ 5-18A or any of the provisions of Title 9 regarding the sale and purchase of property, a municipality operating a telephone system pursuant to § 9-41-1 may lease and purchase equipment for resale to its customers and may contract for services relating to the lease, purchase, sale, installation, and maintenance of ~~the same~~ such property, in a manner and for a price and terms determined by the governing body. If practicable the governing body shall secure at least two competitive quotations and retain them for its files.

Section 117. That § 9-42-4 be amended to read as follows:

9-42-4. ~~Whenever~~ If any local improvement ~~except~~ other than a sidewalk or bulkhead is ordered by the governing body, ~~it~~ the governing body shall have plans and specifications prepared and filed in the office of the auditor or clerk ~~and~~. The governing body shall designate a time, not less than two weeks from the date of the filing, at which sealed bids for the construction of the improvement will be received.

~~It~~ The governing body shall publish notice in the official paper, or elsewhere if deemed advisable, in accordance with the provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18B. The notice shall specify whether the improvement ~~will~~ shall be paid for in cash or by special assessment certificates and the rate of interest which the certificates ~~will~~ shall bear.

Section 118. That § 9-42-5 be amended to read as follows:

9-42-5. ~~All contracts~~ Any contract for the construction or repair of a public ~~buildings~~ building or for public works or improvements, and ~~all contracts~~ any contract for material used therefor and equipment purchased or rented in connection therewith, and ~~all contracts~~ any contract for local improvements for which a special ~~assessments are~~ assessment is to be levied, except as ~~herein~~ provided in this chapter and as provided in ~~chapter 5-18, must~~ chapters 5-18A and 5-18B, shall be let to the lowest responsible bidder in accordance with the provisions of ~~said chapter 5-18~~ chapters 5-18A and 5-18B.

The governing body ~~shall have the right to~~ may reject ~~any and~~ all bids and ~~to~~ readvertise for proposals, if none of the bids are satisfactory or if ~~they believe~~ the governing body believes any agreement has been entered into between the bidders to prevent competition.

Section 119. That § 9-46-4 be amended to read as follows:

9-46-4. If such sidewalk is not constructed, reconstructed, or repaired in the manner and within the time prescribed pursuant to § 9-46-3, the governing body by resolution may cause the work to be done by day labor or by job. If the amount of the contract is less than the amount provided for in ~~§ 5-18-3~~ § 5-18A-14, it is not necessary to advertise for bids.

Section 120. That subdivision (4) of § 10-46-1 be amended to read as follows:

(4) "Fair market value," the price at which a willing seller and willing buyer will trade. Fair market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property or any product transferred electronically that will be used in the performance of a contract, fair market value shall be determined pursuant to ~~§ 5-18-5.1~~ § 5-18B-7. This definition also applies to chapter 10-45;

Section 121. That § 11-7-44 be amended to read as follows:

11-7-44. ~~All~~ Any construction work, and work of demolition or clearing, and ~~every~~ any purchase of equipment, supplies, or materials, necessary in carrying out the purposes of this chapter, shall be awarded pursuant to the provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18B.

Section 122. That § 13-16-6.1 be amended to read as follows:

13-16-6.1. Notwithstanding the provisions of chapters ~~5-18~~ 5-18A and 13-20, if any proposed installment purchase contract or lease-purchase agreement authorized under chapter 13-16, is to be entered into by a school district, the notice for bidders shall require the bidders to state the rate of interest and the installment payment or lease-purchase schedule that would have to be made by the school district in fulfillment of the contract. However, the requirement of this section does not apply to any installment purchase or lease-purchase to be entered into between a school district and the health and educational facilities authority.

Section 123. That § 13-16-9.3 be amended to read as follows:

13-16-9.3. Any school district using the capital outlay fund for payment of construction of new facilities or construction of additions to facilities, the total of which ~~will require~~ requires advertising for bids under chapter ~~5-18, must~~ 5-18A, shall have a public hearing at least ten days prior to the advertisement of any contract specifications. ~~Such~~ The public hearing shall be advertised in the legal newspaper of the school district. Following ~~such~~ the public hearing, and approval of the school board, the school district may use the capital outlay fund as provided in § 13-16-6~~; provided, however, that a~~. No school district may ~~not~~ change the originally advertised use of the fund without holding another public hearing.

Section 124. That § 13-20-3 be amended to read as follows:

13-20-3. Except for purchases made pursuant to chapter 13-34, ~~whenever~~ if any school facilities are to be built or remodeled, or improvements are to be made to school sites, or ~~when~~ if supplies or equipment are to be purchased ~~contracts shall be let~~, the school board shall let contracts in accordance with ~~chapter 5-18~~ chapters 5-18A and 5-18B and in accordance with plans and specifications ~~that shall be~~ furnished by the ~~school~~ board.

Section 125. That § 13-20-4 be amended to read as follows:

13-20-4. ~~Whenever~~ If an emergency maintenance need arises caused by wind, hail, fire, theft, explosion, deterioration resulting in sudden destruction to a vital piece of school equipment, or a traffic accident which would necessitate the closing of school while ~~it~~ the school would otherwise be in session, or which ~~will~~ would endanger the usefulness of remaining school property, the school board may take immediate action to correct such emergency maintenance need in accordance with the procedures provided in chapter ~~5-18~~ 5-18A. An emergency maintenance need ~~shall~~ does not include the replacement of an entire school building.

Section 126. That § 13-20-6 be amended to read as follows:

13-20-6. The purchase of copyrighted material need not be submitted for bids as provided in § 13-20-3 and chapter ~~5-18 when~~ 5-18A if only one company publishes the copyrighted material to be purchased.

Section 127. That § 13-20-7 be amended to read as follows:

13-20-7. ~~When~~ If supplies or equipment are to be purchased, a school board advertising pursuant to § 13-20-3 may require a reasonable deposit guaranteeing the execution of contract and the furnishing of a performance bond by the successful bidder in accordance with chapters ~~5-18~~ 5-18A and 5-21. The board may accept an annual bond ~~provided that it~~ if the bid meets the requirements of chapters ~~5-18~~ 5-18A and 5-21. The board ~~shall reserve the right to~~ may reject any and all bids.

Section 128. That § 13-20-7.1 be amended to read as follows:

13-20-7.1. ~~When~~ If school facilities are to be built or remodeled or improvements are to be made to school sites, the school board advertising pursuant to § 13-20-3 shall require a reasonable deposit guaranteeing the execution of the contract and the furnishing of a performance bond by the successful bidder in accordance with chapters ~~5-18 and 5-21~~ 5-18A and 5-18B. The board ~~shall reserve the right to~~ may reject any and all bids.

Section 129. That § 13-49-16 be amended to read as follows:

13-49-16. ~~All contracts~~ Any contract for the erection and repair of ~~buildings~~ any building and the purchase of ordinary supplies shall be let in accordance with ~~chapter 5-18~~ chapters 5-18A and 5-18B except in the case of coal needed by the institutions.

Section 130. That § 13-49-34 be amended to read as follows:

13-49-34. Notwithstanding the provisions of ~~chapters 5-23 or 5-24~~ chapter 5-24A, if the Board of Regents assesses a special student fee to students in order to lease personal computers for the use of those students at a university, the Board of Regents may, upon the expiration of the lease, acquire the computers and offer them for resale to students, staff, or alumni through a university bookstore or to any political subdivision of the state or in bulk at fair market value on the resale market.

Section 131. That § 23A-37-13 be amended to read as follows:

23A-37-13. Any controlled weapon or firearm used in violation of chapter 22-14 shall be disposed of as follows:

(1) If it is stolen, it shall be returned to the lawful owner upon proof of ownership; ~~or~~

(2) If it is illegal, it shall be destroyed pursuant to law; or

(3) If it is neither stolen nor illegal, it shall be delivered to the arresting agency or, at the direction of the attorney general, to the South Dakota Forensic Laboratory for scientific examination purposes, for lawful use or disposal.

In the case of a disposition pursuant to subdivision (3), the arresting agency or forensic laboratory may use, trade-in, destroy, or sell, as provided in ~~§ 5-23-32, 5-24-9.2 or~~ chapter 5-24A or § 6-13-6, the controlled weapon or firearm.

Section 132. That § 23A-40-7 be amended to read as follows:

23A-40-7. The board of county commissioners of each county and the governing body of any municipality shall provide for the representation of indigent persons described in § 23A-40-6. ~~They~~ The board or body shall provide this representation by any or all of the following:

(1) Establishing and maintaining an office of a public defender;

(2) Arranging with the courts in the county to appoint attorneys on an equitable basis through a systematic, coordinated plan; or

(3) Contracting with any attorney licensed to practice law in this state.

In those counties which have established an office of public defender, any proceedings after judgment may be assigned to the public defender. The provisions of ~~§ 5-18-2~~ chapter 5-18A do not apply to this section.

Section 133. That § 31-12-12 be amended to read as follows:

31-12-12. Any road, tile, ~~and~~ or culvert construction, repair work, or materials ~~therefor~~ upon the county highway system, for which the county highway superintendent's estimated cost equals or is less than the amount provided for in ~~§ 5-18-3~~ § 5-18A-14, may be advertised and let at a public letting by the board of county commissioners, may be let privately at a cost not to exceed the county highway superintendent's estimate, or may be built by day labor.

Section 134. That § 31-12-13 be amended to read as follows:

31-12-13. Any road, tile, or culvert construction, repair work, or materials ~~therefor~~ on the county highway system, for which the county highway superintendent's estimated cost exceeds the amount provided for in ~~§ 5-18-3~~ § 5-18A-14, shall be advertised and let at a public letting by the board of county commissioners or may be built by day labor. The board may reject all bids, in which ~~event it~~ case the board may readvertise or let privately by submitting the contract to the Department of Transportation for approval.

Section 135. That § 31-12-14 be amended to read as follows:

31-12-14. If the cost of any road, bridge, tile, or culvert construction, repair work, or materials upon a county highway system or secondary roads exceeds the amount provided for in ~~§ 5-18-3~~ § 5-18A-14 or any less amount for which work bids are to be called for, and after plans and

specifications therefor have been prepared and filed in the office of the county auditor, the board having charge shall designate a time not less than twenty days from the date of such filing, at which sealed bids for such work or materials will be received~~, and~~. The board shall cause notice thereof to be published once each week for two successive weeks in one of the official newspapers of the county. ~~Such~~ The notice shall state where plans and specifications may be examined, when and where bids will be opened, a brief statement of the principal items of work and materials contemplated by the improvement, and the location of the same, the amount of the certified check or bidder's bond to be required, and such further notice as the board having supervision may deem advisable. Bids may be received at any special or regular meeting of ~~such~~ the board. ~~Such~~ The board may ~~in its discretion~~ refuse to accept any bids submitted.

Section 136. That § 31-12-27.1 be amended to read as follows:

31-12-27.1. Any county may contract with residents served by county roads for the construction, maintenance, and improvement of county roads or any portion thereof serving county residents. ~~Whenever it shall appear to~~ If the board of county commissioners ~~of any county by~~, upon a petition ~~presented~~ by a resident ~~or residents~~ within the county, ~~a copy of which petition shall be~~ filed in the office of the county auditor of the county ~~of which the petitioner or petitioners are residents of~~, determines that it ~~will be to~~ is in the best interest of the petitioner ~~or petitioners~~ and in the public interest that the petitioner ~~or petitioners~~ enter into an agreement in writing with the board of county commissioners of such county for the construction, maintenance, or improvement of county roads or any portion thereof, the board of county commissioners may~~, in its discretion,~~ enter into an agreement in writing with the petitioner ~~or petitioners~~ to construct, maintain, or improve any such county road or portion thereof to be specifically designated, at and for a price to be paid to the county to be expressed in the agreement. If ~~it shall appear to~~ the board of county commissioners determines that it ~~will be to~~ is in the public interest to enter into such an agreement, ~~it shall be lawful for it to~~ the board may do so and ~~such~~ the county may, by and through its highway department and with the personnel and equipment thereof or by privately let contract pursuant to ~~§ 5-18-13~~ § 5-18A-9, perform or cause to be performed such construction, maintenance, and improvement specified in the written agreement under the supervision and control of the county highway superintendent. The prices specified in the contract shall be paid to the county or if privately let, to the person performing the work by the resident ~~or residents~~ petitioning upon estimates certified to by the county highway superintendent.

Section 137. That § 31-17-14 be amended to read as follows:

31-17-14. The court, by its judgment in an action pursuant to § 31-17-11 ~~shall have the right to~~, may determine the necessity and extent of any construction, improvement, or repair of such highway; the right to enforce equal contribution to the costs thereof by both townships; and the right to require the board of supervisors of both townships to jointly meet and advertise for bids and enter into a contract for the construction, improvement, or repair of such highway in the manner provided by ~~§§ 5-18-3 and 5-18-5~~ §§ 5-18A-14 and 5-18B-10.

Section 138. That § 33-12-28 be amended to read as follows:

33-12-28. The provisions of chapters ~~5-18, 5-19 and 5-21~~ 5-18A, 5-18B, and 5-18D, governing contracts by public corporations, apply to contracts and purchases by the adjutant general and the Department of Military and Veterans Affairs. However, in case of insurrection, invasion, tumult, riot, breach of the peace, imminent danger thereof, or other great emergency, the Governor may, upon the certificate of the adjutant general, temporarily suspend the operation of law and direct the quartermaster general to purchase in the open market any necessary military property or supplies. The adjutant general shall report to the Governor the amount of property and supplies purchased and the prices paid.

Section 139. That § 34-31-8 be amended to read as follows:

34-31-8. Notwithstanding the provisions of ~~§ 5-23-2~~ § 5-18D-25, the Department of Agriculture may purchase used motor vehicles and equipment at auctions of federal and state surplus property, or from public and private utility companies, irrespective of whether or not the sellers of the vehicles are licensed dealers as required by ~~§ 5-23-2~~ § 5-18D-25, for distribution to fire departments or districts for fire suppression. The department may charge recipients for reasonable direct and indirect costs of providing such rural fire equipment, vehicles, and supplies to counties and rural fire departments or districts. The department may administer federal and state cost assistance programs related to such rural fire protection.

Section 140. That § 34A-5-41 be amended to read as follows:

34A-5-41. The board of trustees of any sanitary district incorporated under this chapter may submit to the voters of the district at an annual election or a special election called and held in accordance with chapter 9-13 the question whether the district shall be authorized to acquire and operate a water system, or the application for incorporation filed in accordance with § 34A-5-6 may request such authority. Upon approval of the grant of such authority by a majority of the qualified electors voting on the question, or upon entry of the order incorporating the district if the application has requested such authority, the board of trustees ~~shall be authorized to~~ may acquire and operate water mains, hydrants, intakes, wells, storage tanks and reservoirs, treatment plants, and all other facilities used or useful for the supply and distribution of water, and ~~to~~ acquire and operate any of such facilities, and ~~to~~ contract for the service of any such facilities owned by the adjacent municipality or for the use of district facilities by the municipality; and in connection with all such matters the district and its board of trustees ~~shall have~~ has all powers herein granted with reference to sewer facilities. In the exercise of such powers the board of trustees may purchase any existing facilities used or useful therefor, or may contract for the construction of any such facilities in the manner provided in chapters ~~5-18 and 5-19~~ 5-18A and 5-18B.

Section 141. That § 34A-6-63.1 be amended to read as follows:

34A-6-63.1. The governing body of any county, municipality, or political subdivision of the state may, by ordinance or resolution, establish policies, requirements, and procedures for the purchase, acquisition, sale, or transfer of any solid waste, as defined in § 34A-6-1.3; solid waste by-products; recyclable materials, as defined in § 34A-6-61; and scrap materials by any solid waste or recycling system or facility that is owned or operated by the county, municipality, or political subdivision or by any other facility or program that is owned or operated by the county, municipality, or political subdivision. Policies and requirements established pursuant to this section shall conform to state statutes and rules related to solid waste and recycling.

Such purchases, acquisitions, sales, and transfers are exempt from the requirements of chapters ~~5-18~~ 5-18A and 6-13. If the governing body determines that it ~~would be~~ is in the best interests of the county, municipality, or political subdivision, the governing body may attempt to identify additional prospective buyers or sellers and may negotiate the conditions of such transactions with prospective buyers or sellers, including price, delivery, transport, quantity, and length of contract, to obtain the price or conditions most advantageous to the governing body. The governing body may authorize procedures for adjusting prices to meet changing market conditions not within the control of the purchaser or seller. No governing board member and no officer of the county, municipality, or political subdivision may purchase or acquire the materials described in this section unless such materials are available for sale to or acquisition by the general public.

Section 142. That § 34A-16-27 be amended to read as follows:

34A-16-27. ~~Chapter 5-18 applies~~ The provisions of chapter 5-18A apply to purchases by the district.

Section 143. That § 42-7A-5 be amended to read as follows:

42-7A-5. ~~When~~ If entering into ~~contracts~~ any contract pursuant to subdivision 42-7A-4(3), the executive director shall utilize an open and competitive bid process which reflects the best interest of the State of South Dakota. ~~Such contracts are~~ Any such contract is exempt from the provisions of ~~chapter 5-23~~ chapters 5-18A and 5-18D. The executive director shall consider all relevant factors including security, competence, experience, timely performance, and maximization of net revenues to the state. ~~Contracts~~ Any contract entered into pursuant to subdivision 42-7A-4(3) for major procurements are subject to the approval of the commission and are subject to the provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18D.

Section 144. That § 46-6-31 be amended to read as follows:

46-6-31. The chief engineer, ~~when~~ if plugging or otherwise controlling a well pursuant to the provisions of §§ 46-6-29 and 46-6-30, shall comply with the bidding provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18B unless ~~he~~ the chief engineer determines that compliance with those provisions will result in harm to health or property or will result in an unreasonable waste of water.

Section 145. That § 46-7-5.1 be amended to read as follows:

46-7-5.1. Upon failure or refusal of an owner of unsafe works to make the changes necessary to secure the safety of the works pursuant to the chief engineer's order or order of the board ~~as applicable~~, the chief engineer may enter upon the property where the works are located and make the necessary changes. The cost of the work shall be borne by the owner of the works and may be recorded as a lien against any property of the owner until paid. This section does not limit any other remedy against the owner of the works. The chief engineer shall comply with the bidding provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18B unless ~~he~~ the chief engineer determines that compliance with those provisions will result in harm to public health or property.

Section 146. That § 46-7-5.2 be amended to read as follows:

46-7-5.2. Notwithstanding the pendency of any notice, order, or protest pursuant to § 46-7-5, the chief engineer may immediately breach or repair any works if, in ~~his~~ the chief engineer's judgment, it is necessary to protect human life from imminent danger. The cost of the work in such cases shall be borne by the owner of the works and may be recorded as a lien against any property of the owner until paid. The provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18B are not applicable to this section. This section does not limit any other remedy against the owner of the works.

Section 147. That § 46A-1-80.1 be amended to read as follows:

46A-1-80.1. All interest, title, and rights of ownership in the two eight-inch dredges and one ten-inch dredge and associated equipment and any money are hereby transferred to the South Dakota Lakes and Streams Association, for use in the restoration of lakes and streams, with priority given to lakes and streams in South Dakota. This transfer is effective only for so long as the dredges are owned by the association and are used for the above purpose. If the South Dakota Lakes and Streams Association ceases to exist or apply the dredges to the above purpose, all right, title, and interest in the dredges ~~shall~~ revert to the State of South Dakota. In the event of such reversion, the Bureau of Administration shall sell the dredges to the highest bidder, notwithstanding any requirements of chapter ~~5-23~~ 5-24A in regard to minimum bids.

Section 148. That § 46A-9-52 be amended to read as follows:

46A-9-52. ~~All~~ Any water user district ~~contracts~~ contract for the construction, alteration, extension, or improvement of any works, or any part or section thereof, or any building, for the use of the district, or for the purchase of any materials, machinery, or apparatus therefor ~~shall be~~ is governed by ~~chapter 5-18~~ chapters 5-18A and 5-18B.

Section 149. That § 46A-9-53 be amended to read as follows:

46A-9-53. Before publication of any advertisement pursuant to chapter ~~5-18~~ 5-18A, plans and specifications for the proposed construction work or materials shall be prepared and filed at the principal office or place of business of the water user district. The advertisement shall be published as required by ~~§ 5-18-3~~ § 5-18A-14 and, in the discretion of the board of directors of the district, may be published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of the receiving of bids. The advertisement shall designate the nature of construction work proposed to be done or materials proposed to be purchased.

Section 150. That § 46A-10A-75 be amended to read as follows:

46A-10A-75. At any time after adopting a drainage plan or other official control, a board may construct drainage or let contracts for its construction. A contract may be for construction of an entire drainage project, for any portion thereof, or for material and labor separately, and the contract shall be let by competitive bid. A board ~~has the right to~~ may reject any bid. The lowest responsible and capable bidder shall be accepted. If a responsible and capable landowner affected by the project submits one of several low bids, ~~he~~ the landowner shall be given contract preference. If a contract is let, the contractor shall post a bond in the amount of the contract, conditioned on faithful performance of the contract and full completion of the contract to the satisfaction of the board. For purposes of bids on a proposed project, all plans and specifications for the project shall be filed in the office of the county auditor. If, in the judgment of the board, the entire project or any part thereof can be constructed for less money than the amount of the lowest bid submitted, the board may hire the necessary labor and purchase the necessary material for the construction without letting contracts, the provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18B notwithstanding.

Section 151. That § 46A-10A-116 be amended to read as follows:

46A-10A-116. The board of trustees may control, supervise, and manage the district. Subject to the legal controls for drainage management under § 46A-10A-20, the board of trustees may, in conformity with any applicable local, state, and federal laws, rules, ordinances, and regulations:

(1) Clean out, repair, and maintain an existing drainage ditch;

(2) Deepen, widen, or enlarge a drainage ditch;

(3) Create a new drainage ditch, or relocate an existing drainage ditch;

(4) Extend an existing drainage ditch;

(5) Acquire lands for right-of-way for ditches by purchase or condemnation or any other lawful method in conformity with chapter 21-35 and any other provision of state law;

(6) Repair levies, dikes, and barriers for the purpose of drainage;

(7) Regulate the flow and direction of water to prevent downstream flooding;

(8) Employ or contract with an engineer, hydrologist, surveyor, appraiser, assessor, legal counsel, or any other specialists as they deem necessary to carry out the powers and duties conferred by §§ 46A-10A-98 to 46A-10A-123, inclusive;

(9) Let contracts for construction, maintenance, repair, or other necessary work pursuant to the provisions of ~~chapter 5-18~~ chapters 5-18A and 5-18B and § 46A-10A-75. No

member of the board of trustees may have any interest in any contract or employment entered into pursuant to this subdivision or subdivision (8);

(10) Request the county commission or township board of supervisors to replace, repair, remove, and enlarge public highway culverts and bridges, pursuant to §§ 46A-10A-76, 31-12-19, 31-14-2, and 31-14-27;

(11) Grant a request by a landowner to annex the landowner's land to the district and apportion the costs of clean out, maintenance, or construction according to the benefits received and subject to approval by a majority of the eligible landowners voting in a special election held by the board of trustees in conjunction with the district's annual election; and

(12) Reclassify benefits and apportion costs of clean out, extension, enlargement, repairs, or improvements among landowners benefitting therefrom, if the landowners have land located within the drainage district.

Section 152. That § 54-13-6 be amended to read as follows:

54-13-6. The Department of Agriculture, in the administration of this chapter, may contract with one or more established agencies of state government, nonprofit corporations, or individuals to provide mediation services for borrowers and creditors and to provide financial preparation assistance for borrowers involved in mediation. Any contract executed under this section is exempt from ~~chapter 5-18~~ chapters 5-18A and 5-18D. The contract may include such terms and conditions as the board deems appropriate.

Section 153. That subdivision (13) of § 5-18A-22 be amended to read as follows:

(13) Any authority authorized by chapters 1-16A, 1-16B, 1-16E, 1-16G, 1-16H, 1-16J, 5-12, or 11-11;

Section 154. That § 5-18A-17 be amended to read as follows:

5-18A-17. No state officer or employee who approves, awards, or administers a contract involving the expenditure of public funds or the sale or lease of property, may have an interest in a contract that is within the scope of the officer's or employee's official duties. This prohibition includes any state officer or employee who, in his or her official capacity, recommends the approval or award of the contract or who supervises a person who approves, awards, or administers the contract. This prohibition does not include any state officer who serves without compensation or who may be paid per diem pursuant to § 4-7-10.4. Any contract made in violation of this section is void. Any state officer or employee who knowingly violates this section is guilty of a Class 2 misdemeanor.

Signed March 3, 2011

CHAPTER 3

(SB 3)

Use of the state seal revised.

ENTITLED, An Act to revise certain provisions regarding the administration of the state seal.

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

Section 1. That § 1-6-3.1 be amended to read as follows:

1-6-3.1. No person may reproduce, duplicate, or otherwise use the official seal of the State of South Dakota, or its facsimile, adopted and described in §§ 1-6-1 and 1-6-2~~, or the state commemorative medallion design or the state bullion piece design adopted by the commissioner of administration~~ for any for-profit, commercial purpose without specific authorization from the ~~commissioner of the Bureau of Administration~~ secretary of state. A violation of this section is a Class 1 misdemeanor.

Section 2. That § 1-6-3.2 be amended to read as follows:

1-6-3.2. No person may sell or offer for sale a replica or facsimile of the official seal of the State of South Dakota, adopted and described in §§ 1-6-1 and 1-6-2, ~~or the state commemorative medallion design or the state bullion piece design adopted by the commissioner of administration~~ without the specific authorization from the ~~commissioner of the Bureau of Administration~~ secretary of state. A violation of this section is a Class 1 misdemeanor.

Section 3. That § 1-6-3.3 be amended to read as follows:

1-6-3.3. The ~~Bureau of Administration~~ secretary of state shall charge a royalty for the privilege of using the state seal~~, the state commemorative medallion design, or the state bullion piece design~~. The ~~Bureau of Administration~~ secretary of state may not charge a royalty if the state seal~~, the state commemorative medallion design, or the state bullion piece design~~ is used for an educational purpose. ~~The royalty fee collected for the use of the state commemorative medallion design shall be deposited in the commemorative coin fund provided for in § 1-6-23.~~ All ~~other~~ royalty fees collected pursuant to this chapter shall be deposited in the state general fund.

Section 4. That § 1-6-3.4 be repealed.

Signed March 15, 2011

CHAPTER 4

(SB 33)

Sobriety program may include ignition interlock devices.

ENTITLED, An Act to revise certain provisions regarding the 24/7 sobriety program, to authorize the collection of certain fees, and to authorize the use of ignition interlock devices.

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

Section 1. That § 32-23-23 be amended to read as follows:

32-23-23. Any driving permit issued by the court to any person, who has been convicted of a violation of § 32-23-1 ~~within the last ten years or any driving permit issued pursuant to § 32-23-2, if that person had 0.17 percent or more by weight of alcohol in that person's blood,~~ shall be conditioned on the person's total abstinence from the use of alcohol, the person's participation in the 24/7 sobriety program created by §§ 1-11-17 to 1-11-25, inclusive, in those ~~areas~~ counties where 24/7 sobriety testing is available, ~~and~~ the payment of associated costs and expenses and the person meeting one of the following conditions:

(1) The person had a previous conviction for a violation of § 32-23-1 within the last ten years; or

(2) That the person had a 0.17 percent or more by weight of alcohol in that person's blood at the time the violation occurred.

The court shall immediately revoke the permit upon a showing of proof by a preponderance of the evidence that the person has violated this condition.

Section 2. That § 1-11-25 be amended to read as follows:

1-11-25. Any fees collected under §§ 1-11-17 to 1-11-25, inclusive, shall be distributed as follows:

(1) Any daily user fee collected in the administration of twice a day testing, drug patch testing, or urinalysis testing under the 24/7 sobriety program shall be collected by the sheriff, or ~~the~~ an entity designated by the sheriff, and deposited with the county treasurer of the proper county, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services and ensuring compliance;

(2) Any installation and deactivation fee collected in the administration of electronic alcohol monitoring device testing shall be collected by the sheriff, or ~~the~~ an entity designated by the sheriff, and deposited with the county treasurer of the proper county, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services, and ensuring compliance;

(3) Any daily user fee collected in the administration of electronic alcohol monitoring device testing shall be deposited in the state 24/7 sobriety fund created by § 1-11-18. A participant shall pay all electronic alcohol monitoring device testing user fees to the clerk of courts in the county where the participant is enrolled in the program if the test is ordered by a court. If the test is directed by the Board of Pardons and Parole, the Department of Corrections, the Department of Public Safety, or a parole agent, the fees shall be paid to the directing entity as provided in the written directive; ~~and~~

(4) The Department of Corrections or the Unified Judicial System may collect an installation fee and a deactivation fee in their administration of electronic alcohol monitoring device testing. These fees shall be deposited into the state general fund;

(5) Any enrollment and monitoring fee collected in the administration of ignition interlock device testing shall be collected by the sheriff, or an entity designated by the sheriff, and deposited with the county treasurer of the proper county, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services, and ensuring compliance; and

(6) Any participation fee collected in the administration of testing under the 24/7 sobriety program to cover program administration costs incurred by the Office of Attorney General shall be collected by the sheriff, or an entity designated by the sheriff, and deposited in the state 24/7 sobriety fund created by § 1-11-18.

Section 3. That § 1-11-18 be amended to read as follows:

1-11-18. There is hereby established in the state treasury the 24/7 sobriety fund. The fund shall be maintained and administered by the Office of the Attorney General to defray costs of operating the 24/7 sobriety program, including purchasing and maintaining equipment and funding support services. The Office of the Attorney General may accept for deposit in the fund money from donations, gifts, grants, participation fees, and user fees or payments. Expenditures from the fund

shall be budgeted through the normal budget process. Unexpended funds and interest shall remain in the fund.

Section 4. That § 1-11-24 be amended to read as follows:

1-11-24. The Office of the Attorney General, pursuant to chapter 1-26, may promulgate rules for the administration of §§ 1-11-17 to 1-11-25, inclusive, to:

(1) Regulate the nature, method, and manner of testing;

(2) Provide for procedures and apparatus for testing including electronic monitoring devices and ignition interlock devices; and

(3) ~~Set participation and user fees; however, user fees for twice a day testing shall may not be less than one dollar per test; and~~

~~(4)~~ Require the submission of reports and information by law enforcement agencies within this state.

Section 5. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

A participant submitting to twice-a-day testing shall pay a user fee of one dollar to three dollars, inclusive, for each test.

Section 6. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

A participant submitting to urinalysis testing shall pay a user fee of five dollars to ten dollars, inclusive, for each test. If further analysis of the sample is required or requested, the participant is responsible for payment of the actual costs incurred by the participating agency for the analysis of the sample.

Section 7. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

A participant submitting to wear a drug patch shall pay a user fee of forty to fifty dollars, inclusive, for each drug patch attached.

Section 8. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

A participant submitting to the wearing of the electronic alcohol monitoring device shall pay a user fee of five dollars to ten dollars, inclusive, for each day.

In addition, the participant shall pay an installation fee and a deactivation fee, each in the amount of thirty to fifty dollars, inclusive.

The participant is also financially responsible for the actual replacement cost for loss or breakage of the electronic alcohol monitoring device and all associated equipment provided to the participant that is necessary to conduct electronic alcohol monitoring device testing.

Section 9. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

A participant submitting to the installation of an ignition interlock device shall pay all costs and expenses associated with the installation and operation of the ignition interlock device directly to the authorized vendor pursuant to a contract between the vendor and participant.

In addition, the participant shall pay an enrollment fee in the amount of thirty to fifty dollars, inclusive, at the time of enrollment and monitoring fees in the amount of ten to twenty dollars, inclusive, at intervals to be set by the attorney general.

The participant is also financially responsible for the actual replacement cost for loss or breakage of the ignition interlock device and all associated equipment provided to the participant that is necessary to conduct ignition interlock device testing.

Section 10. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

A participant shall pay all electronic alcohol monitoring device fees in advance or contemporaneously with the fee becoming due. All other applicable fees shall be paid at or in advance of the time for the test.

Section 11. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

Each participant in the 24/7 sobriety program shall pay a participation fee of one to three dollars, inclusive, per day.

Section 12. That chapter 1-11 be amended by adding thereto a NEW SECTION to read as follows:

The attorney general shall meet annually with participating agencies to review fees and collection procedures for the 24/7 sobriety program. The attorney general shall set and give notice of the time and place for the meeting. The attorney general shall set, by rules promulgated pursuant to chapter 1-26, the annual fees within the range established by this chapter.

Section 13. That ARSD 2:06:03:01 be repealed.

Section 14. That ARSD 2:06:03:02 be repealed.

Section 15. That ARSD 2:06:03:03 be repealed.

Section 16. That ARSD 2:06:03:04 be repealed.

Section 17. That ARSD 2:06:03:05 be repealed.

Section 18. That ARSD 2:06:03:06 be repealed.

Signed March 15, 2011

CHAPTER 5

(HB 1228)

Bonding limit increased for the four technical institutes.

ENTITLED, An Act to increase the bonding limit for the four technical institutes.

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

Section 1. That § 1-16A-77 be amended to read as follows:

1-16A-77. The aggregate outstanding principal amount of bonds, notes, or other obligations of the authority which are payable out of receipts, rentals, and other payments made pursuant to lease purchase agreements with an LEA or the South Dakota Board of Education under the authority of chapter 13-39, may not exceed ~~eighty~~ one hundred five million dollars for obligations issued by the authority in connection with any lease-purchase agreement with the Western Dakota Technical Institute, the Southeast Technical Institute, the Lake Area Technical Institute or the Mitchell Technical Institute. However, at the option of the authority to be expressed in a resolution or an indenture which authorizes or authorized any refunding bonds, the principal amount of the bonds, notes, or other obligations which are issued to refund, pay, discharge, or defease any outstanding bonds, notes, or other obligations or which are, as a result of issuance of any such refunding obligations, deemed to be paid, discharged, or defeased by reason of an irrevocable deposit of cash or securities, may be excluded from the total principal amount of obligations of the authority for the purpose of determining compliance with the limitation of this section.

Signed March 17, 2011

CHAPTER 6

(HB 1230)

The large project development fund.

ENTITLED, An Act to establish the large project development fund, to provide for its administration, and to make an appropriation therefor.

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

Section 1. That § 1-16G-1.2 be amended to read as follows:

1-16G-1.2. The Board of Economic Development may take title by foreclosure to any property given as security if the acquisition is necessary to protect any economic development grant or loan or any large project development grant made ~~under~~ pursuant to the provisions of this chapter, and may sell, transfer, or convey any such property to any responsible buyer. Any sale of property ~~hereunder~~ pursuant to the provisions of this chapter shall be performed in a commercially reasonable manner. If the sale, transfer, or conveyance cannot be effected with reasonable promptness, the board may, in order to prevent financial loss and sustain employment, lease the property to a responsible tenant or tenants.

All sale proceeds or lease payments received by the board pursuant to this section shall be deposited in the fund from which the original grant or loan was made.

Section 2. That § 1-16G-8 be amended to read as follows:

1-16G-8. The Board of Economic Development shall promulgate rules pursuant to chapter 1-26 concerning the following:

(1) The existing barriers to economic growth and development in the state;

(2) Developing investment in research and development in high technology industries;

(3) The submission of business plans prior to the approval of economic development grants or loans or large project development grants. Business plans shall include the products or services to be offered by the applicant, job descriptions with attendant salary or wage information by job category, educational requirements by job category, methods of accounting, financing other than that provided by the economic development grant or loan or a large project development grant, and marketing, sales, merchandising, and other disciplines proposed to be used for business growth and expansion;

(4) The cooperation between agencies of state government and applicant businesses for nonfinancial services including loan packaging, marketing assistance, research assistance, and assistance with finding solutions for complying with environmental, energy, health, safety, and other federal, state, and local laws and regulations;

(5) Regular performance monitoring and reporting systems for participating businesses to assure compliance with their business plans ~~and~~, terms of repayment of an economic development loan and compliance with terms of an economic development grant or a large project development grant;

(6) Establish eligibility criteria for grants and loans;

(7) Establish application procedures for grants and loans, including a requirement that grant and loan applications be signed under penalty of perjury;

(8) Establish criteria to determine which applicants will receive grants or loans;

(9) Govern the use of proceeds of grants and loans;

(10) Establish criteria for the terms and conditions upon which loans shall be made, including matching requirements, interest rates, repayment terms, and the terms of security given to secure such loans; ~~and~~

(11) Establish criteria for the terms and conditions upon which grants shall be made, including permitted uses, performance criteria, and matching requirements; and

(12) Establish criteria for the terms and conditions upon which grants shall be repaid for noncompliance with the terms and conditions upon which the grant was made.

Section 3. That § 1-16G-16.1 be amended to read as follows:

1-16G-16.1. The Board of Economic Development may use the revolving economic development and initiative fund for the purpose of paying taxes and liens and for the procuring of legal services and other services necessary to protect, recover, maintain, and liquidate the assets of the revolving economic development and initiative fund and the large project development fund. Such costs may be incurred and paid up to ten percent of the loan or grant balance with a majority vote of the board of economic development. Costs in excess of ten percent shall be approved by a two-thirds vote of the board. Such services are not subject to state bid laws so long as such services are procured in a commercially acceptable manner.

Section 4. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

(1) "Large project," a project with a total project cost exceeding five million dollars; and

(2) "Project cost," the amount paid in money, credits, property, or other money's worth for a project.

Section 5. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, project, means a new building or structure or the expansion of an existing building or structure, the construction of which is subject to the contractor's excise tax imposed by chapters 10-46A or 10-46B. A project includes laboratory and testing facilities, manufacturing facilities, power generation facilities, power transmission facilities, agricultural processing facilities, and wind energy facilities. A project does not include any building or structure:

(1) Used predominantly for the sale of products at retail, other than the sale of electricity at retail, to individual consumers;

(2) Used predominantly for residential housing or transient lodging;

(3) Used predominantly to provide health care services;

(4) Constructed for raising or feeding of livestock; or

(5) That is not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts.

Section 6. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

There is established in the state treasury a fund to be known as the large project development fund for the purpose of making grants for large project development.

Section 7. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

The Board of Economic Development may make grants from the large project development fund for the purpose of promoting large project development in South Dakota.

Section 8. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

All money in the fund is hereby appropriated for the purpose of making grants as provided in this Act. Any repayment of grants from the large project development fund and any interest thereon shall be receipted into the large project development fund.

Section 9. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

The Board of Economic Development may accept and expend for the purposes of sections 6 and 7 of this Act, inclusive, any funds obtained from federal sources, gifts, contributions, or any source if such acceptance and expenditure is approved in accordance with § 4-8B-10.

Section 10. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

There is hereby continuously appropriated to the large project development fund the amount of twenty-two percent of all deposits into the general fund of the contractors' excise tax imposed by chapter 10-46A and the alternate contractors' excise tax imposed by chapter 10-46B. Transfers from the general fund to the large project development fund pursuant to this provision shall be made on a monthly basis by the Bureau of Finance and Management.

Section 11. The provisions of section 10 of this Act are effective on January 1, 2013.

Signed March 10, 2011

CHAPTER 7

(HB 1234)

Reporting requirement to the Board of Economic Development changed.

ENTITLED, An Act to repeal the requirement for certain reports to be made to the Board of Economic Development.

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

Section 1. That § 1-16G-2 be repealed.

Signed March 17, 2011

CHAPTER 8

(SB 17)

Property tax exemption for property leased by the Science and Technology Authority.

ENTITLED, An Act to provide for a property tax exemption for certain property leased by the Science and Technology Authority.

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

Section 1. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

If the authority leases land, improvements, equipment, fixtures, or other property interests in Lawrence County to an entity that:

(1) Is organized and operated on a not-for-profit basis;

(2) Is organized as a limited liability company;

(3) Has members of the limited liability company otherwise qualifying for exemption from real property taxation in the state where the entity's headquarters are located; and

(4) Is organized and operated for scientific research and related educational purposes;

the property and any possessory interest in the property is exempt from real property taxation.

Signed February 8, 2011

CHAPTER 9

(HB 1099)

Local historic preservation projects.

ENTITLED, An Act to revise certain provisions regarding local historic preservation projects.

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

Section 1. That chapter 1-19B be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this chapter have the same meaning as defined in § 1-19A-2.

Section 2. That § 1-19B-62 be amended to read as follows:

1-19B-62. Any county or municipality may enact an ordinance requiring a county or municipal historic preservation commission to review any undertaking, whether publicly or privately funded, which will encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places. The ordinance may require the issuance of a permit before any undertaking which will encroach upon, damage, or destroy historic property may proceed. The decision to approve or deny a permit shall be based on the ~~U.S. Department of the Interior Standards for Historic Preservation Projects codified in 36 C.F.R. 67 as of January 1, 1994~~ standards for historic preservation, restoration, and rehabilitation projects adopted by rules promulgated pursuant to § 1-19A-29. Properties owned by the State of South Dakota are exempt from local review.

Signed March 3, 2011

CHAPTER 10

(HB 1003)

Rules may be reverted when the rules impose more than minimal cost on certain units of local government.

ENTITLED, An Act to permit the Interim Rules Review Committee to revert a rule if the rule imposes certain costs.

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

Section 1. That § 1-26-4.7 be amended to read as follows:

1-26-4.7. The Interim Rules Review Committee may require an agency to revert to any step in the adoption procedure provided in § 1-26-4~~. The Interim Rules Review Committee may require an agency to hold public hearings in addition to those provided for in § 1-26-4~~ if, in the judgment of the committee:

(1) The substance of the proposed rule has been significantly rewritten from the originally proposed rule which was not the result of testimony received from the public hearing;

(2) The proposed rule needs to be significantly rewritten in order to accomplish the intent of the agency;

(3) The proposed rule needs to be rewritten to address the recommendations or objections of the Interim Rules Review Committee;

(4) The proposed rule is not a valid exercise of delegated legislative authority;

(5) The proposed rule is not in proper form;

(6) The notice given prior to the proposed rule's adoption was not sufficient to give adequate notice to persons likely to be affected by the proposed rule;

(7) The proposed rule is not consistent with the expressed legislative intent pertaining to the specific provision of law which the proposed rule implements; ~~or~~

(8) The proposed rule is not a reasonable implementation of the law as it affects the convenience of the general public or persons likely affected by the proposed rule ; or

(9) The proposed rule may impose more than nominal costs upon a unit of local government or school district when the unit of local government or school district may not have sufficient funding to perform the activity required by the proposed rule.

~~The Interim Rules Review Committee shall consider whether any rule complies with the provisions of § 6-15-1. If the committee determines that any proposed rule does not comply with § 6-15-1, the committee shall require an agency to revert to any step in the adoption procedure provided in § 1-26-4.~~

If the committee requires an agency to revert to any step in the adoption procedure pursuant to this section, the time limitations set by chapter 1-26 shall also revert to the same step.

Signed March 17, 2011

CHAPTER 11

(SB 101)

Penalty imposed for willful denial of open records.

ENTITLED, An Act to provide a penalty for denying access to public records.

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

Section 1. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If the office of hearing examiners enters a decision pursuant to § 1-27-40 concluding that certain records shall be released or that the fee charged pursuant to §§ 1-27-35 and 1-27-36 was excessive, the public entity has thirty days after the opinion is issued to comply with the order or to file an appeal pursuant to § 1-27-41.

Section 2. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

In a civil action filed pursuant to § 1-27-38 or upon an appeal filed pursuant to § 1-27-41, if the court determines that the public entity acted unreasonably and in bad faith the court may award costs, disbursements, and a civil penalty not to exceed fifty dollars for each day that the record or records were delayed through the fault of the public entity. Any civil penalty collected pursuant to this section shall be deposited into the state general fund.

Signed March 10, 2011

CHAPTER 12

(SB 12)

Visitation Grant Commission created.

ENTITLED, An Act to provide for a Visitation Grant Advisory Group.

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

Section 1. There is hereby created the Visitation Grant Advisory Group to allocate funds received by the Department of Social Services through Part D of Title IV (U.S.C. 651-669). The advisory group shall be composed of three circuit court judges appointed by the Chief Justice of the Supreme Court, two members in good standing of the South Dakota Bar Association with experience in the law of domestic relations, custody, and visitation appointed by the Governor, two at large members appointed by the Governor, and two legislators, one appointed by the speaker of the House of Representatives and one appointed by the president pro tempore of the Senate. The terms of the members of the first advisory group shall be:

(1) One-third selected for one-year terms;

(2) One-third selected for two-year terms; and

(3) One-third selected for three-year terms.

The term of each appointment to the advisory group is three years. No member may serve more than two consecutive three-year terms. The members may elect a chair from among the members. The advisory group shall be staffed by the Department of Social Services.

Section 2. The secretary of the Department of Social Services shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by the Visitation Grant Advisory Group. The Department of Social Services may expend no more than two percent of the annual federal appropriation to pay expenses of the advisory group provided for in this Act.

Section 3. The provisions of chapter 150 of the 1997 Session Laws and chapter 108 of the 1999 Session Laws are hereby superseded by the provisions of this Act.

Signed March 10, 2011

CHAPTER 13

(HB 1242)

Authorize tribal identification cards for certain legal and financial purposes.

ENTITLED, An Act to authorize the use of tribal identification cards as the equivalent of certain state-issued documents for identification purposes.

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

Section 1. A tribal identification card is a valid form of identification for all purposes relating to banks or financial institutions for which a South Dakota nondriver identification card or a South Dakota driver license may be used. Furthermore, tribal identification cards shall be accepted as valid forms of identification for the purpose of cashing checks wherever checks may be cashed. For purposes of this Act, the term, tribal identification card, means an unexpired identification card issued by a South Dakota tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the legal name, date of birth, signature, and picture of the enrolled tribal member.

Section 2. No person may:

(1) Possess any cancelled, fictitious, fraudulently altered, or fraudulently obtained tribal identification card;

(2) Lend the person's tribal identification card to any other person or knowingly permit its use by another;

(3) Display or represent a tribal identification card not issued to the person as being the person's card;

(4) Photograph, duplicate, or in any way reproduce a tribal identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card;

(5) Use a tribal identification card that was obtained by false swearing, fraud, or false statement of any kind or in any form.

A violation of this section is a Class 1 misdemeanor.

Section 3. That § 22-40-9 be amended to read as follows:

22-40-9. For the purposes of §§ 22-40-8 to 22-40-10, inclusive, identifying information includes:

(1) Birth certificate or passport information;

(2) Driver's license numbers <u>or tribal identification card information</u>;

(3) Social security or other taxpayer identification numbers;

(4) Checking account numbers;

(5) Savings account numbers;

(6) Credit card numbers;

(7) Debit card numbers;

(8) Personal identification numbers, passwords, or challenge questions;

(9) User names or identifications;

(10) Biometric data; or

(11) Any other numbers, documents, or information which can be used to access another person's financial resources.

Section 4. That § 34-46-1 be amended to read as follows:

34-46-1. Terms used in this chapter mean:

(1) "Proof of age," a driver's license, nondriver identification card, tribal identification card, or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid;

(2) "Sample," tobacco products distributed to members of the general public at no cost for purposes of promoting the product;

(3) "Sampling," the distribution of samples to members of the general public in a public place;

(4) "Self-service display," a display that contains cigarettes or smokeless tobacco, or both, and is located in an area openly accessible to the merchant's consumers, and from which such consumers can readily access cigarettes or smokeless tobacco, or both, without the assistance of the merchant or an employee or agent of the merchant. A display case that holds tobacco products behind locked doors does not constitute a self-service display;

(5) "Tobacco product," any item made of tobacco intended for human consumption, including cigarettes, cigars, pipe tobacco, and smokeless tobacco;

(6) "Tobacco speciality store," a business that derives at least seventy-five percent of its revenue from the sale of tobacco products.

Signed March 11, 2011

CHAPTER 14

(HB 1246)

An appropriation to reimburse certain family physicians, midlevel practitioners, and dentists.

ENTITLED, An Act to make an appropriation to reimburse certain family physicians, midlevel practitioners, and dentists who have complied with the requirements of the physician tuition reimbursement program, the midlevel tuition reimbursement program, and the dental tuition reimbursement program.

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

Section 1. There is hereby appropriated from the general fund the sum of two hundred forty-four thousand eight hundred thirteen dollars ($244,813), or so much thereof as may be necessary, to the Department of Health for the purposes of reimbursing three family physicians, one nurse practitioner, and one dentist who have, in the determination of the department, met the requirements of the state physician tuition reimbursement program established pursuant to § 1-16A-71.1 or the midlevel tuition reimbursement program pursuant to § 1-16A-73.6 or the dental tuition reimbursement program established pursuant to § 1-16A-73.20.

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 prescribed in chapter 4-8.

Signed March 8, 2011

LEGISLATURE AND STATUTES

CHAPTER 15

(SB 194)

Create a Wind Energy Competitive Advisory Task Force.

ENTITLED, An Act to create a Wind Energy Competitive Advisory Task Force and to provide for the appointment of the task force members.

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

Section 1. There is hereby established the Wind Energy Competitive Advisory Task Force. The task force shall consist of the following eleven members:

(1) The speaker of the House of Representatives shall appoint two members of the House of Representatives;

(2) The speaker of the House of Representatives shall appoint two members of the general public;

(3) The president pro tempore of the Senate shall appoint two members of the Senate;

(4) The president pro tempore of the Senate shall appoint two members of the general public; and

(5) The Governor shall appoint three members of the general public.

The initial appointments shall be made no later than July 1, 2011, and shall serve until January 1, 2012. If there is a vacancy on the task force, the vacancy shall be filled in the same manner as the original appointment.

The task force shall review South Dakota wind energy taxation and incentives and shall advise the Governor and Legislature regarding the competitive atmosphere of wind energy incentives and taxation among the several states.

The task force shall make recommendations as to the proper mechanisms to tax wind energy and compete with surrounding states for the construction and maintenance of wind energy installations.

Section 2. The Wind Energy Competitive Advisory Task Force shall be under the supervision of the Executive Board of the Legislative Research Council and staffed and funded as an interim legislative committee. The Legislative Research Council may receive additional funds from any legal source to carry out the purposes of this Act. The executive board shall designate the chair and the vice chair of the task force.

Signed March 15, 2011

CHAPTER 16

(SB 109)

Lobbyist registration fees and penalty to fail to timely file lobbyist reports.

ENTITLED, An Act to authorize the secretary of state to promulgate rules concerning lobbyist registration fees, to impose a penalty for the failure to timely file lobbyist or lobbyist employer reports, and to repeal certain provisions concerning lobbyists who fail to comply with certain requirements.

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

Section 1. That § 2-12-3 be amended to read as follows:

2-12-3. Each lobbyist who registers and is employed pursuant to this chapter shall pay to the secretary of state an annual registration fee ~~of forty dollars~~ for each employer represented by the lobbyist. The secretary of state shall promulgate rules pursuant to chapter 1-26 to set the fee for lobbyist registration. The annual registration fee for a lobbyist may not exceed sixty-five dollars. The annual registration fee shall be deposited in the general fund.

Section 2. That § 2-12-11 be amended to read as follows:

2-12-11. On or before July first of each year, each registered lobbyist and each employer of a registered lobbyist whose name appears in the directory in that year shall submit to the secretary of state a complete and detailed report of all costs incurred for the purpose of influencing legislation. However, the personal expenses of the lobbyist spent upon the lobbyist's own meals, travel, lodging, phone calls or other necessary personal needs while in attendance at the legislative session need not be reported. The reports shall be personally sworn to by the person making the report in the presence of a notary public. The secretary of state shall prescribe concise and simple forms for reporting costs and expenses for lobbyists and the employers of lobbyists. The completed reports shall be open to public inspection. The terms, costs, and expenses, as used in this section do not mean the compensation paid by the employer to the lobbyist.

Any lobbyist expense report filed pursuant to this section is exempt from the ten dollar filing fee prescribed in subdivision 1-8-10(2).

If a person has been authorized to act as a lobbyist on behalf of an employer pursuant to § 2-12-4, but the lobbyist does not conduct any lobbying activities pursuant to § 2-12-1 nor acts in any manner as a lobbyist in connection with representing that employer, a report is not required to be filed under this chapter.

The secretary of state may impose an administrative penalty for the failure to timely file the report required by this section. The secretary of state may impose a penalty on a registered lobbyist or employer of a registered lobbyist for each report not timely filed not to exceed a total of one hundred dollars per report not timely filed. Any administrative penalty collected pursuant to this section shall be deposited in the general fund.

Section 3. That § 2-12-12 be repealed.

Signed March 14, 2011

CHAPTER 17

(HB 1139)

Appointive officers may lobby.

ENTITLED, An Act to remove the prohibition against certain appointive officers lobbying after completing their service in state government.

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

Section 1. That § 2-12-8.2 be amended to read as follows:

2-12-8.2. No ~~person shall~~ elected officer may act or register as a lobbyist, other than a public employee lobbyist, during a period of one year after the officer's termination of service in the state government ~~as an elected officer or as a full-time appointive officer requiring confirmation by the state senate. A full-time appointive officer or employee of the State of South Dakota or any of its agencies, boards, commissions, or instrumentalities shall not include any person who receives per diem, mileage and expenses for the performance of his duties and who does not receive a salary~~. A violation of this section is a Class 1 misdemeanor.

Signed March 8, 2011

CHAPTER 18

(HB 1004)

Codify 2010 legislation.

ENTITLED, An Act to codify the legislation enacted in 2010.

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

Section 1. That § 2-16-13 be amended to read as follows:

2-16-13. The official code of laws of the State of South Dakota, which may be referred to as the code, consists of all the statutes of a general and permanent nature contained in:

(1) The 2004 revision of volume 1;

(2) The 2004 revision of volume 2;

(3) The 2004 revision of volume 3;

(4) The 2004 revision of volume 4;

(5) The 2004 revision of volume 5;

(6) The 2004 revision of volume 6;

(7) The ~~2004~~ 2010 revision of volume 7;

(8) The 2004 revision of volume 8;

(9) The 2004 revision of volume 9;

(10) The 2004 revision of volume 10;

(11) The 2004 revision of volume 11;

(12) The 2004 revision of volume 12;

(13) The 2004 revision of volume 13;

(14) The 2006 revision of volume 14;

(15) The 2004 revision of volume 15;

(16) The 2004 revision of volume 16;

(17) The 2004 revision of volume 17;

(18) The 2004 revision of volume 18;

(19) The 2004 revision of volume 19;

(20) The 2004 revision of volume 20;

(21) The 2004 revision of volume 21;

(22) The 2004 revision of volume 22;

(23) The 2004 revision of volume 23;

(24) The 2004 revision of volume 24;

(25) The 2004 revision of volume 25;

(26) The 2004 revision of volume 26;

(27) The 2007 revision of volume 27;

(28) The 2004 revision of volume 28;

(29) The 2004 revision of volume 29;

(30) The 2004 revision of volume 30;

(31) The 2004 revision of volume 31;

(32) The 2004 revision of volume 32;

(33) The 2004 revision of volume 33;

(34) The 2009 revision of volume 34;

(35) The 2004 revision of the Parallel Tables volume;

(36) The December ~~2009~~ 2010 Interim Annotation Service of the South Dakota Codified Laws beginning with Title 1, chapter 1-1 and ending with Title 62, chapter 62-9; and

(37) The ~~2009~~ 2010 cumulative annual pocket parts and supplementary pamphlet.

Section 2. That § 2-16-15 be amended to read as follows:

2-16-15. No provision of the code enacted by § 2-16-13, as to which any action or proceeding, civil or criminal, has been commenced prior to July 1, ~~2010~~ 2011, to determine whether or not such provision was constitutionally enacted, is validated by the enactment of this code.

The enactment of the code:

(1) Does not affect the validity of any transaction;

(2) Does not impair the curative or legalizing effect of any statute; and

(3) Does not release or extinguish any penalty, confiscation, forfeiture, or liability; which accrued, occurred, or took effect prior to the time the code took effect.

Section 3. That § 2-16-16 be amended to read as follows:

2-16-16. All statutes, other than this code, enacted at the ~~2010~~ 2011 session of the Legislature shall be deemed to have been enacted subsequently to the enactment of this code. If any such statute repeals, amends, contravenes, or is inconsistent with the provisions of this code, the provisions of the statute shall prevail. Any enactment in the ~~2010~~ 2011 session of the Legislature which cites South Dakota Codified Laws for the purpose of amendment or repeal, shall be construed as having reference to the code enacted by § 2-16-13.

Signed February 8, 2011

CHAPTER 19

(HB 1221)

Teen driving task force.

ENTITLED, An Act to establish a task force on teen driving safety.

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

Section 1. There is hereby established a task force on teen driving safety. The task force shall evaluate data, laws, and current practices regarding teen driving in South Dakota and provide recommendations for improving teen driving safety to the 2013 Legislature. The evaluation by the task force shall include the following:

(1) Examine data on teen driving by age groups and urban and rural setting including traffic citations, crashes, injuries, fatalities, and circumstances and causal factors in crashes;

(2) Review current laws affecting teen drivers;

(3) Examine data on driver education available for teens, including preparation and ongoing training of instructors, costs for driver education, current payers, and enrollment statistics;

(4) Examine barriers to teen driving safety; and

(5) Review national best practices to improve safety of teen drivers.

Section 2. The task force may not exceed twenty members. The Executive Board of the Legislative Research Council shall appoint two senators and two representatives to the task force. The Chief Justice of the Supreme Court shall appoint a representative. The secretary of Public Safety shall appoint no more than fifteen members to the task force. The secretary's appointments shall include parents, advocates, representatives from law enforcement, insurance industry, auto clubs, health care, Indian Health Service, driver education, higher education, public schools, and representatives of the Department of Public Safety, the Department of Education, the Department of Health, and the Department of Transportation.

Section 3. Appointment of the task force shall be contingent on the state receiving a grant to fund the activities of the task force.

Signed March 11, 2011

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 20

(HB 1022)

Veterans credited service under retirement and deferred compensation revised.

ENTITLED, An Act to revise certain provisions regarding veterans credited service and benefits under the South Dakota Retirement System and under the South Dakota deferred compensation plan.

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

Section 1. That § 3-12-47 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Qualified military service," service in the uniformed services as defined in § 414(u)(5) of the Internal Revenue Code as in effect on January 1, 2011;

Section 2. That § 3-12-86 be amended to read as follows:

3-12-86. A member shall receive credited service for leave of absence due to qualified military service, authorized in advance by the employer, without contribution by the employee or employer if the member returns to the employ of a participating unit within one year from the member's date of discharge from the member's initial period of ~~active~~ qualified military service and if the member remains in the employ of a participating unit for at least one year. The member may not receive credited service for any voluntary extension of qualified military service at the instance of the member beyond the initial period of enlistment, induction, or call to active duty. Credited service granted under this section shall be only for the initial period of time that the member is ~~on active~~ performing qualified military ~~duty~~ service. No credited service granted under this section may be considered to represent either member contributions or employer contributions for purposes of contribution withdrawals pursuant to this chapter.

If the member returns to the employ of the member's employer unit within one year of discharge from the initial period of qualified military service, but does not remain in the employ of the unit for at least one year, the member shall be granted credited service for the initial period of qualified military service pursuant to § 414(u)(8) of the Internal Revenue Code as in effect on January 1, 2011, if the member deposits with the system employee contributions for the initial period of the qualified military service as provided for in § 414(u)(8)(C). The contributions shall be made in a lump sum, shall be based on the member's compensation immediately prior to the leave of absence, and shall be without interest. The participating unit that was the member's employer prior to the leave of absence shall deposit employer contributions in an equal amount with the system. Other provisions of this chapter notwithstanding, the member need not be a contributing member at the time the member deposits the contributions. The member is subject to the time limitations for payment provided for in § 414(u)(8)(C).

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

If a member on leave of absence performing initial qualified military service dies, the member shall be considered to have returned from the leave of absence on the day prior to the member's death and become a contributing member for purposes of survivor benefits pursuant to § 3-12-95, if the member has at least one year of credited service prior to the member's death, including the initial period of qualified military service. If the member was contributing for additional survivor protection benefits pursuant to § 3-12-104 immediately prior to the leave of absence, the member shall be considered to have resumed such contributions on the day prior to the member's death.

If a member on leave of absence performing initial qualified military service becomes disabled pursuant to the disability criteria set out in chapter 3-12 and ARSD chapter 62:01:04, the member shall be considered to have returned from the leave of absence on the day prior to the member's discharge date and become a contributing member for purposes of eligibility for disability benefits pursuant to § 3-12-98, if the member has at least three years of credited service including the period of initial qualified military service. The provisions of § 3-12-98 notwithstanding, the member need not have been deemed to be a contributing member on the date of the member's disabling event.

Section 4. That § 3-13-54 be amended to read as follows:

3-13-54. The board may ~~adopt~~ promulgate rules pursuant to chapter 1-26 concerning the time and amount of compensation which may be deferred, the persons who may participate in the plan, the conditions of participation, the time and manner in which accumulated deferrals may be made available to a participant or beneficiary, the establishment of administrative changes, and

participation by political subdivisions. Except pursuant to the provisions of an automatic enrollment feature established under subdivision 3-13-56(4), in no event may the accumulated deferred compensation become available to the participant prior to thirty days following the participant's separation from employment with a participating employer unless ~~such~~ the participant is faced with an unforeseeable emergency as determined by the board, unless an in-service distribution of a small amount of funds is made, or unless a distribution is made to a participant who has been called to perform qualified military service for a period in excess of thirty days. If a participant returns to service with a participating employer within thirty days following separation from service, the accumulated deferred compensation is not available to the participant.

Signed February 24, 2011

CHAPTER 21

(HB 1024)

South Dakota Retirement Board of Trustees, process to fill a vacancy revised.

ENTITLED, An Act to revise certain provisions regarding vacancies on the Board of Trustees of the South Dakota Retirement System.

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

Section 1. That § 3-12-49 be amended to read as follows:

3-12-49. Each group of retirement system members who are vested or are currently contributing or employers as set out in § 3-12-48 shall elect their own trustee or trustees in a separate election. The trustees shall promulgate rules and regulations pursuant to chapter 1-26 to carry out ~~such~~ the elections. The regular term of office of a trustee shall be four years with three terms expiring on June thirtieth of each year and two additional terms to expire on June thirtieth every fourth year. The appointees of the Governor shall serve at the pleasure of the Governor. The term of the representative of the Investment Council shall be one year and ~~he~~ the representative shall be appointed by the Investment Council. ~~A~~ Unless a trustee has resigned, is deemed to have resigned pursuant to § 3-12-53, or has died, the trustee shall continue to serve until ~~his~~ the trustee's successor has been designated and has qualified.

Section 2. That § 3-12-53 be amended to read as follows:

3-12-53. ~~In the event that~~ If an employee trustee ceases to be a member, or any nonemployee elected trustee no longer serves in the capacity that qualified ~~him~~ the trustee for membership on the Board of Trustees, ~~he shall be~~ the trustee is considered to have resigned from the board, and the board shall select a replacement trustee to serve ~~until a replacement trustee can be elected at a regular election to fill the remaining~~ for the remainder of the term. ~~The election shall occur no more than eighteen months after the vacancy occurs. If the election of a replacement trustee coincides with the election of another trustee representing the same group, there shall be only one ballot. The candidate receiving the greatest number of votes shall fill the full term, and the candidate receiving the second greatest number of votes shall be the replacement trustee. The replacement trustee shall take office on July first immediately following his election.~~

Signed February 22, 2011

CHAPTER 22

(HB 1023)

Survivor and disability benefits for children, certain requirements changed.

ENTITLED, An Act to revise certain provisions regarding how South Dakota Retirement System survivor benefits and disability benefits are handled in regard to children.

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

Section 1. That § 3-12-99.1 be amended to read as follows:

3-12-99.1. That portion of a disability allowance that is payable on account of children shall be eliminated as each child becomes ineligible pursuant to subdivision 3-12-47(14). However, that portion of a disability allowance that is payable on account of children shall increase if a disabled member gains an additional child who is eligible pursuant to subdivision 3-12-47(14). All other provisions in § 3-12-101 do not apply to members receiving a disability allowance pursuant to this chapter.

Section 2. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

That portion of a family benefit that is payable on account of children pursuant to subdivision 3-12-95(1) shall be eliminated as each child becomes ineligible pursuant to subdivision 3-12-47(14). The benefit shall be eliminated altogether when the youngest child becomes ineligible pursuant to subdivisions 3-12-47(14).

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

The conservator and custodian provisions of subdivision 3-12-95(2) and § 3-12-95.1 notwithstanding, the benefit becomes payable directly to a child when the child reaches eighteen years of age. The benefit shall be eliminated when the child becomes ineligible pursuant to subdivision 3-12-47(14).

Signed February 22, 2011

PUBLIC FISCAL ADMINISTRATION

CHAPTER 23

(HB 1251)

General Appropriations Act for FY2012

ENTITLED, An Act to appropriate money for the ordinary expenses of the legislative, judicial, and executive departments of the state, the expenses of state institutions, interest on the public debt, and for common schools.

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

Section 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the following sums of money or expenditure authority, or so much thereof as may be necessary, for the ordinary expenses of the legislative, judicial, and executive departments of the state, certain officers, boards, and commissions, and support and maintenance of the educational, charitable, and penal institutions of the state for the fiscal year ending June 30, 2012.

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
SECTION 2. DEPARTMENT OF EXECUTIVE MANAGEMENT				
(1) Office of the Governor				
Personal Services	$1,651,688	$229,333	$0	$1,881,021
Operating Expenses	$373,688	$48,648	$0	$422,336
Total	$2,025,376	$277,981	$0	$2,303,357
F.T.E.				21.5
(2) Governor's Contingency Fund				
Personal Services	$0	$0	$0	$0
Operating Expenses	$75,000	$0	$0	$75,000
Total	$75,000	$0	$0	$75,000
F.T.E.				0.0
(3) Governor's Office of Economic Development				
Personal Services	$1,484,467	$414,027	$466,914	$2,365,408
Operating Expenses	$829,298	$10,854,109	$15,968,933	$27,652,340
Total	$2,313,765	$11,268,136	$16,435,847	$30,017,748
F.T.E.				40.6
(4) Office of Research Commerce				
Personal Services	$156,837	$0	$0	$156,837
Operating Expenses	$3,689,582	$0	$0	$3,689,582
Total	$3,846,419	$0	$0	$3,846,419
F.T.E.				2.0
(5) SD Housing Development Authority--Informational				
Personal Services	$0	$1,421,922	$2,629,835	$4,051,757
Operating Expenses	$0	$679,308	$5,230,241	$5,909,549
Total	$0	$2,101,230	$7,860,076	$9,961,306
F.T.E.				65.0
(6) SD Science and Technology Authority--Informational				
Personal Services	$0	$0	$647,000	$647,000
Operating Expenses	$0	$0	$8,313,000	$8,313,000
Total	$0	$0	$8,960,000	$8,960,000
F.T.E.				5.0
(7) SD Energy Infrastructure Authority--Informational				
Personal Services	$0	$0	$25,274	$25,274
Operating Expenses	$0	$0	$31,606	$31,606
Total	$0	$0	$56,880	$56,880
F.T.E.				0.0
(8) SD Ellsworth Development Authority--Informational				
Personal Services	$0	$75,000	$100,000	$175,000
Operating Expenses	$0	$100,000	$100,000	$200,000
Total	$0	$175,000	$200,000	$375,000
F.T.E.				2.5

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(9) Lieutenant Governor				
Personal Services	$19,051	$0	$0	$19,051
Operating Expenses	$13,091	$0	$0	$13,091
Total	$32,142	$0	$0	$32,142
F.T.E.				0.5
(10) Bureau of Finance and Management (BFM)				
Personal Services	$546,940	$0	$1,601,947	$2,148,887
Operating Expenses	$245,055	$0	$2,076,653	$2,321,708
Total	$791,995	$0	$3,678,600	$4,470,595
F.T.E.				30.0
(11) Sale Leaseback, BFM				
Personal Services	$0	$0	$0	$0
Operating Expenses	$6,632,450	$0	$0	$6,632,450
Total	$6,632,450	$0	$0	$6,632,450
F.T.E.				0.0
(12) Computer Services and Development				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$1,717,364	$1,717,364
Total	$0	$0	$1,717,364	$1,717,364
F.T.E.				0.0
(13) Building Authority--Informational				
Personal Services	$0	$0	$142,841	$142,841
Operating Expenses	$0	$0	$352,223	$352,223
Total	$0	$0	$495,064	$495,064
F.T.E.				1.4
(14) Health & Education Facilities Authority--Informational				
Personal Services	$0	$0	$356,317	$356,317
Operating Expenses	$0	$0	$223,763	$223,763
Total	$0	$0	$580,080	$580,080
F.T.E.				4.6
(15) Conservation Reserve Enhancement Program--Informational				
Personal Services	$0	$0	$987	$987
Operating Expenses	$0	$0	$16,350	$16,350
Total	$0	$0	$17,337	$17,337
F.T.E.				0.0
(16) Educational Enhancement Funding Corporation--Informational				
Personal Services	$0	$0	$32,000	$32,000
Operating Expenses	$0	$0	$130,500	$130,500
Total	$0	$0	$162,500	$162,500
F.T.E.				0.0
(17) State Government Energy Program				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Total	$0	$0	$0	$0
F.T.E.				0.0
(18) Administrative Services, Bureau of Administration (BOA)				
Personal Services	$0	$0	$325,741	$325,741
Operating Expenses	$648,365	$0	$99,637	$748,002
Total	$648,365	$0	$425,378	$1,073,743
F.T.E.				3.5

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(19) Sale Leaseback, BOA				
Personal Services	$0	$0	$0	$0
Operating Expenses	$482,282	$0	$0	$482,282
Total	$482,282	$0	$0	$482,282
F.T.E.				0.0
(20) Central Services				
Personal Services	$155,745	$0	$5,779,928	$5,935,673
Operating Expenses	$208,079	$0	$15,474,763	$15,682,842
Total	$363,824	$0	$21,254,691	$21,618,515
F.T.E.				141.5
(21) State Engineer				
Personal Services	$0	$0	$849,308	$849,308
Operating Expenses	$0	$0	$210,755	$210,755
Total	$0	$0	$1,060,063	$1,060,063
F.T.E.				13.0
(22) Statewide Maintenance and Repair				
Personal Services	$0	$0	$0	$0
Operating Expenses	$2,351,009	$500,000	$3,211,041	$6,062,050
Total	$2,351,009	$500,000	$3,211,041	$6,062,050
F.T.E.				0.0
(23) Office of Hearing Examiners				
Personal Services	$215,589	$0	$0	$215,589
Operating Expenses	$66,032	$0	$0	$66,032
Total	$281,621	$0	$0	$281,621
F.T.E.				3.0
(24) PEPL Fund Administration--Informational				
Personal Services	$0	$0	$343,893	$343,893
Operating Expenses	$0	$0	$1,825,316	$1,825,316
Total	$0	$0	$2,169,209	$2,169,209
F.T.E.				4.0
(25) PEPL Fund Claims--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$1,300,000	$1,300,000
Total	$0	$0	$1,300,000	$1,300,000
F.T.E.				0.0
(26) Data Centers, Bureau of Information and Telecommunication (BIT)				
Personal Services	$0	$0	$3,624,055	$3,624,055
Operating Expenses	$0	$0	$3,799,396	$3,799,396
Total	$0	$0	$7,423,451	$7,423,451
F.T.E.				56.0
(27) Development				
Personal Services	$0	$0	$8,330,678	$8,330,678
Operating Expenses	$0	$118,782	$1,369,584	$1,488,366
Total	$0	$118,782	$9,700,262	$9,819,044
F.T.E.				127.5
(28) Telecommunications Services				
Personal Services	$0	$0	$4,963,542	$4,963,542
Operating Expenses	$0	$1,999,758	$8,770,952	$10,770,710
Total	$0	$1,999,758	$13,734,494	$15,734,252
F.T.E.				79.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(29) South Dakota Public Broadcasting				
Personal Services	$2,279,952	$0	$727,939	$3,007,891
Operating Expenses	$1,214,516	$2,047,527	$1,754,848	$5,016,891
Total	$3,494,468	$2,047,527	$2,482,787	$8,024,782
F.T.E.				57.5
(30) BIT Administration				
Personal Services	$0	$0	$1,237,883	$1,237,883
Operating Expenses	$0	$0	$131,261	$131,261
Total	$0	$0	$1,369,144	$1,369,144
F.T.E.				18.5
(31) State Radio Engineering				
Personal Services	$569,784	$0	$10,371	$580,155
Operating Expenses	$2,127,565	$113,289	$683,326	$2,924,180
Total	$2,697,349	$113,289	$693,697	$3,504,335
F.T.E.				10.0
(32) Personnel Management and Employee Benefits (BOP)				
Personal Services	$177,950	$0	$3,522,232	$3,700,182
Operating Expenses	$53,916	$0	$1,704,528	$1,758,444
Total	$231,866	$0	$5,226,760	$5,458,626
F.T.E.				67.7
(33) South Dakota Risk Pool				
Personal Services	$86,023	$0	$37,940	$123,963
Operating Expenses	$553,898	$500,000	$6,815,770	$7,869,668
Total	$639,921	$500,000	$6,853,710	$7,993,631
F.T.E.				1.8
(34) South Dakota Risk Pool Reserve				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$1,500,000	$1,500,000
Total	$0	$0	$1,500,000	$1,500,000
F.T.E.				0.0
(35) DEPARTMENT TOTAL, EXECUTIVE MANAGEMENT				
Personal Services	$7,344,026	$2,140,282	$35,756,625	$45,240,933
Operating Expenses	$19,563,826	$16,961,421	$82,811,810	$119,337,057
Total	$26,907,852	$19,101,703	$118,568,435	$164,577,990
F.T.E.				756.1
SECTION 3. DEPARTMENT OF REVENUE				
(1)Administration, Secretary of Revenue				
Personal Services	$0	$0	$2,164,560	$2,164,560
Operating Expenses	$0	$0	$1,321,671	$1,321,671
Total	$0	$0	$3,486,231	$3,486,231
F.T.E.				36.5
(2) Business Tax				
Personal Services	$0	$0	$2,458,727	$2,458,727
Operating Expenses	$0	$0	$876,552	$876,552
Total	$0	$0	$3,335,279	$3,335,279
F.T.E.				48.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(3) Motor Vehicles				
Personal Services	$0	$0	$1,939,078	$1,939,078
Operating Expenses	$0	$0	$3,234,030	$3,234,030
Total	$0	$0	$5,173,108	$5,173,108
F.T.E.				46.0
(4) Property and Special Taxes				
Personal Services	$783,748	$0	$0	$783,748
Operating Expenses	$170,944	$0	$0	$170,944
Total	$954,692	$0	$0	$954,692
F.T.E.				14.0
(5) Audits				
Personal Services	$0	$0	$3,028,277	$3,028,277
Operating Expenses	$0	$0	$559,428	$559,428
Total	$0	$0	$3,587,705	$3,587,705
F.T.E.				55.0
(6) Instant and On-line Operation--Informational				
Personal Services	$0	$0	$1,170,032	$1,170,032
Operating Expenses	$0	$0	$29,200,857	$29,200,857
Total	$0	$0	$30,370,889	$30,370,889
F.T.E.				21.0
(7) Video Lottery				
Personal Services	$0	$0	$492,081	$492,081
Operating Expenses	$0	$0	$1,997,460	$1,997,460
Total	$0	$0	$2,489,541	$2,489,541
F.T.E.				9.0
(8) Commission on Gaming--Informational				
Personal Services	$0	$0	$864,521	$864,521
Operating Expenses	$0	$0	$9,603,875	$9,603,875
Total	$0	$0	$10,468,396	$10,468,396
F.T.E.				16.0
(9) DEPARTMENT TOTAL, REVENUE				
Personal Services	$783,748	$0	$12,117,276	$12,901,024
Operating Expenses	$170,944	$0	$46,793,873	$46,964,817
Total	$954,692	$0	$58,911,149	$59,865,841
F.T.E.				245.5
SECTION 4. DEPARTMENT OF AGRICULTURE				
(1) Administration, Secretary of Agriculture				
Personal Services	$566,228	$36,756	$65,987	$668,971
Operating Expenses	$167,483	$15,474	$120,003	$302,960
Total	$733,711	$52,230	$185,990	$971,931
F.T.E.				9.5
(2) Agricultural Services and Assistance				
Personal Services	$1,130,043	$1,599,692	$964,282	$3,694,017
Operating Expenses	$520,451	$1,783,561	$2,076,384	$4,380,396
Total	$1,650,494	$3,383,253	$3,040,666	$8,074,413
F.T.E.				81.8
(3) Agricultural Development and Promotion				
Personal Services	$751,106	$395,848	$442,610	$1,589,564
Operating Expenses	$317,917	$1,234,899	$989,728	$2,542,544
Total	$1,069,023	$1,630,747	$1,432,338	$4,132,108
F.T.E.				27.8

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(4) Animal Industry Board				
Personal Services	$1,461,915	$909,664	$115,327	$2,486,906
Operating Expenses	$297,168	$964,917	$141,640	$1,403,725
Total	$1,759,083	$1,874,581	$256,967	$3,890,631
F.T.E.				40.9
(5) American Dairy Association--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$1,999,240	$1,999,240
Total	$0	$0	$1,999,240	$1,999,240
F.T.E.				0.0
(6) Wheat Commission--Informational				
Personal Services	$0	$0	$190,801	$190,801
Operating Expenses	$0	$0	$1,904,546	$1,904,546
Total	$0	$0	$2,095,347	$2,095,347
F.T.E.				3.0
(7) Oilseeds Council--Informational				
Personal Services	$0	$0	$2,200	$2,200
Operating Expenses	$0	$0	$348,269	$348,269
Total	$0	$0	$350,469	$350,469
F.T.E.				0.0
(8) Soybean Research and Promotion Council--Informational				
Personal Services	$0	$0	$235,798	$235,798
Operating Expenses	$0	$0	$7,771,802	$7,771,802
Total	$0	$0	$8,007,600	$8,007,600
F.T.E.				4.0
(9) Brand Board--Informational				
Personal Services	$0	$0	$1,239,385	$1,239,385
Operating Expenses	$0	$0	$499,961	$499,961
Total	$0	$0	$1,739,346	$1,739,346
F.T.E.				33.0
(10) Corn Utilization Council--Informational				
Personal Services	$0	$0	$127,667	$127,667
Operating Expenses	$0	$0	$5,034,800	$5,034,800
Total	$0	$0	$5,162,467	$5,162,467
F.T.E.				1.0
(11) Board of Veterinary Medicine Examiners--Informational				
Personal Services	$0	$0	$2,295	$2,295
Operating Expenses	$0	$0	$56,465	$56,465
Total	$0	$0	$58,760	$58,760
F.T.E.				0.0
(12) Pulse Crops Council				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$19,980	$19,980
Total	$0	$0	$19,980	$19,980
F.T.E.				0.0
(13) State Fair				
Personal Services	$0	$0	$722,030	$722,030
Operating Expenses	$268,207	$0	$1,281,743	$1,549,950
Total	$268,207	$0	$2,003,773	$2,271,980
F.T.E.				19.5

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(14) DEPARTMENT TOTAL, AGRICULTURE				
Personal Services	$3,909,292	$2,941,960	$4,108,382	$10,959,634
Operating Expenses	$1,571,226	$3,998,851	$22,244,561	$27,814,638
TOTAL	$5,480,518	$6,940,811	$26,352,943	$38,774,272
F.T.E.				220.5
SECTION 5. DEPARTMENT OF TOURISM				
(1) Tourism				
Personal Services	$0	$0	$1,403,396	$1,403,396
Operating Expenses	$0	$0	$10,530,582	$10,530,582
Total	$0	$0	$11,933,978	$11,933,978
F.T.E.				25.0
(2) Arts				
Personal Services	$0	$0	$210,991	$210,991
Operating Expenses	$0	$878,000	$571,385	$1,449,385
Total	$0	$878,000	$782,376	$1,660,376
F.T.E.				3.0
(3) History				
Personal Services	$788,636	$330,485	$1,082,766	$2,201,887
Operating Expenses	$886,618	$533,972	$1,485,047	$2,905,637
Total	$1,675,254	$864,457	$2,567,813	$5,107,524
F.T.E.				44.0
(4) DEPARTMENT TOTAL, TOURISM				
Personal Services	$788,636	$330,485	$2,697,153	$3,816,274
Operating Expenses	$886,618	$1,411,972	$12,587,014	$14,885,604
TOTAL	$1,675,254	$1,742,457	$15,284,167	$18,701,878
F.T.E.				72.0
SECTION 6. DEPARTMENT OF GAME, FISH AND PARKS				
(1) Administration, Secretary of Game, Fish, and Parks				
Personal Services	$84,252	$0	$1,568,317	$1,652,569
Operating Expenses	$1,070,268	$0	$1,509,526	$2,579,794
Total	$1,154,520	$0	$3,077,843	$4,232,363
F.T.E.				25.1
(2) Wildlife--Informational				
Personal Services	$0	$3,514,589	$11,484,508	$14,999,097
Operating Expenses	$0	$10,803,681	$14,099,778	$24,903,459
Total	$0	$14,318,270	$25,584,286	$39,902,556
F.T.E.				286.7
(3) Wildlife, Development and Improvement--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$2,466,000	$2,890,000	$5,356,000
Total	$0	$2,466,000	$2,890,000	$5,356,000
F.T.E.				0.0
(4) State Parks and Recreation				
Personal Services	$2,191,888	$772,889	$5,802,029	$8,766,806
Operating Expenses	$1,330,874	$2,215,531	$6,614,486	$10,160,891
Total	$3,522,762	$2,988,420	$12,416,515	$18,927,697
F.T.E.				242.2

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(5) State Parks and Recreation, Development and Improvement				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$8,113,650	$4,219,050	$12,332,700
Total	$0	$8,113,650	$4,219,050	$12,332,700
F.T.E.				0.0
(6) Snowmobile Trails--Informational				
Personal Services	$0	$0	$333,611	$333,611
Operating Expenses	$0	$75,000	$883,407	$958,407
Total	$0	$75,000	$1,217,018	$1,292,018
F.T.E.				9.1
(7) DEPARTMENT TOTAL, GAME, FISH AND PARKS				
Personal Services	$2,276,140	$4,287,478	$19,188,465	$25,752,083
Operating Expenses	$2,401,142	$23,673,862	$30,216,247	$56,291,251
TOTAL	$4,677,282	$27,961,340	$49,404,712	$82,043,334
F.T.E.				563.1
SECTION 7. DEPARTMENT OF TRIBAL RELATIONS				
(1) Office of Tribal Relations				
Personal Services	$186,550	$0	$0	$186,550
Operating Expenses	$38,094	$0	$0	$38,094
Total	$224,644	$0	$0	$224,644
F.T.E.				3.0
(2) DEPARTMENT TOTAL, TRIBAL RELATIONS				
Personal Services	$186,550	$0	$0	$186,550
Operating Expenses	$38,094	$0	$0	$38,094
Total	$224,644	$0	$0	$224,644
F.T.E.				3.0
SECTION 8. DEPARTMENT OF SOCIAL SERVICES				
(1) Administration, Secretary of Social Services				
Personal Services	$3,575,471	$4,681,698	$8,813	$8,265,982
Operating Expenses	$3,751,779	$14,605,614	$7,408	$18,364,801
Total	$7,327,250	$19,287,312	$16,221	$26,630,783
F.T.E.				182.7
(2) Economic Assistance				
Personal Services	$6,598,409	$9,328,815	$0	$15,927,224
Operating Expenses	$14,025,661	$57,575,832	$317,021	$71,918,514
Total	$20,624,070	$66,904,647	$317,021	$87,845,738
F.T.E.				320.5
(3) Medical and Adult Services				
Personal Services	$2,545,746	$5,307,507	$140,305	$7,993,558
Operating Expenses	$244,467,470	$482,702,527	$1,623,246	$728,793,243
Total	$247,013,216	$488,010,034	$1,763,551	$736,786,801
F.T.E.				149.0
(4) Children's Services				
Personal Services	$8,702,348	$8,220,575	$1,408,796	$18,331,719
Operating Expenses	$23,325,798	$41,890,044	$2,972,593	$68,188,435
Total	$32,028,146	$50,110,619	$4,381,389	$86,520,154
F.T.E.				349.8

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(5) Behavioral Health				
Personal Services	$23,297,465	$9,148,686	$839,005	$33,285,156
Operating Expenses	$32,448,019	$28,065,816	$1,341,644	$61,855,479
Total	$55,745,484	$37,214,502	$2,180,649	$95,140,635
F.T.E.				637.5
(6) Board of Counselor Examiners--Informational				
Personal Services	$0	$0	$2,333	$2,333
Operating Expenses	$0	$0	$81,808	$81,808
Total	$0	$0	$84,141	$84,141
F.T.E.				0.0
(7) Board of Psychology Examiners--Informaional				
Personal Services	$0	$0	$3,124	$3,124
Operating Expenses	$0	$0	$73,149	$73,149
Total	$0	$0	$76,273	$76,273
F.T.E.				0.0
(8) Board of Social Work Examiners--Informational				
Personal Services	$0	$0	$2,627	$2,627
Operating Expenses	$0	$0	$90,582	$90,582
Total	$0	$0	$93,209	$93,209
F.T.E.				0.0
(9) Certification Board for Alcohol and Drug Professionals--Informational				
Personal Services	$0	$0	$84,810	$84,810
Operating Expenses	$0	$0	$53,196	$53,196
Total	$0	$0	$138,006	$138,006
F.T.E.				1.3
(10) DEPARTMENT TOTAL, SOCIAL SERVICES				
Personal Services	$44,719,439	$36,687,281	$2,489,813	$83,896,533
Operating Expenses	$318,018,727	$624,839,833	$6,560,647	$949,419,207
TOTAL	$362,738,166	$661,527,114	$9,050,460	$1,033,315,740
F.T.E.				1,640.8
SECTION 9. DEPARTMENT OF HEALTH				
(1) Administration, Secretary of Health				
Personal Services	$597,100	$851,662	$496,834	$1,945,596
Operating Expenses	$513,690	$5,246,711	$1,380,608	$7,141,009
Total	$1,110,790	$6,098,373	$1,877,442	$9,086,605
F.T.E.				31.0
(2) Health Systems Development and Regulation				
Personal Services	$1,332,528	$2,727,740	$10,746	$4,071,014
Operating Expenses	$861,780	$8,569,136	$1,185,078	$10,615,994
Total	$2,194,308	$11,296,876	$1,195,824	$14,687,008
F.T.E.				62.5
(3) Health and Medical Services				
Personal Services	$1,573,224	$7,591,157	$1,140,198	$10,304,579
Operating Expenses	$2,100,803	$12,884,495	$2,662,528	$17,647,826
Total	$3,674,027	$20,475,652	$3,802,726	$27,952,405
F.T.E.				176.5
(4) Laboratory Services				
Personal Services	$0	$394,959	$1,327,786	$1,722,745
Operating Expenses	$0	$2,676,389	$1,843,982	$4,520,371
Total	$0	$3,071,348	$3,171,768	$6,243,116
F.T.E.				28.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(5) Correctional Health				
Personal Services	$0	$0	$5,308,108	$5,308,108
Operating Expenses	$0	$0	$10,380,027	$10,380,027
Total	$0	$0	$15,688,135	$15,688,135
F.T.E.				81.0
(6) Tobacco Prevention				
Personal Services	$0	$214,611	$0	$214,611
Operating Expenses	$0	$1,350,004	$3,999,830	$5,349,834
Total	$0	$1,564,615	$3,999,830	$5,564,445
F.T.E.				3.0
(7) Board of Chiropractic Examiners--Informational				
Personal Services	$0	$0	$52,252	$52,252
Operating Expenses	$0	$0	$48,426	$48,426
Total	$0	$0	$100,678	$100,678
F.T.E.				1.0
(8) Board of Dentistry--Informational				
Personal Services	$0	$0	$10,840	$10,840
Operating Expenses	$0	$0	$173,848	$173,848
Total	$0	$0	$184,688	$184,688
F.T.E.				0.0
(9) Board of Hearing Aid Dispensers--Informational				
Personal Services	$0	$0	$1,035	$1,035
Operating Expenses	$0	$0	$21,103	$21,103
Total	$0	$0	$22,138	$22,138
F.T.E.				0.0
(10) Board of Funeral Service--Informational				
Personal Services	$0	$0	$7,523	$7,523
Operating Expenses	$0	$0	$58,372	$58,372
Total	$0	$0	$65,895	$65,895
F.T.E.				0.0
(11) Board of Medical and Osteopathic Examiners--Informational				
Personal Services	$0	$0	$340,714	$340,714
Operating Expenses	$0	$0	$612,459	$612,459
Total	$0	$0	$953,173	$953,173
F.T.E.				7.0
(12) Board of Nursing--Informational				
Personal Services	$0	$0	$479,283	$479,283
Operating Expenses	$0	$0	$551,970	$551,970
Total	$0	$0	$1,031,253	$1,031,253
F.T.E.				8.0
(13) Board of Nursing Home Administrators--Informational				
Personal Services	$0	$0	$1,696	$1,696
Operating Expenses	$0	$0	$40,555	$40,555
Total	$0	$0	$42,251	$42,251
F.T.E.				0.0
(14) Board of Optometry--Informational				
Personal Services	$0	$0	$1,309	$1,309
Operating Expenses	$0	$0	$48,431	$48,431
Total	$0	$0	$49,740	$49,740
F.T.E.				0.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(15) Board of Pharmacy--Informational				
Personal Services	$0	$0	$364,147	$364,147
Operating Expenses	$0	$193,769	$302,753	$496,522
Total	$0	$193,769	$666,900	$860,669
F.T.E.				4.2
(16) Board of Podiatry Examiners--Informational				
Personal Services	$0	$0	$254	$254
Operating Expenses	$0	$0	$21,180	$21,180
Total	$0	$0	$21,434	$21,434
F.T.E.				0.0
(17) Board of Massage Therapy--Informational				
Personal Services	$0	$0	$1,840	$1,840
Operating Expenses	$0	$0	$43,928	$43,928
Total	$0	$0	$45,768	$45,768
F.T.E.				0.0
(18) DEPARTMENT TOTAL, HEALTH				
Personal Services	$3,502,852	$11,780,129	$9,544,565	$24,827,546
Operating Expenses	$3,476,273	$30,920,504	$23,375,078	$57,771,855
TOTAL	$6,979,125	$42,700,633	$32,919,643	$82,599,401
F.T.E.				402.2
SECTION 10. DEPARTMENT OF LABOR AND REGULATION				
(1) Administration, Secretary of Labor				
Personal Services	$0	$2,722,659	$97,396	$2,820,055
Operating Expenses	$180,000	$15,867,483	$35,465	$16,082,948
Total	$180,000	$18,590,142	$132,861	$18,903,003
F.T.E.				53.5
(2) Unemployment Insurance Services				
Personal Services	$0	$4,276,360	$0	$4,276,360
Operating Expenses	$0	$675,724	$0	$675,724
Total	$0	$4,952,084	$0	$4,952,084
F.T.E.				92.0
(3) Field Operations				
Personal Services	$0	$8,855,394	$0	$8,855,394
Operating Expenses	$0	$1,541,722	$0	$1,541,722
Total	$0	$10,397,116	$0	$10,397,116
F.T.E.				187.0
(4) State Labor Law Administration				
Personal Services	$505,174	$328,417	$202,326	$1,035,917
Operating Expenses	$86,809	$70,694	$228,486	$385,989
Total	$591,983	$399,111	$430,812	$1,421,906
F.T.E.				19.7
(5) Board of Accountancy--Informational				
Personal Services	$0	$0	$117,992	$117,992
Operating Expenses	$0	$0	$110,902	$110,902
Total	$0	$0	$228,894	$228,894
F.T.E.				2.5

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(6) Board of Barber Examiners--Informational				
Personal Services	$0	$0	$2,184	$2,184
Operating Expenses	$0	$0	$26,423	$26,423
Total	$0	$0	$28,607	$28,607
F.T.E.				0.0
(7) Cosmetology Commission--Informational				
Personal Services	$0	$0	$132,911	$132,911
Operating Expenses	$0	$0	$95,372	$95,372
Total	$0	$0	$228,283	$228,283
F.T.E.				3.0
(8) Plumbing Commission--Informational				
Personal Services	$0	$0	$325,381	$325,381
Operating Expenses	$0	$0	$198,822	$198,822
Total	$0	$0	$524,203	$524,203
F.T.E.				7.0
(9) Board of Technical Professions--Informational				
Personal Services	$0	$0	$151,213	$151,213
Operating Expenses	$0	$0	$180,550	$180,550
Total	$0	$0	$331,763	$331,763
F.T.E.				3.5
(10) Electrical Commission--Informational				
Personal Services	$0	$0	$997,586	$997,586
Operating Expenses	$0	$0	$467,323	$467,323
Total	$0	$0	$1,464,909	$1,464,909
F.T.E.				22.0
(11) Real Estate Commission--Informational				
Personal Services	$0	$0	$286,106	$286,106
Operating Expenses	$0	$0	$228,335	$228,335
Total	$0	$0	$514,441	$514,441
F.T.E.				5.0
(12) Abstracters Board of Examiners--Informational				
Personal Services	$0	$0	$15,460	$15,460
Operating Expenses	$0	$0	$9,428	$9,428
Total	$0	$0	$24,888	$24,888
F.T.E.				0.0
(13) Banking				
Personal Services	$0	$0	$1,371,693	$1,371,693
Operating Expenses	$0	$0	$486,932	$486,932
Total	$0	$0	$1,858,625	$1,858,625
F.T.E.				21.5
(14) Securities				
Personal Services	$0	$0	$341,092	$341,092
Operating Expenses	$0	$0	$63,856	$63,856
Total	$0	$0	$404,948	$404,948
F.T.E.				5.0
(15) Insurance				
Personal Services	$0	$19,000	$1,442,413	$1,461,413
Operating Expenses	$0	$585,198	$270,317	$855,515
Total	$0	$604,198	$1,712,730	$2,316,928
F.T.E.				28.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(16) South Dakota Retirement System				
Personal Services	$0	$0	$1,836,902	$1,836,902
Operating Expenses	$0	$0	$1,503,708	$1,503,708
Total	$0	$0	$3,340,610	$3,340,610
F.T.E.				33.0
(17) DEPARTMENT TOTAL, LABOR AND REGULATION				
Personal Services	$505,174	$16,201,830	$7,320,655	$24,027,659
Operating Expenses	$266,809	$18,740,821	$3,905,919	$22,913,549
TOTAL	$771,983	$34,942,651	$11,226,574	$46,941,208
F.T.E.				482.7
SECTION 11. DEPARTMENT OF TRANSPORTATION				
(1) General Operations				
Personal Services	$419,688	$9,644,772	$47,103,748	$57,168,208
Operating Expenses	$50,471	$24,002,383	$71,700,685	$95,753,539
Total	$470,159	$33,647,155	$118,804,433	$152,921,747
F.T.E.				1,026.3
(2) Construction Contracts--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$347,068,873	$81,132,400	$428,201,273
Total	$0	$347,068,873	$81,132,400	$428,201,273
F.T.E.				0.0
(3) DEPARTMENT TOTAL, TRANSPORTATION				
Personal Services	$419,688	$9,644,772	$47,103,748	$57,168,208
Operating Expenses	$50,471	$371,071,256	$152,833,085	$523,954,812
Total	$470,159	$380,716,028	$199,936,833	$581,123,020
F.T.E.				1,026.3
SECTION 12. DEPARTMENT OF EDUCATION				
(1) Administration, Secretary of Education				
Personal Services	$1,050,621	$1,009,202	$0	$2,059,823
Operating Expenses	$426,131	$4,366,456	$88,674	$4,881,261
Total	$1,476,752	$5,375,658	$88,674	$6,941,084
F.T.E.				34.5
(2) State Aid to General Education				
Personal Services	$0	$0	$0	$0
Operating Expenses	$276,044,687	$0	$0	$276,044,687
Total	$276,044,687	$0	$0	$276,044,687
F.T.E.				0.0
(3) State Aid to Special Education				
Personal Services	$0	$0	$0	$0
Operating Expenses	$45,415,601	$0	$0	$45,415,601
Total	$45,415,601	$0	$0	$45,415,601
F.T.E.				0.0
(4) Sparsity Payments				
Personal Services	$0	$0	$0	$0
Operating Expenses	$1,652,696	$0	$0	$1,652,696
Total	$1,652,696	$0	$0	$1,652,696
F.T.E.				0.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(5) Consolidation Incentives				
Personal Services	$0	$0	$0	$0
Operating Expenses	$476,800	$0	$0	$476,800
Total	$476,800	$0	$0	$476,800
F.T.E.				0.0
(6) National Board Certified Teachers				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Total	$0	$0	$0	$0
F.T.E.				0.0
(7) Teacher Compensation Assistance Program				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Total	$0	$0	$0	$0
F.T.E.				0.0
(8) Technology in Schools				
Personal Services	$0	$0	$0	$0
Operating Expenses	$5,742,020	$0	$2,502,423	$8,244,443
Total	$5,742,020	$0	$2,502,423	$8,244,443
F.T.E.				0.0
(9) Curriculum, Career and Technical Education				
Personal Services	$654,318	$184,303	$0	$838,621
Operating Expenses	$314,391	$9,703,481	$729,352	$10,747,224
Total	$968,709	$9,887,784	$729,352	$11,585,845
F.T.E.				15.0
(10) Postsecondary Vocational Education				
Personal Services	$0	$0	$0	$0
Operating Expenses	$20,540,284	$0	$0	$20,540,284
Total	$20,540,284	$0	$0	$20,540,284
F.T.E.				0.0
(11) Education Resources				
Personal Services	$724,487	$2,295,139	$208,463	$3,228,089
Operating Expenses	$4,778,181	$189,572,959	$689,705	$195,040,845
Total	$5,502,668	$191,868,098	$898,168	$198,268,934
F.T.E.				55.0
(12) Education Service Agencies				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Total	$0	$0	$0	$0
F.T.E.				0.0
(13) State Library				
Personal Services	$1,059,483	$311,125	$0	$1,370,608
Operating Expenses	$556,593	$875,715	$186,083	$1,618,391
Total	$1,616,076	$1,186,840	$186,083	$2,988,999
F.T.E.				28.5
(14) DEPARTMENT TOTAL, EDUCATION				
Personal Services	$3,488,909	$3,799,769	$208,463	$7,497,141
Operating Expenses	$355,947,384	$204,518,611	$4,196,237	$564,662,232
Total	$359,436,293	$208,318,380	$4,404,700	$572,159,373
F.T.E.				133.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
SECTION 13. DEPARTMENT OF PUBLIC SAFETY				
(1) Administration, Secretary of Public Safety				
Personal Services	$103,850	$123,044	$501,231	$728,125
Operating Expenses	$11,543	$0	$125,248	$136,791
Total	$115,393	$123,044	$626,479	$864,916
F.T.E.				8.5
(2) Highway Patrol				
Personal Services	$1,066,341	$803,381	$14,599,776	$16,469,498
Operating Expenses	$108,705	$4,673,680	$4,355,084	$9,137,469
Total	$1,175,046	$5,477,061	$18,954,860	$25,606,967
F.T.E.				274.0
(3) Emergency Services & Homeland Security				
Personal Services	$1,032,278	$1,188,271	$83,318	$2,303,867
Operating Expenses	$404,468	$14,934,398	$213,457	$15,552,323
Total	$1,436,746	$16,122,669	$296,775	$17,856,190
F.T.E.				35.0
(4) Inspection and Licensing				
Personal Services	$56,529	$0	$3,747,511	$3,804,040
Operating Expenses	$506,543	$89,270	$2,865,047	$3,460,860
Total	$563,072	$89,270	$6,612,558	$7,264,900
F.T.E.				90.5
(5) DEPARTMENT TOTAL, PUBLIC SAFETY				
Personal Services	$2,258,998	$2,114,696	$18,931,836	$23,305,530
Operating Expenses	$1,031,259	$19,697,348	$7,558,836	$28,287,443
Total	$3,290,257	$21,812,044	$26,490,672	$51,592,973
F.T.E.				408.0
SECTION 14. BOARD OF REGENTS				
(1) Regents Central Office				
Personal Services	$3,514,029	$0	$1,813,537	$5,327,566
Operating Expenses	$7,839,698	$24,334,007	$32,265,151	$64,438,856
Total	$11,353,727	$24,334,007	$34,078,688	$69,766,422
F.T.E.				72.3
(2) South Dakota Scholarships				
Personal Services	$0	$0	$0	$0
Operating Expenses	$4,156,341	$0	$0	$4,156,341
Total	$4,156,341	$0	$0	$4,156,341
F.T.E.				0.0
(3) Employee Compensation and Health Insurance				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Total	$0	$0	$0	$0
F.T.E.				0.0
(4) University of South Dakota Proper				
Personal Services	$26,958,162	$8,725,018	$35,049,447	$70,732,627
Operating Expenses	$178,715	$10,131,148	$34,952,216	$45,262,079
Total	$27,136,877	$18,856,166	$70,001,663	$115,994,706
F.T.E.				1,026.2

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(5) University of South Dakota School of Medicine				
Personal Services	$14,995,855	$8,243,360	$8,877,382	$32,116,597
Operating Expenses	$373,901	$10,418,182	$8,459,100	$19,251,183
Total	$15,369,756	$18,661,542	$17,336,482	$51,367,780
F.T.E.				349.2
(6) South Dakota State University Proper				
Personal Services	$34,218,698	$13,240,293	$61,614,480	$109,073,471
Operating Expenses	$306,900	$50,859,691	$82,396,958	$133,563,549
Total	$34,525,598	$64,099,984	$144,011,438	$242,637,020
F.T.E.				1,617.7
(7) Cooperative Extension Service				
Personal Services	$7,038,644	$4,752,873	$774,282	$12,565,799
Operating Expenses	$329,154	$1,726,908	$886,053	$2,942,115
Total	$7,367,798	$6,479,781	$1,660,335	$15,507,914
F.T.E.				200.4
(8) Agricultural Experiment Station				
Personal Services	$8,794,095	$7,400,039	$4,437,152	$20,631,286
Operating Expenses	$314,155	$8,760,134	$8,101,541	$17,175,830
Total	$9,108,250	$16,160,173	$12,538,693	$37,807,116
F.T.E.				276.5
(9) South Dakota School of Mines and Technology				
Personal Services	$12,045,921	$19,878,370	$10,059,782	$41,984,073
Operating Expenses	$298,066	$56,018,752	$16,356,876	$72,673,694
Total	$12,343,987	$75,897,122	$26,416,658	$114,657,767
F.T.E.				358.8
(10) Northern State University				
Personal Services	$9,870,859	$1,091,087	$10,303,523	$21,265,469
Operating Expenses	$344,135	$3,319,466	$9,092,883	$12,756,484
Total	$10,214,994	$4,410,553	$19,396,406	$34,021,953
F.T.E.				326.5
(11) Black Hills State University				
Personal Services	$6,602,987	$3,778,737	$18,252,955	$28,634,679
Operating Expenses	$40,173	$5,123,747	$14,081,712	$19,245,632
Total	$6,643,160	$8,902,484	$32,334,667	$47,880,311
F.T.E.				410.5
(12) Dakota State University				
Personal Services	$7,347,110	$2,373,661	$9,983,132	$19,703,903
Operating Expenses	$64,187	$3,840,965	$8,634,279	$12,539,431
Total	$7,411,297	$6,214,626	$18,617,411	$32,243,334
F.T.E.				284.8
(13) South Dakota School for the Deaf				
Personal Services	$1,357,757	$30,125	$0	$1,387,882
Operating Expenses	$1,222,737	$108,421	$525,339	$1,856,497
Total	$2,580,494	$138,546	$525,339	$3,244,379
F.T.E.				36.9
(14) South Dakota School for the Blind and Visually Impaired				
Personal Services	$2,260,187	$267,678	$0	$2,527,865
Operating Expenses	$276,322	$45,683	$337,124	$659,129
Total	$2,536,509	$313,361	$337,124	$3,186,994
F.T.E.				52.6

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(15) DEPARTMENT TOTAL, BOARD OF REGENTS				
Personal Services	$135,004,304	$69,781,241	$161,165,672	$365,951,217
Operating Expenses	$15,744,484	$174,687,104	$216,089,232	$406,520,820
Total	$150,748,788	$244,468,345	$377,254,904	$772,472,037
F.T.E.				5,012.4
SECTION 15. DEPARTMENT OF THE MILITARY				
(1) Adjutant General				
Personal Services	$409,573	$0	$16,137	$425,710
Operating Expenses	$457,899	$10,306	$10,021	$478,226
Total	$867,472	$10,306	$26,158	$903,936
F.T.E.				6.3
(2) Army Guard				
Personal Services	$492,891	$1,495,940	$0	$1,988,831
Operating Expenses	$1,029,955	$30,532,039	$0	$31,561,994
Total	$1,522,846	$32,027,979	$0	$33,550,825
F.T.E.				48.1
(3) Air Guard				
Personal Services	$158,965	$2,238,203	$0	$2,397,168
Operating Expenses	$202,289	$2,584,718	$0	$2,787,007
Total	$361,254	$4,822,921	$0	$5,184,175
F.T.E.				47.0
(4) DEPARTMENT TOTAL, MILITARY				
Personal Services	$1,061,429	$3,734,143	$16,137	$4,811,709
Operating Expenses	$1,690,143	$33,127,063	$10,021	$34,827,227
Total	$2,751,572	$36,861,206	$26,158	$39,638,936
F.T.E.				101.4
SECTION 16. DEPARTMENT OF VETERANS' AFFAIRS				
(1) Veterans' Benefits and Services				
Personal Services	$772,068	$191,169	$0	$963,237
Operating Expenses	$159,991	$82,920	$61,000	$303,911
Total	$932,059	$274,089	$61,000	$1,267,148
F.T.E.				18.0
(2) State Veterans' Home				
Personal Services	$1,412,567	$0	$2,123,359	$3,535,926
Operating Expenses	$663,664	$22,977,500	$2,183,534	$25,824,698
Total	$2,076,231	$22,977,500	$4,306,893	$29,360,624
F.T.E.				82.7
(3) DEPARTMENT TOTAL, VETERANS' AFFAIRS				
Personal Services	$2,184,635	$191,169	$2,123,359	$4,499,163
Operating Expenses	$823,655	$23,060,420	$2,244,534	$26,128,609
Total	$3,008,290	$23,251,589	$4,367,893	$30,627,772
F.T.E.				100.7
SECTION 17. DEPARTMENT OF CORRECTIONS				
(1) Administration, Central Office				
Personal Services	$2,038,965	$201,589	$139,267	$2,379,821
Operating Expenses	$16,205,994	$1,953,383	$1,367,662	$19,527,039
Total	$18,244,959	$2,154,972	$1,506,929	$21,906,860
F.T.E.				39.5

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(2) Mike Durfee State Prison				
Personal Services	$7,570,776	$29,854	$298,369	$7,898,999
Operating Expenses	$3,734,350	$127,158	$241,042	$4,102,550
Total	$11,305,126	$157,012	$539,411	$12,001,549
F.T.E.				170.0
(3) State Penitentiary				
Personal Services	$12,386,075	$70,520	$99,232	$12,555,827
Operating Expenses	$3,999,428	$884,495	$135,962	$5,019,885
Total	$16,385,503	$955,015	$235,194	$17,575,712
F.T.E.				277.5
(4) Women's Prison				
Personal Services	$2,335,651	$0	$0	$2,335,651
Operating Expenses	$900,563	$114,308	$151,025	$1,165,896
Total	$3,236,214	$114,308	$151,025	$3,501,547
F.T.E.				50.0
(5) Pheasantland Industries				
Personal Services	$0	$0	$763,220	$763,220
Operating Expenses	$0	$0	$1,738,163	$1,738,163
Total	$0	$0	$2,501,383	$2,501,383
F.T.E.				14.0
(6) Community Service				
Personal Services	$2,631,196	$67,313	$849,031	$3,547,540
Operating Expenses	$1,610,769	$80,151	$1,343,598	$3,034,518
Total	$4,241,965	$147,464	$2,192,629	$6,582,058
F.T.E.				75.1
(7) Parole Services				
Personal Services	$2,293,346	$0	$205,659	$2,499,005
Operating Expenses	$945,597	$0	$0	$945,597
Total	$3,238,943	$0	$205,659	$3,444,602
F.T.E.				50.0
(8) Juvenile Community Corrections				
Personal Services	$2,258,434	$0	$0	$2,258,434
Operating Expenses	$11,373,512	$8,150,915	$635,081	$20,159,508
Total	$13,631,946	$8,150,915	$635,081	$22,417,942
F.T.E.				44.5
(9) Youth Challenge Center				
Personal Services	$1,229,922	$0	$0	$1,229,922
Operating Expenses	$103,521	$0	$14,942	$118,463
Total	$1,333,443	$0	$14,942	$1,348,385
F.T.E.				26.0
(10) Patrick Henry Brady Academy				
Personal Services	$1,280,267	$0	$0	$1,280,267
Operating Expenses	$88,497	$0	$14,280	$102,777
Total	$1,368,764	$0	$14,280	$1,383,044
F.T.E.				26.0
(11) State Treatment and Rehabilitation Academy				
Personal Services	$2,112,252	$0	$0	$2,112,252
Operating Expenses	$2,138,535	$565,469	$128,000	$2,832,004
Total	$4,250,787	$565,469	$128,000	$4,944,256
F.T.E.				44.7

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(12) QUEST and ExCEL				
Personal Services	$1,375,503	$0	$0	$1,375,503
Operating Expenses	$107,514	$0	$12,599	$120,113
Total	$1,483,017	$0	$12,599	$1,495,616
F.T.E.				28.0
(13) DEPARTMENT TOTAL, CORRECTIONS				
Personal Services	$37,512,387	$369,276	$2,354,778	$40,236,441
Operating Expenses	$41,208,280	$11,875,879	$5,782,354	$58,866,513
Total	$78,720,667	$12,245,155	$8,137,132	$99,102,954
F.T.E.				845.3
SECTION 18. DEPARTMENT OF HUMAN SERVICES				
(1) Administration, Secretary of Human Services				
Personal Services	$462,958	$396,220	$0	$859,178
Operating Expenses	$270,446	$129,251	$1,421	$401,118
Total	$733,404	$525,471	$1,421	$1,260,296
F.T.E.				15.0
(2) Developmental Disabilities				
Personal Services	$548,722	$482,028	$0	$1,030,750
Operating Expenses	$39,928,174	$67,595,659	$112,500	$107,636,333
Total	$40,476,896	$68,077,687	$112,500	$108,667,083
F.T.E.				18.5
(3) South Dakota Developmental Center--Redfield				
Personal Services	$7,278,047	$10,716,008	$0	$17,994,055
Operating Expenses	$2,013,802	$2,935,463	$992,145	$5,941,410
Total	$9,291,849	$13,651,471	$992,145	$23,935,465
F.T.E.				395.6
(4) Rehabilitation Services				
Personal Services	$678,449	$3,775,502	$0	$4,453,951
Operating Expenses	$2,985,153	$11,888,314	$698,339	$15,571,806
Total	$3,663,602	$15,663,816	$698,339	$20,025,757
F.T.E.				99.1
(5) Telecommunications Services for the Deaf				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$1,251,680	$1,251,680
Total	$0	$0	$1,251,680	$1,251,680
F.T.E.				0.0
(6) Services to the Blind and Visually Impaired				
Personal Services	$413,294	$991,555	$131,754	$1,536,603
Operating Expenses	$370,607	$1,064,366	$119,947	$1,554,920
Total	$783,901	$2,055,921	$251,701	$3,091,523
F.T.E.				29.2
(7) DEPARTMENT TOTAL, HUMAN SERVICES				
Personal Services	$9,381,470	$16,361,313	$131,754	$25,874,537
Operating Expenses	$45,568,182	$83,613,053	$3,176,032	$132,357,267
Total	$54,949,652	$99,974,366	$3,307,786	$158,231,804
F.T.E.				557.4

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
SECTION 19. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES				
(1) Financial and Technical Assistance				
Personal Services	$1,688,798	$1,360,085	$690,276	$3,739,159
Operating Expenses	$330,791	$12,588,962	$257,887	$13,177,640
Total	$2,019,589	$13,949,047	$948,163	$16,916,799
F.T.E.				56.5
(2) Environmental Services				
Personal Services	$2,665,518	$3,144,282	$1,858,482	$7,668,282
Operating Expenses	$539,995	$2,686,925	$835,063	$4,061,983
Total	$3,205,513	$5,831,207	$2,693,545	$11,730,265
F.T.E.				118.0
(3) Regulated Response Fund--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$1,750,000	$1,750,000
Total	$0	$0	$1,750,000	$1,750,000
F.T.E.				0.0
(4) Livestock Cleanup Fund--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$765,000	$765,000
Total	$0	$0	$765,000	$765,000
F.T.E.				0.0
(5) Petroleum Release Compensation				
Personal Services	$0	$0	$320,079	$320,079
Operating Expenses	$0	$0	$63,117	$63,117
Total	$0	$0	$383,196	$383,196
F.T.E.				6.0
(6) Petroleum Release Compensation--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$2,100,000	$2,100,000
Total	$0	$0	$2,100,000	$2,100,000
F.T.E.				0.0
(7) DEPARTMENT TOTAL, ENVIRONMENT AND NATURAL RESOURCES				
Personal Services	$4,354,316	$4,504,367	$2,868,837	$11,727,520
Operating Expenses	$870,786	$15,275,887	$5,771,067	$21,917,740
Total	$5,225,102	$19,780,254	$8,639,904	$33,645,260
F.T.E.				180.5
SECTION 20. PUBLIC UTILITIES COMMISSION				
(1) Public Utilities Commission				
Personal Services	$412,842	$310,490	$1,891,325	$2,614,657
Operating Expenses	$49,937	$68,607	$1,379,401	$1,497,945
Total	$462,779	$379,097	$3,270,726	$4,112,602
F.T.E.				33.2
(2) DEPARTMENT TOTAL, PUBLIC UTILITIES COMMISSION				
Personal Services	$412,842	$310,490	$1,891,325	$2,614,657
Operating Expenses	$49,937	$68,607	$1,379,401	$1,497,945
Total	$462,779	$379,097	$3,270,726	$4,112,602
F.T.E.				33.2

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
SECTION 21. UNIFIED JUDICIAL SYSTEM				
(1) State Bar of South Dakota--Informational				
Personal Services	$0	$0	$198,633	$198,633
Operating Expenses	$0	$0	$334,689	$334,689
Total	$0	$0	$533,322	$533,322
F.T.E.				3.0
(2) Unified Judicial System				
Personal Services	$29,423,898	$130,317	$1,954,109	$31,508,324
Operating Expenses	$2,367,181	$263,222	$8,382,128	$11,012,531
Total	$31,791,079	$393,539	$10,336,237	$42,520,855
F.T.E.				524.4
(3) DEPARTMENT TOTAL, UNIFIED JUDICIAL SYSTEM				
Personal Services	$29,423,898	$130,317	$2,152,742	$31,706,957
Operating Expenses	$2,367,181	$263,222	$8,716,817	$11,347,220
Total	$31,791,079	$393,539	$10,869,559	$43,054,177
F.T.E.				527.4
SECTION 22. LEGISLATURE				
(1) Legislative Operations				
Appropriation	$4,249,061	$0	$35,000	$4,284,061
F.T.E.				31.3
(2) Legislative Employee Compensation and Health Insurance				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Total	$0	$0	$0	$0
F.T.E.				0.0
(3) Auditor General				
Personal Services	$2,386,750	$0	$0	$2,386,750
Operating Expenses	$312,651	$0	$0	$312,651
Total	$2,699,401	$0	$0	$2,699,401
F.T.E.				34.0
(4) DEPARTMENT TOTAL, LEGISLATURE				
Personal Services	$2,386,750	$0	$0	$2,386,750
Operating Expenses	$312,651	$0	$0	$312,651
Legislative Operations Appropriation	$4,249,061	$0	$35,000	$4,284,061
TOTAL	$6,948,462	$0	$35,000	$6,983,462
F.T.E.				65.3
SECTION 23. ATTORNEY GENERAL				
(1) Legal Services Program				
Personal Services	$4,380,724	$769,833	$894,913	$6,045,470
Operating Expenses	$608,186	$1,072,036	$741,879	$2,422,101
Total	$4,988,910	$1,841,869	$1,636,792	$8,467,571
F.T.E.				81.5
(2) Criminal Investigation				
Personal Services	$2,492,872	$1,031,833	$1,649,138	$5,173,843
Operating Expenses	$1,165,557	$1,941,833	$1,840,079	$4,947,469
Total	$3,658,429	$2,973,666	$3,489,217	$10,121,312
F.T.E.				76.5
(3) Law Enforcement Training				
Personal Services	$0	$0	$689,418	$689,418
Operating Expenses	$315,992	$0	$956,116	$1,272,108
Total	$315,992	$0	$1,645,534	$1,961,526
F.T.E.				10.5

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(4) 911 Training				
Personal Services	$0	$0	$107,287	$107,287
Operating Expenses	$0	$0	$97,138	$97,138
Total	$0	$0	$204,425	$204,425
F.T.E.				2.0
(5) Insurance Fraud Unit--Informational				
Personal Services	$0	$0	$156,417	$156,417
Operating Expenses	$0	$0	$70,259	$70,259
Total	$0	$0	$226,676	$226,676
F.T.E.				3.0
(6) DEPARTMENT TOTAL, ATTORNEY GENERAL				
Personal Services	$6,873,596	$1,801,666	$3,497,173	$12,172,435
Operating Expenses	$2,089,735	$3,013,869	$3,705,471	$8,809,075
Total	$8,963,331	$4,815,535	$7,202,644	$20,981,510
F.T.E.				173.5
SECTION 24. SCHOOL AND PUBLIC LANDS				
(1) Administration of School and Public Lands				
Personal Services	$429,563	$0	$0	$429,563
Operating Expenses	$62,780	$0	$225,000	$287,780
Total	$492,343	$0	$225,000	$717,343
F.T.E.				7.0
(2) Administration--Informational				
Personal Services	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0
Total	$0	$0	$0	$0
F.T.E.				0.0
(3) DEPARTMENT TOTAL, SCHOOL AND PUBLIC LANDS				
Personal Services	$429,563	$0	$0	$429,563
Operating Expenses	$62,780	$0	$225,000	$287,780
Total	$492,343	$0	$225,000	$717,343
F.T.E.				7.0
SECTION 25. SECRETARY OF STATE				
(1) Secretary of State				
Personal Services	$615,850	$71,853	$143,674	$831,377
Operating Expenses	$260,891	$3,055,694	$303,197	$3,619,782
Total	$876,741	$3,127,547	$446,871	$4,451,159
F.T.E.				15.6
(2) DEPARTMENT TOTAL, SECRETARY OF STATE				
Personal Services	$615,850	$71,853	$143,674	$831,377
Operating Expenses	$260,891	$3,055,694	$303,197	$3,619,782
Total	$876,741	$3,127,547	$446,871	$4,451,159
F.T.E.				15.6
SECTION 26. STATE TREASURER				
(1) Treasury Management				
Personal Services	$324,208	$0	$0	$324,208
Operating Expenses	$133,492	$0	$0	$133,492
Total	$457,700	$0	$0	$457,700
F.T.E.				5.5

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(2) Unclaimed Property--Informational				
Personal Services	$0	$0	$239,551	$239,551
Operating Expenses	$0	$0	$2,654,864	$2,654,864
Total	$0	$0	$2,894,415	$2,894,415
F.T.E.				3.5
(3) Investment of State Funds				
Personal Services	$0	$0	$6,682,562	$6,682,562
Operating Expenses	$0	$0	$2,016,726	$2,016,726
Total	$0	$0	$8,699,288	$8,699,288
F.T.E.				28.0
(4) DEPARTMENT TOTAL, STATE TREASURER				
Personal Services	$324,208	$0	$6,922,113	$7,246,321
Operating Expenses	$133,492	$0	$4,671,590	$4,805,082
Total	$457,700	$0	$11,593,703	$12,051,403
F.T.E.				37.0
SECTION 27. STATE AUDITOR				
(1) State Auditor				
Personal Services	$959,671	$0	$0	$959,671
Operating Expenses	$125,678	$0	$100,000	$225,678
Total	$1,085,349	$0	$100,000	$1,185,349
F.T.E.				18.0
(2) DEPARTMENT TOTAL, STATE AUDITOR				
Personal Services	$959,671	$0	$0	$959,671
Operating Expenses	$125,678	$0	$100,000	$225,678
Total	$1,085,349	$0	$100,000	$1,185,349
F.T.E.				18.0
SECTION 28. STATE TOTAL				
(1) Personal Services	$301,108,371	$187,184,517	$342,734,545	$831,027,433
Operating Expenses	$814,730,648	$1,663,875,277	$645,258,023	$3,123,863,948
Single Line Item Appropriation	$4,249,061	$0	$35,000	$4,284,061
TOTAL	$1,120,088,080	$1,851,059,794	$988,027,568	$3,959,175,442
F.T.E.				13,627.9

Section 29. The state treasurer shall transfer to the state general fund money from the following funds for the purposes herein indicated:

From the state highway fund:

Radio Communications Operations $2,335,749

Governor's Office Operations $93,637

From the game, fish and parks fund:

Radio Communications Operations $230,267

From the game, fish and parks administrative revolving fund:

Governor's Office Operations $15,766

From the motor vehicle fund:

Radio Communications Operations $1,195,787

Section 30. The state treasurer shall transfer to the state general fund twelve million dollars ($12,000,000) from the dakota cement trust fund.

Section 31. The state treasurer shall transfer to the state general fund money from the health care trust fund, the amount identified by notice of the state investment officer pursuant to § 4-5-29.1, for the Department of Social Services - medical services.

Section 32. The state treasurer shall transfer to the state general fund money from the education enhancement trust fund, the amount identified by notice of the state investment officer pursuant to § 4-5-29.2, for the Department of Education - state aid to education and technology in schools.

Section 33. The state treasurer shall transfer to the state general fund all moneys available from the health care tobacco tax fund created by § 4-5-46, for the Department of Social Services - medical services.

Section 34. The state treasurer shall transfer to the state general fund all moneys available from the education enhancement tobacco tax fund created by § 4-5-45, for the Department of Education - state aid to education and technology in schools.

Section 35. The state treasurer shall transfer to the state general fund one million dollars ($1,000,000), from the tobacco prevention and reduction trust fund.

Signed March 17, 2011

CHAPTER 24

(SB 190)

The General Appropriations Act for fiscal year 2011, revisited.

ENTITLED, An Act to revise the General Appropriations Act for fiscal year 2011.

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

Section 1. That section 2 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF EXECUTIVE MANAGEMENT

(1) Office of the Governor

Personal Services, Federal Funds, delete "$206,402" and insert "$252,265"

Operating Expenses, Federal Funds, delete "$46,894" and insert "$155,402"

Adjust all totals accordingly.

Section 2. That section 2 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF EXECUTIVE MANAGEMENT

(19) Development

Operating Expenses, Federal Funds, delete "$0" and insert "$303,558"

Adjust all totals accordingly.

Section 3. That section 3 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF REVENUE AND REGULATION

(8) Insurance

Personal Services, Federal Funds, delete "$0" and insert "$53,624"

Operating Expenses, Federal Funds, delete "$0" and insert "$588,572"

Adjust all totals accordingly.

Section 4. That section 5 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF TOURISM AND STATE DEVELOPMENT

(1) Economic Development

Operating Expenses, Other Funds, delete "$11,158,712" and insert "$18,352,382"

Adjust all totals accordingly.

Section 5. That section 6 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF GAME, FISH AND PARKS

(5) State Parks and Recreation

Operating Expenses, General Funds, delete "$1,020,414" and insert "$1,162,314"

Adjust all totals accordingly.

Section 6. That section 7 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF SOCIAL SERVICES

(2) Economic Assistance

Operating Expenses, General Funds, delete $14,668,703" and insert "$14,858,459"

Personal Services, Federal Funds, delete "$9,272,132" and insert "$9,474,961"

Operating Expenses, Federal Funds, delete "$61,933,045" and insert "$61,976,163"

Operating Expenses, Other Funds, delete "$443,803" and insert "$447,110"

F.T.E., delete "320.5" and insert "322.9"

Adjust all totals accordingly.

Section 7. That section 7 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF SOCIAL SERVICES

(3) Medical and Adult Services

Operating Expenses, General Funds, delete "$220,492,309" and insert "$197,347,132"

Operating Expenses, Federal Funds, delete "$494,597,028" and insert "$492,458,704"

Operating Expenses, Other Funds, delete "$2,851,425" and insert "$2,846,032"

F.T.E., delete "145.0" and insert "147.0"

Adjust all totals accordingly.

Section 8. That section 7 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF SOCIAL SERVICES

(4) Children's Services

Operating Expenses, General Funds, delete "$23,994,645" and insert "$23,462,197"

Operating Expenses, Federal Funds, delete "$44,310,323" and insert "$44,602,333"

Operating Expenses, Other Funds, delete "$2,998,598" and insert "$3,000,684"

Adjust all totals accordingly.

Section 9. That section 10 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF TRANSPORTATION

(1) General Operations

Operating Expenses, Federal Funds, delete "$28,325,183" and insert "$44,325,183"

Operating Expenses, Other Funds, delete "$85,312,439" and insert "$89,053,436

Adjust all totals accordingly.

Section 10. That section 11 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF EDUCATION

(1) Administration, Secretary of Education

Operating Expenses, Federal Funds, delete "$6,888,192" and insert "$7,808,192"

Adjust all totals accordingly.

Section 11. That section 11 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF EDUCATION

(2) State Aid to General Education

Operating Expenses, General Funds, delete "$316,510,858" and insert "$321,419,327"

Adjust all totals accordingly.

Section 12. That section 11 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF EDUCATION

(10) Curriculum, Career and Technical Education

Operating Expenses, Federal Funds, delete "$9,257,059" and insert "$9,707,059"

Adjust all totals accordingly.

Section 13. That section 11 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF EDUCATION

(11) Postsecondary Vocational Education

Operating Expenses, General Funds, delete "$21,115,827" and insert "$21,911,820"

Adjust all totals accordingly.

Section 14. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(1) Regents Central Office

Operating Expenses, Other Funds, delete "$28,814,307" and insert "$32,401,859"

Adjust all totals accordingly.

Section 15. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(3) University of South Dakota Proper

Operating Expenses, General Funds, delete "$0" and insert "$2,558,423"

Adjust all totals accordingly.

Section 16. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(4) University of South Dakota School of Medicine

Operating Expenses, General Funds, delete "$1,168,726" and insert "$2,690,615"

Adjust all totals accordingly.

Section 17. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(5) South Dakota State University Proper

Operating Expenses, General Funds, delete "$0" and insert "$3,544,609"

Adjust all totals accordingly.

Section 18. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(8) South Dakota School of Mines and Technology

Personal Services, Federal Funds, delete "$5,406,483" and insert "$8,556,483"

Personal Services, Other Funds, delete "$9,566,241" and insert "$12,566,241"

Operating Expenses, General Funds, delete "$217,097" and insert "$1,376,218"

Operating Expenses, Federal Funds, delete "$13,869,139" and insert "$22,719,139"

Operating Expenses, Other Funds, delete "$14,426,876" and insert "$20,926,876"

FTE, delete "318.8" and insert "333.8"

Adjust all totals accordingly.

Section 19. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(9) Northern State University

Operating Expenses, General Funds, delete "$407,477" and insert "$1,105,800"

Adjust all totals accordingly.

Section 20. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(10) Black Hills State University

Operating Expenses, General Funds, delete "$0" and insert "$575,107"

Adjust all totals accordingly.

Section 21. That section 13 of chapter 25 of the 2010 Session Laws be amended to read as follows:

BOARD OF REGENTS

(11) Dakota State University

Personal Services, Federal Funds, delete "$1,273,661" and insert "$1,723,661"

Personal Services, Other Funds, delete "$9,323,565" and insert "$10,373,565"

Operating Expenses, General Funds, delete "$24,653" and insert "$590,604"

Operating Expenses, Other Funds, delete "$8,554,279" and insert "$10,054,279"

FTE, delete "249.8" and insert "259.8"

Adjust all totals accordingly.

Section 22. That section 14 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

(3) Air Guard

Personal Services, Federal Funds, delete "$1,912,337" and insert "$2,086,742"

F.T.E., delete "41.0" and insert "44.0"

Adjust all totals accordingly.

Section 23. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(1) Administration, Central Office

Personal Services, General Funds, delete "$1,968,287" and insert "$1,962,287"

Operating Expenses, General Funds, delete "$7,908,162" and insert "$7,883,162"

Adjust all totals accordingly.

Section 24. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(2) Mike Durfee State Prison

Personal Services, General Funds, delete "$8,455,146" and insert "$8,380,702"

Operating Expenses, General Funds, delete "$3,981,790" and insert "$4,060,791"

Adjust all totals accordingly.

Section 25. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(3) State Penitentiary

Personal Services, General Funds, delete "$13,364,098" and insert "$13,260,848"

Operating Expenses, General Funds, delete "$4,884,315" and insert "$4,653,322"

Adjust all totals accordingly.

Section 26. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(4) Women's Prison

Personal Services, General Funds, delete "$2,275,651" and insert "$2,235,651"

Operating Expenses, General Funds, delete "$850,809" and insert "$823,843"

Operating Expenses, Federal Funds, delete "$275,951" and insert "$270,112"

Adjust all totals accordingly.

Section 27. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(6) Community Service

Operating Expenses, General Funds, delete "$1,424,320" and insert "$1,423,518"

Adjust all totals accordingly.

Section 28. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(7) Parole Services

Personal Services, General Funds, delete "$2,689,121" and insert "$2,615,121"

Operating Expenses, General Funds, delete "$1,012,616" and insert "$1,007,616"

Adjust all totals accordingly.

Section 29. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(8) Juvenile Community Corrections

Personal Services, General Funds, delete "$2,442,476" and insert "$2,333,070"

Operating Expenses, General Funds, delete "$12,930,213" and insert "$12,705,830"

Operating Expenses, Federal Funds, delete $8,715,221" and insert "$9,095,411"

Adjust all totals accordingly.

Section 30. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(9) Youth Challenge Center

Personal Services, General Funds, delete "$1,321,922" and insert "$1,259,922"

Adjust all totals accordingly.

Section 31. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(10) Patrick Henry Brady Academy

Personal Services, General Funds, delete "$1,323,267" and insert "$1,295,267"

Adjust all totals accordingly.

Section 32. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(11) State Treatment and Rehabilitation Academy

Personal Services, General Funds, delete "$2,743,295" and insert "$2,674,295"

Operating Expenses, General Funds, delete "$2,527,145" and insert "$2,523,371"

Adjust all totals accordingly.

Section 33. That section 15 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF CORRECTIONS

(12) QUEST and ExCEL

Personal Services, General Funds, delete "$1,427,503" and insert "$1,403,603"

Adjust all totals accordingly.

Section 34. That section 16 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF HUMAN SERVICES

(2) Developmental Disabilities

Operating Expenses, General Funds, delete "$36,678,731" and insert "$34,177,349"

Operating Expenses, Federal Funds, delete "$70,671,918" and insert "$72,089,465"

Adjust all totals accordingly.

Section 35. That section 16 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF HUMAN SERVICES

(3) South Dakota Developmental Center--Redfield

Personal Services, General Funds, delete "$6,505,285" and insert "$5,871,595"

Operating Expenses, General Funds, delete "$1,902,505" and insert "$1,656,592"

Operating Expenses, Federal Funds, delete "$3,449,646" and insert "$3,337,103"

Adjust all totals accordingly.

Section 36. That section 16 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF HUMAN SERVICES

(4) Alcohol and Drug Abuse

Operating Expenses, General Funds, delete "$8,622,849" and insert "$7,616,857"

Adjust all totals accordingly.

Section 37. That section 16 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF HUMAN SERVICES

(5) Rehabilitation Services

Operating Expenses, General Funds, delete "$3,085,683" and insert "$2,961,276"

Operating Expenses, Federal Funds, delete $13,563,501" and insert "$13,591,955"

Adjust all totals accordingly.

Section 38. That section 16 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF HUMAN SERVICES

(12) Human Services Center

Personal Services, General Funds, delete "$21,138,798" and insert "$20,050,657"

Personal Services, Federal Funds, delete "$8,227,886" and insert "$9,048,053"

Operating Expenses, General Funds, delete "$10,017,405" and insert "$9,028,629"

Operating Expenses, Federal Funds, delete "$1,650,718" and insert "$2,368,430"

Adjust all totals accordingly.

Section 39. That section 16 of chapter 25 of the 2010 Session Laws be amended to read as follows:

DEPARTMENT OF HUMAN SERVICES

(13) Community Mental Health

Personal Services, General Funds, delete "$511,315" and insert "$510,290"

Operating Expenses, General Funds, delete "$15,280,929" and insert "$14,140,687"

Adjust all totals accordingly.

Section 40. That section 19 of chapter 25 of the 2010 Session Laws be amended to read as follows:

UNIFIED JUDICIAL SYSTEM

(2) Unified Judicial System

Operating Expenses, General Funds, delete "$4,923,417" and insert "$4,955,073"

Adjust all totals accordingly.

Section 41. That section 22 of chapter 25 of the 2010 Session Laws be amended to read as follows:

SCHOOL AND PUBLIC LANDS

(1) Administration of School and Public Lands

Operating Expenses, Federal Funds, delete "$0" and insert "$34,381"

Operating Expenses, Other Funds, delete "$225,000" and insert "$239,610"

Adjust all totals accordingly.

Section 42. That chapter 25 of the 2010 Session Laws be amended to by adding thereto a NEW SECTION to read as follows:

Section 46. The state treasurer shall transfer to the state general fund one hundred forty-one thousand nine hundred dollars ($141,900) from the Custer State Park improvement fund to make the bond payment for Custer State Park improvements.

Section 43. That chapter 25 of the 2010 Session Laws be amended to by adding thereto a NEW SECTION to read as follows:

Section 47. Funds appropriated in subdivision (2) of section 13 of this Act which are unspent at the end of fiscal year 2011 may be carried over to fiscal year 2012.

Section 44. Funds appropriated by this Act which are unspent at the end of fiscal year 2011 may be carried over to fiscal year 2012.

Section 45. This Act is effective June 28, 2011.

Signed March 15, 2011

CHAPTER 25

(HB 1194)

South Dakota endowment fund created.

ENTITLED, An Act to establish the State of South Dakota endowment fund.

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

Section 1. The State of South Dakota endowment fund may be established within the South Dakota Community Foundation. The purpose of the endowment fund is to provide a fund for any person who wishes to contribute to the endowment fund to further the excellent quality of life which is unique to this state. This fund shall be administered by the South Dakota Community Foundation. Any funds received by the state from the State of South Dakota endowment fund shall be appropriated by the South Dakota Legislature.

Signed March 11, 2011

CHAPTER 26

(SB 68)

Public funds may be invested in bonds issued by political subdivisions or agencies of the state.

ENTITLED, An Act to authorize investment of public funds in bonds issued by or direct obligations of certain political subdivisions or bonding authorities of the state.

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

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

In addition to the investments permitted by § 4-5-6, any public funds which are not needed for current operating expenses may be invested in:

(1) Direct obligations of any county, municipality, or school district in the state; and

(2) Bonds issued by the South Dakota Housing Development Authority, the South Dakota Health and Educational Facilities Authority, or the South Dakota Building Authority.

The investments shall be registered in the name of the political subdivision or authority or held under a custodial agreement at a bank. The investments shall be rated at the time of purchase within the two highest general classifications established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions. Other than permanent, trust, retirement, building, and depreciation reserve funds, such securities shall mature with eighteen months from the date of purchase or be redeemable at par at the option of the holder within eighteen months from the date of purchase.

Moneys in any bond redemption fund may be invested only in the types of investments listed in § 4-5-6. The investments shall be due and payable on or before the date when the bonds for the payment of which the bond redemption fund was created become due and payable, except bonds of the United States redeemable at par.

Section 2. That § 13-16-18 be amended to read as follows:

13-16-18. All accumulations in all school district funds shall be deposited in lawful depositories in checking accounts, savings accounts, or time deposits, or invested, except as hereinafter limited, in ~~bonds~~:

(1) Bonds, registered warrants, or promissory notes of the school district making ~~such~~ the investment, or securities issued and guaranteed by the United States government; or

(2) Investments authorized by section 1 of this Act.

The interest accruing on ~~such~~ the investment or deposit shall be credited to the respective fund or the general fund. Other than permanent, trust, retirement, building, and depreciation reserve funds, such securities shall mature within eighteen months from the date of purchase or be redeemable at par at the option of the holder within eighteen months from the date of purchase.

Moneys in any bond redemption fund may be invested only in ~~such of the above listed~~ the types of ~~securities as will become~~ investments listed in subdivision (1). The investments shall be due and payable on or before the date when the bonds for the payment of which ~~such~~ the bond redemption fund was created become due and payable, except bonds of the United States redeemable at par.

In carrying out the provisions of this section, all transactions shall be by resolutions of the board, which resolutions shall be regularly filed and recorded with the business manager as a public record.

Signed March 14, 2011

CHAPTER 27

(SB 189)

Budgetary procedures relating to certain funds received from the federal government modified.

ENTITLED, An Act to revise certain budgetary provisions relating to certain funds received from the federal government.

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

Section 1. That § 4-8A-14 be amended to read as follows:

4-8A-14. The provisions of §§ 4-7-32, 4-7-39, 4-8A-8, 4-8-17.1, and 31-2-14 do not apply to any funds received by the State of South Dakota from the federal government through the American Recovery and Reinvestment Act of 2009, P.L. 111-5 or the FAA Air Transportation Modernization and Safety Improvement Act, P.L. 111-226.

Section 2. That § 4-8A-15 be repealed.

Section 3. That section 3 of chapter 23 of the 2009 Session Laws be amended to read as follows:

Section 3. This Act is effective June 29, 2009, and expires on June 30, ~~2011~~ 2016.

Section 4. That chapter 4-8 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the prohibition by § 4-8-19 of funds being carried forward, funds received by the state from the federal government through the American Recovery and Reinvestment Act of 2009, P.L. 111-5 or the FAA Air Transportation Modernization and Safety Improvement Act, P.L. 111-226 may be carried forward.

Section 5. That chapter 4-8 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the prohibition by § 4-8-19 of funds being carried forward, the sums of ten million six hundred twenty-three thousand four hundred twenty-three dollars ($10,623,423), or so much thereof as may be necessary, in general funds within the Board of Regents and twenty-six million two hundred ninety-two thousand two hundred sixty-one dollars ($26,292,261), or so much thereof as may be necessary, in general funds within the Department of Education as appropriated in the general appropriations act for fiscal year 2011 shall be carried forward to fiscal year 2012. This section shall expire on June 30, 2012.

Section 6. This Act is effective June 28, 2011.

Signed March 15, 2011

CHAPTER 28

(HB 1081)

Political subdivisions not required to purchase an accounting manual.

ENTITLED, An Act to eliminate the requirement that certain political subdivisions purchase an accounting manual.

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

Section 1. That § 4-11-6 be amended to read as follows:

4-11-6. The Department of Legislative Audit shall prepare and distribute an accounting manual for counties, municipalities, school districts, and their agencies and update such manual periodically. ~~Each county, municipality, and school district shall purchase at least one copy of such manual at a price to be determined by the auditor general.~~

Signed March 3, 2011

PUBLIC PROPERTY, PURCHASES AND CONTRACTS

CHAPTER 29

(HB 1231)

The state may sell certain surplus real estate.

ENTITLED, An Act to provide for the sale of certain surplus real estate, to appropriate the proceeds to the revolving economic development and initiative fund, and to revise certain provisions relating to the sale of certain surplus property.

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

Section 1. Upon the request of the Governor, the Commissioner of School and Public Lands shall sell all or any portion of the following real estate and any related personal property and improvements located on the property:

(1) In Aurora County:

(a) Certain property under the control of the Department of Corrections and described generally as the N1/2 of the NE1/4, less the North 600', Section 13, Township 103, Range 64, consisting of 42.68 acres, more or less;

(b) Certain property under the control of the Department of Corrections and described generally as the NW1/4, less the North 880', Section 13, Township 103, Range 64, consisting of 106.72 acres, more or less; and

(c) Certain property under the control of the Department of Corrections and described generally as the N880' of the NE1/4 of Section 14, Township 103, Range 64, consisting of 53.44 acres more or less;

(2) In Custer County:

(a) Certain property under the control of the Department of Corrections and described generally as HES#168, less Tract A and less Lot A, located in Sections 22 and 23, Township 4S, Range 4EBHM, consisting of 73.48 acres, more or less;

(3) In Fall River County:

(a) Certain property under the control of the Department of Military and Veterans Affairs and described generally as Lots 1-5, inclusive, of Block 42; and Lots 13-23, inclusive, of Block 42, Second Minnekahta Addition, City of Hot Springs; and

(b) Certain property under the control of the Department of Military and Veterans Affairs and described generally as Lots 1-12, inclusive, of Block 1; Lots 1-12, inclusive, of Block 2; Lots 1-24, inclusive, of Block 3; Lots 1-14, inclusive, of Block 4; Lots 1-12, inclusive, of Block 6; and Lots 1-4, inclusive, of Block 7, Cottage Grove Addition, City of Hot Springs;

(4) In Minnehaha County:

(a) Certain property under the control of the Department of Corrections and described generally as the SW1/4 of the NW1/4 and NW1/4 of the SW1/4, Section 7, Township 101, Range 50, consisting of 80 acres, more or less;

(b) Certain property under the control of the Department of Corrections and described generally as the W1/2 of the NW1/4 of the NW1/4 of Section 18, Township 101, Range 50, consisting of 20 acres, more or less;

(c) Certain property under the control of the Department of Corrections and described generally as the W1/2 of the NE1/4 and the SE1/4 of the NE1/4 of Section 12, Township 101, Range 51, consisting of 120 acres, more or less;

(d) Certain property under the control of the Department of Corrections and described generally as the N1/2 of the NW1/4 of Section 12, Township 101, Range 51, consisting of 80 acres, more or less;

(e) Certain property under the control of the Department of Corrections and described generally as the N1/2 of the SE1/4 and E1/2 of the SE1/4 of the SE1/4 of Section 12, Township 101, Range 51, consisting of 100 acres, more or less;

(f) Certain property under the control of the Department of Corrections and described generally as the NE1/4 of the NE1/4 of Section 13, Township 101, Range 51, consisting of 40 acres, more or less;

(g) Certain property under the control of the Department of Corrections and described generally as the S1/2 of the NW1/4 (except the South 806.87' of the West 810') and the N1/2 of the SW1/4 of Section 14, Township 101, Range 51, consisting of 145 acres, more or less; and

(h) Certain property under the control of the Department of Corrections and described generally as a part of the SW1/4 of Section 4, Township 101, Range

49, lying east of the Big Sioux River diversion channel, including Lot "H-2", except Lot B of Lot "H-2" and except Lot "H-1," consisting of 32 acres, more or less; and

(5) In Spink County:

(a) Certain property under the control of the Department of Human Services described generally as, Lot CC3, being a Subdivision of Government Lot 1 of Section 4, Township 116 North, Range 64 West of the 5th P.M. Spink County, South Dakota, containing 52.67 acres, more or less, less Hwy ROW of 2.15 acres, more or less.

Section 2. Real property and related personal property and improvements on the property which are generally considered a part of the tracts described in section 1 of this Act but not specifically included in the legal descriptions set out in section 1 of this Act may be sold as provided in this Act as though they were specifically described in section 1 of this Act.

Section 3. Nothing in section 1 of this Act is intended to authorize the sale of real property under the control of the Department of Military and Veterans Affairs that is intended for use for construction of a new Veterans Home.

Section 4. The real property and other property described in section 1 of this Act shall be appraised by the board of appraisal established by § 5-9-3 and shall be sold according to the procedure established in §§ 5-9-6 to 5-9-9, inclusive, §§ 5-9-11 to 5-9-15, inclusive, § 5-9-28 and 5-9-36, subject to all applicable constitutional reservations.

Section 5. Except as otherwise required by the South Dakota Constitution or applicable federal law, notwithstanding any other law to the contrary, the proceeds from the sale of the real estate and other property described in section 1 of this Act shall be deposited into the revolving economic development and initiative fund created by §1-16G-3. The provisions of § 1-16G-7 notwithstanding, the sale proceeds are hereby appropriated for the purpose of making loans and grants for economic development pursuant to chapter 1-16G.

Section 6. That § 5-2-2.1 be amended to read as follows:

5-2-2.1. The Board of Regents~~, the Department of Corrections, and the Department of Human Services~~ may sell extraneous real property subject to the provisions of the Constitution and approval of the Legislature.

The proceeds from a sale of such land under the Board of Regents shall be deposited with the state treasurer and credited to a fund specifically designated as the "real property acquisition and capital improvement fund" for each institution under the Board of Regents involved in such transaction. The proceeds shall be invested by the State Investment Council in accordance with chapter 4-5. Expenditures from the fund shall be approved by the Legislature.

~~The proceeds from the sale of land under the Department of Corrections and the Department of Human Services shall be deposited in the Department of Corrections building improvement fund and the Department of Human Services building improvement fund which are hereby created in the state treasury.~~

Section 7. That § 5-2-2.3 be amended to read as follows:

5-2-2.3. The proceeds and accumulated interest from sale of land under the Board of Regents pursuant to § 5-2-2.1 shall be used by the Board of Regents for acquisition of real and personal property or capital improvements subject to the approval of the Legislature. For purposes of this section, the definition of capital improvement contained in § 5-14-1 applies.

~~The proceeds of the sale of land under the Department of Corrections or the Department of Human Services pursuant to § 5-2-2.1 shall be expended in such manner as determined by the Legislature.~~

Section 8. Notwithstanding the provisions of this Act or any other law to the contrary, the Governor may direct the Commissioner of School and Public Lands to sell any real estate and related personal property described in section 1 of this Act to a political subdivision within which the real estate and related personal property is located. The sale may be made without first offering the real estate and related personal property for sale to the public. The sale price shall be at least the appraised value as determined by the board of appraisal established by § 5-9-3, and is subject to all applicable statutory and constitutional reservations.

Signed March 17, 2011

CHAPTER 30

(HB 1232)

Sale of certain surplus real estate, the deposit of the proceeds, and revision of provisions relating to the sale of surplus property.

ENTITLED, An Act to provide for the sale of certain surplus real estate, to provide for the deposit of the proceeds, and to revise certain provisions relating to the sale of certain surplus property.

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

Section 1. The provisions of any law to the contrary, upon the request of the Governor, the Commissioner of School and Public Lands shall sell all or any portion of the following real estate located in Yankton County and any related personal property and improvements located on the property:

(a) Certain property under the control of the Department of Human Services described generally as Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 21, Township 94 North, Range 55, West of the 5th P.M., also described as Lot 13 and that portion of Lot 14 as described in Warranty Deed, F.V. Willhite, Grantor to Yankton State Hospital (administered by the South Dakota Department of Human Services) Grantee; as recorded August 26th 1918 in Book 120 on page 388 in the County of Yankton to wit: Commencing on the West or right bank of the James or Dakota River at a point where the east and west section line between sections 21 and 28 of Township 94 North, of Range 55 West of the 5th P.M. intersects said bank of said river; thence west along said section line 4.51 chains; thence north to the right bank of said river, thence down said stream along the right bank of said river to the place of beginning north to the right bank of said river, and accreted land; all of Section 21, Township 94 North, range 55, West of the 5th P.M., consisting of 15 acres, more or less; and

(b) Certain property under the control of the Department of Human Services described generally as the East 1900 feet of the South 1300 feet of Lot A being a Subdivision of the SE1/4 of Section 36 Township 94 North Range 56 West of the 5th P.M., consisting of 56.70 acres, more or less.

Section 2. Real property and related personal property and improvements on the property which are generally considered a part of the tracts described in section 1 of this Act but not specifically included in the legal descriptions set out in section 1 of this Act may be sold as provided in this Act as though they were specifically described in section 1 of this Act.

Section 3. The real estate and other property described in section 1 of this Act shall be appraised by the board of appraisal established by §§ 5-9-3 and shall be sold according to the procedure established in §§ 5-9-6 to 5-9-9, inclusive, 5-9-11 to 5-9-15, inclusive, 5-9-28 and 5-9-36, subject to all applicable constitutional reservations.

Section 4. The proceeds from the sale of the real estate and other property described in section 1 of this Act under the control of the Human Services Center shall be deposited into the permanent fund established by Article VIII, Section 7, of the South Dakota Constitution for the use and benefit of the Human Services Center.

Section 5. That § 5-2-2.1 be amended to read as follows:

5-2-2.1. The Board of Regents~~, the Department of Corrections, and the Department of Human Services~~ may sell extraneous real property subject to the provisions of the Constitution and approval of the Legislature.

The proceeds from a sale of such land under the Board of Regents shall be deposited with the state treasurer and credited to a fund specifically designated as the "real property acquisition and capital improvement fund" for each institution under the Board of Regents involved in such transaction. The proceeds shall be invested by the State Investment Council in accordance with chapter 4-5. Expenditures from the fund shall be approved by the Legislature.

~~The proceeds from the sale of land under the Department of Corrections and the Department of Human Services shall be deposited in the Department of Corrections building improvement fund and the Department of Human Services building improvement fund which are hereby created in the state treasury.~~

Section 6. That § 5-2-2.3 be amended to read as follows:

5-2-2.3. The proceeds and accumulated interest from sale of land under the Board of Regents pursuant to § 5-2-2.1 shall be used by the Board of Regents for acquisition of real and personal property or capital improvements subject to the approval of the Legislature. For purposes of this section, the definition of capital improvement contained in § 5-14-1 applies.

~~The proceeds of the sale of land under the Department of Corrections or the Department of Human Services pursuant to § 5-2-2.1 shall be expended in such manner as determined by the Legislature.~~

Section 7. Notwithstanding the provisions of this Act or any other law to the contrary, the Governor may direct the Commissioner of School and Public Lands to sell any real estate and related personal property described in section 1 of this Act to a political subdivision within which the real estate and related personal property is located. The sale may be made without first offering the real estate and related personal property for sale to the public. The sale price shall be at least the appraised value as determined by the board of appraisal established by § 5-9-3, and is subject to all applicable statutory and constitutional reservations.

Signed March 17, 2011

CHAPTER 31

(SB 168)

State purchases of supplies and services, procedure altered.

ENTITLED, An Act to revise certain provisions regarding certain state purchases of supplies and services.

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

Section 1. That § 5-18A-22 be amended to read as follows:

5-18A-22. The provisions of this chapter and chapters 5-18B, 5-18C, and 5-18D do not apply to:

(1) Any highway construction contract entered into by the Department of Transportation;

(2) Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;

(3) Any purchase of supplies or services, other than professional services, by purchasing agencies from any active contract that has been awarded by any government entity by competitive sealed bids or competitive sealed proposals or from any contract that was competitively solicited and awarded within the previous twelve months;

(4) Any equipment repair contract;

(5) Any procurement of electric power, water, or natural gas; chemical and biological products; laboratory apparatus and appliances; published books, maps, periodicals and technical pamphlets; works of art for museum and public display; medical supplies; communications technologies, computer hardware and software, peripheral equipment, and related connectivity; tableware or perishable foods;

(6) Any supplies, services, and professional services required for externally funded research projects at institutions under the control of the Board of Regents;

(7) Any property or liability insurance or performance bonds, except that the actual procurement of any insurance or performance bonds by any department of the state government, state institution, and state agency shall be made under the supervision of the Bureau of Administration;

(8) Any supplies needed by the Department of Human Services or prison industries for the manufacturing of products;

(9) Any printing involving student activities, conducted by student organizations and paid for out of student fees, at institutions under the control of the Board of Regents. However, nothing in this subdivision exempts, from the requirements of this chapter and chapters 5-18B, 5-18C, and 5-18D, purchases that involve printing for other activities at institutions under the control of the Board of Regents;

(10) Any purchase of surplus property from another purchasing agency;

(11) Any animals purchased;

(12) Any purchase by a school district of perishable food, raw materials used in construction or manufacture of products for resale, or for transportation of students;

(13) Any authority authorized by chapters 1-16A, 1-16B, 1-16E, 1-16G, 1-16H, 5-12, or 11-11;

(14) Any seeds, fertilizers, herbicides, pesticides, feeds, and supplies used in the operation of farms by institutions under the control of the Board of Regents;

(15) Any purchase of supplies for any utility owned or operated by a municipality if the purchase does not exceed the limits established in § 5-18A-14; ~~or~~

(16) For political subdivisions, any contract for asbestos removal in emergency response actions and any contract for services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, or auction services; or

(17) Any purchase of supplies or services from a contract established through a Midwestern Higher Education Compact group purchasing program by a competitive sealed bid or a competitive sealed proposal.

Section 2. That § 5-18A-11 be amended to read as follows:

5-18A-11. Unless otherwise specified by statute, purchases of supplies and services under twenty-five thousand dollars shall be made as follows:

(1) ~~State~~ Notwithstanding other provisions of chapter 5-18A or 5-18D, the Bureau of Administration may authorize state agencies and institutions to make purchases of supplies over ~~one~~ four thousand dollars and under twenty-five thousand dollars ~~shall be processed by the Bureau of Administration and shall be made~~ by ~~first~~ obtaining three quotes from different vendors. If three quotes cannot be obtained, ~~a sole source justification shall accompany the purchase request and~~ the Bureau of Administration may approve the purchase if in the best interest of the state, require additional quotes to be obtained, or require the purchase be advertised for bids;

(2) State purchases of supplies under ~~one~~ four thousand dollars may be made in accordance with procedures established by the purchasing agency in the best interests of the state;

(3) State purchases of services under twenty-five thousand dollars may be made in accordance with procedures established by the purchasing agency in the best interests of the state; and

(4) For all other purchasing agencies, purchases under twenty-five thousand dollars may be made in accordance with procedures established by the purchasing agency.

No purchases may be artificially divided to constitute a small purchase under this section.

Signed March 10, 2011

CHAPTER 32

(HB 1007)

Building Authority may issue revenue bonds for maintenance and repair of facilities under the control of the Board of Regents.

ENTITLED, An Act to authorize the South Dakota Building Authority to issue revenue bonds to provide for maintenance and repair on facilities controlled by the Board of Regents and to provide appropriations therefor.

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

Section 1. It is in the public interest that the South Dakota Building Authority contract for the construction, completion, furnishing, equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and engineering services, and such other services or actions as may be required, to address deferred maintenance and repair of facilities under the control of the Board of Regents, at the estimated cost of thirteen million two hundred thirty-three thousand eight hundred dollars ($13,233,800). The South Dakota Building Authority may finance up to thirteen million two hundred thirty-three thousand eight hundred dollars ($13,233,800) of the construction costs through the issuance of revenue bonds, in accordance with this Act and chapter 5-12.

Section 2. All cost estimates contained in this Act have been stated in terms of 2010 values. The Building Authority, at the request of the Board of Regents, may adjust such cost estimates to reflect inflation as measured by the Building Cost Index reported by the Engineering News Record, additional expenditures required to comply with regulations adopted after the effective date of this Act, or grants or donations received pursuant to section 4 of this Act. However, such adjustments to cost estimates may not exceed one hundred twenty-five percent of the estimated project cost stated in section 1 of this Act.

Section 3. Expenditure authority may be increased based on the receipt of grants or donations received pursuant to this Act. However, no adjustment to any cost estimate may exceed one hundred twenty-five percent of the authorized expenditure authority stated in section 2 of this Act.

Section 4. The Building Authority and the Board of Regents may accept, transfer, and expend any property or funds obtained for these purposes from federal sources, gifts, contributions, or any other source, all of which shall comprise a special fund for the benefitted project and all moneys deposited into that fund are hereby appropriated to the projects authorized by this Act in addition to the amounts otherwise authorized by this Act.

Section 5. No indebtedness, bond, or obligation incurred or created under the authority of this Act may be or may become a lien, charge, or liability against the State of South Dakota, nor against the property or funds of the State of South Dakota within the meaning of the Constitution or statutes of the state.

Section 6. The Board of Regents may make and enter into a lease agreement with the Building Authority and make rental payments under the terms thereof, pursuant to chapter 5-12, from the higher education facilities fund for the purposes of this Act.

Section 7. The design and construction of the facility authorized in this Act shall be under the general supervision of the Bureau of Administration as provided in chapter 5-14. The commissioner of the Bureau of Administration and 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.

Signed March 7, 2011

CHAPTER 33

(SB 52)

Appropriation for the State Veterans' Home.

ENTITLED, An Act to authorize the South Dakota Building Authority and the Department of Military and Veterans Affairs to provide for the design, construction, and equipping of the veterans home near Hot Springs and to declare an emergency.

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

Section 1. It is in the public interest that the South Dakota Building Authority contract for the construction, completion, furnishing and equipping, including heating, air conditioning, plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, maintenance shop, architectural and engineering services, removal of any existing improvements, demolition of appropriate buildings, cost of issuance of bonds and such other services or actions as may be required to provide for a state veterans home near Hot Springs, South Dakota, at the estimated cost of thirty four million six hundred thousand dollars ($34,600,000). The South Dakota Building Authority may finance up to twelve million one hundred ten thousand dollars ($12,110,000) of the costs described in this section through the issuance of revenue bonds, in accordance with this Act and chapter 5-12.

Section 2. The authorizations granted under section 1 of this Act, and all necessary appropriations required to finance and to complete such project, remain effective through June 30, 2017.

Section 3. No indebtedness, bond, or obligation incurred or created under the authority of this Act may be or may become a lien, charge, or liability against the State of South Dakota, nor against the property or funds of the State of South Dakota within the meaning of the Constitution or statutes of the state.

Section 4. The Building Authority and Department of Military and Veterans Affairs may accept, transfer, and expend any property or funds obtained for these purposes from federal sources, gifts contributions, or any other source, all of which shall be deemed appropriated to the project authorized by this Act in addition to the amounts otherwise authorized by this Act.

Section 5. The administration of the design and construction of the project authorized by this Act shall be under the general charge and supervision of the Bureau of Administration as provided in chapter 5-14. The secretary of the Department of Military and Veterans Affairs and the executive secretary of the Building Authority shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. The Department of Military and Veterans Affairs may make and enter into a lease agreement with the Building Authority and make rental payments under the terms thereof, pursuant to chapter 5-12, for the purposes of this Act.

Section 7. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 14, 2011

LOCAL GOVERNMENT GENERALLY

CHAPTER 34

(HB 1114)

Revamped conditions under which contracts with local officials are permitted.

ENTITLED, An Act to revise the conditions under which contracts with local officials are permitted.

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

Section 1. That § 6-1-2 be amended to read as follows:

6-1-2. The provisions of § 6-1-1 are not applicable if the contract is made pursuant to any one of the conditions set forth in the following subdivisions, without fraud or deceit; but, the contract is voidable if the provisions of the applicable subdivision were not fully satisfied or present at the time the contract was entered into:

(1) Any contract involving three thousand dollars or less regardless of whether other sources of supply or services are available within the county, municipality, township, or school district, if the consideration for such supplies or services is reasonable and just;

(2) Any contract involving more than three thousand dollars but less than the amount for which competitive bidding is required, and there is no other source of supply or services available within the county, municipality, township, or school district if the consideration for such supplies or services is reasonable and just and if the accumulated total of such contracts paid during any given fiscal year does not exceed the amount specified in § 5-18-3;

(3) Any contract with any firm, association, corporation, or cooperative association for which competitive bidding is not required and where other sources of supply and services are available within the county, municipality, township or school district, and the consideration for such supplies or services is reasonable and just, unless the majority of the governing body are members or stockholders who collectively have controlling interest, or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association, in which case any such contract is null and void;

(4) Any contract ~~with any firm, association, corporation, or cooperative association~~ for which competitive bidding procedures are followed pursuant to chapter 5-18, and where more than one such competitive bid is submitted;

(5) Any contract for professional services with any individual, firm, association, corporation, or cooperative, if the individual or any member of the firm, association, corporation, or cooperative is an elected or appointed officer of a county, municipality, township, or school district, whether or not other sources of such services are available within the county, municipality, township, or school district, if the consideration for such services is reasonable and just;

(6) Any contract for commodities, materials, supplies, or equipment found in the state price list established pursuant to § 5-23-8.1, at the price there established or below; ~~and~~

(7) Any contract or agreement between a governmental entity specified in § 6-1-1 and a public postsecondary educational institution if an employee of the Board of Regents serves as an elected or appointed officer for the governmental entity, and if the employee does not receive direct compensation or payment as a result of the contract or agreement; and

(8) Any contract with any firm, association, corporation, individual, or cooperative association for which competitive bidding procedures are followed pursuant to chapter 5-18A, and where only one such competitive bid is submitted, provided the procedures established in section 2 of this Act are followed.

Section 2. That chapter 6-1 be amended by adding thereto a NEW SECTION to read as follows:

If competitive bidding procedures have been followed pursuant to chapter 5-18A, and the bid notice has been placed on the central bid exchange pursuant to § 5-18A-13 for two weeks prior to the opening of bids, a bid from an officer of the governing body may be opened and accepted provided the consideration is reasonable and just as determined by the governing body or a disinterested governmental entity.

Signed March 7, 2011

CHAPTER 35

(HB 1044)

Revise voting requirements in water project districts.

ENTITLED, An Act to revise certain water project district voter eligibility provisions.

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

Section 1. That § 6-16-2 be amended to read as follows:

6-16-2. The application for organization shall be a petition verified by one or more circulators by affidavit stating that each affiant personally witnessed the signatures on the petition and believe the signatures to be genuine. ~~The~~ Except as provided in this section, the petition shall be signed by at least twenty-five percent of the registered voters within the proposed district. If the proposed district is in two or more counties, a petition shall be filed in each county and each petition shall be signed by at least twenty-five percent of the registered voters within the proposed district in that county. The petition shall be accompanied by a deposit covering the estimated costs as determined by the county auditor of the public notices and the conduct of the election for the formation of the district. If the district to be formed is a road district that contains no registered voters, the petition shall be signed by at least twenty-five percent of the landowners. If the district to be formed is a water project district, any petition required by this section shall be signed by qualified voters of

the proposed district, as defined in § 46A-18-2.1 and section 4 of this Act, in the appropriate county.

Section 2. That § 6-16-6 be amended to read as follows:

6-16-6. Any person who is registered to vote and resides in the proposed district may vote in the elections provided for in § 6-16-5. However, the qualifications of a voter for irrigation district elections are as provided in chapter 46A-4, and the qualifications of a voter for water project district elections are as provided in § 46A-18-2.1 and section 4 of this Act. Absentee voting is allowed pursuant to chapter 12-19 for the election on the question of formation of the special district or any other question to be voted on by the eligible voters of the district. If the district to be formed is a road district that contains no registered voters, voter eligibility is based solely on landowners. For the purpose of this section, a person resides in a proposed district if the person actually lives in the proposed district for at least thirty days in the last year.

Section 3. That § 46A-18-2.1 be amended to read as follows:

46A-18-2.1. Except as provided in section 4 of this Act, and except as otherwise provided in this chapter, no person may vote in any election held pursuant to this chapter unless the person is a qualified voter of the water project district. A qualified voter of the district is a person who is a registered voter and a resident of the district. If the election is conducted based on director divisions, no person may vote in the election unless the person is a qualified voter of the person's respective director division. A qualified voter of a director division is a person who is a registered voter and a resident of the director division.

Section 4. That chapter 46A-18 be amended by adding thereto a NEW SECTION to read as follows:

If fewer than one hundred fifty persons reside within the boundaries of an existing water project district on July 1, 2011, the board of directors of the district may, by a resolution adopted not later than July 1, 2014, specify that a qualified voter of the district or director division is an owner of real property located within the district or director division, rather than a registered voter and resident of the district or director division.

For purposes of this section, the term, owner of real property, includes any person listed as the owner of real property in the records in the office of the register of deeds of the county in which the property is located. If real property is sold under a contract for deed that is of record in the office of the register of deeds, the purchaser of the real property, as named in the contract for deed, is treated as the owner. A landowner or joint landowners who own a tract of land within the district are entitled to one vote collectively. The vote of any person who is a minor or a protected person as defined by § 29A-5-102, may be cast by the parent, conservator, or legal representative of the minor or protected person.

Signed March 17, 2011

CHAPTER 36

(HB 1179)

Political subdivisions may establish deferred compensation plans.

ENTITLED, An Act to permit local political subdivisions with volunteer advanced life support personnel to establish deferred compensation plans.

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

Section 1. That chapter 7-18 be amended by adding thereto a NEW SECTION to read as follows:

Any county with volunteer advanced life support personnel may establish a deferred compensation program for its volunteer advanced life support personnel. Such a program may be financed by the county or by the volunteer advanced life support personnel and may be managed through the county or through an insurance company or other financial institution. Such program shall be established by ordinance. Each county shall establish requirements for participation in the program. Participation in the program of deferred compensation shall be at the option of the volunteer advanced life support personnel.

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

Any township with volunteer advanced life support personnel may establish a deferred compensation program for its volunteer advanced life support personnel. Such a program may be financed by the township or by the volunteer advanced life support personnel and may be managed through the township or through an insurance company or other financial institution. Such program shall be established by ordinance. Each township shall establish requirements for participation in the program. Participation in the program of deferred compensation shall be at the option of the volunteer advanced life support personnel.

Section 3. That chapter 9-16 be amended by adding thereto a NEW SECTION to read as follows:

Any municipality with volunteer advanced life support personnel may establish a deferred compensation program for its volunteer advanced life support personnel. Such a program may be financed by the municipality or by the volunteer advanced life support personnel and may be managed through the municipality or through an insurance company or other financial institution. Such program shall be established by ordinance. Each municipality shall establish requirements for participation in the program. Participation in the program of deferred compensation shall be at the option of the volunteer advanced life support personnel.

Section 4. That chapter 34-11A be amended by adding thereto a NEW SECTION to read as follows:

Any ambulance district with volunteer advanced life support personnel may establish a deferred compensation program for its volunteer advanced life support personnel. Such a program may be financed by the ambulance district or by the volunteer advanced life support personnel and may be managed through the ambulance district or through an insurance company or other financial institution. Such program shall be established by ordinance. Each ambulance district shall establish requirements for participation in the program. Participation in the program of deferred compensation shall be at the option of the volunteer advanced life support personnel.

Signed March 17, 2011

COUNTIES

CHAPTER 37

(SB 129)

County employees may assist in the execution of United States passport applications.

ENTITLED, An Act to revise which county employees may assist in the execution of United States passport applications and to declare an emergency.

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

Section 1. That chapter 7-8 be amended by adding thereto a NEW SECTION to read as follows:

Any county employee designated by the board of county commissioners may apply to the United States State Department to assist in the execution of United States passport applications. Any fees collected but not remitted to the United States State Department shall be deposited in the county general fund.

Section 2. That § 7-9-23 be repealed.

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

Signed March 7, 2011

CHAPTER 38

(SB 108)

Appointment of an alternate board member for the county legal expense relief board.

ENTITLED, An Act to allow for the appointment of an alternate board member for the county legal expense relief board.

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

Section 1. That § 7-16B-22 be amended to read as follows:

7-16B-22. There is established a county legal expense relief board to consist of five county commissioners from participating counties appointed by the executive board of the association of county commissioners established pursuant to § 7-7-28. The executive board of the association may appoint an alternate board member to serve when the county legal expense relief board does not have a quorum at meeting. The alternate board member may be a county commissioner or a county manager appointed pursuant to § 7-8A-4. Board members shall serve staggered terms of

four years or until their term as county commissioner has expired. Per diem costs for the board shall be established by the executive board of the association and shall be paid from funds collected by the association.

Signed March 7, 2011

CHAPTER 39

(SB 67)

Revise the minimum size of an improvement district.

ENTITLED, An Act to reduce the minimum size for improvement districts.

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

Section 1. That subdivision (6) of § 7-25A-1 be amended to read as follows:

(6) "Improvement district," a local unit of special purpose government which is created pursuant to this chapter and limited to the performance of those functions authorized by this chapter, the boundaries of which contain no less than ~~six hundred forty~~ three hundred twenty acres, the governing head of which is a body created, organized, and authorized to function specifically as prescribed in this chapter;

Signed March 14, 2011

CHAPTER 40

(SB 69)

Revise the authority of counties relating to veterans memorials.

ENTITLED, An Act to revise certain provisions relating to county veterans memorials.

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

Section 1. That § 7-26-1 be amended to read as follows:

7-26-1. The board of county commissioners may erect in a suitable place a monument suitable to honor and perpetuate the memory of all American veterans from the county ~~and for such purpose may appropriate a sum not to exceed ten thousand dollars~~. The board shall provide continued maintenance and repair of ~~such~~ the monument.

Signed March 14, 2011

CHAPTER 41

(SB 66)

Agricultural land leased by counties, revised.

ENTITLED, An Act to revise certain provisions regarding land leased by counties.

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

Section 1. That § 7-30-4 be amended to read as follows:

7-30-4. Each tract of land shall be leased to the highest bidder~~, provided any former lessor shall have prior right to lease at the highest bid in case land offered is under his fence or inclosure~~.

Before the auction date the board of county commissioners shall fix by resolution a minimum rental rate ~~and no~~ for each tract of land. No bid ~~shall~~ may be accepted which is less than ~~such~~ the minimum rental rate.

Signed March 7, 2011

MUNICIPAL GOVERNMENT

CHAPTER 42

(SB 98)

Election requirement concerning the employment of a city manager.

ENTITLED, An Act to revise certain provisions concerning the employment of a city manager and to declare an emergency.

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

Section 1. That § 9-10-1 be amended to read as follows:

9-10-1. If a petition signed by fifteen percent of the registered voters of any first or second class municipality as determined by the total number of registered voters at the last preceding general election is presented requesting that an election be called to vote upon the proposition of employing a city manager, the governing body shall call an election for that purpose~~ to be held within sixty days from the date of filing such petition with the auditor~~. Upon receipt of a valid petition, the question shall be presented at the next annual municipal election or the next general election, whichever is earlier. However, the governing body may expedite the date of the election by ordering, within ten days of receiving the petition, a special election to be held on a Tuesday not less than thirty days from the date of the order of the governing body.

The election shall be held upon the same notice and conducted in the same manner as other ~~city~~ municipal elections. The vote upon the question of employing a city manager shall be by ballot

which conforms to a ballot for statewide question except that the statement required to be printed on the ballot shall be prepared by the municipal attorney.

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

Signed March 14, 2011

CHAPTER 43

(HB 1096)

Repeal certain provisions relating to the appointment of municipal officers.

ENTITLED, An Act to repeal certain provisions relating to the appointment of municipal officers.

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

Section 1. That § 9-14-3 be amended to read as follows:

9-14-3. Such officers as needed and provided for by ordinance shall be appointed. All appointive officers 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 they 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, policemen, and firemen.

Section 2. That § 9-14-1 be repealed.

Signed March 3, 2011

CHAPTER 44

(SB 80)

Time limit concerning actions for recovery of damages for personal injury or death.

ENTITLED, An Act to apply certain provisions concerning actions for recovery of damages for personal injury or death to municipal officers, employees, and volunteers.

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

Section 1. That § 9-24-5 be amended to read as follows:

9-24-5. Any action for recovery of damages for personal injury or death caused by the negligence of a municipality ~~must~~ or its employees, elected and appointed officials, and volunteers authorized by the municipality at the time of the alleged negligent act shall be commenced within two years from the occurrence of the accident causing the injury or death. This section applies

whether such person is classified, unclassified, licensed, certified, permanent, temporary, compensated, or not compensated.

Signed March 14, 2011

CHAPTER 45

(HB 1092)

Time frame revised for hearings to vacate municipal streets or alleys.

ENTITLED, An Act to revise the time frame for conducting hearings to vacate municipal streets or alleys.

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

Section 1. That § 9-45-11 be amended to read as follows:

9-45-11. After the filing of a petition pursuant to § 9-45-10, the governing body shall give notice by publication once each week for at least two successive weeks. The notice shall state that a petition has been filed, briefly state the object of the petition, and the date that the petition will be heard and considered by the governing body or the committee appointed by the governing body for that purpose. The hearing shall be held ~~within~~ not less than ten days from the last publication of the notice. Upon the hearing it is sufficient to establish that the street, or alley, or any part thereof to be vacated, has not been used, worked, or traveled during the twenty years preceding the time for the meeting and since the recording of the plat thereof.

Signed March 3, 2011

CHAPTER 46

(SB 89)

Clarify municipal fees for street maintenance.

ENTITLED, An Act to clarify a municipality's ability to assess a fee for street maintenance.

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

Section 1. That § 9-45-38 be amended to read as follows:

9-45-38. The governing body prior to the assessment of real property within the municipality for the next fiscal year, may levy, annually, for the purpose of maintaining or repairing street surfacing or pavement a special front foot ~~assessment~~ fee not exceeding forty cents per front foot upon the lots fronting and abutting ~~the street~~ any streets within the municipality that are maintained by the municipality. The ~~assessment~~ fee shall be apportioned on a front foot basis and levied in the following manner~~:~~. The governing body prior to the assessment of real property may, by resolution, designate the lot or portion of lots against which the ~~assessment~~ fee is to be levied and the amount of the ~~assessment~~ fee to be assessed against each lot or portions thereof for such purposes~~;~~. The governing body may directly bill the affected property owner for the fee in a manner determined by the municipality, or the governing body may direct the director of equalization to add the ~~assessment~~ fee assessed to the general assessment against the property~~;~~ and certify the ~~assessment~~ fee assessed together with the regular assessment to the county auditor to be collected in the same

manner as municipal taxes are collected for general purposes. The ~~assessment~~ fee assessed is subject to review and equalization the same as assessments or taxes for general purposes. Front foot, for the purposes of this section, means the actual front of the premises as established by the buildings ~~thereon~~ on the premises, record title, and use of the property regardless of the original plat.

Signed March 14, 2011

TAXATION

CHAPTER 47

(SB 75)

Conference between the directors of equalization and county commissioners, requirement changed.

ENTITLED, An Act to revise the requirements for the annual conference held for the directors of equalization.

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

Section 1. That § 10-3-14 be amended to read as follows:

10-3-14. The director of equalization shall meet the county commissioners ~~and auditor~~ at the office of the county ~~auditor~~ commissioners on the first Tuesday of April for conference in reference to the performance of ~~their~~ the director's duties. ~~At such time and meeting the director shall take the oath of office to be administered by the county auditor, unless such oath has been taken as provided by § 10-3-12.~~

Signed March 7, 2011

CHAPTER 48

(HB 1025)

Internal Revenue Code references updated.

ENTITLED, An Act to revise certain provisions regarding references to the Internal Revenue Code.

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

Section 1. That § 10-4-9.1 be amended to read as follows:

10-4-9.1. Property owned by a public charity and used for charitable purposes is exempt from taxation. A public charity is any organization or society which devotes its resources to the relief of the poor, distressed, or underprivileged. A public charity shall receive a majority of its revenue from donations, public funds, membership fees, or program fees generated solely to cover

operating expenses; it shall lessen a governmental burden by providing its services to people who would otherwise use governmental services; it shall offer its services to people regardless of their ability to pay for such services; it shall be nonprofit and recognized as an exempt organization under section 501(c)(3) of the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011; and it may not have any of its assets available to any private interest.

Section 2. That § 10-4-9.2 be amended to read as follows:

10-4-9.2. Property owned by a benevolent organization and used exclusively for benevolent purposes is exempt from taxation. A benevolent organization is any lodge, patriotic organization, memorial association, educational association, cemetery association, or similar association. A benevolent organization shall be nonprofit and recognized as an exempt organization under section 501(c)(3), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011. However, if any such property consists of improved or unimproved property located within a municipality not occupied or directly used in carrying out the primary objective of the benevolent organization owning the same, such property shall be taxed the same as other property of the same class is taxed. However, if any such property consists of agricultural land, such property shall be taxed the same as other property of the same class is taxed. For the purposes of this section, an educational association is a group of accredited elementary, secondary or postsecondary schools. For the purposes of this section, a benevolent organization also includes a congressionally chartered veterans organization which is nonprofit and recognized as an exempt organization under section 501(c)(4) of the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011.

For purposes of this section, benevolent purpose means an activity that serves the poor, distressed or underprivileged, promotes the physical or mental welfare of youths or disadvantaged individuals, or relieves a government burden.

Section 3. That § 10-4-9.3 be amended to read as follows:

10-4-9.3. Property owned by any corporation, organization, or society and used primarily for human health care and health care related purposes is exempt from taxation. Such corporation, organization or society shall be nonprofit and recognized as an exempt organization under section 501(c)(3) of the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011, and none of its assets may be available to any private interest. The property shall be a health care facility licensed pursuant to chapter 34-12, orphanage, mental health center or community support provider regulated under chapter 27A-5, or camp. The facility shall admit all persons for treatment consistent with the facility's ability to provide health care services required by the patient until the facility is filled to its ordinary capacity and conform to all applicable regulations of and permit inspections by the state as otherwise provided by law.

Section 4. That § 10-4-9.4 be amended to read as follows:

10-4-9.4. Any congregate housing facility owned by a corporation, organization, or society is exempt from certain property taxes, if the facility provides certain health care services and is recognized as an exempt nonprofit corporation, organization, or society under section 501(c)(3) of the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011, and if none of its assets are available to any private interest. A congregate housing facility does provide health care services if the facility is an independent group-living environment operated and owned by a health care facility licensed pursuant to chapter 34-12 which offers a continuum of care, residential accommodations, and supporting services primarily for persons at least sixty-two years of age or disabled as defined pursuant to chapter 10-6A. Supporting services include the ability to provide health care and a food service that satisfies a balanced nutrition program. As part of the statement required by § 10-4-19, the owner of the congregate housing facility shall submit a statement to the county director of equalization listing the health cares services provided and method used to satisfy the balanced nutrition program.

In addition, no owner may apply for a property tax exemption for a congregate housing facility constructed after July 1, 2004, unless the congregate housing facility:

(1) Consists of two or more individual housing units located within one structure; and

(2) Not more than twenty-five percent of the individual housing units exceed fifteen hundred square feet.

Section 5. That § 10-4-39 be amended to read as follows:

10-4-39. Any facility operated as a multi-tenant business incubator and owned by an entity recognized as an exempt nonprofit corporation pursuant to section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code as amended and in effect on January 1, ~~2010~~ 2011, is exempt from property taxation. A business incubator is any facility that supports the development and operation of a number of small start-up businesses. Tenants of the facility may share a number of support services and the tenants may receive technical assistance, business planning, legal, financial, and marketing advice. If any portion of the facility is occupied by an incubated business for more than five years, that portion of the facility shall be taxed as other property of the same class is taxed.

Section 6. That subdivision (7) of § 10-6A-1 be amended to read as follows:

(7) "Income," the sum of adjusted gross income as defined in the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011, and IRA disbursements, the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance and relief, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans disability pensions, all payments received under the federal social security and state unemployment insurance laws, nontaxable interest, life insurance proceeds that exceed twenty thousand dollars, any gift or inheritance that exceeds five hundred dollars, proceeds from a court action, any sale of a personal item that exceeds five hundred dollars, foster care income, and workers' compensation;

Section 7. That subdivision (5) of § 10-6B-1 be amended to read as follows:

(5) "Income," the sum of adjusted gross income as defined in the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011, and all nontaxable income, including the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash, public assistance and relief, not including relief granted under this chapter, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability pensions, all payments received under the federal social security and state unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workers' compensation, and the gross amount of "loss of time" insurance, but not including gifts from nongovernmental sources, food stamps, or surplus foods or other relief in kind provided by a public agency less real estate taxes payable on the applicant's principal residence for the year in which application is made;

Section 8. That subdivision (6) of § 10-18A-1 be amended to read as follows:

(6) "Income," the sum of adjusted gross income as defined in the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011 and all nontaxable income, including the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance and relief, not including relief granted under this chapter, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability pensions,

all payments received under the federal social security and state unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workers' compensation, and the gross amount of loss of time insurance, but not including gifts from nongovernmental sources, food stamps, or surplus foods, or other relief in kind provided by a public agency less real estate taxes payable on the applicant's principal residence for the year in which application is made. However, the reduction in the applicant's income for real estate taxes payable may not exceed four hundred dollars;

Section 9. That § 10-43-10.1 be amended to read as follows:

10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined in the Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011, and reportable for federal income tax purposes for the taxable year, but subject to the adjustments as provided in §§ 10-43-10.2 and 10-43-10.3. If a financial institution has elected to file its federal tax return pursuant to 26 USC § 1362(a), as amended, and in effect on January 1, 1997, net income shall be computed in the same manner and in the same amount as if that institution had continued to file its federal tax return without making the election and the financial institution shall continue to be treated as a separate corporation for the purposes of this chapter. If a financial institution is organized as a limited liability company, the limited liability company shall be treated as a separate corporation for the purpose of this chapter.

Section 10. That subdivision (5) of § 10-45A-1 be amended to read as follows:

(5) "Income," the sum of adjusted gross income as defined in the United States Internal Revenue Code, as amended and in effect on January 1, ~~2010~~ 2011, and all nontaxable income, including the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance and relief, not including relief granted under this chapter, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability pensions, all payments received under the federal social security and state unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workers' compensation, and the gross amount of loss of time insurance, but not including gifts from nongovernmental sources, food stamps, or surplus foods, or other relief in kind provided by a public agency, less real estate taxes payable or ten percent of rent paid on the applicant's principal residence for the year in which application is made. However, the reduction in the individual's income may not exceed four hundred dollars;

Section 11. That § 35-4-11.9 be amended to read as follows:

35-4-11.9. The renewal fee for any on-sale license issued outside a municipality to a nonprofit organization, recognized as an exempt organization under section 501(c)(7) or 501(c)(19) of the United States Internal Revenue Code of 1986, as amended and in effect on January 1, ~~2010~~ 2011, which will be in operation less than one hundred fifty days each year shall be established by the county commission at a rate not to exceed the rate in the nearest municipality.

Signed February 10, 2011

CHAPTER 49

(HB 1001)

Agricultural land value adjustment factors, revised.

ENTITLED, An Act to revise certain provisions concerning the assessment of agricultural land.

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

Section 1. That § 10-6-33.29 be amended to read as follows:

10-6-33.29. The secretary of revenue and regulation shall enter into contracts with South Dakota State University and, if necessary, the South Dakota Agricultural Statistics Service for the purpose of creating a database to determine the agricultural income value of agricultural land by county. The cropland data ~~shall~~ may include: acres planted, acres harvested, yield per acre, and statewide crop prices. The noncropland data ~~shall~~ may include: cash rents, rangeland acres, pastureland acres, rangeland AUM's per acre, pastureland AUM's per acre, grazing season data, and statewide cow and calf prices. The Agricultural Land Assessment Implementation and Oversight Advisory Task Force may recommend other cropland and noncropland data to the Legislature for subsequent use in the database. The secretary shall have such data collected for 2001, which will serve as the first year of the database, and each year thereafter. The database shall consist of the most recent eight years of data that have been collected and the two years, one year representing the highest agricultural income value and one year representing the lowest agricultural income value, shall be discarded from the database. The database for the 2010 assessment for taxes payable in 2011 shall consist of data from 2001 to 2008, inclusive, and the database for each assessment year thereafter shall be adjusted accordingly. South Dakota State University shall provide the data for each county to the secretary of revenue and regulation by June first of each year.

Signed February 24, 2011

CHAPTER 50

(HB 1002)

Other productivity data may be used to assess agricultural land.

ENTITLED, An Act to revise certain provisions regarding the documentation of data used to make adjustments during the assessment process for factors that affect the capacity of the land to produce agricultural products.

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

Section 1. That § 10-6-33.31 be amended to read as follows:

10-6-33.31. Before July first each year, the secretary of revenue and regulation shall annually provide each director of equalization the agricultural income value for each county as computed pursuant to § 10-6-33.28. The director of equalization shall annually determine the assessed value of agricultural land. The assessed value of agricultural land may be adjusted by the following factors affecting productivity:

(1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2; and

(2) The location, size, soil survey statistics, terrain, and topographical condition of the land including the climate, accessibility, and surface obstructions ~~which can be documented~~.

Each adjustment shall be documented. The director of equalization may document an adjustment by using data from sources reasonably related to the adjustment being made. In addition, the director of equalization may use data from comparable sales of agricultural land to document the adjustment concerning productivity for any of the factors listed in this section.

Signed March 3, 2011

CHAPTER 51

(SB 102)

Outdated provision repealed regarding the assessment of property for school districts.

ENTITLED, An Act to repeal an outdated provision regarding the assessment of property for school districts.

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

Section 1. That § 10-6-49 be repealed.

Signed March 14, 2011

CHAPTER 52

(HB 1057)

County auditor not required to assist in locating unregistered mobile homes.

ENTITLED, An Act to repeal the provision that requires the county auditor to assist in locating unregistered mobile homes.

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

Section 1. That § 10-9-6 be repealed.

Signed March 3, 2011

CHAPTER 53

(SB 112)

County treasurers to collect delinquent property tax.

ENTITLED, An Act to repeal the provision that requires county treasurers to collect the oldest delinquent property tax first.

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

Section 1. That § 10-21-15 be repealed.

Section 2. That § 10-21-1.1 be amended to read as follows:

10-21-1.1. The county treasurer shall send a written tax bill to each taxpayer against whom a property tax has been assessed. Property tax bills sent to taxpayers may reflect the breakdown of the tax by tax levies. The property tax bill shall also separately state the amount of any taxes due as a result of a local decision to exceed the tax increase limits set forth in § 10-13-36 or 10-12-43 and shall be marked by an asterisk. The notice shall include the statement: "INDICATES A LOCAL DECISION TO OPT OUT OF THE TAX LIMITATION." If the local vote to increase taxes had not passed, your taxes would not have included the items marked with an asterisk (*). If the treasurer does not mail the property tax receipts described in §§ 10-21-14 ~~and 10-21-15~~, the treasurer shall indicate in the property tax bill or a notice enclosed with the bill that the treasurer does not intend to send a receipt unless requested by the taxpayer. The county treasurer shall provide to a taxpayer a tax levy sheet, if the tax levy breakdown is not shown on the tax bill, or upon the taxpayer's request. The annual levy sheet shall contain an example of the computation of the total tax for an individual. The secretary of revenue and regulation shall prescribe a uniform form which shall be used by the county treasurer for notification of taxpayers as required by this section.

Signed March 3, 2011

CHAPTER 54

(HB 1029)

Telecommunications company tax revised.

ENTITLED, An Act to revise certain provisions concerning the taxation of telecommunications companies.

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

Section 1. That § 10-33-1 be amended to read as follows:

10-33-1. On April fifteenth of each year, each telephone company ~~in this state~~ subject to the tax imposed by § 10-33-21 shall file with the secretary of revenue and regulation on forms prescribed by ~~him~~ the secretary a report of its gross receipts derived from the furnishing of ~~such~~ the telephone and exchange service, rental and toll service, during the preceding calendar year. ~~Such~~ The report shall set forth ~~the miles of line, the number of main stations,~~ the total gross receipts of ~~such~~ the company in the State of South Dakota, together with the gross receipts ~~from each county in which such company operates, and shall further contain the total gross receipts~~

~~received by such company~~ within each school district ~~in each county~~ in which ~~such~~ the company operates~~, and each~~. Each company shall furnish such other further information as the secretary shall from time to time require. ~~Such~~ The report shall be sworn to and verified by an officer of the company.

Section 2. That § 10-33-3 be repealed.

Section 3. That § 10-33-4 be amended to read as follows:

10-33-4. ~~It shall be the duty of the~~ The president, secretary, general manager, or superintendent of ~~every~~ each telephone company ~~doing business in this state, to~~ not subject to the tax imposed by § 10-33-21 shall furnish to the Department of Revenue and Regulation on or before April fifteenth, each year, a report under oath, on the forms furnished and according to the instructions issued by the ~~Department of Revenue and Regulation~~ department, with reference to the property owned, leased, or controlled on December thirty-first of the preceding calendar year.

Section 4. That § 10-33-10 be amended to read as follows:

10-33-10. All property, real and personal, which is actually and necessarily used in providing telephone and exchange service comprising rental and toll service by means of wired circuits and otherwise in this state, and which belongs to any telephone company in this state which is not subject to the ~~provisions of §§ 10-33-21 and 10-33-22~~ tax imposed by § 10-33-21 shall be assessed for the purpose of taxation by the Department of Revenue and Regulation, and not otherwise.

Section 5. That § 10-33-11 be amended to read as follows:

10-33-11. The Department of Revenue and Regulation shall assess the property of all telephone companies not subject to the tax imposed by § 10-33-21 on the fifth day of July of each year. In making the assessment, the department shall consider all the reports, facts, information filed, with any other information obtainable, concerning the value of the property of all telephone companies and may add any property omitted from the return of the companies. In making the assessment, which shall be with reference to value and ownership on January first of the year for which the assessment is made, the department shall take into consideration, among other things, the amount of gross earnings and net incomes, and the value to each telephone company of its franchises, rights, and privileges, granted under the laws of this state to do business in this state. ~~In making the assessment the department shall fix a value on all the property of each company which is situated within the limits of any city or incorporated town, and any and all exchanges maintained by the company.~~

Section 6. That § 10-33-14 be amended to read as follows:

10-33-14. For the purpose of aiding the Department of Revenue and Regulation in ~~making an assessment of the property of telephone companies, it is hereby made the duty of the Public Utilities Commission to collect information and facts concerning the value of property of each telephone company in this state, including the value of the franchises, if any, and to make an estimate of the value thereof, and to make and file with the Department of Revenue and Regulation, on or before the first day of June of each year, a written and detailed report of such facts, information, and estimate, and for the purpose of securing facts and information such commission is authorized to inspect the books, records, and property of such companies, and employ an expert when deemed necessary, whose compensation shall first be fixed by such public utilities commission. Failure to furnish such report, however, shall in no manner invalidate the assessment or tax~~ implementing the taxes imposed by this chapter, the Public Utilities Commission shall provide any information requested by the secretary and deemed necessary by the secretary to ensure uniform and fair taxation.

Section 7. That § 10-33-14.1 be amended to read as follows:

10-33-14.1. For the purpose of determining the fair market value of the property of any telephone company not subject to the tax imposed by § 10-33-21, the Department of Revenue and Regulation shall take into consideration the cost approach, the market approach, and the income approach to appraisal. In the market approach, the department shall consider the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding, and all other indebtedness as may be applicable for operating the company. In the income approach, the department may consider the company's growth rate and the rate of inflation in determining the capitalization rate. The ~~Department of Revenue and Regulation~~ department may take into consideration any other information or data of any kind or nature which the department may deem material in arriving at the fair market value of the property.

Section 8. That § 10-33-15 be amended to read as follows:

10-33-15. After the assessment is made on each company not subject to the tax imposed by § 10-33-21, the Department of Revenue and Regulation shall give notice by mail to the officers of each telephone company making return to the ~~Department of Revenue and Regulation~~ department, setting out the assessment and fixing a date at least ten days in advance when the representatives of any telephone company, so desiring, may appear before the secretary of revenue and regulation and be heard in all matters relating to the correctness of the assessment of the property of the company. The secretary of revenue and regulation may promulgate rules pursuant to chapter 1-26 concerning the conduct of the hearings.

Section 9. That § 10-33-16 be amended to read as follows:

10-33-16. After ~~such~~ the date of hearing, and on or before the fourth Monday of August, the Department of Revenue and Regulation shall finally equalize the ~~assessments~~ assessment of each company not subject to the tax imposed by § 10-33-21 and notify each company ~~thereof~~ by mail.

The ~~Department of Revenue and Regulation~~ department shall certify the value finally determined to the county auditor of each county in which the company assessed owns property.

Section 10. That § 10-33-19 be amended to read as follows:

10-33-19. All laws relating to the enforcement of the payment of delinquent taxes ~~shall be~~ are applicable to ~~all taxes levied under the provisions of this chapter. Whenever any taxes levied under the provisions of this chapter shall become delinquent, the county treasurer having control of such delinquent taxes may proceed to collect the same in the same manner and with the same right and power as the sheriff under execution, except that no process shall be necessary to authorize him to sell any property belonging to any telephone company for the collection of such taxes~~ each company not subject to the tax imposed by § 10-33-21.

Section 11. That § 10-33-21 be amended to read as follows:

10-33-21. ~~All persons, corporations, cooperatives, and associations~~ Each telephone company engaged in furnishing and providing telephone and exchange service comprising rental and toll service by means of wired circuits and otherwise ~~and whose annual gross receipts are less than seventy-five million dollars~~ shall be taxed on the basis of gross receipts at the rate of four percent. This tax does not apply to any company that does not provide local exchange telephone service to patrons.

However, no telephone company operating in this state may be taxed less than an amount equal to fifty cents per year per telephone serviced.

Section 12. That § 10-33-23 be repealed.

Signed February 22, 2011

CHAPTER 55

(HB 1157)

Court appearance bond premiums included in insurance company premium and annuity taxes.

ENTITLED, An Act to revise the rate of the insurance company premium and annuity taxes applied to court appearance bonds and to establish an annual fee for certificate of authority for domestic insurers issuing court appearance bonds.

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

Section 1. That § 10-44-2 be amended to read as follows:

10-44-2. Any company doing insurance business in this state shall pay a tax at the rates specified in this section. The tax shall be paid to the Division of Insurance at the time the company files its annual statement, or, if no annual statement is required, then before March first of each year.

If, during the previous year, a company paid more than five thousand dollars in premium taxes in this state, the company shall submit payments equal to one-quarter of the previous year's premium taxes to the Division of Insurance on April thirtieth, July thirty-first, October thirty-first, and January thirty-first. The quarterly payments shall be credited against the amount due from the company at the time the company files its annual statement, or if no annual statement is required, then on March first of each year. The director of the Division of Insurance may waive the requirement in writing for quarterly payments or reduce the amount of deposit if the director finds the requirement would impose an undue premium tax on a company because of a significant decline in sales within the state. If the sum of the quarterly payments exceeds the total taxes due, the director shall credit the overpayment against subsequent amounts due or, if requested in writing at the time the company files its annual statement, refund the overpayment to the company. If the overpayment cannot be credited, there is excess remaining after the credit is taken on the annual statement, or the refund is not requested, the division may refund the amount overpaid by May first of the following year. The rates are:

(1) On each domestic company, two and one-half percent of premiums, except for life insurance policies, other than credit life as defined in chapter 58-19, of a face amount of seven thousand dollars or less, for which the rate is one and one-fourth percent of premiums; and one and one-fourth percent of the consideration for annuity contracts. However, the rate for life insurance ~~and~~, annuities, and court appearance bonds shall be computed as follows:

(a) Two and one-half percent of premiums for a life policy on the first one hundred thousand dollars of annual premium, and eight one-hundredths of a percent for that portion of a policy's annual life premiums exceeding one hundred thousand dollars; ~~and~~

(b) One and one-fourth percent of the consideration for an annuity contract on the first five hundred thousand dollars of consideration, and eight one-hundredths of

a percent for that portion of the consideration on an annuity contract exceeding five hundred thousand dollars; and

(c) One percent of premiums for court appearance bonds.

The tax also applies to premiums for insurance written on individuals residing outside this state or property located outside this state if no comparable tax is paid by the direct writing company to any other appropriate taxing authority. However, the tax applies only to premiums for insurance written after July 1, 1980, on individuals residing outside of the United States;

(2) On each foreign company the rate shall be computed as follows:

(a) Two and one-half percent of premiums, except for life insurance policies, other than credit life as defined in chapter 58-19, of a face amount of seven thousand dollars or less, for which the rate is one and one-fourth percent of premiums;

(b) Two and one-half percent of premiums for a life policy on the first one hundred thousand dollars of annual premium, and eight one-hundredths of a percent for the portion of a policy's annual life premiums exceeding one hundred thousand dollars; ~~and~~

(c) One and one-fourth percent of the consideration for an annuity contract on the first five hundred thousand dollars of consideration, and eight one-hundredths of a percent for that portion of the consideration on an annuity contract exceeding five hundred thousand dollars; and

(d) One percent of premiums for court appearance bonds;

(3) On each insurer not licensed or not authorized to do business in this state the rate shall be computed as follows:

(a) Two and one-half percent of premiums, except for life insurance policies, other than credit life as defined in chapter 58-19, of a face amount of seven thousand dollars or less, for which the rate is one and one- fourth percent of premiums;

(b) Two and one-half percent of premiums for a life policy on the first one hundred thousand dollars of annual premium, and eight one-hundredths of a percent for that portion of a policy's annual life premiums exceeding one hundred thousand dollars; ~~and~~

(c) One and one-fourth percent of the consideration for an annuity contract on the first five hundred thousand dollars of consideration, and eight one-hundredths of a percent for that portion of the consideration on an annuity contract exceeding five hundred thousand dollars; and

(d) One percent of premiums for court appearance bonds;

(4) Fourteen dollars for each insurance policy issued or renewed for workers' compensation coverage.

Revenue from subdivision (4) of this section shall be deposited in the insurance operating fund of the state treasury and is dedicated to the Department of Labor for purposes of automating the administration of the workers' compensation law and supporting the Workers' Compensation Advisory Council.

Section 2. That § 58-2-29 be amended by adding thereto a NEW SUBDIVISION to read as follows:

(14) Annual renewal of certificate of authority for domestic insurer issuing court appearance bonds 6,000

Signed March 10, 2011

CHAPTER 56

(SB 147)

Nexus for the purpose of collecting of sales and use tax.

ENTITLED, An Act to expand the application of nexus for the purpose of collecting sales and use taxes owed to the state.

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

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

Pursuant to this Act, a retailer is engaged in the business of selling tangible personal property, services, and products transferred electronically for use in this state if:

(1) Both of the following conditions exist:

(a) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a retailer maintaining a place of business within this state; and

(b) The retailer sells the same or a substantially similar line of products as the related retailer in this state and does so under the same or a substantially similar business name, or the instate facility or instate employee of the related retailer is used to advertise, promote, or facilitate sales by the retailer to a consumer; or

(2) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a business that maintains a distribution house, sales house, warehouse, or similar place of business in this state that delivers property sold by the retailer to consumers.

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

Terms used in section 1 of this Act mean:

(1) "Substantial ownership interest," an interest in an entity that is not less than the degree of ownership of equity interest in an entity that is specified by Section 78p of Title 15 of the United States Code as of January 1, 2011, with respect to a person other than a director or officer;

(2) "Ownership," includes both direct ownership and indirect ownership through a parent, subsidiary, or affiliate.

Section 3. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

The processing of orders electronically, including facsimile, telephone, the internet, or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this Act.

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

Any retailer that is part of a controlled group as defined in § 10-45-20.3 and that controlled group has a component member that is a retailer engaged in business in this state as described in this Act, shall be presumed to be a retailer engaged in business in this state. This presumption may be rebutted by evidence that during the calendar year at issue the component member that is a retailer engaged in business in this state did not engage in any of the activities described in this Act on behalf of the retailer. For purposes of this section, the term, component member, means any component member as defined in Section 1563(b) of the Internal Revenue Code as of January 1, 2011.

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

Any retailer making sales of tangible personal property to purchasers in this state by mail, telephone, the internet, or other media which has a contractual relationship with an entity to provide and perform installation, maintenance, or repair services for the retailer's purchasers within this state shall be included within the definition of retailer under the provisions of this Act.

Signed March 10, 2011

CHAPTER 57

(SB 39)

Religious educational institution sales tax exemption revised.

ENTITLED, An Act to revise certain provisions regarding what organizations qualify for an exemption from sales tax as a relief agency or a religious educational institution.

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

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

10-45-10. There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property, any product transferred electronically, and services to the United States, to the State of South Dakota or to any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption for South Dakota, to public or municipal corporations of the State of South Dakota or of any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption to South Dakota public or municipal corporations, to any nonprofit charitable organization <u>maintaining a physical location within this state</u> which devotes its resources exclusively to the relief of the poor, distressed or underprivileged, and has been recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code, or to any Indian tribe.

Section 2. That § 10-45-14 be amended to read as follows:

10-45-14. There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal

property, any product transferred electronically, and services to and for use by religious educational institutions, private educational institutions currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code as in effect on January 1, ~~1983~~ 2011, and nonprofit, charitable hospitals when purchases are made by authorized officials, payment made from the institution funds and title to the property retained in the name of such institution. For the purposes of this section, a private educational institution shall be defined as an institution currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code as in effect on January 1, ~~1983~~ 2011, maintaining a campus physically located within this state; and accredited by the South Dakota Department of Education or the North Central Association of Colleges and Schools. For the purposes of this section, a religious educational institution shall be defined as an institution currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code as in effect on January 1, 2011, that maintains a campus physically located within this state.

This exemption does not extend to sales to or purchases of tangible personal property or any product transferred electronically for the personal use of officials, members or employees of such institutions or to sales to or purchases of tangible personal property or any product transferred electronically used in the operation of a taxable retail business.

The exemption provided in this section does not, in any manner, relieve the institution from the payment of the additional and further license fee imposed on the registration of motor vehicles.

~~All institutions~~ Each institution claiming this exemption shall prepare and maintain a list of all purchases on which the exemption was claimed, fully itemized, showing name and address of vendors, description of property purchased, date or dates of purchase, purchase price, and brief explanation of use or intended use.

Signed March 14, 2011

CHAPTER 58

(HB 1248)

Delay the sunset clause for the one-half percent increase in the gross receipts tax imposed on visitor-related businesses.

ENTITLED, An Act to extend the sunset of the one-half percent increase in the gross receipts tax imposed on visitor-related businesses.

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

Section 1. That section 2 of chapter 54 of the 2009 Session Laws be amended to read as follows:

Section 2. The provisions of section 1 of this Act are repealed on ~~June 30, 2011~~ July 1, 2013.

Section 2. This Act is effective on June 29, 2011.

Signed March 24, 2011

CHAPTER 59

(SB 146)

Sales and use tax collection based on electronic out-of-state sales.

ENTITLED, An Act to require certain notice requirements for retailers that do not have nexus in South Dakota which are selling tangible personal property, services, or products transferred electronically for use in South Dakota.

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

Section 1. Terms used in this Act mean:

(1) "De minimis online auction website," any online auction website that facilitates total gross sales in South Dakota in the prior calendar year of less than one hundred thousand dollars and reasonably expects South Dakota sales in the current calendar year will be less than one hundred thousand dollars;

(2) "De minimis retailer," any noncollecting retailer that made total gross sales in South Dakota in the prior calendar year of less than one hundred thousand dollars and reasonably expects South Dakota sales in the current calendar year will be less than one hundred thousand dollars;

(3) "Noncollecting retailer," any retailer, not currently registered to collect and remit South Dakota sales and use tax, who makes sales of tangible personal property, services, and products transferred electronically from a place of business outside of South Dakota to be shipped to South Dakota for use, storage, or consumption and who is not required to collect South Dakota sales or use taxes;

(4) "Online auction website," a collection of web pages on the Internet that allows any person to display tangible personal property, services, or products transferred electronically for sale which is purchased through a competitive process where a participant places a bid with the highest bidder purchasing the property, service, or product when the bidding period ends;

(5) "South Dakota purchaser," any purchaser that purchases tangible personal property, services, or products transferred electronically to be shipped or transferred to South Dakota.

Section 2. Pursuant to this Act, each noncollecting retailer shall give notice that South Dakota use tax is due on nonexempt purchases of tangible personal property, services, or products transferred electronically and shall be paid by the South Dakota purchaser. The notice shall be readily visible and contain the information as follows:

(1) The noncollecting retailer is not required, and does not collect South Dakota sales or use tax;

(2) The purchase is subject to state use tax unless it is specifically exempt from taxation;

(3) The purchase is not exempt merely because the purchase is made over the Internet, by catalog, or by other remote means;

(4) The state requires each South Dakota purchaser to report any purchase that was not taxed and pay tax on the purchase. The tax may be reported and paid on the South Dakota use tax form; and

(5) The use tax form and corresponding instructions are available on the South Dakota Department of Revenue and Regulation website.

Section 3. The notice required by section 2 of this Act on a website shall occur on a page necessary to facilitate the applicable transaction. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota." The prominent linking notice shall direct the purchaser to the principal notice information required by section 2 of this Act.

The notice required by section 2 of this Act in a catalog shall be part of the order form. The notice shall be sufficient if the noncollecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota on page __." The notice on the order form shall direct the purchaser to the page that includes the principal notice required by section 2 of this Act.

Section 4. For any internet purchase made pursuant to this Act, the invoice notice shall occur on the electronic order confirmation. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota." The invoice notice link shall direct the purchaser to the principal notice required by section 2 of this Act. If the noncollecting retailer does not issue an electronic order confirmation, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

For any catalog or phone purchase made pursuant to this Act, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

Section 5. For any internet purchase made pursuant to this Act, notice on the check-out page fulfills both the website and invoice notice requirements simultaneously, the notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota." The check-out page notice link shall direct the purchaser to the principal notice required by section 2 of this Act.

If a retailer is required to provide a similar notice for another state in addition to South Dakota, the retailer may provide a consolidated notice so long as the notice includes the information contained in section 2 of this Act, specifically references South Dakota, and meets the placement requirements of this section.

Section 6. A noncollecting retailer may not state or display or imply that no tax is due on any South Dakota purchase unless the display is accompanied by the notice required by section 2 of this Act each time the display appears. If a summary of the transaction includes a line designated "sales tax" and shows the amount of sales tax as zero, this constitutes a display implying that no tax is due on the purchase. This display shall be accompanied by the notice required by section 2 of this Act each time it appears.

Notwithstanding the limitation in this section, if a noncollecting retailer knows that a purchase is exempt from South Dakota tax pursuant to South Dakota law, the noncollecting retailer may display or indicate that no sales or use tax is due even if the display is not accompanied by the notice required by section 2 of the Act.

Section 7. With the exception of notification on an invoice, the provisions of this Act apply to online auction websites.

Section 8. A de minimis retailer and a de minimis online auction website are exempt from the notice requirements provided by this Act.

Section 9. No criminal penalty or civil liability may be applied or assessed for failure to comply with the provisions of this Act.

Signed March 10, 2011

CHAPTER 60

(SB 42)

Motor fuel tax exemption clarified for certain bulk transfers.

ENTITLED, An Act to revise certain provisions regarding the exemption from the motor fuel tax for bulk fuel transfers into a terminal.

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

Section 1. That § 10-47B-19 be amended to read as follows:

10-47B-19. The following are exempt from fuel excise tax imposed by this chapter:

(1) Motor fuel or undyed special fuel removed from a terminal in this state at the rack by the federal government or defense fuel supply center for consumption in any federal government motor vehicle, machinery, equipment, or aircraft;

(2) Motor fuel or undyed special fuel imported into this state by the federal government or defense fuel supply center for consumption in any federal government motor vehicle, machinery, equipment, or aircraft;

(3) Special fuel that has been dyed in accordance with this chapter. The tax liability is reestablished if the dyed special fuel is used in the engine fuel supply tank of self-propelled machinery and equipment for use in highway construction or repair work within the right-of-way within this state;

(4) Transmix removed from a terminal in this state at the rack by the terminal operator and transferred to another terminal, or to a licensed supplier for refinement and re-introduction into the pipeline system;

(5) Undyed special fuel removed from a terminal in this state at the rack and delivered directly into a railroad locomotive if the railroad company is also the supplier. Undyed special fuel transported from the terminal to the locomotive fueling site by truck or railcar is not exempt from the tax;

(6) Motor fuel or undyed special fuel removed from a terminal in this state by an electrical power company or cooperative and directly used for the generation of electricity. Motor fuel or undyed diesel fuel transported from the terminal to an electrical generation plant by truck or railcar is not exempt from the tax; or

(7) Motor fuel or special fuel transfers in bulk ~~into or~~ by pipeline into a terminal or in bulk by pipeline within a terminal~~, except for ethyl alcohol or methyl alcohol~~. This

subdivision does not apply to any transfers of ethyl alcohol or methyl alcohol into a terminal or within a terminal. The subsequent removal of the fuel from the terminal is not exempt from tax.

Signed February 24, 2011

CHAPTER 61

(HB 1215)

Motor fuel tax use and distribution of the motor fuel tax revised.

ENTITLED, An Act to repeal certain refund provisions of the motor fuel tax for certain nonhighway agricultural use of motor fuels and to provide for the distribution of such motor fuel tax.

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

Section 1. That § 10-47B-119 be repealed.

Section 2. That § 10-47B-149 be amended to read as follows:

10-47B-149. At the beginning of each month, the secretary shall make adjustments to the motor fuel tax fund balance in the following manner:

(1) Each July transfer an amount to the snowmobile trails' fund equal to the product of multiplying the number of licensed snowmobiles as of July first, times one hundred twenty-five gallons, times the rate of tax provided for motor fuel under this chapter;

(2) ~~Transfer~~ Each July transfer from the amount of motor fuel tax collected from the motor fuel used for nonhighway purposes to the ~~motor fuel tax refund fund an amount to pay motor fuel tax refunds for the current month~~ value added agriculture subfund created in § 1-16G-25 one hundred thirty-five thousand dollars;

(3) Each July transfer from the amount of motor fuel tax collected from the motor fuel used for nonhighway purposes to the Department of Agriculture seventy-five thousand dollars to be used for a grant to the Northern Crops Institute;

(4) Transfer to the motor fuel tax administration account two percent of the deposits made to the motor fuel tax fund during the preceding month to cover the expenses incurred in administering all motor fuel and special fuel tax laws of this state. On or about August first of each year, the preceding year's remaining motor fuel tax administration account balance, less an amount to provide cash flow within the account, shall be transferred to the state highway fund. The remaining balance is to be calculated by subtracting from the total of monthly deposits, the amount of corresponding expenses. The expense of administering the chapters relating to motor and special fuel taxation shall be paid out of appropriations made by the Legislature;

~~(4)~~(5) ~~Transfer~~ Each July transfer from the amount of motor fuel tax collected from the motor fuel used for nonhighway purposes to the coordinated natural resources conservation fund ~~an amount equal to thirty-five percent of the claimed refunds authorized by § 10-47B-119 for the preceding month, not to exceed a cumulative total of one million five hundred thousand dollars in any single fiscal year~~ five hundred thousand dollars;

~~(5)~~(6) Each July transfer to the parks and recreation fund an amount equal to the product of multiplying the number of licensed motorized boats as of the previous December thirty-first, times one hundred forty gallons, times the rate of tax provided for motor fuels under this chapter;

~~(6)~~(7) Each July distribute to counties and townships as provided in section 3 of this Act seven hundred thousand dollars;

(8) Transfer to the member jurisdictions taxes collected under the provisions of the international fuel tax agreement; and

~~(7)~~(9) Transfer the remaining cash balance to the state highway fund.

Section 3. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

The amount to be distributed to counties and townships pursuant to section 2 of this Act shall be distributed among the counties, pro rata, twenty-five percent according to truck registrations, twenty-five percent according to population, and fifty percent according to total road mileage. Each county shall distribute sixty percent of the amount received pursuant to this section to the county road and bridge fund and forty percent to the special highway fund to be distributed pursuant to the provisions of subdivision 32-11-4.1(2) and § 32-11-6.

Section 4. That § 32-11-6 be amended to read as follows:

32-11-6. The amount set aside to the various unorganized and organized civil townships pursuant to § 32-11-4.1 and section 3 of this Act shall be apportioned among the townships according to the number of miles of maintained township roads within the townships. The county treasurer shall distribute ~~such~~ the money to each organized township within the county within thirty days of apportionment. However, an organized township may request in writing that ~~such~~ the money remain in the custody of the county treasurer and shall be paid out only on warrants issued by the county auditor in payment of claims for the construction, reconstruction, or maintenance of roads and highways within the township highway system.

Section 5. That § 10-47B-135 be amended to read as follows:

10-47B-135. No refund of motor fuel or special fuel taxes paid may be made for any of the following uses of fuel:

(1) Fuel used in motor vehicles operated on the public highways of this state;

(2) Fuel used for propulsion on the highway in any vehicles, machinery, or equipment for any highway construction or maintenance work which is paid for, wholly or in part, by public moneys;

(3) Fuel used in aircraft or watercraft;

(4) Undyed special fuel used in off-road machinery or equipment; ~~or~~

(5) Fuel used from the engine fuel supply tank by a motor vehicle while idling. Fuel used by a motor vehicle while idling shall be included in the total amount of fuel consumed when calculating average miles per gallon; or

(6) Fuel used in any motor vehicle, recreation vehicle, or farm equipment used for nonhighway agricultural purposes or, unless otherwise provided by this chapter, used in any motor vehicle or equipment for nonhighway commercial uses.

Section 6. That § 10-47B-144 be amended to read as follows:

10-47B-144. Interest at the rate provided for under § 10-59-6 shall be paid on any refund claim amount authorized by §§ ~~10-47B-119~~ 10-47B-119.2 to 10-47B-131, inclusive, which has not been refunded to the claimant within sixty days of acceptance by the department during the months of January, February, or March. Claims received during any other month shall be paid within forty-five days, otherwise interest shall be paid to the claimant. No interest may be paid for refunds made to interstate fuel tax agreement licensees or licensed interstate users.

Section 7. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

The Legislature finds, based on historical data, that one million four hundred ten thousand dollars represents the amount of motor fuel taxes collected annually on motor fuel for nonhighway agricultural uses. The Legislature further finds that these funds should be utilized in a manner which benefits agriculture and the citizens of the state.

Section 8. That § 38-7-26 be amended to read as follows:

38-7-26. The coordinated natural resources conservation fund consists of money transferred from the ~~unclaimed tax refunds from the~~ sale of motor fuel for nonhighway agricultural uses in the motor fuel tax fund as provided in § ~~10-47A-11~~ 10-47B-149, and all public and private sources including legislative appropriations or federal grants.

Section 9. That § 10-47B-119.1 be repealed.

Section 10. That § 10-47B-127 be repealed.

Section 11. That § 10-47B-138 be repealed.

Section 12. That § 10-47B-139 be repealed.

Section 13. That § 10-47B-140 be repealed.

Section 14. That § 10-47B-141 be repealed.

Section 15. That § 10-47B-142 be repealed.

Section 16. That § 10-47B-154 be repealed.

Signed March 17, 2011

CHAPTER 62

(SB 196)

Revise the ethanol production incentive payment.

ENTITLED, An Act to modify the ethanol production incentive payment, to create the ethanol infrastructure incentive fund, to appropriate money to encourage the use of ethanol, and to make transfers into the ethanol infrastructure incentive fund and the revolving economic development and initiative fund.

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

Section 1. That § 10-47B-162 be amended to read as follows:

10-47B-162. A production incentive payment of twenty cents per gallon is available to ethanol producers for ethyl alcohol which is fully distilled and produced in South Dakota. To be eligible for this payment, the ethyl alcohol shall be denatured and subsequently blended with gasoline to create ethanol blend. The ethyl alcohol shall be ninety-nine percent pure and shall be distilled from cereal grains. Annual production incentive payments for any facility may not exceed one million dollars. An ethanol production facility is eligible for a production incentive payment under this section only if the facility has produced qualifying ethyl alcohol on or before December 31, 2006. No facility may receive any production incentive payments in an amount greater than ~~ten million~~ nine million six hundred eighty-two thousand dollars. The cumulative annual production incentive payments made under this section may not exceed four million dollars for fiscal year 2003, five million dollars for fiscal year 2004, six million dollars for fiscal year 2005, seven million dollars for fiscal year 2006, seven million dollars for fiscal year 2007, seven million dollars for fiscal year 2008, seven million dollars for fiscal year 2009, seven million dollars for fiscal year 2010, seven million dollars for fiscal year 2011, four million dollars for fiscal year 2012, four million dollars for fiscal year 2013, four million five hundred thousand dollars for fiscal year 2014, four million five hundred thousand dollars for fiscal year 2015, four million five hundred thousand dollars for fiscal year 2016, and seven million dollars per fiscal year thereafter. Payments from the ethanol fuel fund shall be prorated equally to all of the facilities each month based on claims submitted for that month and the amount of funds available for that month. No facility may receive payment for more than four hundred sixteen thousand six hundred sixty-seven gallons per month. If excess funds are available in the fund in any given month, payment may be made to facilities for previous months when funds were not sufficient to pay the claims from the previous months. All moneys available in the ethanol fuel fund at the end of the fiscal year shall be prorated equally to the facilities based upon all unpaid claims received through the end of that fiscal year.

Section 2. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

There is hereby established the ethanol infrastructure incentive fund to receive funds transferred from the ethanol fuel fund pursuant to § 10-47B-164. Any money in the ethanol infrastructure incentive fund is continuously appropriated for the following purposes:

(1) To award incentive grants to motor fuel retail dealers as defined in § 10-47B-3 for the purpose of entering into contracts for the purchase or installation, or for the purchase and installation, of ethanol blender pumps and associated piping and storage systems and related equipment to be used at facilities operated by the motor fuel retail dealers for the sale of motor fuel to the public;

(2) To award incentive grants to motor fuel retail dealers as defined in § 10-47B-3 for the purpose of entering into contracts for the purchase, or the purchase, of pumps and pump equipment authorized to dispense gasoline containing up to and including eighty-five percent ethanol;

(3) To award incentive grants to encourage the purchase of flex fuel vehicles;

(4) To encourage the increased use of ethanol in South Dakota; and

(5) To otherwise encourage the installation of infrastructure related to sale and distribution of ethanol.

The Governor's Office of Economic Development shall establish, by rules promulgated pursuant to chapter 1-26, such regulations and procedures as are necessary to implement this section. For the purposes of this section, the term, ethanol blender pump, refers to a mechanism provided by the retail dealer for the dispensing at retail as defined in § 10-47B-3 of ethanol blend

so that the end user may choose a particular grade of ethanol to gasoline to be dispensed. The Governor's Office of Economic Development may use up to five percent of any amount appropriated to the ethanol infrastructure incentive fund for administration of the fund or any incentive programs established by this section.

Section 3. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

The Governor's Office of Economic Development may promulgate rules pursuant to chapter 1-26 concerning the ethanol infrastructure incentive fund as follows:

(1) The submission of grant applications for the ethanol infrastructure incentive fund;

(2) Eligibility criteria for grants from the ethanol infrastructure incentive fund;

(3) Application procedures for grants from the ethanol infrastructure incentive fund;

(4) Criteria for determining which applicants will receive grants from the ethanol infrastructure incentive fund; and

(5) Follow-up reporting to the Governor's Office of Economic Development by grant recipients.

Section 4. That § 10-47B-164 be amended to read as follows:

10-47B-164. Any money in the ethanol fuel fund is continuously appropriated for purposes of providing ethanol production payments to qualified ethanol producers for purposes of making deposits into the ethanol infrastructure incentive fund, and for purposes of making deposits into the revolving economic development and initiative fund. The department may receive and approve ethanol production incentive payment claims and authorize the issuance of payment warrants to licensed ethanol producer claimants based on claims presented by the licensees. At the end of each fiscal year, any unobligated cash in excess of one hundred thousand dollars in the ethanol fuel fund shall be transferred to the state highway fund.

There shall be a transfer from the ethanol fuel fund to the ethanol infrastructure incentive fund in fiscal year 2012 of one million dollars, a transfer from the ethanol fuel fund to the ethanol infrastructure incentive fund in fiscal year 2013 of one million dollars, a transfer from the ethanol fuel fund to the ethanol infrastructure incentive fund in fiscal year 2014 of five hundred thousand dollars, a transfer from the ethanol fuel fund to the ethanol infrastructure incentive fund in fiscal year 2015 of five hundred thousand dollars, and a transfer from the ethanol fuel fund to the ethanol infrastructure incentive fund in fiscal year 2016 of five hundred thousand dollars.

There shall be a transfer from the ethanol fuel fund to the revolving economic development and initiative fund in fiscal year 2012 of two million dollars, a transfer from the ethanol fuel fund to the revolving economic development and initiative fund in fiscal year 2013 of two million dollars, a transfer from the ethanol fuel fund to the revolving economic development and initiative fund in fiscal year 2014 of two million dollars, a transfer from the ethanol fuel fund to the revolving economic development and initiative fund in fiscal year 2015 of two million dollars, and a transfer from the ethanol fuel fund to the revolving economic development and initiative fund in fiscal year 2016 of two million dollars.

The transfers from the ethanol fuel fund to the ethanol infrastructure incentive fund and the revolving economic development and initiative fund in each fiscal year shall be made before any production incentive payment is made pursuant to § 10-47B-162 in the fiscal year.

No production incentive payment may be made pursuant to § 10-47B-162 unless the ethanol fuel fund has a balance of at least nine hundred fifty thousand dollars.

Signed March 24, 2011

CHAPTER 63

(SB 40)

Uniform administration of state taxes clarified.

ENTITLED, An Act to provide that the uniform administration of certain state taxes apply to the telecommunications gross receipts tax and to limit the application of the uniform administration of certain state taxes.

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

Section 1. That § 10-59-1 be amended to read as follows:

10-59-1. The provisions of this chapter may only apply to ~~any~~ proceedings commenced under this chapter concerning the taxes ~~or~~, the fees, or the persons subject to the taxes or fees imposed by, ~~and to~~ or any civil or criminal investigation authorized by, chapters 10-33A, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-46E, 10-47B, 10-52, 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

Signed March 3, 2011

CHAPTER 64

(HB 1028)

Tax return and remittance due dates changed.

ENTITLED, An Act to revise the due dates of certain tax returns and remittances.

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

Section 1. That § 10-59-32 be amended to read as follows:

10-59-32. The secretary may authorize any person required to file returns or reports and remit taxes or fees under ~~the~~ chapters ~~set forth in § 10-59-1~~ 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-46E, 10-52, and 10-52A, to remit the taxes or fees by electronic transmission. Any person required to file returns and remit taxes on a monthly basis who remits taxes by electronic transmission pursuant to this section, as authorized by the secretary, shall file returns by electronic means on or before the twenty-third day of the month following each monthly period. If the due date for a return falls on a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed, the return shall be due on the next succeeding day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed. Remittances transmitted electronically pursuant to this section shall be made on or before the second to the last day of the month following each monthly period. Remittances are considered to have been made on the date that the remittance is credited to the bank account designated by the treasurer of the State of South Dakota. For purposes of making any electronic transfers of

remittances ~~provided for in this title~~ pursuant to this section, the last day and the second to the last day of the month shall mean the last day and the second to the last day of the month which are not a Saturday ~~or~~, Sunday ~~or a state or federal holiday~~, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 2. That chapter 10-59 be amended by adding thereto a NEW SECTION to read as follows:

Any return, report, or remittance which is required to be filed under the taxes specified in chapters 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-46E, 10-52, and 10-52A, is timely filed if mailed, postage prepaid, on or before the due date of the reporting period, and is received by the department. If the due date falls on a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed, the return, report, or remittance is timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed. A United States Postal Service postmark is evidence of the date of mailing for the purpose of timely filing of returns, reports, or remittances. The provisions of this section do not apply to a return filed by electronic means.

Section 3. That § 10-59-33 be amended to read as follows:

10-59-33. Any return, report, or remittance which is required to be filed under the taxes specified in § 10-59-1, except as provided for in § 10-59-32, section 2 of this Act, and section 4 of this Act, is timely filed if mailed, postage prepaid, on or before the due date of the reporting period, and is received by the department. If the due date falls on a Sunday, or a legal holiday enumerated in ~~§§ 1-5-1 and 1-5-1.1~~ § 1-5-1, the return, report, or remittance is timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, or legal holiday enumerated in § 1-5-1. A United States Postal Service postmark is evidence of the date of mailing for the purpose of timely filing of returns, reports, or remittances. The provisions of this section do not apply to a return filed by electronic means.

Section 4. That chapter 10-59 be amended by adding thereto a NEW SECTION to read as follows:

This section applies to any return, report, or remittance filed pursuant to chapter 10-47B. Any return, report, or remittance which is required to be filed pursuant to chapter 10-47B is timely filed if mailed, postage prepaid, or is filed by electronic means, on or before the due date of the reporting period, and is received by the department. If the due date falls on a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed, the return, report, or remittance is timely filed if mailed, postage prepaid, or is filed by electronic means, on the next succeeding day which is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed. A United States Postal Service postmark is evidence of the date of mailing for the purpose of timely filing of returns, reports, or remittances.

Section 5. That chapter 10-52 be amended by adding thereto a NEW SECTION to read as follows:

Any person who holds a license issued pursuant to this chapter or who is a person whose receipts are subject to the tax imposed by this chapter shall, except as otherwise provided in this section, file a return, and pay any tax due, to the Department of Revenue and Regulation on or before the twentieth day of the month following each monthly period. The return shall be filed on forms prescribed and furnished by the department.

If the person remits the tax by electronic transfer to the state, the person shall file the return by electronic means on or before the twenty-third day of the month following each monthly period and remit the tax on or before the second to the last day of the month following each monthly period.

The secretary may require or allow a person to file a return, and pay any tax due, on a basis other than monthly. The return and remittance is due the last day of the month following the reporting period, or at a time otherwise determined by the secretary.

The secretary may grant an extension of not more than five days for filing a return and remittance.

Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return or remittance is not made on time.

Section 6. That § 10-47B-28 be amended to read as follows:

10-47B-28. The tax imposed by § 10-47B-12 shall be remitted by the liquid petroleum user and is due on a semi-annual calendar basis. The tax is due on the last day of the month following the end of the semi-annual period. If the last day of the month falls on a ~~Sunday or holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed, the tax is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 7. That § 10-47B-29 be amended to read as follows:

10-47B-29. All tax required to be remitted by §§ 10-47B-21 to 10-47B-27, inclusive, is due and payable on or before the last day of the calendar month which follows the month in which the tax was imposed. If the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed, the tax is due and payable on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 8. That § 10-47B-92 be amended to read as follows:

10-47B-92. Any report required by § 10-47B-91 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 9. That § 10-47B-96 be amended to read as follows:

10-47B-96. Any report required by § 10-47B-95 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 10. That § 10-47B-99 be amended to read as follows:

10-47B-99. Any report required by § 10-47B-98 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 11. That § 10-47B-102 be amended to read as follows:

10-47B-102. Any report required by § 10-47B-101 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 12. That § 10-47B-105 be amended to read as follows:

10-47B-105. Any report required by § 10-47B-104 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 13. That § 10-47B-108 be amended to read as follows:

10-47B-108. Any report required by § 10-47B-107 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed. The secretary may also request specific information regarding shipments of fuel delivered in this state or exported at any time after the shipment is made including the address or location of the delivery site.

Section 14. That § 10-47B-112 be amended to read as follows:

10-47B-112. Any report required by § 10-47B-111 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 15. That § 10-47B-114.1 be amended to read as follows:

10-47B-114.1. Any report required by § 10-47B-114 shall be filed with respect to information for the preceding quarter on or before the last day of the month following unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 16. That § 10-47B-115.2 be amended to read as follows:

10-47B-115.2. Any report required by § 10-47B-115.1 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 17. That § 10-47B-115.5 be amended to read as follows:

10-47B-115.5. Any report required by § 10-47B-115.4 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Section 18. That § 10-47B-169 be amended to read as follows:

10-47B-169. The reports required by § 10-47B-168 shall be filed with respect to information for the preceding reporting period on or before the last day of each reporting period unless the last day of the month falls on a ~~Sunday or legal holiday~~ Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed in which case it is due on the next ~~working~~ day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed.

Signed February 10, 2011

CHAPTER 65

(HB 1247)

An appropriation to fund tax refunds.

ENTITLED, An Act to make an appropriation to fund property and sales tax refunds for certain elderly persons and persons with a disability.

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

Section 1. There is hereby appropriated from the state general fund the sum of five hundred thousand dollars ($500,000), or so much thereof as may be necessary, to the Department of Revenue and Regulation to provide refunds for real property tax and sales tax to elderly and disabled persons pursuant to chapters 10-18A and 10-45A. An amount not to exceed twenty thousand dollars in fiscal year 2012 may be used for the administrative costs of this Act.

Section 2. The secretary of revenue and regulation 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 by June 30, 2012, shall revert in accordance with the procedures prescribed in chapter 4-8.

Signed March 7, 2011

CHAPTER 66

(SB 11)

State Conservation Commission appropriation.

ENTITLED, An Act to make an appropriation from the coordinated natural resources fund to the State Conservation Commission and to declare an emergency.

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

Section 1. There is hereby appropriated from the coordinated natural resources conservation fund the sum of five hundred thousand dollars ($500,000), in accordance with subdivision 10-47B-149(4), to the State Conservation Commission.

Section 2. The State Conservation Commission 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 prescribed in chapter 4-8.

Section 4. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 10, 2011

PLANNING, ZONING AND HOUSING PROGRAMS

CHAPTER 67

(SB 113)

Zoning change notice requirements revised.

ENTITLED, An Act to revise certain provisions regarding the notice requirements for changes in zoning requested by landowners.

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

Section 1. That § 11-2-28.1 be amended to read as follows:

11-2-28.1. An individual landowner may petition the board to change the zoning of all or any part of the landowner's property. The petitioning landowner shall notify ~~all other~~ abutting and adjoining landowners by registered or certified mail of the petitioned zoning change at least ~~seven~~ ten days before the public hearing is held on the matter by the planning commission. The landowner shall use information provided by the county director of equalization to determine the abutting and adjoining land owners. Property is considered as abutting and adjoining even though it may be separated from the property of the petitioner by a public road or highway. If the affected property abuts, adjoins, or is within one mile of a county border, the county auditor on behalf of the individual landowner shall also notify, by registered or certified mail, the county auditor in the adjoining county of the petitioned zoning change at least ~~seven~~ ten days before the public hearing is held on the matter by the planning commission.

Signed March 14, 2011

CHAPTER 68

(HB 1053)

Notice requirement to abutting counties when changing the county plan or ordinances, repealed.

ENTITLED, An Act to repeal the requirement to provide notice to abutting counties when changing the county plan or ordinances.

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

Section 1. That § 11-2-29 be amended to read as follows:

11-2-29. The planning commission shall hold at least one public hearing on any proposed change or modification to the plan or ordinances. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. ~~The county auditor shall also provide a copy of the notice to the county auditor in the abutting county at least ten days before the hearing on any proposed change or modification to the plan and ordinances~~. At the public hearing, any person may appear and request or protest the requested change.

Signed March 10, 2011

CHAPTER 69

(HB 1169)

Special zoning areas revamped.

ENTITLED, An Act to provide for the enlargement of special zoning areas, to revise certain provisions regarding special zoning areas, and to provide for the appointment of special zoning area commissions.

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

Section 1. That § 11-2-37 be amended to read as follows:

11-2-37. If an area within a county and not within a municipality becomes so situated that a zoning ordinance or any other purpose or procedure set forth in this chapter is advisable, persons within the area may apply to the board to establish or enlarge the area as a special zoning area or the board may on its own initiative establish or enlarge the area as a special zoning area, pursuant to this chapter. No special zoning area may be formed in a county in which a county wide comprehensive plan and zoning ordinances have been adopted. The formation of a special zoning area is only valid in a county that has not adopted a county wide comprehensive plan and zoning ordinances. The board may establish or enlarge a special zoning area on its own initiative if the special zoning area comprises an area of at least five square miles.

Section 2. That § 11-2-38 be amended to read as follows:

11-2-38. Persons making application for the establishment or enlargement of a special zoning area, or the board if it is proposing the establishment of a special zoning area, shall first obtain an accurate survey and map of the territory intended to be embraced within the limits of the special

zoning area, showing the boundaries and area of the proposed special zoning area. The accuracy of the survey and map shall be verified by the affidavit of the surveyor.

Section 3. That § 11-2-39 be repealed.

Section 4. That § 11-2-40 be amended to read as follows:

11-2-40. The survey~~,~~ and map~~, and census~~ when completed and verified shall be left at some convenient public place, to be designated by the county auditor, within the proposed special zoning area for a period of not less than twenty days for examination by the public.

Section 5. That § 11-2-41 be amended to read as follows:

11-2-41. The application for establishment or enlargement of a special zoning area shall be a petition verified by one or more applicants, by affidavit stating that the affiant personally witnessed the signatures on the petition and believe the signatures to be genuine, and shall be subscribed by not less than one-third of the whole number of qualified voters residing within the proposed special zoning area~~ according to the census taken~~. The petition shall be filed with the county auditor and presented to the board for consideration at its next meeting. If the board chooses to propose the establishment or enlargement of a special zoning area on its own initiative, the board may by resolution propose the establishment or enlargement of the special zoning area at any regular meeting of the board. After the board has adopted a resolution proposing the establishment or enlargement of a special zoning area, the board shall publish notice and hold a public hearing on the question as provided in §§ 11-2-43 and 11-2-47.

Section 6. That § 11-2-42 be amended to read as follows:

11-2-42. If a petition has been presented to the board as provided in § 11-2-41 and if the board is satisfied that the requirements of this chapter have been fully complied with, it shall make an order declaring that the territory shall, with the assent of the qualified voters thereof~~ as provided in § 11-2-39~~, be a special zoning area or number specified in the application. The board shall include in the order a notice for an election of the qualified voters resident in the proposed special zoning area, at a convenient place or places therein, on some day within one month from the notice, to determine whether the territory shall become a special zoning area.

Section 7. That § 11-2-43 be amended to read as follows:

11-2-43. The board shall give ten days' notice of the election by publication and by posting a copy of the notice at three of the most public places in the proposed special zoning area. In the case of a special zoning area that is proposed by the board, the board shall post such notice at least ten days before the meeting at which it will act on the establishment or enlargement of the special zoning area. In addition, if the board is proposing the establishment or enlargement of a special zoning area, the board shall publish notice in the official newspapers of the county at least ten days before the meeting at which it intends to act on the ~~establishment of the~~ special zoning area. For a special zoning area proposed by the board, the published notice shall include a statement that the board will hold a public hearing on the ~~establishment of the~~ proposed special zoning area; the location of the proposed special zoning area; the date, time, and location of the meeting at which the hearing will be held; and a statement that the board will take final action on the ~~establishment of the~~ proposed special zoning area after the hearing is completed. The publication may be waived if a copy of the notice is mailed to every qualified voter within the proposed special zoning area, by first class mail or bulk mail, at least ten days before the election.

Section 8. That § 11-2-46 be amended to read as follows:

11-2-46. The vote upon the question of establishing or enlarging a special zoning area shall be by ballot which conforms to a ballot for a statewide question except that the statement required to

be printed on the ballot shall be prepared by the state's attorney. If a majority of those voting vote in favor of the establishment or enlargement, the territory is from that time a special zoning area by the name and style specified in the order of the board.

Section 9. That § 11-2-47 be amended to read as follows:

11-2-47. After the vote is cast and canvassed, the judges shall make a verified statement showing the whole number of ballots cast, together with the number voting for and the number voting against establishment or enlargement, and shall return the statement to the board at its next session. If satisfied with the legality of the election, the board shall make an order declaring that the special zoning area has been incorporated by the name or number adopted. The order is conclusive of the fact of establishment or enlargement.

In the case of a special zoning area that is proposed by the board, the board shall hold a public hearing at a meeting of the board on the ~~establishment of the~~ proposed special zoning area. The meeting shall be held as specified in the notice published pursuant to § 11-2-43. After the public hearing, the board shall determine whether the special zoning area is to be established or enlarged. If the board decides to establish or enlarge the special zoning area, the board shall issue an order ~~establishing and~~ incorporating the special zoning area.

Section 10. That § 11-2-47.1 be amended to read as follows:

11-2-47.1. The board's decision to ~~establish and~~ incorporate the special zoning area may be referred to a vote of the qualified voters of the proposed special zoning area pursuant to §§ 7-18A-17 to 7-18A-24, inclusive. The qualified voters of the proposed special zoning area may refer the decision within twenty days after its publication by filing a petition signed by five percent of the registered voters in the special zoning area, based upon the total number of registered voters at the last preceding general election. The filing of a valid petition requires the submission of the decision to ~~establish and~~ incorporate the special zoning area to a vote of the qualified voters of the proposed special zoning area for its rejection or approval. The effective date of the ~~establishment and~~ incorporation of the special zoning area on which a referendum is to be held shall be suspended by the filing of a referendum petition until the referendum process is completed.

Section 11. That § 11-2-48 be amended to read as follows:

11-2-48. The board may expend funds of the county, in the manner and to the extent permitted by law for other county expenditures, in the payment of necessary costs of preparation of petitions, surveys, maps, and applications submitted under the provisions of this chapter, and of the holding of elections on the establishment or enlargement of special zoning areas under the provisions of this chapter.

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

For the purposes of §§ 11-2-37 to 11-2-38, inclusive, the term, proposed special zoning area, means the area proposed for the establishment of the district or the area to be added to an existing special zoning area if it is a proposed enlargement.

Section 13. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as follows:

If a special zoning area is established or enlarged pursuant to this chapter, the board of county commissioners may appoint a commission of five or more members to be known as the special zoning area commission or the board may designate the planning and zoning commission to have jurisdiction over the special zoning area. The total membership of the special zoning area commission shall always be an uneven number and at least one member shall be a member of the

board of county commissioners. The special zoning area commission members appointed by the board shall reside within the special zoning area. The special zoning area commission may exercise any of the powers granted to county planning and zoning commission under this chapter.

Section 14. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as follows:

The term of each of the appointed members of the special zoning area commission shall be for three to five years as the board of county commissioners may provide. However, when the special zoning area commission is first appointed, the lengths of the terms shall be varied so that no more than one-third of the terms expire in the same year. Any appointed member of the special zoning area commission may be removed for cause, after hearing prior to the expiration of the term by a majority vote of the elected members of the board of county commissioners. Administrative officials of the county may be appointed as ex officio members of the special zoning area commission.

Signed March 8, 2011

CHAPTER 70

(HB 1180)

Outdated provisions regarding land surveying repealed.

ENTITLED, An Act to revise and repeal certain outdated provisions regarding land surveying.

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

Section 1. That § 11-3-2 be amended to read as follows:

11-3-2. ~~The owner of the property, by himself or agent,~~ A registered land surveyor engaged by the owner shall at the time of surveying and laying out ~~of~~ the property cause to be planted and firmly fixed in the ground at the corners of each block, lot, parcel, or tract, permanent markers constructed and placed in accordance with the rules adopted pursuant to § 43-20-7~~, referenced to at least two identifiable reference points at each marker as the surveyor shall direct~~. The point set shall be distinguished on the plat.

Section 2. That § 21-40-6 be amended to read as follows:

21-40-6. Upon the trial of an action under this chapter, the court shall make its judgment locating and defining the boundary lines involved by reference to well-known, permanent landmarks, if any there be, or if none, then to such landmarks as may be placed or established for that purpose by the surveyor engaged in such work, and if it shall be deemed for the interest of the parties after the entry of judgment, the court may order a ~~competent~~ registered land surveyor to establish and mark such boundaries ~~by means of a stone or concrete block containing at least one cubic foot and planted in the earth at least eighteen inches deep from the top thereof at the corners or boundaries of such lands, or if it is impossible or impracticable to place the same at the true and exact points where the same would otherwise be placed, then at the next nearest convenient point thereto with the course and distance from the true and exact point plainly marked thereon, and in accordance with the order or judgment and from which future surveys of the land and boundaries embraced therein and adjoining lands and boundaries shall be made~~. Such landmarks so established, located, and ~~planted~~ placed in the earth shall have distinctly ~~cut and~~ marked thereon the words, judicial landmark or J. L., with the date that it was so placed and the name or initial letters of the name and the registration number of the surveyor who placed the ~~same~~ landmark.

Section 3. That § 43-18-10 be repealed.

Signed March 17, 2011

CHAPTER 71

(HB 1118)

Extraterritorial jurisdiction of municipalities.

ENTITLED, An Act to revise certain provisions concerning the extraterritorial jurisdiction of municipalities.

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

Section 1. That §11-6-26 be amended to read as follows:

11-6-26. After the city council of any municipality has adopted a comprehensive plan that includes at least a major street plan or has progressed in its comprehensive planning to the stage of making and adopting a major street plan, and has filed a certified copy of the major street plan in the office of the register of deeds of the county in which the municipality is located, no plat of a subdivision of land lying within the municipality, or of land within three miles of its corporate limits and not located in any other municipality, may be filed or recorded unless the plat has the recommendation of the city planning and zoning commission and the approval of the city council. As an alternative, the plat may be reviewed and approved in accordance with § 11-3-6. This provision applies to land within three miles of the corporate limits of the municipality and not located in any other municipality only if the comprehensive plan or major street plan includes such land. However, if such extra municipal land lies within three miles of more than one ~~first or second class~~ municipality, the jurisdiction of each municipality terminates at a boundary line equidistant from the respective corporate limits of the municipalities, unless otherwise agreed to by a majority vote of the governing body of each such municipality. The plats shall, after report and recommendations of the commission are made and filed, be approved or disapproved by the city council or reviewed and approved in accordance with § 11-3-6. The commission shall make its recommendation to the council within sixty days of submission.

Signed March 7, 2011

CHAPTER 72

(SB 94)

Building energy codes updated.

ENTITLED, An Act to repeal and revise certain provisions related to building energy codes.

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

Section 1. That § 11-10-1 be repealed.

Section 2. That § 11-10-2 be repealed.

Section 3. That § 11-10-3 be repealed.

Section 4. That § 11-10-4 be repealed.

Section 5. That § 11-10-7 be amended to read as follows:

11-10-7. The State of South Dakota hereby adopts the International Energy Conservation Code of ~~2006~~ 2009, published by the International Code Council, as the voluntary standard applying to the construction of new residential buildings in the state.

Section 6. That § 11-10-10 be amended to read as follows:

11-10-10. The disclosure form required in § 11-10-8 shall read as follows:

BUILDER'S ENERGY EFFICIENCY DISCLOSURE STATEMENT

Builder _____

Property Address _____

_____

This Disclosure Statement concerns the real property identified above situated in the City of _____ County of _____, State of South Dakota.

Part 1. Builder shall provide the following information about the new residential building:

1. Has this new residential building been built or will it be built to meet the energy efficiency standards of the International Energy Conservation Code of ~~2006~~ 2009 (IECC ~~2006~~ 2009)?

Yes _____ No _____

2. Has this new residential building received or will it receive any other energy efficient certification?

Yes _____ No _____

If yes, which certification(s): _____

Part 2. Builder shall describe the following energy efficiency elements of the new residential building:

	Actual Value	~~2006~~ 2009 IECC* Zone 5	~~2006~~ 2009 IECC* Zone 6
Wall Insulation R-Value	_____	~~R-19~~ R-20 (or R-13 cavity + R-5 insulated sheathing)	~~R-19~~ R-20 (or R-13 cavity + R-5 insulated sheathing)
Attic Insulation R-Value	_____	R-38	R-49
Foundation Insulation R-Value			
Basement Walls	_____	R-10/13**	R-~~10/13~~15-19**

Crawlspace Walls	_____	R-10/13**	R-10/13**
Slab-on-Grade	_____	R-10, 2 ft. depth	R-10, 4 ft. depth
Floors over Unheated Spaces	_____	R-30	R-30
Window U-Value	_____	0.35	0.35
Door U-Value	_____	0.35***	0.35***

Part 3. Builder shall provide the following information about equipment:

1. Does the new residential building contain an Energy Star certified:

a. Water heater?

Yes _____ No _____

b. Heating system (furnace, heat pump, or other)?

Yes _____ No _____

c. Cooling system (air conditioner, heat pump, or other)?

Yes _____ No _____

Part 4. Builder's Notes and Comments:

_____

_____

_____

_____

*IECC stands for International Energy Conservation Code.

**The first R-Value applies to continuous insulation; the second to framing cavity insulation.

***One opaque door per building is exempt from this requirement.

Signed March 14, 2011

_____

CHAPTER 73

(SB 90)

Tax increment financing districts.

ENTITLED, An Act to revise certain provisions concerning tax incremental districts.

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

Section 1. That § 11-9-1 be amended to read as follows:

11-9-1. Terms used in this chapter mean:

(1) "Department of Revenue and Regulation," the South Dakota Department of Revenue and Regulation;

(2) "Governing body," the board of trustees, the board of commissioners, the board of county commissioners, or the common council of a municipality;

(3) "Grant," the transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the municipality;

(4) "Municipality," any incorporated city or town in this state and, for purposes of this chapter only, any county in this state;

~~(4)~~(5) "Planning commission," a planning commission created under chapter 11-6 or a municipal planning committee of a governing body of a municipality which has no planning commission or, if the municipality is a county having no planning commission or planning committee, its board of county commissioners;

~~(5)~~(6) "Project plan," the properly approved plan for the development or redevelopment of a tax incremental district including all properly approved amendments thereto;

~~(6)~~(7) "Tax incremental district," a contiguous geographic area within a municipality defined and created by resolution of the governing body;

~~(7)~~(8) "Taxable property," all real and personal taxable property located in a tax incremental district;

~~(8)~~(9) "Tax increment valuation," is the total value of the tax incremental district minus the tax incremental base pursuant to § 11-9-19.

Section 2. That § 11-9-2 be amended to read as follows:

11-9-2. A municipality may exercise those powers necessary and convenient to carry out the purposes of this chapter, including the power to:

(1) Create tax incremental districts and to define their boundaries;

(2) Prepare project plans, approve the plans, and implement the provisions and purposes of the plans, including the acquisition by purchase or condemnation of real and personal property within the tax incremental district and the sale, lease, or other disposition of such property to private individuals, partnerships, corporations, or other entities at a price less than the cost of such acquisition and of any site improvements undertaken by the municipality pursuant to a project plan;

(3) Issue tax incremental bonds ~~and notes~~;

(4) Deposit moneys into the special fund of any tax incremental district; and

(5) Enter into any contracts or agreements, including agreements with bondholders, determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. The contracts or agreements may include conditions, restrictions, or covenants which run with the land or otherwise regulate the use of land or which establish a minimum market value for the land and completed improvements to be constructed thereon until a specified date, which date may not be later than the date of termination of the tax incremental district pursuant to

§ 11-9-46. Any contract or agreement which provides for the payment of a specified sum of money at a specified future date shall be entered into in accordance with chapter 6-8B.

Section 3. That § 11-9-8 be amended to read as follows:

11-9-8. To implement the provisions of this chapter, the resolution required by § 11-9-5 shall contain findings that:

(1) Not less than twenty-five percent, by area, of the real property within the district is a blighted area or not less than fifty percent, by area, of the real property within the district will stimulate and develop the general economic welfare and prosperity of the state through the promotion and advancement of industrial, commercial, manufacturing, agricultural, or natural resources; and

(2) The improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district.

It is not necessary to identify the specific parcels meeting the criteria. No county may create a tax incremental district located, in whole or in part, within a municipality, unless the governing body of ~~such~~ the municipality has consented thereto by resolution.

Section 4. That § 11-9-13 be amended to read as follows:

11-9-13. ~~In order to implement the provisions of this chapter, the~~ The planning commission shall ~~prepare and~~ adopt a project plan for each tax incremental district and submit the plan to the governing body. The plan shall include a statement listing:

(1) The kind, number, and location of all proposed public works or improvements within the district;

(2) An economic feasibility study;

(3) A detailed list of estimated project costs;

(4) A fiscal impact statement which shows the impact of the tax increment district, both until and after the bonds are repaid, upon all entities levying taxes upon property in the district; and

(5) A description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred.

No expenditure may be provided for in the plan more than five years after a district is created unless an amendment is adopted by the governing body under § 11-9-23.

Section 5. That § 11-9-14 be amended to read as follows:

11-9-14. "Project costs" are any expenditures made or estimated to be made, or monetary obligations incurred or estimated to be incurred, by a municipality which are listed in a project plan as grants, costs of public works, or improvements within a tax incremental district, plus any costs incidental thereto, diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by the municipality in connection with the implementation of the plan.

Section 6. That § 11-9-15 be amended to read as follows:

11-9-15. Project costs include~~, but are not limited to~~:

(1) Capital costs, including the actual costs of the construction of public works or improvements, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; the clearing and grading of land; and the amount of interest payable on tax incremental bonds ~~or notes~~ issued pursuant to this chapter until such time as positive tax increments to be received from the district, as estimated by the project plan, are sufficient to pay the principal of and interest on the tax incremental bonds ~~or notes~~ when due;

(2) Financing costs, including all interest paid to holders of evidences of indebtedness issued to pay for project costs, any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity and a reserve for the payment of principal of and interest on such obligations in an amount determined by the governing body to be reasonably required for the marketability of such obligations;

(3) Real property assembly costs, including the actual cost of the acquisition by a municipality of real or personal property within a tax incremental district less any proceeds to be received by the municipality from the sale, lease, or other disposition of such property pursuant to a project plan;

(4) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(5) Imputed administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of a project plan;

(6) Relocation costs;

(7) Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public of the creation of tax incremental districts and the implementation of project plans; and

(8) Payments and grants made, at the discretion of the governing body, which are found to be necessary or convenient to the creation of tax incremental districts~~ or~~, the implementation of project plans, or to stimulate and develop the general economic welfare and prosperity of the state.

Section 7. That § 11-9-25 be amended to read as follows:

11-9-25. Positive tax increments of a tax incremental district shall be allocated to the municipality which created the district for each year from the date when the district is created until the ~~earlier of:~~

~~(1) That time, after the completion of all public improvements specified in the plan or amendments, when the municipality has received aggregate tax increments of the district in an amount equal to the aggregate of all expenditures previously made or monetary obligations previously incurred for project costs for the district; or~~

~~(2) Fifteen years after the last expenditure identified in the plan has been made or until retirement of all outstanding tax incremental bonds or notes issued pursuant to § 11-9-35 have matured~~ municipality or county has been reimbursed for expenditures previously made, has paid all monetary obligations, and has retired all outstanding tax incremental bonds. However, in no event may the positive tax increments be allocated longer than twenty years after the calendar year of creation.

Section 8. That § 11-9-30 be amended to read as follows:

11-9-30. Payment of project costs may be made by any of the following methods or by any combination thereof:

(1) Payment by the municipality from the special fund of the tax incremental district;

(2) Payment out of the municipality's ~~general~~ funds;

(3) Payment out of the proceeds of the sale of municipal ~~improvement~~ bonds issued by the municipality under ~~chapter 9-44~~ chapters 10-52 or 10-52A;

(4) Payment out of the proceeds of revenue bonds issued by the municipality under chapter 9-54; or

(5) Payment out of the proceeds of the sale of tax incremental bonds ~~or notes~~ issued by the municipality under this chapter.

Section 9. That § 11-9-32 be amended to read as follows:

11-9-32. Moneys shall be paid out of the special fund created under § 11-9-31 only to pay project costs or grants of the district, to reimburse the municipality for the payments, or to satisfy claims of holders of tax incremental bonds ~~or notes~~ issued for the district.

Section 10. That § 11-9-33 be amended to read as follows:

11-9-33. For the purpose of paying project costs, the governing body may issue tax incremental bonds ~~or notes~~ payable out of positive tax increments.

Section 11. That § 11-9-34 be amended to read as follows:

11-9-34. Tax incremental bonds ~~or notes~~, contracts, or agreements shall be authorized by resolution of the governing body without the necessity of ~~a referendum or~~ any voter's approval.

Section 12. That § 11-9-35 be amended to read as follows:

11-9-35. Tax incremental bonds ~~or notes~~ may not be issued in an amount exceeding the aggregate project costs. The bonds ~~or notes~~ may not mature later than twenty years from the date thereof. The bonds ~~or notes~~ may contain a provision authorizing the redemption thereof, in whole or in part, at stipulated prices, at the option of the municipality, on any interest payment date and shall provide the method of selecting the bonds ~~or notes~~ to be redeemed. The principal and interest on the bonds ~~and notes~~ may be payable at any time and at any place. The bonds ~~or notes~~ may be payable to their bearer or may be registered as to the principal or principal and interest. The bonds ~~or notes~~ may be in any denominations.

Section 13. That § 11-9-36 be amended to read as follows:

11-9-36. Tax incremental bonds ~~or notes~~ are payable only out of the special fund created under § 11-9-31. Each bond ~~or note~~ shall contain such recitals as are necessary to show that ~~it~~ the bond is only so payable and that ~~it~~ the bond does not constitute a general indebtedness of the municipality or a charge against its general taxing power.

Section 14. That § 11-9-37 be amended to read as follows:

11-9-37. The governing body shall irrevocably pledge all or a stated percentage of the special fund created under § 11-9-31 to the payment of the bonds ~~or notes~~. The special fund or designated

part thereof may thereafter be used only for the payment of the bonds ~~or notes~~ and interest until they have been fully paid, and any holder of the bonds ~~or notes~~ or of any coupons appertaining thereto shall have a lien against the special fund for payment of the bonds ~~or notes~~ and interest and may either at law or in equity protect and enforce the lien.

Section 15. That § 11-9-38 be amended to read as follows:

11-9-38. Each bond ~~or note~~ issued under the provisions of this chapter and all interest coupons appurtenant thereto are declared to be negotiable instruments. Bonds so issued are not general obligation bonds and are payable only from the tax increment of the project as provided in this chapter.

Section 16. That § 11-9-39 be amended to read as follows:

11-9-39. To increase the security and marketability of its tax incremental bonds ~~or notes~~, a municipality may:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom; or

(2) Make covenants and do any and all acts, not inconsistent with the South Dakota Constitution, necessary, convenient, or desirable in order to additionally secure bonds ~~or notes~~ or to make the bonds ~~or notes~~ more marketable according to the best judgment of the governing body, including the establishment of a reserve for the payment of principal of and interest on the bonds ~~or notes~~ funded from the proceeds of such bonds ~~or notes~~ or other revenues, including tax increments, of the municipality; or

(3) Comply with both subdivisions (1) and (2) of this section.

Section 17. That § 11-9-39.1 be amended to read as follows:

11-9-39.1. The State of South Dakota does hereby pledge to and agree with the holders of any bonds ~~or notes~~ issued under this chapter that the state will not alter the rights vested in the bond holders until such ~~notes or~~ bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

Section 18. That § 11-9-40 be amended to read as follows:

11-9-40. Tax incremental bonds ~~or notes~~ may be sold at public or private sale at a price which the governing body deems in the best interests of the municipality. ~~Insofar as they are consistent with this chapter, the provisions of chapter 9-25 relating to procedures for issuance, form, contents, execution, negotiation, and registration of municipal bonds and notes shall be followed.~~

Section 19. That § 11-9-46 be amended to read as follows:

11-9-46. The existence of a tax incremental district shall terminate when:

(1) Positive tax increments are no longer allocable to a district under § 11-9-25; or

(2) The governing body, by resolution, dissolves the district, after payment or provision for payment of all project costs, grants, and all tax incremental bonds of the district.

Section 20. That § 11-9-45 be amended to read as follows:

11-9-45. After all project costs and all tax incremental bonds ~~and notes~~ of the district have been paid or provided for subject to any agreement with bondholders, if any moneys remain in the fund, they shall be paid to the treasurer of each county, school district, or other tax-levying municipality or to the general fund of the municipality in such amounts as belong to each respectively, having due regard for what portion of such moneys, if any, represents tax increments not allocated to the municipality and what portion thereof, if any, represents voluntary deposits of the municipality into the fund.

Signed March 7, 2011

CHAPTER 74

(SB 142)

The advice and consent authority of the Senate reduced.

ENTITLED, An Act to repeal the requirement that members of certain boards and commissions receive the advice and consent of the Senate.

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

Section 1. That § 11-11-12 be amended to read as follows:

11-11-12. The powers of the authority shall be vested in seven commissioners, who shall be residents of the state, to be appointed by the Governor~~, with the advice and consent of the senate~~. Not more than four of the commissioners ~~shall~~ may be of the same political party.

Section 2. That § 1-16I-7 be amended to read as follows:

1-16I-7. The governing and administrative powers of the authority are vested in its board of directors consisting of five members. The Governor shall appoint the directors~~, with the advice and consent of the Senate~~. Not all members of the board may be of the same political party. The terms of the members of the board may not exceed six years. The terms of the initial board of directors shall be staggered by the drawing of lots so that not more than two of the director's terms shall end at the same time. Members of the board may serve more than one term.

Section 3. That § 3-6A-4 be amended to read as follows:

3-6A-4. There is created a Career Service Commission. The Career Service Commission consists of five members, not all of whom may be of the same political party. The members shall be appointed by the Governor for four-year terms~~, with the advice and consent of the Senate~~. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term.

Section 4. That § 13-47-1 be amended to read as follows:

13-47-1. There is created the South Dakota Board of Directors for Educational Telecommunications, which shall consist of the commissioner of information and telecommunications or an authorized representative, the executive director of the Board of Regents or an authorized representative, a representative of the Bureau of Information and Telecommunications selected by the secretary, and six others appointed by the Governor ~~with the advice and consent of the senate~~. At least one of the appointive members shall be representative of the nonpublic institutions of higher education in the state. The terms of the appointive members of the board shall be for a period of three years, two terms expiring each year. Not more than four of the appointive members may be from the same political party.

Section 5. That § 20-13-2 be amended to read as follows:

20-13-2. The State Commission of Human Rights shall consist of five members appointed by the Governor~~, by and with the consent of the Senate~~, no more than three of whom ~~shall~~ may be from the same political party and two of whom shall, in the opinion of the Governor, be experienced in or have a favorable reputation for skill, knowledge, and experience in the management or operations of a business enterprise. Appointments shall take into consideration geographical area insofar as may be practicable. Members appointed to the commission shall serve for a term of four years expiring June thirtieth of an odd-numbered year. Vacancies on the commission shall be filled by the Governor by appointment for the unexpired part of the term of the vacancy. Any commissioner may be removed from office by the Governor for cause.

Section 6. That § 23A-28B-3 be amended to read as follows:

23A-28B-3. There is created the South Dakota Crime Victims' Compensation Commission, which shall consist of five residents of the state, three of whom shall be appointed by the Governor ~~and confirmed by the Senate~~ as follows:

(1) One member shall be a law enforcement officer with a minimum of five years' experience in a law enforcement agency which has among its primary duties the investigation of violent crimes;

(2) One member shall be a physician or a person who, in the opinion of the Governor, has experience or knowledge in the processing and evaluation of medical claims; and

(3) One member shall be ~~an individual~~ a person with experience in providing victim assistance services, either through employment with a governmental agency which provides such services or as an officer, employee, or volunteer of a nonprofit, charitable crime victims' organization established pursuant to the laws of this state.

One member of the commission shall be appointed by the Chief Justice of the state Supreme Court ~~and confirmed by the Senate~~. One member of the commission shall be appointed by the attorney general ~~and confirmed by the Senate~~.

Section 7. That § 49-16B-3 be amended to read as follows:

49-16B-3. There is created the South Dakota Railroad Authority, a body corporate and politic, to consist of seven members appointed by the Governor~~, by and with the advice and consent of the Senate~~. No person may be appointed to the authority who is an elected official of the State of South Dakota or any subdivision thereof. The authority shall annually choose a chairperson from its membership.

Signed March 7, 2011

ELECTIONS

CHAPTER 75

(HB 1173)

Local election official to notify the Secretary of State when an election date is set.

ENTITLED, An Act to require the person in charge of local elections to notify the secretary of state when the dates of elections have been set.

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

Section 1. If any political subdivision of the state sets a date and time for conducting a public election, within fifteen days the person in charge of an election shall notify the secretary of state in writing or by telephone or electronic mail.

Signed March 17, 2011

CHAPTER 76

(HB 1130)

Adult children of overseas citizens may vote in the state.

ENTITLED, An Act to allow certain adult children of overseas citizens to vote in the state.

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

Section 1. That § 12-4-4.4 be amended to read as follows:

12-4-4.4. Any overseas citizen ~~shall have the right to~~ may register and vote in any federal, state, county, or local election held within South Dakota under the following conditions:

(1) The overseas citizen, or the spouse or parent of the overseas citizen, was last domiciled in South Dakota immediately prior to departure from the United States~~.~~;

(2) The overseas citizen does not maintain a domicile, is not registered to vote, and is not voting in any other state~~.~~;

(3) The overseas citizen is otherwise qualified to vote according to law.

Section 2. That § 12-4-4.5 be amended to read as follows:

12-4-4.5. The overseas citizen ~~shall be allowed to~~ may register and vote absentee in the same county and election precinct in which the overseas citizen, or spouse or parent of the overseas citizen, resided immediately prior to leaving the United States.

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

If an overseas citizen who has never resided in South Dakota is eligible to register to vote pursuant to § 12-4-4.4 as the adult child of an overseas citizen and has not reached the age of twenty-two, the voter registration of the adult child shall be accompanied by a photocopy of the adult child's United States passport identification page and an overseas registrant form indicating where the adult child's parent is registered to vote in South Dakota. The State Board of Elections shall prescribe the overseas registrant form.

Signed March 22, 2011

CHAPTER 77

(HB 1051)

Deadlines set for the transmission of voter registration files.

ENTITLED, An Act to provide deadlines for the transmission of voter registration files.

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

Section 1. That § 12-4-37 be amended to read as follows:

12-4-37. The secretary of state shall establish a computerized system for maintaining and utilizing the voter registration file and transmitting voter registration information from each county auditor to the Office of the Secretary of State. Each county auditor shall transmit any changes to the master registration file or the absentee voter log to the secretary of state on a daily basis. The county auditor shall transmit updated information contained in the county voter registration system, including voter registration information and voter election history information, to the Office of the Secretary of State not later than July fifteenth after each primary election and December fifteenth after each general election.

Signed March 7, 2011

CHAPTER 78

(HB 1104)

Deadline revised for withdrawing from a primary election.

ENTITLED, An Act to revise the deadline for withdrawing from a primary election.

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

Section 1. That § 12-6-8.1 be amended to read as follows:

12-6-8.1. Any person may have his or her name withdrawn from the primary election by making a written request under oath. The request shall be filed with the officer with whom the nominating petition was filed pursuant to § 12-6-4, not later than ~~the second to~~ two days after the last Tuesday in March at five p.m. If the request is mailed by registered mail ~~by the second to~~ not later than two days after the last Tuesday in March at five p.m., the request is properly filed. No

name that is withdrawn pursuant to this section may be printed on the ballots to be used at the election.

Signed March 17, 2011

CHAPTER 79

(HB 1141)

Dates set for absentee voting and printing ballots.

ENTITLED, An Act to establish a date to begin absentee voting and to revise the deadline for the printing of ballots.

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

Section 1. That § 12-16-1 be amended to read as follows:

12-16-1. The county auditor shall provide printed ballots for each election in which the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a primary election shall contain the name of each candidate who has filed for nomination and is approved. The printed ballots for the election of officers shall contain the name of each candidate whose nomination has been certified or filed with the county auditor in the manner provided by law unless the candidate is deemed elected by having no opposition. The names of the candidates shall appear on the ballot exactly as listed in the declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed on paper of a different color from the official ballot but in the same form. The sample ballots and official ballots shall be printed and in the possession of the county auditor not later than ~~forty-five~~ forty-eight days prior to a primary or general election. Absentee voting shall begin no earlier and no later than forty-six days prior to the election. The county auditor shall also prepare the necessary ballots if any question is required to be submitted to the voters of the county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to 12-16-11, inclusive.

Signed March 17, 2011

CHAPTER 80

(SB 95)

Printing of voting rights notices.

ENTITLED, An Act to provide for the printing of voting rights notices.

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

Section 1. That § 12-16-23 be amended to read as follows:

12-16-23. The county auditor shall cause to be printed, in large type on cards in the English language ~~and such other languages as may be deemed necessary~~, voting rights notices and instructions for the guidance of voters in preparing their ballots in ~~such~~ the form as prescribed by

the State Board of Elections and deliver ~~them~~ the cards with the ballots in sufficient numbers to meet the requirements of § 12-16-25.

Signed March 7, 2011

CHAPTER 81

(SB 130)

Secretary of State to conduct certain local elections.

ENTITLED, An Act to provide a procedure for the Secretary of State to conduct certain local elections when an emergency exists.

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

Section 1. That chapter 12-18 be amended by adding thereto a NEW SECTION to read as follows:

If the person charged with the conduct of an election and the governing board determine that an election cannot be conducted, the person charged with the conduct of an election shall sign a declaration of emergency and deliver it to the secretary of state prior to the election. The secretary of state may conduct the election for that county or political subdivision until the election has been certified. Any reasonable and necessary expenses incurred by the secretary of state to conduct the election shall be reimbursed by the county or political subdivision within ninety days after the election has been certified.

Signed March 15, 2011

CHAPTER 82

(HB 1162)

Secretary of State to allow a person in charge of election to use the state system.

ENTITLED, An Act to authorize the secretary of state to allow a person in charge of election to use the state system.

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

Section 1. That § 12-19-2.3 be amended to read as follows:

12-19-2.3. Any voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, ~~2005~~ 2011, may submit an application or request for an absentee ballot by facsimile or emailed image to the person in charge of the election. The secretary of state may authorize a person in charge of an election to accept an application or request for absentee ballot pursuant to this section through the system provided by the Office of the Secretary of State.

Signed March 3, 2011

CHAPTER 83

(SB 93)

An organization may contribute to a political action committee.

ENTITLED, An Act to authorize an organization to contribute to a political action committee and to set a limit on contributions.

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

Section 1. That § 12-27-9 be amended to read as follows:

12-27-9. If the contributor is a person or an organization, no political action committee may accept any contribution which in the aggregate exceeds ten thousand dollars during any calendar year. A political action committee may accept contributions from any candidate campaign committee, political action committee, or political party. A violation of this section is a Class 1 misdemeanor.

Section 2. That § 12-27-18 be amended to read as follows:

12-27-18. No organization may make a contribution to a candidate committee~~, political action committee,~~ or political party. An organization may make a contribution to a ballot question committee organized solely for the purpose of influencing an election on a ballot question and independent expenditures regarding the placement of a ballot question on the ballot or the adoption or defeat of a ballot question. Any organization making expenditures, equal to or exceeding fifty percent of the organization's annual gross income, for the adoption or defeat of a ballot measure is a ballot question committee. An organization may create a political action committee. A violation of this section is a Class 1 misdemeanor.

Signed March 14, 2011

CHAPTER 84

(HB 1094)

Campaign finance disclosure statements.

ENTITLED, An Act to revise certain provisions concerning the filing of campaign finance disclosure statements.

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

Section 1. That § 12-27-22 be amended to read as follows:

12-27-22. A campaign finance disclosure statement shall be filed with the secretary of state by the treasurer of every:

(1) Candidate or candidate campaign committee for any statewide or legislative office;

(2) Political action committee;

(3) Political party; and

(4) Ballot question committee.

The statement shall be signed and filed by the treasurer of the political committee or political party. The statement shall be received by the secretary of state and filed by 5:00 p.m. each February first and shall cover the contributions and expenditures for the preceding calendar year. The statement shall also be received by the secretary of state and filed by 5:00 p.m. on the second Friday prior to each primary and general election complete through the fifteenth day prior to that election. If a candidate is seeking nomination at the biennial state convention, the candidate or the candidate campaign committee shall file a campaign finance disclosure statement with the secretary of state by 5:00 p.m. on the second Friday prior to any biennial state convention. Any statement filed pursuant to this section shall be consecutive and shall cover contributions and expenditures since the last statement filed.

The following are not required to file a campaign finance disclosure statement:

(1) A candidate campaign committee for legislative or county office on February first following a year in which there is not an election for the office;

(2) A county, local, or auxiliary committee of any political party, qualified to participate in a primary or general election, prior to a statewide primary election;

(3) A legislative or county candidate campaign committee without opposition in a primary election, prior to a primary election;

(4) A ballot question committee prior to a primary election unless the committee is involved in a ballot question voted on at the primary;

(5) A candidate campaign committee whose name is not on the general election ballot, prior to the general election; and

(6) A political committee that regularly files a campaign finance disclosure statement with another state or the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service.

A violation of this section is a Class 1 misdemeanor.

Signed March 3, 2011

EDUCATION

CHAPTER 85

(HB 1093)

Required school district reorganization criteria revised.

ENTITLED, An Act to revise the criteria used to exempt certain school districts from the requirement to reorganize.

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

Section 1. That § 13-6-97 be amended to read as follows:

13-6-97. Any school district that has a fall enrollment, as defined in § 13-13-10.1, of less than one hundred and is not a sparse school district, as defined in § 13-13-78, shall reorganize with another school district or school districts to create a newly reorganized school district with a fall enrollment of one hundred or greater. Any school district that is not sparse and has a fall enrollment of one hundred or less on July 1, 2007, shall prepare a plan for reorganization by June 30, 2009. After July 1, 2007, if the fall enrollment of any school district that is not sparse falls to one hundred or below, that school district shall prepare a plan for reorganization within two years. If any such district fails to prepare a plan for reorganization by the deadline, the Board of Education shall prepare a reorganization plan for the district. However, the provisions of this section do not apply to any school district ~~that contracts with a school district in another state pursuant to § 13-15-11 to provide for the education of children in grades seven through twelve who reside within the district,~~ that receives no foundation program state aid distributed pursuant to chapter 13-13, and that is located at least twenty-five miles from the nearest high school in an adjoining school district in the state.

Signed March 17, 2011

CHAPTER 86

(HB 1080)

Due date for annual financial reports of school districts.

ENTITLED, An Act to modify the date on which the annual financial reports of school districts are considered past due.

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

Section 1. That § 13-8-47 be amended to read as follows:

13-8-47. Before the first day of August every school board shall file an annual report with the Department of Education. The report shall contain all the educational and financial information and statistics of the school district as requested in a format established by the Department of Education. The business manager with assistance of the secretary of the Department of Education shall make the annual report, and it shall be approved by the school board. The business manager shall sign the annual report and file a copy with the Department of Education as provided in § 13-13-37. The division shall audit the report and return one copy to the school district.

Reports not filed prior to August ~~fifteenth~~ thirtieth are considered past due and are subject to the past-due provisions of § 13-13-38.

Section 2. That § 13-13-38 be amended to read as follows:

13-13-38. The Department of Education shall determine on December first, or as soon thereafter as practicable, of each school fiscal year the amount of foundation program funds to which each school district within the state is eligible. The department shall require from any county or school district officer any information which is necessary in order to apportion foundation program funds. If complete and accurate information is past due according to the reporting dates specified in § 13-8-47, the secretary of the Department of Education on August ~~fifteenth~~ thirtieth shall declare the school district to be fiscally delinquent. The school district, unless granted an extension, shall forfeit from its entitlement one hundred dollars for each day that the data is past

due for seven days and two hundred dollars for each day past due thereafter starting with the eighth day. Forfeited funds shall be deposited in the foundation program fund established by § 13-13-12.

Section 3. That § 13-16-33 be amended to read as follows:

13-16-33. Each school district shall file the annual financial report pursuant to § 13-8-47 using the uniform accounting system as defined in the accounting manual developed pursuant to § 4-11-6. Reports not filed prior to August ~~fifteenth~~ thirtieth are considered past due and are subject to the past-due provisions of § 13-13-38.

Signed February 22, 2011

CHAPTER 87

(HB 1208)

Certain education related requirements changed.

ENTITLED, An Act to revise certain provisions relating to public schools to allow school districts to operate more economically.

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

Section 1. That § 13-10-12 be amended to read as follows:

13-10-12. Each person over eighteen years of age hired by a school district shall submit to a criminal background investigation, by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. The school district shall submit completed fingerprint cards to the Division of Criminal Investigation before the prospective new employee enters into service. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check. Any person whose employment is subject to the requirements of this section may enter into service on a temporary basis pending receipt of results of the criminal background investigation. The employing school district may, without liability, withdraw its offer of employment or terminate the temporary employment without notice if the report reveals a disqualifying record. Any person whose employment is subject to the requirements of this section shall pay any fees charged for the criminal record check. ~~However, the school board or governing body may reimburse the person for the fees.~~ Any person hired to officiate, judge, adjudicate, or referee a public event sponsored by a school district is not required to submit to a criminal background investigation as required in this section. In addition, any person employed by a postsecondary technical institute is not required to submit to a criminal background investigation as required in this section, unless the person is a teacher who teaches an elementary or secondary level course in an elementary or secondary school facility, or unless the person is an employee, other than a teacher, whose work assignment includes working in an elementary or secondary school facility.

The criminal investigation required by this section with respect to a student teacher completing requirements for teacher certification shall be conducted by the school district. A criminal background investigation, of a student teacher, conducted by a school district may be provided to any other school in which the student engages in student teaching. The school district conducting the criminal background investigation of a student teacher may rely upon the results of that investigation for employment of that person as an employee of the district.

Section 2. That ARSD 24:06:08:01 be repealed.

Section 3. That chapter 13-29 be amended by adding thereto a NEW SECTION to read as follows:

Each school bus driver shall receive appropriate training at least once every five years, and the school bus driver shall pay any fees charged for the training. The training shall include classroom instruction in first aid, bus safety, and the management of passengers, and also behind-the-wheel training to enable the safe and efficient operation of the bus.

Section 4. That § 13-43-7.1 be repealed.

Section 5. That chapter 13-1 be amended by adding thereto a NEW SECTION to read as follows:

It is the policy of the State of South Dakota that the parent or guardian of any student enrolled in a public school may opt to receive any notifications or correspondence from that school by electronic mail in lieu of regular mail if the parent or guardian provides to the school an electronic mail address to which the notifications or correspondence may be sent.

Section 6. That § 13-13-78 be amended to read as follows:

13-13-78. Terms used in § 13-13-79 mean:

(1) "Sparse school district," a school district that meets each of the following criteria:

(a) Has a fall enrollment per square mile of 0.50 or less;

(b) Has a fall enrollment of five hundred or less;

(c) Has an area of four hundred square miles or more;

(d) Has at least fifteen miles between its secondary attendance center or centers and that of an adjoining district;

(e) Operates a secondary attendance center; and

(f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42 or more; ~~and~~

~~(g) Has a general fund balance percentage of thirty percent or less excluding revenue received from opting out of property tax limitations pursuant to chapter 10-12;~~

(2) "Sparsity fall enrollment," for sparse school districts with a fall enrollment as defined in § 13-13-10.1 of less than eighty-three or greater than two hundred thirty-two, is calculated as follows:

(a) Divide the fall enrollment as defined in § 13-13-10.1 by the area of the school district in square miles;

(b) Multiply the quotient obtained in subsection (a) times negative 0.125;

(c) Add 0.0625 to the product obtained in subsection (b); and

(d) Multiply the sum obtained in subsection (c) times the fall enrollment;

(3) "Sparsity adjusted fall enrollment," for sparse school districts with a fall enrollment as defined in § 13-13-10.1 of at least eighty-three, but no more than two hundred thirty-two, subtract the fall enrollment from two hundred thirty-two.

Signed March 22, 2011

CHAPTER 88

(HB 1070)

School districts to employ certified school counselors.

ENTITLED, An Act to prohibit school districts from employing school counselors who are not certified.

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

Section 1. That chapter 13-10 be amended by adding thereto a NEW SECTION to read as follows:

If a school district employs a school counselor, on either a full-time or part-time basis, or contracts for the services of a school counselor through an educational cooperative or other entity, that school counselor shall be certified in accordance with the standards established by the South Dakota Board of Education pursuant to § 13-1-12.1.

Section 2. This Act is effective on July 1, 2016.

Signed March 7, 2011

CHAPTER 89

(SB 200)

School district fund balances.

ENTITLED, An Act to revise certain provisions related to school district fund balances and to declare an emergency.

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

Section 1. That § 13-13-10.1 be amended to read as follows:

13-13-10.1. Terms used in this chapter mean:

(1) "Average daily membership," the average number of resident and nonresident kindergarten through twelfth grade pupils enrolled in all schools operated by the school district during the previous regular school year, minus average number of pupils for whom the district receives tuition, except pupils described in subdivision (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the average number of pupils for whom the district pays tuition;

(1A) Nonresident students who are in the care and custody of the Department of Social Services, the Unified Judicial System, the Department of Corrections, or other state agencies and are attending a public school may be included in the average daily membership of the receiving district when enrolled in the receiving district. When counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;

(2) "Adjusted average daily membership," calculated as follows:

(a) For districts with an average daily membership of two hundred or less, multiply 1.2 times the average daily membership;

(b) For districts with an average daily membership of less than six hundred, but greater than two hundred, raise the average daily membership to the 0.8293 power and multiply the result times 2.98;

(c) For districts with an average daily membership of six hundred or more, multiply 1.0 times their average daily membership;

(2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled in all schools operated by the school district on the last Friday of September of the current school year minus the number of students for whom the district receives tuition, except nonresident students who are in the care and custody of a state agency and are attending a public school and students for whom tuition is being paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays tuition. When computing state aid to education for a school district under the foundation program pursuant to § 13-13-73, the secretary of the Department of Education shall use either the school district's fall enrollment or the average of the school district's fall enrollment from the previous two years, whichever is higher;

(2B) Repealed by SL 2010, ch 84, § 1.

(2C) "Small school adjustment," calculated as follows:

(a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times $4,237.72;

(b) For districts with a fall enrollment of greater than two hundred, but less than six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that result; and multiply the sum obtained times $4,237.72;

The determination of the small school adjustment for a school district may not include any students residing in a residential treatment facility when the education program is operated by the school district;

(3) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;

(4) "Per student allocation," for school fiscal year 2011 is $4,804.60. Each school fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the index factor;

(5) "Local need," is the sum of:

(a) The per student allocation multiplied by the fall enrollment; and

(b) The small school adjustment, if applicable, multiplied by the fall enrollment;

(6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42;

~~(7) "General fund balance," the unreserved fund balance of the general fund, less general fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers out of the general fund for the previous school fiscal year;~~

~~(8)~~(7) "General fund balance percentage," is a school district's general fund ~~balance~~ equity divided by the school district's total general fund expenditures for the previous school fiscal year, the quotient expressed as a percent~~;~~

~~(9) "General fund base percentage," is the lesser of:~~

~~(a) The general fund balance percentage as of June 30, 2011; or~~

~~(b) The maximum allowable percentage for that particular fiscal year as stated in this subsection.~~

~~For fiscal year 2008, the maximum allowable percentage is one hundred percent; for fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal years 2011 to 2014, inclusive, forty percent for each fiscal year; for fiscal year 2015 and subsequent fiscal years, twenty-five percent. However, the general fund base percentage may always be at least twenty-five percent;~~

~~(10) "Allowable general fund balance," the general fund base percentage multiplied by the district's general fund expenditures in the previous school fiscal year;~~

~~(11) "General fund exclusions," revenue a school district has received from the imposition of the excess tax levy pursuant to § 10-12-43; revenue a school district has received from gifts, contributions, grants, or donations; revenue a school district has received under the provisions of §§ 13-6-92 to 13-6-96, inclusive; revenue a school district has received as compensation for being a sparse school district under the terms of §§ 13-13-78 and 13-13-79; any revenue a school district has received under the provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5); and any revenue in the general fund set aside for a noninsurable judgment~~.

Section 2. That § 13-13-10.3 be repealed.

Section 3. That § 13-13-73.2 be repealed.

Section 4. That § 13-13-73.3 be repealed.

Section 5. That § 13-13-73.4 be repealed.

Section 6. That § 13-13-76 be repealed.

Section 7. That § 13-13-77 be repealed.

Section 8. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 17, 2011

CHAPTER 90

(SB 152)

General fund levies of a school district revised.

ENTITLED, An Act to revise certain provisions concerning state aid to education, to revise and provide for the adjustment of the per student allocation for the state aid to general education formula, and to revise certain property tax levies for the general fund of a school district.

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

Section 1. That § 13-13-72 be amended to read as follows:

13-13-72. It is the policy of the Legislature that the appropriation for the state aid to education foundation program increase on an annual basis by the percentage increase in local need on an aggregate statewide basis so that the relative proportion of local need paid by local effort and state aid shall remain constant. For school fiscal year 2013, it is the policy of the Legislature that the relative proportion of the total local need paid by state aid shall be amended by adjusting the proportion of state aid to fifty-three and eight-tenths percent of the total local need. However, the increase in the per student allocation on an annual basis that exceeds three percent shall be paid solely by the state and is not a factor in this policy.

Section 2. That subdivision (4) of § 13-13-10.1 be amended to read as follows:

(4) "Per student allocation," for school fiscal year ~~2011 is $4,804.60~~ 2012 is $4,389.95. Each school fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the index factor;

Section 3. That § 13-13-72.1 be amended to read as follows:

13-13-72.1. Any adjustments in the levies specified in § 10-12-42 made pursuant to §§ 13-13-71 and 13-13-72 shall be based on maintaining the relationship between statewide local effort as a percentage of statewide local need in the fiscal year succeeding the fiscal year in which the adjustment is made. However, for fiscal year 2013 and each year thereafter, if the levies specified in § 10-12-42 are not adjusted to maintain this relationship, the per student allocation as defined in § 13-13-10.1(4) shall be reduced to maintain the relationship between statewide local effort as a percentage of statewide local need. Any adjustment to the levy for agricultural property shall be based upon the change in the statewide agricultural taxable valuation and the reclassification of agricultural property to another property classification. Any adjustment to the levies for nonagricultural property and owner-occupied single-family dwellings shall be based upon the change in the statewide nonagricultural property and owner-occupied single-family dwellings taxable valuations. However, if any new project with a total taxable valuation of one hundred fifty million dollars or more is constructed, the levies shall be proportionately decreased for agricultural property, nonagricultural property, and owner-occupied single-family dwellings. In addition to the adjustments in the levies provided by this section, the levies shall also be annually adjusted as necessary to reduce the portion of local need paid by local effort by an amount equal to nine million dollars from those funds transferred into the property tax reduction fund pursuant to § 10-50-52 subsequent to July 1, 2007. In addition to the adjustments in the levies provided by this

section, the levies for nonagricultural property and owner-occupied single-family dwellings shall also be adjusted as necessary to account for the additional increase in the total assessed value for nonagricultural property and owner-occupied single-family dwellings pursuant to the phasing out and repeal of the provisions provided in § 10-6-74.

Section 4. That § 10-12-42 be amended to read as follows:

10-12-42. For taxes payable in ~~2011~~ 2012 and each year thereafter, the levy for the general fund of a school district shall be as follows:

(1) The maximum tax levy shall be eight dollars and forty-nine and one tenth cents per thousand dollars of taxable valuation subject to the limitations on agricultural property as provided in subdivision (2) of this section, and owner-occupied property as provided ~~for~~ in subdivision (3) of this section;

(2) The maximum tax levy on agricultural property for such school district shall be two dollars and ~~fifty-five and four tenths~~ thirty-eight and eight tenths cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies; and

(3) The maximum tax levy for an owner-occupied single-family dwelling as defined in § 10-13-40~~,~~ for such school district ~~may not exceed~~ shall be three dollars and ninety-six and five tenths cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies.

All levies in this section shall be imposed on valuations where the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue and Regulation. These valuations shall be used for all school funding purposes. If the district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies in this section. The school district may elect to tax at less than the maximum amounts set forth in this section.

Signed March 11, 2011

CHAPTER 91

(SB 8)

Reserves for school district general fund, revised.

ENTITLED, An Act to revise certain provisions related to school district unreserved fund balances.

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

Section 1. That § 13-13-73.4 be amended to read as follows:

13-13-73.4. The secretary of the Department of Education shall promulgate rules, pursuant to chapter 1-26, that calculate exclusions for revenue received from opting out of the property tax limitations such that all expenditures shall be credited to formula revenue and ~~unreserved~~ general fund balance from the preceding fiscal year prior to any credits against opt-out revenue.

Section 2. That § 13-13-10.1 be amended to read as follows:

13-13-10.1. Terms used in this chapter mean:

(1) "Average daily membership," the average number of resident and nonresident kindergarten through twelfth grade pupils enrolled in all schools operated by the school district during the previous regular school year, minus average number of pupils for whom the district receives tuition, except pupils described in subdivision (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the average number of pupils for whom the district pays tuition;

(1A) Nonresident students who are in the care and custody of the Department of Social Services, the Unified Judicial System, the Department of Corrections, or other state agencies and are attending a public school may be included in the average daily membership of the receiving district when enrolled in the receiving district. When counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;

(2) "Adjusted average daily membership," calculated as follows:

(a) For districts with an average daily membership of two hundred or less, multiply 1.2 times the average daily membership;

(b) For districts with an average daily membership of less than six hundred, but greater than two hundred, raise the average daily membership to the 0.8293 power and multiply the result times 2.98;

(c) For districts with an average daily membership of six hundred or more, multiply 1.0 times their average daily membership;

(2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled in all schools operated by the school district on the last Friday of September of the current school year minus the number of students for whom the district receives tuition, except nonresident students who are in the care and custody of a state agency and are attending a public school and students for whom tuition is being paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays tuition. When computing state aid to education for a school district under the foundation program pursuant to § 13-13-73, the secretary of the Department of Education shall use either the school district's fall enrollment or the average of the school district's fall enrollment from the previous two years, whichever is higher;

(2B) Repealed by SL 2010, ch 84, § 1.

(2C) "Small school adjustment," calculated as follows:

(a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times $4,237.72;

(b) For districts with a fall enrollment of greater than two hundred, but less than six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that result; and multiply the sum obtained times $4,237.72;

The determination of the small school adjustment for a school district may not include any students residing in a residential treatment facility when the education program is operated by the school district;

(3) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;

(4) "Per student allocation," for school fiscal year 2011 is $4,804.60. Each school fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the index factor;

(5) "Local need," is the sum of:

(a) The per student allocation multiplied by the fall enrollment; and

(b) The small school adjustment, if applicable, multiplied by the fall enrollment;

(6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42;

(7) "General fund balance," the ~~unreserved fund balance~~ total general fund equity less general fund reserves of the general fund, less general fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers out of the general fund for the previous school fiscal year;

(8) "General fund balance percentage," is a school district's general fund balance divided by the school district's total general fund expenditures for the previous school fiscal year, the quotient expressed as a percent;

(9) "General fund base percentage," is the lesser of:

(a) The general fund balance percentage as of June 30, 2011; or

(b) The maximum allowable percentage for that particular fiscal year as stated in this subsection.

For fiscal year 2008, the maximum allowable percentage is one hundred percent; for fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal years 2011 to 2014, inclusive, forty percent for each fiscal year; for fiscal year 2015 and subsequent fiscal years, twenty-five percent. However, the general fund base percentage may always be at least twenty-five percent;

(10) "Allowable general fund balance," the general fund base percentage multiplied by the district's general fund expenditures in the previous school fiscal year;

(11) "General fund exclusions," revenue a school district has received from the imposition of the excess tax levy pursuant to § 10-12-43; revenue a school district has received from gifts, contributions, grants, or donations; revenue a school district has received under the provisions of §§ 13-6-92 to 13-6-96, inclusive; revenue a school district has received as compensation for being a sparse school district under the terms of §§ 13-13-78 and 13-13-79; any revenue a school district has received under the provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5); and any revenue in the general fund set aside for a noninsurable judgment;

(12) "General fund reserves," the sum of a school district's nonspendable and restricted fund balances of the general fund;

(13) "Nonspendable fund balance," that amount of the fund balance that is not in spendable form;

(14) "Restricted fund balance," that amount of the fund balance that has constraints on how it may be used that are externally imposed or are imposed by law.

Signed March 10, 2011

CHAPTER 92

(SB 133)

State aid distribution to sparse school districts prorated.

ENTITLED, An Act to revise certain provisions related to distribution of funds to sparse school districts.

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

Section 1. That § 13-13-79 be amended to read as follows:

13-13-79. At the same time that foundation program state aid is distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of Education shall distribute funds to sparse school districts by multiplying the result of the calculation in either subdivision 13-13-78(2) or subdivision 13-13-78(3) by seventy-five percent of the per student allocation as defined in § 13-13-10.1. However, no sparse school district may receive a sparsity benefit in any year that exceeds one hundred twenty-three thousand seven hundred fifty dollars. If the appropriation is insufficient to fully fund all sparse school districts as per the calculation in either subdivision 13-13-78(2) or subdivision 13-13-78(3), each eligible district shall receive a prorata share of the total appropriated amount.

Signed March 15, 2011

CHAPTER 93

(SB 111)

School districts may expend capital outlay funds for an additional time for certain costs.

ENTITLED, An Act to extend for two years the period of time in which school districts may expend capital outlay funds for certain transportation, insurance, energy, and utility costs.

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

Section 1. That § 13-16-6 be amended to read as follows:

13-16-6. The capital outlay fund of the school district is a fund provided by law to meet expenditures which result in the acquisition or lease of or additions to real property, plant, or equipment. Such an expenditure shall be for land, existing facilities, improvement of grounds,

construction of facilities, additions to facilities, remodeling of facilities, or for the purchase or lease of equipment. It may also be used for installment or lease-purchase payments for the purchase of real property, plant, or equipment, which have a contracted terminal date not exceeding twenty years from the date of the installment contract or lease-purchase and for the payment of the principal of and interest on capital outlay certificates issued pursuant to § 13-16-6.2.

Any purchase of one thousand dollars or less may be paid out of the general fund. The total accumulated unpaid principal balances of such installment contracts and lease-purchase and the outstanding principal amounts of such capital outlay certificates may not exceed three percent of the taxable valuation. The school district shall provide a sufficient levy each year under the provisions of § 13-16-7 to meet the annual installment contract, lease-purchase, and capital outlay certificate payments, including interest.

A school district which contracts its student transportation may expend from the capital outlay fund an amount not to exceed fifteen percent of the contract amount. In addition, a school district which reimburses for mileage instead of providing transportation pursuant to § 13-30-3, may use the capital outlay fund to pay for fifteen percent of its mileage reimbursement costs.

The capital outlay fund may be used to purchase textbooks and instructional software.

The capital outlay fund may be used to purchase warranties on capital assets if the warranties do not include supplies.

During the period of time beginning on July 1, 2009, and ending on June 30, ~~2012~~ 2014, any school district may make payments from its capital outlay fund for the purchase of property insurance and casualty insurance, for payments for energy costs and the cost of utilities, and for motor fuel or for any portion of a contract providing transportation to students or for any mileage reimbursements. However, the total amount that a school district expends from its capital outlay fund for these expenses may not exceed forty-five percent of the total tax revenues deposited in that fund during the current school fiscal year, and for any school district with a current tax levy for the capital outlay fund that is greater than its tax levy for the capital outlay fund in school fiscal year 2008, the total amount expended from the capital outlay fund for these expenses may not exceed forty-five percent of the total tax revenues that would have been deposited in that fund during the current school fiscal year if the tax levy for the capital outlay fund had not been increased since 2008.

Signed March 10, 2011

CHAPTER 94

(HB 1133)

Application to be used to excuse a child from school.

ENTITLED, An Act to revise certain provisions relating to the excusal of a child from school.

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

Section 1. That § 13-27-2 be amended to read as follows:

13-27-2. Upon ~~receipt~~ filing of an application with a school official from the parent or guardian of the child for the reasons set forth in § 13-27-3, ~~school boards of all school districts shall excuse a child from school attendance in executive session using a case number~~ the child shall be excused, without the necessity of school board action, subject to revocation thereafter as provided in this

chapter. School boards of all school districts may excuse a child from public school attendance for the reasons set forth in §§ 13-27-6 and 13-27-6.1.

Signed March 3, 2011

CHAPTER 95

(SB 77)

Transportation for open-enrolled students regulated.

ENTITLED, An Act to require school boards to approve pick-up locations for any open enrolled students who are transported in their resident school districts by receiving school districts.

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

Section 1. That § 13-28-45 be amended to read as follows:

13-28-45. The parent or guardian of a student who has been accepted for transfer is responsible for transporting the student to school in the receiving district without reimbursement. ~~Either the district of residence or the receiving district may provide transportation to students approved for transfer.~~ A receiving school district may enter the district of residence of students accepted for transfer into that school district to provide transportation to those students. However, the school boards in both the receiving school district and the resident school district shall annually approve the pick-up locations for those students within any incorporated municipality. When approving pick-up locations, the school boards shall base their decisions foremost on student safety. If the school boards cannot reach agreement on the pick-up locations, the locations shall be determined by the secretary of the Department of Education. The provisions of § 13-29-4 do not apply when transporting students enrolled under the provisions of §§ 13-28-40 to 13-28-47. The receiving district may charge a reasonable fee if the student elects to use the transportation services offered by the receiving district. The provisions of this section regarding the transportation agreements among school districts do not apply to any school district defined as a sparse school district pursuant to § 13-13-78.

Signed March 14, 2011

CHAPTER 96

(SB 65)

Nonpublic schools may be members of the South Dakota High School Activities Association.

ENTITLED, An Act to allow nonpublic schools accredited by certain accrediting agencies other than the Department of Education to become members of the South Dakota High School Activities Association.

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

Section 1. That § 13-36-4 be amended to read as follows:

13-36-4. The school board of a public ~~or the governing body of a nonpublic~~ school, approved and accredited by the secretary of the Department of Education, may delegate, on a year to year

basis, the control, supervision, and regulation of any high school interscholastic activities to any association which is voluntary and nonprofit if membership in such association is open to all high schools approved and accredited ~~by the secretary of the Department of Education~~ pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title, and if the constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board.

The governing body of a nonpublic school, approved and accredited by the secretary of the Department of Education, or the North Central Association Commission on Accreditation and School Improvement (NCA CASI), or the Association of Christian Schools International (ACSI), or the Association of Classical and Christian Schools (ACCS), or Christian Schools International (CSI), or National Lutheran School Accreditation (NLSA), or Wisconsin Evangelical Lutheran Synod School Accreditation, may also delegate, on a year to year basis, the control, supervision, and regulation of any high school interscholastic activities to any association which is voluntary and nonprofit if membership in such association is open to all high schools approved and accredited pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title, and if the constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board.

Any association which complies with this section may exercise the control, supervision, and regulation of interscholastic activities, including interscholastic athletic events of member schools. Such association may promulgate reasonable uniform rules, to make decisions and to provide and enforce reasonable penalties for the violation of such rules.

Signed March 11, 2011

CHAPTER 97

(SB 149)

Concussion policy for youth athletes.

ENTITLED, An Act to establish policies for youth athletes with concussions resulting from participation in youth athletic activities.

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

Section 1. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

The South Dakota High School Activities Association, in concert with the Department of Education, shall develop guidelines to inform and educate member schools, coaches, athletes, and the parents or guardians of athletes, of the nature and risk of concussion, including continuing to play after sustaining a concussion. A concussion information sheet shall be signed and returned by any athlete who seeks to compete in activities sanctioned by the South Dakota High School Activities Association and the athlete's parent or guardian prior to the athlete's participation in any youth athletic activities sanctioned by the South Dakota High School Activities Association. A signed information sheet is effective for one academic year.

The guidelines and information sheet shall include protocols and content consistent with current medical knowledge for informing and educating each member school, coach, and athlete participating in athletic activities sanctioned by the South Dakota High School Activities Association, and the athlete's parent or guardian as to:

(1) The nature and risk of concussions associated with athletic activity;

(2) The signs, symptoms, and behaviors consistent with a concussion;

(3) The need to alert appropriate medical professionals for urgent diagnosis or treatment if an athlete is suspected to have received a concussion; and

(4) The need to follow proper medical direction and protocols for treatment and return to play after an athlete sustains a concussion.

Section 2. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

The South Dakota High School Activities Association and the South Dakota Department of Education shall develop a training program consistent with section 1 of this Act. Each coach participating in athletic activities sanctioned by the South Dakota High School Activities Association shall complete the training program each academic year.

Section 3. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

An athlete shall be removed from participation in any athletic activity sanctioned by the South Dakota High School Activities Association at the time the athlete:

(1) Exhibits signs, symptoms, or behaviors consistent with a concussion; or

(2) Is suspected of sustaining a concussion.

Section 4. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

No athlete who has been removed from participation in an athletic activity sanctioned by the South Dakota High School Activities Association may return to athletic activities until the athlete:

(1) No longer exhibits signs, symptoms, or behavior consistent with a concussion; and

(2) Receives an evaluation by a licensed health care provider trained in the evaluation and management of concussions and receives written clearance to return to play from such health care provider.

Section 5. For the purposes of this Act, a licensed health care provider is a person who is:

(1) Registered, certified, licensed, or otherwise recognized in law by the State of South Dakota to provide medical treatment; and

(2) Trained and experienced in the evaluation, management, and care of concussions.

Section 6. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

This Act does not create any liability for, or create any cause of legal action against, a school, a school district, or any officer or employee of a school or school district.

Signed March 17, 2011

CHAPTER 98

(SB 192)

Allocations revised for disabilities in the state aid for special education formula.

ENTITLED, An Act to revise certain allocations for disabilities in the state aid for special education formula.

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

Section 1. That § 13-37-35.1 be amended to read as follows:

13-37-35.1. Terms used in chapter 13-37 mean:

(1) "Level one disability," a mild disability;

(2) "Level two disability," cognitive disability or emotional disorder;

(3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-blindness, orthopedic impairment, or traumatic brain injury;

(4) "Level four disability," autism;

(5) "Level five disability," multiple disabilities;

(5A) "Level six disability," prolonged assistance;

(6) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;

(7) "Local effort," shall be calculated for taxes payable in 2011 and shall be the amount of revenue that could have been generated for the taxes payable in 2010 using a special education levy of one dollar and twenty cents per one thousand dollars of valuation increased by the lesser of three percent or the index factor, as defined in § 10-13-38, plus a percentage increase of value resulting from any improvements or change in use of real property, annexation, minor boundary changes, and any adjustments in taxation of real property separately classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.

For taxes payable in 2012, 2013, 2014, and 2015, the total amount of local effort shall be increased by the lesser of three percent or the index factor, established pursuant to § 10-13-38 plus a percentage increase of value resulting from any improvements or change in use of real property, annexation, minor boundary changes, and any adjustments in taxation of real property separately classified and subject to statutory

adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value;

(8) "Allocation for a student with a level one disability," for the school fiscal year beginning July 1, ~~2010~~ 2011, is $4,057. For each school year thereafter, the allocation for a student with a level one disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(9) "Allocation for a student with a level two disability," for the school fiscal year beginning July 1, ~~2010~~ 2011, is $9,471. For each school year thereafter, the allocation for a student with a level two disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(10) "Allocation for a student with a level three disability," for the school fiscal year beginning July 1, ~~2010~~ 2011, is $15,220. For each school year thereafter, the allocation for a student with a level three disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(11) "Allocation for a student with a level four disability," for the school fiscal year beginning July 1, ~~2010~~ 2011, is $13,164. For each school year thereafter, the allocation for a student with a level four disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(12) "Allocation for a student with a level five disability," for the school fiscal year beginning July 1, ~~2010~~ 2011, is $16,539. For each school year thereafter, the allocation for a student with a level five disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(12A) "Allocation for a student with a level six disability," for the school fiscal year beginning July 1, ~~2010~~ 2011, is $8,438. For each school year thereafter, the allocation for a student with a level six disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(13) "Child count," is the number of students in need of special education or special education and related services according to criteria set forth in rules promulgated pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in accordance with rules promulgated pursuant to § 13-37-1.1;

(14) "Fall enrollment," the number of kindergarten through twelfth grade pupils enrolled in all schools operated by the school district on the last Friday of September of the previous school year minus the number of students for whom the district receives tuition, except any nonresident student who is in the care and custody of a state agency and is attending a public school and any student for whom tuition is being paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays tuition;

(15) "Nonpublic school," a sectarian organization or entity which is accredited by the secretary of education for the purpose of instructing children of compulsory school age. This definition excludes any school that receives a majority of its revenues from public funds;

(16) "Nonpublic fall enrollment," until June 30, 2008, the number of children under age sixteen, and beginning July 1, 2009, the number of children under age eighteen, who are approved for alternative instruction pursuant to § 13-27-2 on the last Friday of September of the previous school year plus:

(a) For nonpublic schools located within the boundaries of a public school district with a fall enrollment of six hundred or more on the last Friday of September of the previous school year, the number of kindergarten through twelfth grade pupils enrolled on the last Friday of September of the previous regular school year in all nonpublic schools located within the boundaries of the public school district;

(b) For nonpublic schools located within the boundaries of a public school district with a fall enrollment of less than six hundred on the last Friday of September of the previous school year, the number of resident kindergarten through twelfth grade pupils enrolled on the last Friday of September of the previous school year in all nonpublic schools located within the State of South Dakota;

(17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;

(18) "Local need," an amount to be determined as follows:

(a) Multiply the special education fall enrollment by 0.1062 and multiply the result by the allocation for a student with a level one disability;

(b) Multiply the number of students having a level two disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level two disability;

(c) Multiply the number of students having a level three disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level three disability;

(d) Multiply the number of students having a level four disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level four disability;

(e) Multiply the number of students having a level five disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level five disability;

(f) Multiply the number of students having a level six disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level six disability;

(g) Sum the results of (a) through (f);

(19) "Effort factor," for taxes payable in 2011, 2012, 2013, 2014, and 2015, the effort factor is the amount of taxes payable for the year divided by the amount of local effort as calculated in subdivision (7). The maximum effort factor is 1.0.

Signed March 15, 2011

CHAPTER 99

(HB 1235)

Board of Regents' performance improvement fund created.

ENTITLED, An Act to create the Board of Regents performance improvement fund and make an appropriation therefor.

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

Section 1. There is hereby created a special fund known as the Board of Regents performance improvement fund. All money in the Board of Regents performance improvement fund is dedicated for the purposes of leveraging non-state grant funding for research infrastructure and improving postsecondary students' academic success. Interest earned on money in the fund shall be deposited into the fund. Expenditures from this fund shall be appropriated through the normal budgeting process.

Section 2. The Board of Regents may accept for the purposes of this Act any funds obtained from federal sources, gifts, contributions, or any other source if such acceptance and expenditure is approved in accordance with § 4-8B-10.

Section 3. There is hereby appropriated from the general fund the sum of one million five hundred thousand dollars ($1,500,000), or so much thereof as may be necessary, to the Board of Regents performance improvement fund.

Section 4. 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.

Signed March 15, 2011

CHAPTER 100

(HB 1008)

Higher education facilities funds may be expended for facilities occupied under capital leases.

ENTITLED, An Act to authorize the Board of Regents to expend higher education facilities funds to maintain and repair certain facilities occupied under capital leases.

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

Section 1. That § 13-51-2 be amended to read as follows:

13-51-2. There is continued an educational facilities fund in the state treasury from which ~~on and after July 1, 1984,~~ the Board of Regents may make expenditures, relating only to institutions of higher education under its jurisdiction, to:

(1) Make lease payments to the South Dakota Building Authority for projects authorized to be paid out of that fund by the Legislature;

(2) Maintain and repair existing facilities in amounts as may from time to time be authorized by the Legislature;

(3) Maintain and repair the Sanford School of Medicine building occupied under capital lease located on Lot 9 except the North 14 Feet, Lots 10 through 14, the East 7.7 Feet of Lots 15, 18 and 19, and the East 7.7 Feet except the North 14 Feet of Lot 20, Block 2, Hayward Investment Company Subdivision of Block A of Hayward's Addition, and the West one-half of the vacated portion of Euclid Avenue adjacent to Lot 9 except the North 14 Feet and Lots 10, 11 and 12, Block 2, Hayward Investment Company Subdivision of Block A of Hayward's Addition to the City of Sioux Falls, Minnehaha County, South Dakota;

~~(3)~~(4) Make rent payments from higher education facilities funds, appropriated through the general appropriation act for such purposes, to other private or public parties for educational facilities in accordance with § 13-51-1 as necessary to the proper and efficient delivery of instruction; and

~~(4)~~(5) Build and equip new facilities as may from time to time be authorized by the Legislature.

No funding may be provided in any year for subdivision (3) or (4) of this section until the level of annual appropriations reaches three million dollars for subdivision (2) of this section. Authorizations for new lease payments, new construction, reconstruction, and renovation are restricted to and shall not exceed the amount of higher education facilities funds in excess of the sum of existing lease payments to the South Dakota Building Authority plus three million dollars for maintenance and repair.

Signed March 17, 2011

CHAPTER 101

(HB 1110)

Temporary increase in state aid to education.

ENTITLED, An Act to appropriate funding for the purpose of a one-time increase in state aid to education.

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

Section 1. There is hereby appropriated from the general fund the sum of twelve million two hundred twenty-two thousand ninety-six dollars ($12,222,096), or so much thereof as may be necessary, to the Department of Education for the purpose of a one-time payment to school districts.

Section 2. After July 1, 2011, the secretary of the Department of Education shall distribute the funds, on a one-time basis, appropriated by section 1 of this Act to school districts based on fall enrollment as defined in subdivision 13-13-10.1(2A) at the same time that foundation program state aid is distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive.

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

Signed March 17, 2011

CHAPTER 102

(HB 1175)

Jump start scholarship program established.

ENTITLED, An Act to establish the jump start scholarship program.

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

Section 1. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

There is hereby established the jump start scholarship program to be administered by the Board of Regents. The purpose of the program is to allow a student who graduates from a public high school in three years or less to receive a scholarship funded with a portion of the money saved by the state in state aid to education funding pursuant to chapter 13-13 as a result of the student's early graduation if the student enrolls at any college, university, or technical school accredited by the North Central Association of Colleges and Schools that provides instruction from a campus located in South Dakota.

Section 2. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

To be eligible for the jump start scholarship program, a student shall:

(1) Be a resident of South Dakota;

(2) Complete the requirements of the recommended high school program as established by the Board of Education pursuant to § 13-1-12.1, and be awarded a high school diploma by a public high school in three years or less;

(3) Have attended a public high school in South Dakota on a full-time basis for at least two semesters prior to graduating; and

(4) Within one year of graduating from high school, excluding any time served on active duty in the armed forces of the United States, enroll in a college, university, or technical school accredited by the North Central Association of Colleges and Schools that provides instruction from a campus located in South Dakota.

No student who enrolls in a high school for all or any part of a fourth year is eligible for the jump start scholarship program.

Section 3. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

The amount of the scholarship shall be calculated as follows:

(1) Multiply the per student allocation as defined in subdivision 13-13-10.1(4) by seventy-five percent; and

(2) Multiply the result of subdivision (1) by the percentage of the statewide local need as defined in subdivision 13-13-10.1(5) that is paid with funds appropriated for state aid to general education pursuant to chapter 13-13.

One half of the award shall be paid to an approved institution on behalf of any eligible student there enrolled at the beginning of the fall semester, and the other half shall be paid in the same manner at the beginning of the spring semester. A student must be enrolled full-time during the spring semester in order to receive the second installment.

Section 4. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

Any eligible student seeking to obtain a jump start scholarship shall, by September first of the year following the student's graduation from high school, apply for admission to an approved postsecondary education institution. The institution shall determine the student's initial eligibility, and once the student is admitted into the jump start scholarship program, the executive director of the Board of Regents shall make scholarship payments to the institution on behalf of the student. The approved institutions shall submit to the Board of Regents the names of all eligible students by October first for the first semester and by February twenty-fifth for the second semester, and once the eligibility of each student is verified, the executive director of the Board of Regents shall distribute the funds necessary to award the scholarship to each eligible student to the approved institutions for the first semester on October fifteenth or the first working day thereafter, and for the second semester on March fifteenth or the first working day thereafter.

Section 5. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of the Department of Education shall transfer to the executive director of the Board of Regents, on a noncash basis, from funds appropriated for state aid to general education pursuant to chapter 13-13, the amount of money necessary to award the jump start scholarships to all students admitted into the scholarship program for that fiscal year. One-half of the necessary amount shall be transferred by October fifteenth for distribution for the first semester, and one-half of the necessary amount shall be transferred by March fifteenth for distribution for the second semester. Upon receipt, the executive director of the Board of Regents shall distribute the funds pursuant to section 4 of this Act.

Section 6. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of the Department of Education shall transfer on a noncash basis to the executive director of the Board of Regents the amount of foundation program funds necessary to award jump start scholarships pursuant to this Act to all students admitted into the scholarship program for that fiscal year. One-half of the necessary amount shall be transferred by October fifteenth for distribution for the first semester, and one-half of the necessary amount shall be transferred by March fifteenth for distribution for the second semester.

Section 7. That § 13-13-73 be amended to read as follows:

13-13-73. The secretary of the Department of Education shall compute state aid to education for each school district under the foundation program according to the following calculations:

(1) Determine each school district's fall enrollment;

(2) To arrive at the local need per district:

(a) Multiply the per student allocation by the fall enrollment;

(b) Multiply the small school adjustment, if applicable, by the fall enrollment; and

(c) Add the product of subsection (a) to the product of subsection (b);

(3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a negative number;

(4) If the state aid appropriation for the general support of education is in excess of the entitlement provided for in this section and the entitlement provided for in section 6 of this Act, the excess shall be used to fund any shortfall of the appropriation as provided for in § 13-37-36.3. The secretary shall report to the Governor by January seventh of each year, the amount of state aid necessary to fully fund the general aid formula in the current year. If a shortfall in the state aid appropriation for general education exists that cannot be covered by § 13-37-45, the Governor shall inform the Legislature and provide a proposal to eliminate the shortfall.

Signed March 10, 2011

CHAPTER 103

(HB 1249)

Authorize the carryover of the fiscal year 2011 state aid to special education appropriation.

ENTITLED, An Act to authorize a carryover of the fiscal year 2011 state aid to special education appropriation to fiscal year 2012.

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

Section 1. Notwithstanding the provisions of §§ 4-8-19 and 13-37-40, any unencumbered funds appropriated from the general fund by subdivision (3) of section 11 of chapter 25 of the 2010 Session Laws for state aid to special education, equal to an amount necessary to meet the federal maintenance of effort requirement, shall be carried forward to fiscal year 2012.

Section 2. This Act is effective June 28, 2011.

Signed March 7, 2011

CHAPTER 104

(SB 10)

Dairy manufacturing plant appropriation.

ENTITLED, An Act to appropriate certain funds for the construction of a new dairy manufacturing plant at South Dakota State University and to declare an emergency.

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

Section 1. There is hereby appropriated from other fund expenditure authority the sum of one million dollars ($1,000,000), or so much thereof as may be necessary, to the to the Board of Regents, payable from funds in the higher education facilities fund, for the construction of a new dairy manufacturing plant at South Dakota State University, as authorized by chapter 93 of the 2006 Session Laws and amended by chapter 93 of the 2008 Session Laws.

Section 2. That chapter 93 of the 2006 Session Laws be amended by adding thereto a NEW SECTION to read as follows:

Any amounts appropriated in this Act, as amended by chapter 93 of the 2008 Session Laws, not lawfully expended or obligated by June 30, 2015, shall revert in accordance with § 4-8-21.

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

Signed March 10, 2011

CIVIL PROCEDURE

CHAPTER 105

(HB 1042)

Clerk of Courts' duties revised relating to the assignment of a judgment.

ENTITLED, An Act to revise certain provisions relating to the assignment of a judgment.

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

Section 1. That § 15-16-11 be amended to read as follows:

15-16-11. Every clerk of courts, upon the presentation to ~~him~~ the clerk of an assignment of any judgment rendered or docketed in ~~his~~ the office of the clerk of courts, signed by the party in whose favor the judgment is rendered, ~~his~~ the party's personal representative, successor in interest, or the duly appointed agent for the specific purpose thereof and acknowledged in the manner prescribed by law for the acknowledgment of deeds, shall immediately note the fact of such assignment, the date thereof, and the name of the assignee upon the docket of such judgment. ~~The clerk of courts of any other county where such judgment is docketed shall note the fact of such assignment, the date thereof, and the name of the assignee upon the presentation to and filing with him a certified copy of the original judgment docket with the facts of such assignment noted thereon.~~

Signed February 17, 2011

CHAPTER 106

(HB 1043)

Jurisdictional amount clarified in a small claims court proceeding.

ENTITLED, An Act to clarify the jurisdictional amount in a small claims court proceeding.

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

Section 1. That chapter 15-39 be amended by adding thereto a NEW SECTION to read as follows:

No claim pursuant to this chapter may exceed twelve thousand dollars, not including allowable costs or attorney fees.

Signed February 10, 2011

COURTS AND JUDICIARY

CHAPTER 107

(HB 1041)

Statutory duties revised for the presiding judge of each judicial circuit.

ENTITLED, An Act to revise the statutory duties of the presiding judge of each judicial circuit.

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

Section 1. That § 16-2-21 be amended to read as follows:

16-2-21. The presiding judge in each judicial circuit, to be appointed by the Chief Justice, subject to the rules of the Supreme Court, has administrative supervision and authority over the operation of the circuit courts, the courts of limited jurisdiction, and clerks and other court personnel in the circuit. These powers and duties include, but are not limited to, the following:

(1) Arranging schedules and assigning circuit judges for sessions of circuit courts;

(2) Arranging or supervising the calendaring of matters for trial or hearing;

(3) Appointing clerks, deputies and other personnel within the circuit to make available their services in every county in the circuit and, subject to standards established by the Supreme Court, fixing their compensation within the limits set by § 16-2-23 with approval of the Chief Justice, and supervising the personnel in the discharge of their functions;

(4) Assigning matters and duties to clerks, and prescribing times and places at which clerks shall be available for the performance of their duties;

(5) Making arrangements with proper authorities for the drawing of jury panels and determining which sessions shall be jury sessions;

(6) Arranging for the reporting of cases by court reporters or other authorized means;

(7) Arranging for the orderly disposition of specialized matters, including, but not limited to traffic, domestic relations, and proceedings under chapters 26-7A, 26-8A, 26-8B, and 26-8C;

(8) Promulgating a schedule of offenses for which magistrates or other designated persons may accept written appearances, waivers of trial, and pleas of guilty, and establishing a schedule of fines and bails therefor;

(9) Assigning to other circuit judges in the circuit various powers and duties in this chapter provided;

(10) Periodically reviewing the performance and application by magistrates, clerks and deputy clerks of schedules they are to follow, and correcting, with or without the request of the person affected, erroneous application thereof.

~~To assure the availability of circuit judges in all areas of the state, the presiding judge shall arrange, so that in each county of that circuit, there shall be available a circuit judge to hold court in the county seat of each such county on at least two days each month if there are matters that warrant the presence of a judge.~~ The presiding judge shall arrange that a circuit judge is available to hold court in the county seat of each county in the circuit as necessary to distribute the work of the courts, alleviate congestion, and secure the prompt disposition of cases for each county.

Signed March 7, 2011

CHAPTER 108

(HB 1038)

Fees revised for the electronic transmission of court records.

ENTITLED, An Act to revise certain provisions concerning certain fees for the electronic transmission of court records.

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

Section 1. That § 16-2-29 be amended to read as follows:

16-2-29. The clerk of courts shall charge and collect the following fees:

(1) For the probate of an estate, seventy-five dollars;

(2) For all service connected with the preparation and transmission of a settled record to the Supreme Court, including the remittitur from the Supreme Court, fifty dollars;

(3) For any of the following, twenty-five dollars:

(a) Civil cases filed for jury or court trial;

(b) Guardianship or conservatorship actions, adoption cases, termination of life estates;

(c) Cases to determine amount of inheritance tax in estates in which real and personal property is transferred in contemplation of death;

(d) Default actions to quiet title to real property;

(e) Default cases involving garnishment proceedings;

(f) Dissolutions of corporations;

(g) Foreclosure actions;

(h) Special administration proceedings;

(i) Summary administration proceedings;

(j) Appeals to the circuit court from an action of a political subdivision of the state or from an action of the state or its officers, boards, agencies, and commissions; or

(k) All matters not otherwise provided for in this section;

(4) For any of the following, fifty dollars:

(a) Petitions and motions to modify final child support orders, except if the petitioner or moving party is a recipient of assistance benefits pursuant to Title 28;

(b) Petitions and motions to modify final child custody orders;

(c) Petitions and motions to modify final visitation orders;

(d) Petitions and motions to modify final spousal support orders;

(5) For any of the following, five dollars:

(a) Issuing a transcript of a judgment;

(b) Filing and docketing a transcript of a judgment;

(c) Issuing and docketing an execution, commission, or writ;

(d) Filing a special execution; or

(e) Renewing a judgment according to § 15-16-33;

(6) For any of the following, two dollars:

(a) Reproducing an authenticated, exemplified, or double certificate of a record on file in the clerk's office;

(b) Certifying a document not excepted by subdivision (7) of this section;

(c) Issuing a subpoena in a civil case; or

(d) Safekeeping or filing of a will;

(7) All true and correct copies of any original record or paper furnished by the attorney of record or the personal representative qualified to act in any of the following cases which are necessary for the completion of the case shall be certified at no extra charge for the certification:

(a) Guardianship or conservatorship actions, adoption cases, termination of life estates, trusts, probate actions;

(b) Cases to determine amount of inheritance tax in estates in which real and personal property is transferred in contemplation of death; and

(c) Divorce actions;

(8) For a facsimile or electronic mail transmission of any opinion, record, or paper from an active or inactive file in the clerk's custody, one dollar per page, but the minimum charge is five dollars. Fees collected pursuant to this subdivision shall be deposited into the unified judicial system court automation fund.

No fee for filing, docketing, issuing, recording, certifying, or searching, or other fee or commission, may be required of the state, any foreign state, or the federal government, or its officers, boards, agencies, and commissions, or its political subdivisions, in any action or proceeding commenced by the state or a political subdivision. In addition, no fee for record searches may be required of any agency of the federal government which is charged with law enforcement or investigatory duties under federal law.

No filing fee may be required in any action under § 25-10-3, 25-10-6, 22-19A-8, or 22-19A-12.

Section 2. That § 16-2-29.1 be amended to read as follows:

16-2-29.1. ~~It shall be the duty of the~~ The clerk of the Supreme Court ~~to~~ shall charge the following fees and shall collect ~~the same~~ them in advance:

(1) For each action or proceeding originally commenced in or brought to the Supreme Court by appeal, to be advanced by the party commencing or bringing such action or proceeding, fifty dollars;

(2) For each certificate of admission to practice as an attorney and counselor at law, ten dollars;

(3) For each copy of any opinion, record or paper from an active file in the clerk's custody, fifty cents per page, provided, however, that the minimum charge shall be two dollars;

(4) For each copy of any opinion, record or paper from an inactive file in the clerk's custody, fifty cents per page, provided, however, that the minimum charge shall be five dollars;

(5) For facsimile or electronic mail transmission of any opinion, record or paper from an active or inactive file in the clerk's custody, one dollar per page, provided, however, that the minimum charge shall be five dollars.

No fee ~~shall~~ may be required under the provisions of this section in habeas corpus proceedings or in actions or proceedings or appeals brought by the state or agencies thereof, including political subdivisions, or public officials acting on the behalf of any of them.

Signed February 17, 2011

CHAPTER 109

(HB 1040)

Clerk magistrates may accept certain penalties.

ENTITLED, An Act to provide jurisdiction for clerk magistrates to accept certain penalties.

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

Section 1. That § 16-12C-11 be amended to read as follows:

16-12C-11. A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts:

(1) To accept defaults for petty offenses;

(2) To try contested cases involving a petty offense;

(3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or

(4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance, bylaw, or other police regulation of a political subdivision;

if the punishment is a fine not exceeding five hundred dollars or imprisonment for a period not exceeding thirty days, or both such fine and imprisonment, and to impose sentence upon a plea of guilty or nolo contendere, which sentence shall be in accordance with § 23-1A-22 or schedules adopted pursuant to subdivision 16-2-21(8). However, if the offense or violation is not covered by ~~said~~ the schedules, the magistrate court may impose a sentence of a fine as authorized by statute, ordinance, bylaw, or police regulation or five hundred dollars, whichever is less. A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts for any penalty imposed pursuant to § 32-22-55, notwithstanding the amount of the penalty, if the penalty is paid in full at the time of the acceptance of the plea. Acceptance of not guilty or nolo contendere pleas shall be in accordance with §§ 23A-7-2 and 23A-7-8, as applicable.

Signed March 10, 2011

EVIDENCE

CHAPTER 110

(SB 13)

Evidentiary rule relating to a child's statement in an abuse case, revised.

ENTITLED, An Act to revise certain evidentiary rules relating to the statements of children.

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

Section 1. That § 19-16-39 be amended to read as follows:

19-16-39. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible in evidence in any civil proceeding alleging child abuse or neglect or any proceeding for termination of parental rights if:

(1) The statement was made by a child under the age of ~~ten~~ thirteen years or by a child ~~ten~~ thirteen years of age or older who is developmentally disabled, as defined in § ~~27B-1-3~~ 27B-1-18; ~~and~~

(2) The statement alleges, explains, denies, or describes:

(a) Any act of sexual penetration or contact performed with or on the child; ~~or~~

(b) Any act of sexual penetration or contact with or on another child observed by the child making the statement; ~~or~~

(c) Any act of physical abuse or neglect of the child by another; or

(d) Any act of physical abuse or neglect of another child observed by the child making the statement; ~~and~~

(3) The court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(4) The proponent of the statement notifies other parties of an intent to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence, to provide the parties with a fair opportunity to meet the statement.

For purposes of this section, an out-of-court statement includes a video, audio, or other recorded statement.

Signed March 10, 2011

PERSONAL RIGHTS AND OBLIGATIONS

CHAPTER 111

(HB 1087)

Trespass liability revised.

ENTITLED, An Act to address comprehensibly the liability relationship between a trespasser and a person with a possessory interest in land.

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

Section 1. No person with a possessory interest in land, including an owner, lessee, or other occupant, owes any duty of care to a trespasser nor is subject to liability for any injury to a trespasser except as provided in this Act.

Section 2. A person with a possessory interest in land may be subject to liability if the trespasser's physical injury or death was intentionally caused, including by entrapment, and if the injury or death was not justifiable pursuant to § 22-18-4.

Section 3. A person with a possessory interest in land may be subject to liability for physical injury or death to a child thirteen years of age or younger resulting from an artificial condition on the land if:

(1) The person knew or had reason to know that children of that age were likely to trespass at the location of the artificial condition; and

(2) The condition is one the person knew or reasonably should have known involved an unreasonable risk or death or serious bodily harm to such children; and

(3) The injured child did not discover the artificial condition or realize the risk involved in the artificial condition or the risk coming within the area made dangerous by it; and

(4) The utility to the person of maintaining the artificial condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and

(5) The person failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

Section 4. A person with a possessory interest in land may be subject to liability for physical injury or death to a trespasser if the possessor knows, or from facts within the possessor's knowledge should have known, that trespassers consistently intrude upon a limited area of the possessor's land and:

(1) The trespasser's harm was caused by the possessor's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety; or

(2) The trespasser's harm was cause by an artificial condition and:

(a) The artificial condition was created or maintained by the person;

(b) The person knew the artificial condition was likely to cause death or serious bodily injury to such a trespasser;

(c) The artificial condition was of such a nature that the possessor had reason to believe that the trespasser would not discover it; and

(d) The person failed to exercise reasonable care to warn the trespasser of the artificial condition and the risk involved.

Section 5. A person with a possessory interest in land may be subject to liability for physical injury or death to a known trespasser if:

(1) The trespasser was harmed as a result of the persons's failure to carry on dangerous activities on the land with reasonable care for the trespasser's safety;

(2) The trespasser was harmed as a result of the possessor's failure to exercise reasonable care to warn the trespasser about an artificial condition maintained by the person, the artificial condition involved a risk of death or serious bodily injury, and the artificial condition was of such a nature that the person had reason to believe the trespasser would not discover the artificial condition or realize the risk involved; or

(3) The person knew or had reason to know that the trespasser was in dangerous proximity to a moving force in the person's immediate control just before the harm occurred, and the trespasser was harmed as a result of the person's failure to exercise reasonable care so as to prevent the force from harming the trespasser or failed to exercise reasonable care to provide a warning that was reasonably adequate to allow the trespasser to avoid the harm.

Section 6. For the purposes of this Act, a trespasser is any person who enters on the property of another without permission and without an invitation, express or implied.

Signed March 17, 2011

JUDICIAL REMEDIES

CHAPTER 112

(HB 1145)

Identify the law applicable to claims for damages.

ENTITLED, An Act to provide for the identification of the law applicable to certain claims for damages.

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

Section 1. That chapter 21-3 be amended by adding thereto a NEW SECTION to read as follows:

In any action arising out of an injury to the person, the local law of the state where the injury occurs determines whether a claim for damages survives the death of the party sought to be held liable or of the injured person. For purposes of this section, the place where the injury occurs is the place where the forces causing the injury first result in actionable injury to the injured person.

Signed March 17, 2011

CHAPTER 113

(HB 1233)

Liability limited from damages caused by certain aviation products.

ENTITLED, An Act to limit liability from damages caused by certain aviation products.

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

Section 1. Terms used in this Act mean:

(1) "Aviation product," any product or component designed, manufactured, fabricated, assembled, produced, or constructed for aviation purposes, including aircraft, parts produced primarily for use in aircraft, aviation navigation aids, aircraft instrumentation,

aircraft testing products, aircraft components, aircraft support and maintenance products or components, aircraft materials production, aircraft materials testing, and aircraft safety products;

(2) "Aviation product liability claim," includes any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage, or labeling of the relevant aviation product. The term includes any action based on, strict liability in tort, negligence, breach of express or implied warranty, breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent, misrepresentation, concealment, or nondisclosure, whether negligent or innocent, or under any other substantive legal theory;

(3) "Harm," includes damage to property, personal physical injuries, illness, and death, mental anguish or emotional harm attendant to personal physical injuries, illness, or death. The term does not include direct or consequential economic loss;

(4) "Manufacturer," includes an aviation product seller who designs, produces, creates, assembles, installs, makes, fabricates, constructs, or remanufactures the relevant product or component part of an aviation product before its sale to a user or consumer. The term includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer, or that is owned in whole or in part by the manufacturer;

(5) "Product seller," any person or entity that is engaged in the business of selling aviation products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant aviation product; and

(6) "Time of delivery," the time of delivery of an aviation product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

Section 2. Except as provided in section 4 of this Act, no aviation product seller is liable in an aviation product liability claim if the product seller proves by a preponderance of the evidence that the harm was caused after the aviation product's useful safe life had expired. Useful safe life begins at the time of delivery of the aviation product and extends for the time during which the product would normally perform.

Section 3. Factors to be considered in determining whether an aviation product's useful safe life has expired include:

(1) The amount of wear and tear to which the aviation product had been subject;

(2) The effect of deterioration from natural causes and from climate and other conditions under which the aviation product was used or stored;

(3) The normal practices of the user, similar users, and the aviation product seller with respect to the circumstances, frequency, and purposes of the product's use, and with respect to repairs, renewals, and replacements;

(4) Any representations, instructions, or warnings made by the aviation product seller concerning proper maintenance, storage, and use of the product or the expected useful safe life of the product; and

(5) Any modification or alteration of the aviation product by a user or third party.

Section 4. An aviation product seller may be subject to liability for harm caused by an aviation product used beyond the product's useful safe life to the extent that the aviation product seller has expressly warranted the aviation product for a longer period.

Section 5. The provisions of § 15-2-12.2 notwithstanding, any claim that involves harm caused more than ten years after the time of delivery is barred regardless of the date the defect or harm is discovered or the disability or minority of the person harmed.

Nothing contained in this section affects the right of any person liable under an aviation product liability claim to seek and obtain indemnity from any other person who is responsible for the harm which gave rise to the aviation product liability claim.

Section 6. If the injury-causing aspect of the aviation product was, at the time of manufacture, in compliance with legislative or administrative regulatory safety standards relating to design or performance, the aviation product is deemed not defective by reason of design or performance. If the standard addressed warnings or instructions, the aviation product is deemed not defective by reason of warnings or instructions.

Section 7. If the injury-causing aspect of the aviation product was not, at the time of manufacture, in compliance with legislative or administrative regulatory safety standards relating to design, performance, warnings, or instructions, no presumption exists and the burdens of proof applicable to nonaviation products liability actions apply.

Section 8. If the injury-causing aspect of the aviation product was, at the time of manufacture, in compliance with a mandatory government contract specification relating to design, this is an absolute defense and the aviation product is deemed not defective for that reason. If the specification related to warnings or instructions, the aviation product is deemed not defective for that reason.

Section 9. If the injury-causing aspect of the aviation product was not, at the time of manufacture, in compliance with a mandatory government contract specification relating to design, or if the specification related to warnings or instructions that were not in compliance with a mandatory government contract specification relating to warnings or instruction, no presumption exists and the burdens of proof applicable to nonaviation products liability actions apply.

Section 10. In any aviation product liability claim, any duty on the part of the aviation product seller to warn or protect against a danger or hazard which could or did arise in the use or misuse of such aviation product and any duty to have properly instructed in the use of such aviation product, does not extend:

(1) To any warning protecting against or instructing with regard to those safeguards, precautions, and actions which a reasonable user or consumer of the aviation product, with the training, experience, education, and any special knowledge the user or consumer did, should, or was required to possess, could and should have taken for such user or consumer or others, under all the facts and circumstances;

(2) To any situation where the safeguards, precautions, and actions could or should have been taken by a reasonable user or consumer of the aviation product similarly situated exercising reasonable care, caution, and procedure; or

(3) To any warnings protecting against or instructing with regard to dangers, hazards, or risks which are patent, open, or obvious and which should have been realized by a reasonable user or consumer of the aviation product.

Section 11. No provision contained within this Act abrogates or limits protections afforded aviation product manufacturers, sellers, or assemblers contained in §§ 20-9-10 to 20-9-11, inclusive.

Section 12. In an aviation product liability claim, the following evidence is not admissible for any purpose:

(1) Evidence of any advancements or changes in technical or other knowledge or techniques; in design theory or philosophy; in manufacturing or testing knowledge; in techniques or processes in labeling; or warning of risks or hazards; or, in instructions for the use of the aviation product, if the advancements or changes have been made, learned, or placed into common use subsequent to the time the aviation product in issue was designed, formulated, tested, manufactured, or sold by the manufacturer; and

(2) Evidence of any changes made in the designing, planning, formulating, testing, preparing, manufacturing, packaging, warning, labeling, or instructing for use of, or with regard to, the aviation product in issue, or any similar product, which any change was made subsequent to the time the aviation product in issue was designed, formulated, tested, manufactured, or sold by the manufacturer.

This section does not require the exclusion of evidence of a subsequent measure if offered to impeach a witness for the manufacturer or seller of an aviation product who has expressly denied the feasibility of such a measure.

Signed March 11, 2011

CRIMES

CHAPTER 114

(HB 1019)

Persons included in the protections afforded law enforcement and judicial officers.

ENTITLED, An Act to include employees responsible for persons on supervised release or probation and members of the Board of Pardons and Paroles in protections afforded law enforcement and judicial officers.

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

Section 1. That subdivision (22) of § 22-1-2 be amended to read as follows:

(22) "Law enforcement officer," any officer, prosecutor, or employee of the state or any of its political subdivisions or of the United States, or, while on duty, an agent or employee of a railroad or express company or security personnel of an airline or airport, who is responsible for the prevention, detection, or prosecution of crimes, for the enforcement of the criminal or highway traffic laws of the state, or for the supervision of confined persons <u>or those persons on supervised release or probation</u>;

Section 2. That § 22-11-15 be amended to read as follows:

22-11-15. Any person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, juror, member of the Board of Pardons and Paroles, or other person authorized by law to hear or determine any controversy, or any court services officer, with intent to induce ~~such~~ the person either to do any act not authorized by law, or to omit or delay the performance of any duty imposed upon ~~such~~ the person by law, or for having performed any duty imposed upon ~~such~~ the person by law, is guilty of a Class 5 felony.

Signed February 8, 2011

CHAPTER 115

(HB 1067)

Lookback period revised for the enhancement of penalties for multiple assaults and violations of protection orders.

ENTITLED, An Act to revise the lookback period for the enhancement of penalties for multiple assaults and violations of protection orders.

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

Section 1. That § 22-18-1 be amended to read as follows:

22-18-1. Any person who:

(1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;

(2) Recklessly causes bodily injury to another;

(3) Negligently causes bodily injury to another with a dangerous weapon;

(4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or

(5) Intentionally causes bodily injury to another which does not result in serious bodily injury;

is guilty of simple assault. Simple assault is a Class 1 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29 within ~~five~~ ten years of committing the current offense, the defendant is guilty of a Class 6 felony for any third or subsequent offense.

Section 2. That § 25-10-13 be amended to read as follows:

25-10-13. If a temporary protection order or a protection order is granted pursuant to this chapter or a foreign protection order recognized pursuant to § 25-10-12.1, or if a no contact order is issued pursuant to § 25-10-25, and the respondent or person to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to § 22-18-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section, the factual basis for which occurred after the date of the second conviction, and occurred within ~~five~~ ten years of committing the current offense, the respondent or person to be restrained

is guilty of a Class 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition to other civil or criminal remedies.

Signed March 17, 2011

CHAPTER 116

(SB 35)

Taking pictures without consent made a crime.

ENTITLED, An Act to revise certain provisions regarding the crime of taking or disseminating pictures without consent and to provide for a felony penalty under certain circumstances.

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

Section 1. That § 22-21-4 be amended to read as follows:

22-21-4. No person may use ~~a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, any other person without clothing, or any other person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person~~ or disseminate any visual recording or photographic device to photograph or visually record any other person without clothing or under or through the clothing, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to self-gratify, to harass, or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. A violation of this section is a Class 1 misdemeanor. However, a violation of this section is a Class 6 felony if the victim is seventeen years of age or younger and the perpetrator is at least twenty-one years old.

Signed March 15, 2011

CHAPTER 117

(SB 32)

Sex offender registration requirements revised.

ENTITLED, An Act to revise the time period to update certain sex offender registration information and to require the collection of passport and professional license information for such registration purposes.

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

Section 1. That § 22-24B-12 be amended to read as follows:

22-24B-12. Any person required to register pursuant to §§ 22-24B-1 to 22-24B-14, inclusive, who moves to a different location or residence address shall inform the law enforcement agency with whom the person last registered of the new location or address, in writing, within ~~five~~ three business days. The law enforcement agency shall, within three days of receipt, forward the information to the Division of Criminal Investigation and to the law enforcement agency having

jurisdiction of the new location or residence. A failure to register pursuant to this section is a Class 6 felony.

Section 2. That § 22-24B-21 be amended to read as follows:

22-24B-21. The Division of Criminal Investigation shall post and maintain on an internet site sex offender registration information including offender name, physical description and photograph, address, type of sex crime convicted of, previous convictions requiring registration as defined in § 22-24B-1, dates of commission and the dates of conviction of any sex crime committed, community safety zone restrictions, offense description, and the offender's status as an inmate, parolee, or person who has completed their correctional placement.

The division shall update sex offender registration information on the internet site within ~~five~~ three business days of receipt from the registering agency. The division and the registering agency are not civilly or criminally liable for good faith conduct under this section or § 22-24B-11.

Section 3. That § 22-24B-8 be amended to read as follows:

22-24B-8. The registration shall include the following information which, unless otherwise indicated, shall be provided by the offender:

(1) Name and all aliases used;

(2) Complete description, photographs, fingerprints and palm prints collected and provided by the registering agency;

(3) Residence, length of time at that residence including the date the residence was established, and length of time expected to remain at that residence;

(4) The type of sex crime convicted of;

(5) The date of commission and the date of conviction of any sex crime committed;

(6) Social Security number on a separate confidential form;

(7) Driver license number and state of issuance;

(8) Whether or not the registrant is receiving or has received any sex offender treatment;

(9) Employer name, address, and phone number or school name, address, and phone number;

(10) Length of employment or length of attendance at school;

(11) Occupation or vocation;

(12) Vehicle license plate number of any vehicle owned by the offender;

(13) Information identifying any internet accounts of the offender as well as any user names, screen names, and aliases that the offender uses on the internet;

(14) A listing of all felony convictions, in any jurisdiction, for crimes committed as an adult and sex offense convictions and adjudications subject to sex offender registry provided by the offender and confirmed by the registering agency;

(15) A description of the offense, provided by the prosecuting attorney;

(16) Acknowledgment whether the offender is currently an inmate, parolee, juvenile in department of corrections placement or under aftercare supervision, county or city jail inmate or detainee in a juvenile detention center, provided by the offender and confirmed by the administering body of the correctional facility;

(17) Acknowledgment whether the offender is subject to community safety zone restrictions, provided by the registering agency; ~~and~~

(18) The name, address and phone number of two local contacts, who have regular interaction with the offender and the name, address and phone number of the offender's next of kin;

(19) Passport and any document establishing immigration status, including the document type and number; and

(20) Any professional, occupational, business or trade license from any jurisdiction.

In addition, at the time of the offender's registration, the registering agency will collect a DNA sample and submit the sample to the South Dakota State Forensic Laboratory in accordance with procedures established by the South Dakota State Forensic Laboratory. The collection of DNA at the time of the registration is not required if the registering agency can confirm that DNA collection and submission to the South Dakota State Forensic Laboratory has already occurred.

Any failure by the offender to accurately provide the information required by this section is a Class 6 felony.

Signed March 10, 2011

CHAPTER 118

(SB 34)

Possession of any substance, excluding alcohol, intended for the purpose of intoxication made a crime.

ENTITLED, An Act to create the crime of possessing, selling, or distributing certain substances intended for the purpose of intoxication.

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

Section 1. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

Any person who possesses, possesses with intent to distribute, sells, or distributes a substance knowing that it is to be used in violation of § 22-42-15 is guilty of a Class 1 misdemeanor.

Signed March 10, 2011

CHAPTER 119

(SB 14)

Elderly or disabled adult abuse mandatory reporting.

ENTITLED, An Act to require the mandatory reporting of abuse or neglect of elderly or disabled adults.

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

Section 1. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as follows:

Any person who is a:

(1) Physician, dentist, doctor of osteopathy, chiropractor, optometrist, podiatrist, religious healing practitioner, hospital intern or resident, nurse, paramedic, emergency medical technician, social worker, or any health care professional;

(2) Long-term care ombudsman;

(3) Psychologist, licensed mental health professional, or counselor engaged in professional counseling; or

(4) State, county, or municipal criminal justice employee or law enforcement officer;

who knows, or has reasonable cause to suspect, that an elder or disabled adult has been or is being abused or neglected, shall, within twenty-four hours, report such knowledge or suspicion orally or in writing to the state's attorney of the county in which the elder or disabled adult resides or is present, to the Department of Social Services, or to a law enforcement officer. Any person who knowingly fails to make the required report is guilty of a Class 1 misdemeanor.

Section 2. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as follows:

Any staff member of a nursing facility, assisted living facility, adult day care center, or community support provider, or any residential care giver, individual providing homemaker services, victim advocate, or hospital personnel engaged in the admission, examination, care, or treatment of elderly or disabled adults who knows, or has reasonable cause to suspect, that an elderly or disabled adult has been or is being abused or neglected, shall, within twenty-four hours, notify the person in charge of the institution where the elderly or disabled adult resides or is present, or the person in charge of the entity providing the service to the elderly or disabled adult, of the suspected abuse or neglect. The person in charge shall report the information in accordance with the provisions of section 1 of this Act. Any person who knowingly fails to make the required report is guilty of a Class 1 misdemeanor.

Section 3. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as follows:

Any person who knows or has reason to suspect that an elderly or disabled adult has been abused or neglected as defined in § 22-46-2 or 22-46-3 may report that information, regardless of whether that person is one of the mandatory reporters listed in this Act.

Signed February 10, 2011

CHAPTER 120

(SB 176)

The crime of human trafficking.

ENTITLED, An Act to provide for the crime of human trafficking, to establish the elements and degrees of the crime, and to provide penalties for the violation thereof.

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

Section 1. No person may recruit, harbor, transport, provide, or obtain, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude. Nor may any person benefit financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section. Any violation of this section constitutes the crime of human trafficking.

Section 2. If the acts or the venture set forth in section 1 of this Act:

(1) Involve committing or attempting to commit kidnaping;

(2) Involve a victim under the age of sixteen years;

(3) Involve prostitution or procurement for prostitution; or

(4) Result in the death of a victim;

any person guilty has committed human trafficking in the first degree, which is a Class 2 felony.

Section 3. A person is guilty of human trafficking in the second degree if that person:

(1) Recruits, harbors, transports, provides, or obtains, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude; or

(2) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section.

Human trafficking in the second degree is a Class 4 felony.

Signed March 15, 2011

LAW ENFORCEMENT

CHAPTER 121

(SB 36)

Tribal member added to the Law Enforcement Officers Standards Commission.

ENTITLED, An Act to add a tribal member who is a certified law enforcement officer to the Law Enforcement Officers Standards Commission.

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

Section 1. That § 23-3-28 be amended to read as follows:

23-3-28. There is hereby created a Law Enforcement Officers Standards Commission in the Office of the Attorney General. This commission shall consist of ~~ten~~ eleven members, ~~seven~~ eight of whom shall be appointed by the attorney general as follows~~, to wit~~: one person from the Division of Highway Patrol; one person who is a duly elected, qualified, and acting sheriff of this state; one person who is a duly appointed, qualified, and acting member of a municipal police department of this state; one member who is an enrolled tribal member and a certified law enforcement officer; one person who is a member of the State Bar of South Dakota; one member recommended by the executive director of the Board of Regents; one member recommended by the South Dakota Municipal League; and one member recommended by the South Dakota County Commissioners Association.

The attorney general on the first appointments shall appoint three ~~such~~ members for terms of one year and four ~~such~~ members for a term of two years; thereafter all ~~such~~ appointments shall be for two years. ~~Any such~~ An appointee ~~shall be~~ is eligible to ~~succeed himself in office~~ be reappointed.

Signed March 10, 2011

CHAPTER 122

(HB 1079)

Purchase of firearms by residents and out-of-state residents, certain provisions repealed.

ENTITLED, An Act to repeal certain provisions related to the purchase of firearms by out-of-state residents.

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

Section 1. That § 23-7-40 be repealed.

Section 2. That § 23-7-41 be repealed.

Signed March 17, 2011

CHAPTER 123

(HB 1149)

Legal residents may obtain a concealed pistol permit.

ENTITLED, An Act to allow legal residents of the United States to obtain a concealed pistol permit.

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

Section 1. That § 23-7-7.1 be amended to read as follows:

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

(1) Is eighteen years of age or older;

(2) Has never pled guilty to, nolo contendere to, or been convicted of a felony or a crime of violence;

(3) Is not habitually in an intoxicated or drugged condition;

(4) Has no history of violence;

(5) Has not been found in the previous ten years to be a "danger to others" or a "danger to self" as defined in § 27A-1-1 or is not currently adjudged mentally incompetent;

(6) Has physically resided in and is a resident of the county where the application is being made for at least thirty days immediately preceding the date of the application;

(7) Has had no violations of chapter 23-7, 22-14, or 22-42 constituting a felony or misdemeanor in the five years preceding the date of application or is not currently charged under indictment or information for such an offense;

(8) Is a citizen <u>or legal resident</u> of the United States; and

(9) Is not a fugitive from justice.

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

Section 2. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the five day requirement provided in § 23-7-7.1, if the background investigation under § 23-7-7 requires an international criminal history check through INTERPOL, the sheriff shall issue a temporary permit to carry a concealed pistol within three business days of

receiving a response from INTERPOL if the applicant otherwise meets the requirements of § 23-7-7.1.

Signed March 10, 2011

CRIMINAL PROCEDURE

CHAPTER 124

(SB 173)

Details of alleged sex crimes against minors may be suppressed.

ENTITLED, An Act to allow specific details of alleged sex crimes against minors be suppressed under certain conditions.

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

Section 1. That § 23A-6-22.1 be amended to read as follows:

23A-6-22.1. Notwithstanding the provisions of § 23A-6-22, upon the request of any minor victim ~~who is a minor~~ or the minor victim's parent or guardian in a prosecution for rape, incest, or sexual contact, the court shall order that the name of the minor and the specific details of the alleged acts be suppressed if the trial court finds a compelling interest after consideration of the following factors: the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of the parents and relatives.

Section 2. That § 23A-35-4.1 be amended to read as follows:

23A-35-4.1. If not filed earlier, any affidavit in support of a search warrant shall be filed with the court when the warrant and inventory are returned. Upon filing the warrant and supporting documents, the law enforcement officer may apply by separate affidavit to the court to seal the supporting affidavit from public inspection or disclosure. The court, for reasonable cause shown, may order the contents of the affidavit sealed from public inspection or disclosure but may not prohibit disclosure that a supporting affidavit was filed, the contents of the warrant, the return of the warrant, nor the inventory. The court may order that the supporting affidavit be sealed until the investigation is terminated or an indictment or information is filed. In cases of alleged rape, incest, or sexual contact, if the victim is a minor, the court may limit access to an affidavit pursuant to § 23A-6-22.1. However, a court order sealing a supporting affidavit may not affect the right of any defendant to discover the contents of the affidavit under chapter 23A-13.

Section 3. That § 23A-2-2 be amended to read as follows:

23A-2-2. If it appears from a complaint, or from an affidavit or affidavits filed with a complaint, that there is probable cause to believe that an offense has been committed and that a particular person has committed it, a warrant for the arrest of that person, if requested by the prosecuting attorney, shall be issued to any officer authorized by law to execute it. If circumstances make it reasonable to do so in the absence of a written affidavit, an arrest warrant may be issued upon sworn oral testimony of a person who is not in the physical presence of a committing magistrate if the committing magistrate is satisfied that probable cause exists for the issuance of the warrant. The sworn oral testimony may be communicated to the magistrate by telephone or

other appropriate means and shall be recorded and transcribed. After transcription the statement shall be certified by the magistrate and filed with the court. This statement shall be deemed to be an affidavit and complaint for purposes of this section. In cases of alleged rape, incest, or sexual contact, if the victim is a minor, the court may limit access to the affidavit pursuant to § 23A-6-22.1. Upon the request of the prosecuting attorney, a summons instead of a warrant shall be used. More than one warrant or summons may be issued on the same complaint. If a defendant fails to appear in response to a summons, a warrant shall be issued.

Signed March 15, 2011

CHAPTER 125

(HB 1020)

Disclosure of parole eligibility at sentencing repealed.

ENTITLED, An Act to repeal certain provisions regarding the disclosure of parole eligibility at sentencing.

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

Section 1. That § 23A-27-48 be repealed.

Signed February 8, 2011

PENAL INSTITUTIONS, PROBATION AND PAROLE

CHAPTER 126

(HB 1017)

Offender identification information may be released.

ENTITLED, An Act to authorize the release of offender photographs and physical description for purposes of victim and community notification.

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

Section 1. That § 24-2-20 be amended to read as follows:

24-2-20. Notwithstanding the provisions of § 24-1-26, when requested, regarding the fitness of any inmate, sentenced as an adult, for a modification of sentence, parole, pardon, or early release, the warden shall furnish only to the sentencing court, the secretary of corrections, the Board of Pardons and Parole, or the Governor, respectively, any requested record, fact, or opinion in the warden's possession or knowledge. The Department of Corrections may release the following information on any inmate or parolee sentenced as an adult for purposes of community and victim notification pursuant to subdivisions 23A-28C-1(10) and (12), §§ 23A-28C-5, 24-15-8.1, 24-15-8.2, and 24-15A-22, and to other governmental entities as defined in § 24-2-20.1:

(1) Name and any known aliases;

(2) Date of birth or age;

(3) Race and gender;

(4) Location of incarceration;

(5) Community of residence;

(6) Custody status and conditions of supervision;

(7) Any Department of Corrections sentence identification number;

(8) Any crime of conviction;

(9) Number of felony convictions;

(10) Sentence, time suspended, jail time credit, and revoked good time credits;

(11) Offense, sentence, admission, release, and parole eligibility dates;

(12) Dates of pending hearings and final determinations of parole, suspended sentence, pardon, and commutation hearings;

(13) Status as an inmate, parolee, or person who has completed a prison term;

(14) County of conviction;

(15) Plea;

(16) Citizenship status; and

(17) Birth town, state, and country; and

(18) Identification photograph and physical description.

The department is not civilly liable for good faith conduct under this section.

Signed February 8, 2011

CHAPTER 127

(HB 1021)

Parole file inspection requirements changed.

ENTITLED, An Act to revise certain provisions regarding the inspection of parole files.

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

Section 1. That § 24-15-1 be amended to read as follows:

24-15-1. If a defendant is sentenced to the state penitentiary, the Department of Corrections shall develop a file which shall contain a complete history of that person. The executive director of the Board of Pardons and Paroles shall generate an adequate case history of each inmate of the state penitentiary to enable the executive director to make recommendations to the Board of

EXECUTIVE ORDERS

CHAPTER 1

EXO 2011-01

EXECUTIVE ORDERS

EXECUTIVE REORGANIZATION ORDER 2011-01

WHEREAS, Article IV, Section 8, of the constitution of the state of South Dakota provides that "Except as to elected constitutional officers, the Governor may make such changes in the organization of offices, boards, commissions, agencies and instrumentalities, and in allocation of their functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the Legislature within five legislative days after it convenes, and shall become effective, and shall have the force of law, within ninety days after submission, unless disapproved by a resolution concurred in by a majority of all the members of either house"; and

WHEREAS, this executive order has been submitted to the 86th Legislative Assembly on the 2nd legislative day, being the 12th day of January, 2011;

IT IS, THEREFORE, BY EXECUTIVE ORDER, directed that the executive branch of state government be reorganized to comply with the following sections of this order.

GENERAL PROVISIONS

Section 1. This executive order shall be known and may be cited as the "Executive Reorganization Order 2011-01".

Section 2. Any agency not enumerated in this order, but established by law within another agency which is transferred to a principal department under this order, shall also be transferred in its current form to the same principal department and its functions shall be allocated between itself and the principal department as they are now allocated between itself and the agency within which it is established.

Section 3. "Agency" as used in this order shall mean any board, authority, commission, department, bureau, division or any other unit or organization of state government.

Section 4. "Function" as used in this order shall mean any authority, power, responsibility, duty or activity of an agency, whether or not specifically provided for by law.

Section 5. Unless otherwise provided by this order, division directors shall be appointed by the head of the department or bureau of which the division is a part, and shall be removable at the pleasure of the department or bureau head, provided, however, that both the appointment and removal of division directors shall be subject to approval by the Governor.

Section 6. It is the intent of this order not to repeal or amend any laws relating to functions performed by an agency, unless the intent is specifically expressed in this order or unless there is an irreconcilable conflict between this order and those laws.

Pardons and Paroles. The case history shall be transferred and kept as a permanent record of the Department of Corrections, solely for the proper supervision of the inmate by the Department of Corrections and as a guide to the inmate's needs. Except for the information authorized for release pursuant to § 24-2-20, no person other than members of the Board of Pardons and Paroles, its executive director, the secretary of corrections, or any person specifically delegated for such access by the secretary of corrections, may inspect such file unless otherwise ordered by a circuit court or subpoena after notice to the secretary of corrections and an opportunity for a hearing on any objections to inspection. The secretary shall have ten days after receipt of the notice to inform the court if the secretary requests a hearing.

Section 2. That § 24-15A-14 be amended to read as follows:

24-15A-14. If a defendant is sentenced to prison, the department shall develop a file which shall contain a complete history of that person. Except for the information authorized for release pursuant to § 24-2-20, the record shall be a permanent record of the department, solely for the proper supervision of the inmate by the department and as a guide to the inmate's needs. No person other than members of the board, its executive director, the secretary, and any person specifically delegated for such access by the secretary, may inspect the file unless otherwise ordered by a circuit court or subpoena after notice to the secretary and an opportunity for a hearing on any objections to inspection. The secretary shall have ten days after receipt of the notice to inform the court if the secretary requests a hearing.

Signed February 8, 2011

CHAPTER 128

(HB 1018)

Partial early final discharge from parole created.

ENTITLED, An Act to provide for a partial early final discharge from parole.

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

Section 1. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

Upon the recommendation of the supervising agent, the board may grant a partial early final discharge for a parolee or person serving a suspended sentence under supervision of the board if the board is satisfied that a partial early final discharge would be in the best interests of society and the inmate. A partial early final discharge is a reduction of the sentence term in an amount less than the amount to discharge the inmate from supervision. A partial early final discharge shall impact the inmate's sentence discharge date pursuant to §§ 24-15A-6 and 24-5-1. There is no entitlement to a partial early final discharge. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any inmate.

Section 2. That § 24-15A-6 be amended to read as follows:

24-15A-6. The department shall establish the sentence discharge date for each inmate based on the total sentence length, minus court ordered jail time credit. Each inmate shall be under the jurisdiction of the department, either incarcerated or under parole release or a combination, for the entire term of the inmate's total sentence length unless the board grants an early final discharge pursuant to § 24-15A-8, a partial early final discharge pursuant to section 1 of this Act, the court modifies the sentence or the sentence is commuted.

Section 3. That § 24-5-2 be amended to read as follows:

24-5-2. ~~Whenever~~ If any inmate has been discharged under the provisions of§ 24-5-1, 24-5-7, or section 1 of this Act, the inmate shall, at the time of discharge, be considered as restored to the full rights of citizenship. At the time of the discharge of any inmate under the provisions of this chapter, the inmate shall receive from the secretary of corrections a certificate stating that the inmate has been restored to the full rights of a citizen. If an inmate is on parole at the time the inmate becomes eligible for discharge, the secretary of corrections shall issue a like certificate stating that the inmate has been restored to the full rights of a citizen.

The secretary of corrections shall mail a copy of the certificate to the clerk of court for the county from which the inmate was sentenced.

Section 4. That § 24-15A-1 be amended to read as follows:

24-15A-1. The provisions of this chapter do not apply to persons sentenced to prison for crimes committed prior to July 1, 1996, except the provisions in §§ 24-15A-18 and 24-15A-19 involving multiple sentences occurring both prior and subsequent to the enactment of this chapter and the provisions of §§ 24-15A-9, 24-15A-10, 24-15A-11, 24-15A-31, 24-15A-37, 24-15A-40, ~~and the provisions in §~~ 24-15A-11.1, and section 1 of this Act.

Section 5. That § 24-15A-22 be amended to read as follows:

24-15A-22. The victim may request in writing to be notified by the board when an inmate who was convicted of committing the crime is released on parole, the inmate's parole is revoked, an early final discharge or a partial early final discharge is considered, an offender is granted a clemency hearing, or clemency is recommended. The board shall send the notice by first class mail to the address provided by the victim. However, the board is not liable for any damages to the victim if ~~it~~ the board fails to mail the notice.

Section 6. That § 24-15-8.1 be amended to read as follows:

24-15-8.1. The victim may request in writing to be notified by the Board of Pardons and Parole when an inmate who was convicted of committing the crime is granted parole, the inmate's parole is revoked, an early final discharge or partial early final discharge is considered, an offender is granted a clemency hearing, or clemency is recommended. The board shall send the notice by first class mail to the address provided by the victim. However, the board is not liable for any damages to the victim if the board fails to mail the notice.

Section 7. That § 24-15-24 be amended to read as follows:

24-15-24. If the Board of Pardons and Paroles is satisfied that any provision of § 24-15-20 has been violated, it may revoke the parole and reinstate the terms of the original sentence and conviction or it may modify conditions of parole and restore parole status. In addition, the board may order the reduction of time in full or in part for good conduct granted under § 24-5-1 and withdraw time granted toward a partial early final discharge. If the board does not find that the provisions of § 24-15-20 have been violated, the board may restore the parolee to the original or modified terms and conditions of parole.

Section 8. That § 24-15A-28 be amended to read as follows:

24-15A-28. If the board is satisfied that any provision of § 24-15A-27 has been violated, it may revoke the parole and reinstate the terms of the original sentence and conviction or it may modify conditions of parole and restore parole status. In addition, the board may order the denial of credit for time served on parole and withdraw time granted toward a partial early final discharge. If the

board does not find that the provisions of § 24-15A-27 have been violated, the board may restore the parolee to the original or modified terms and conditions of the parolee's parole.

Signed February 8, 2011

CHAPTER 129

(SB 37)

Appropriation for the construction and renovation of a combined minimum security and parole facility in Rapid City.

ENTITLED, An Act to revise the appropriation for the construction and renovation of a combined minimum security and parole facility in Rapid City and to declare an emergency.

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

Section 1. That section 1 of chapter 135 of the 2010 Session Laws be amended to read as follows:

Section 1. There is hereby appropriated from the general fund the sum of one million eight hundred thousand dollars ($1,800,000), the sum of ~~eight hundred twenty-five thousand dollars ($825,000)~~ two million six hundred twenty-five thousand dollars ($2,625,000) in other fund expenditure authority, and the sum of one million one hundred seventy-five thousand dollars ($1,175,000) in federal fund expenditure authority, or so much thereof as may be necessary, to the Department of Corrections for the purpose of designing, renovating, and constructing, furnishing and equipping a correctional unit including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and engineering services, asbestos abatement, and such other services and improvements as may be required.

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

Signed March 3, 2011

DOMESTIC RELATIONS

CHAPTER 130

(SB 114)

Parties to a divorce may be restrained from making changes to insurance coverage.

ENTITLED, An Act to provide that parties to a divorce or separate maintenance action be restrained from making changes to insurance coverage.

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

Section 1. That § 25-4-33.1 be amended to read as follows:

25-4-33.1. Upon the filing of a summons and complaint for divorce or separate maintenance by the plaintiff, and upon personal service of the summons and complaint on the defendant, a temporary restraining order shall be in effect against both parties until the final decree is entered, the complaint dismissed, or until further order of the court:

(1) Restraining both parties from transferring, encumbering, concealing, or in any way dissipating or disposing of any marital assets, without the written consent of the other party or an order of the court, except as may be necessary in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the temporary restraining order is in effect;

(2) Restraining both parties from molesting or disturbing the peace of the other party; ~~and~~

(3) Restraining both parties from removing any minor child of the parties from the state without the written consent of the other party or an order of the court; and

(4) Restraining both parties from making any changes to any insurance coverage for the parties or any child of the parties without the written consent of the other party or an order of the court unless the change under the applicable insurance coverage increases the benefits, adds additional property, persons, or perils to be covered, or is required by the insurer.

The provisions of the temporary restraining order shall be printed upon the summons and shall become an order of the court upon fulfillment of the requirements of service. However, nothing in this ~~paragraph~~ section precludes either party from applying to the court for any further relief or for the modification or revocation of any order.

Signed March 14, 2011

CHAPTER 131

(SB 178)

The rights and duties of joint legal custodians changed.

ENTITLED, An Act to revise certain provisions relating to the rights and duties of joint legal custodians.

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

Section 1. That § 25-5-7.1 be amended to read as follows:

25-5-7.1. In any custody dispute between parents, the court may order joint legal custody so that both parents retain full parental rights and responsibilities with respect to their child and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child. In ordering joint legal custody, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those aspects between the parties based on the best interest of the child. If it appears to the court to be in the best interest of the child, the court may order, or the parties may agree, how any such responsibility shall be divided. Such areas of responsibility may include the child's primary physical residence, child care, education, extracurricular activities, medical and dental

care, religious instruction, the child's use of motor vehicles, and any other responsibilities which the court finds unique to a particular family or in the best interest of the child.

Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

Each parent sharing joint legal custody of their child shall foster the other parent's relationship with the child.

Signed March 15, 2011

CHAPTER 132

(HB 1011)

Domestic abuse program requirements revised.

ENTITLED, An Act to revise certain provisions pertaining to domestic abuse programs.

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

Section 1. That § 25-10-16 be amended to read as follows:

25-10-16. The board of county commissioners shall award domestic ~~abuse grants~~ violence program funds to domestic ~~abuse~~ violence programs that are locally controlled and situated in the state. ~~Grants~~ The funds may be awarded to either local governmental or nongovernmental agencies or organizations, and may not be used for anything other than the costs of local programs or shelters. No award of funds may be contingent upon the county receiving individual client information. The county may retain ten percent of the county domestic ~~abuse~~ violence program funds for administrative costs. The board of county commissioners shall distribute the money in the county domestic ~~abuse~~ violence program fund to the recipients ~~of the grants~~ authorized by this section ~~on a quarterly basis~~ no less than annually.

Section 2. That § 25-10-18 be amended to read as follows:

25-10-18. Domestic ~~abuse grants~~ violence program funds shall be awarded by the board of county commissioners to domestic violence programs that meet the requirements of § 25-10-28 within the following guidelines:

(1) Equitable distribution of funds according to need;

(2) Distribution of funds through grants to private, nonprofit organizations;

(3) Assurance of proper fiscal control and fund accounting procedures;

(4) Exchange of technical assistance with other related programs;

(5) Assurance of proper recordkeeping and reporting procedures; and

(6) Assurance of full opportunity for active citizen participation.

Section 3. That § 25-10-28 be amended to read as follows:

25-10-28. Any shelter or service programs established pursuant to ~~§§ 25-10-26 to 25-10-33, inclusive,~~ this chapter shall have as its primary purpose the provision of services to victims of domestic violence or sexual assault, or both, and shall include:

(1) Crisis telephone and referral services available twenty-four hours per day, seven days per week;

(2) Shelter available twenty-four hours per day, seven days per week; ~~and~~

(3) Prevention and education programs periodically available to the local community;

(4) Victim advocacy; and

(5) Confidentiality of identity, location, records, and information pertaining to any person to whom services are or were provided.

Section 4. That § 25-10-30 be amended to read as follows:

25-10-30. The Department of Social Services shall promulgate rules pursuant to chapter 1-26 to:

(1) Establish minimum qualifications of ~~contractors eligible for grants pursuant to §§ 25-10-26 to 25-10-33, inclusive;~~ sexual assault or domestic violence shelters or service programs; and

(2) ~~Establish procedures for grant applications and disbursements; and~~

~~(3)~~ Evaluate the programs and services provided by ~~contractors with the grants received pursuant to §§ 25-10-26 to 25-10-33, inclusive~~ sexual assault or domestic violence shelters or service programs.

Section 5. That § 25-10-15 be repealed.

Section 6. That § 25-10-17 be repealed.

Section 7. That § 25-10-19 be repealed.

Section 8. That § 25-10-20 be repealed.

Section 9. That § 25-10-26 be repealed.

Section 10. That § 25-10-27 be repealed.

Section 11. That § 25-10-29 be repealed.

Section 12. That § 25-10-31 be repealed.

Section 13. That § 25-10-32 be repealed.

Section 14. That § 25-10-33 be repealed.

Signed February 10, 2011

CHAPTER 133

(HB 1154)

Persons convicted of crimes involving domestic abuse to support domestic abuse shelters.

ENTITLED, An Act to require persons convicted of crimes involving domestic violence to support domestic violence programs.

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

Section 1. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as follows:

In addition to any other penalty, assessment, or fine provided by law, the court shall order any person convicted of a crime involving domestic violence or domestic abuse to remit costs in the amount of twenty-five dollars to the clerk of courts. The clerk of courts shall forward any amount collected to the county treasurer for deposit in the county domestic violence program fund. Failure to remit the amount to the clerk of courts in the time specified by the court is punishable by contempt proceedings.

Signed March 11, 2011

PUBLIC WELFARE AND ASSISTANCE

CHAPTER 134

(SB 191)

The sales tax on food refund program revised.

ENTITLED, An Act to revise certain provisions providing for the sales tax on food refund program.

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

Section 1. That § 28-1-71 be amended to read as follows:

28-1-71. To be eligible for the sales tax on food refund program, a person shall:

(1) Be a South Dakota resident;

(2) Be the head of the household and certify the number of persons in the household;

(3) Have countable income above one hundred thirty percent and below one hundred fifty-one percent of the federal poverty level, as updated annually by the Department of Social Services in administrative rules promulgated pursuant to chapter 1-26;

(4) Not be a current recipient of ~~food stamp~~ supplemental nutrition assistance program benefits.

Section 2. That § 28-1-73 be amended to read as follows:

28-1-73. To receive sales tax on food refunds pursuant to §§ 28-1-70 to 28-1-77, inclusive, a household shall~~:~~

~~(1) Apply~~ apply for ~~a quarterly~~ an annual refund during an annual enrollment period on forms prescribed by the Department of Social Services ~~using the prior three month periods's income;~~

~~(2) Certify that any refund received will only be used to purchase food as defined in §§ 10-45-1 and 10-46-1; and~~

~~(3) Report quarterly on forms prescribed by the Department of Social Services to continue eligibility for a refund~~.

Section 3. That § 28-1-74 be repealed.

Section 4. That § 28-1-75 be amended to read as follows:

28-1-75. The estimate of sales tax on food paid or refund awarded under this program shall be determined based on:

(1) The thrifty food plan as adopted and updated annually in administrative rules promulgated by the Department of Social Services pursuant to chapter 1-26; and

(2) The number of individuals in the household.

A monthly allotment shall be determined based on the thrifty food plan's maximum allotment and the corresponding number of individuals in the household. Once the monthly allotment is determined, it shall be annualized and multiplied by the average sales tax rate in South Dakota as determined by the Department of Revenue and Regulation. This shall be the annual level of refund eligible for the household. ~~The annual refund shall be converted to a quarterly refund. This shall be the amount of eligible refund to the household.~~

Section 5. That § 28-1-76 be repealed.

Section 6. That § 28-1-77 be amended to read as follows:

28-1-77. The method of payment utilized to make payments authorized by §§ 28-1-70 to 28-1-77, inclusive, shall be made by ~~electronic debit card or by paper~~ warrant.

Section 7. That section 5 of chapter 140 of the 2009 Session Laws be amended to read as follows:

Section 5. ~~Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.~~ The provisions of § 4-8-21 do not apply to the moneys appropriated by section 3 of this Act.

Signed March 15, 2011

UNIFORM PROBATE CODE

CHAPTER 135

(HB 1062)

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

ENTITLED, An Act to adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

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

Section 101. This Act may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Section 102. In this Act:

(1) "Adult" means an individual who has attained eighteen years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under chapter 29A-5.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under chapter 29A-5, but excludes one who is merely a guardian ad litem.

(4) "Guardianship order" means an order appointing a guardian, limited guardian, or temporary guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(7) "Person," except in the term, protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Protected person" means an adult for whom a guardian or conservator has been appointed.

(9) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(10) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(11) "Provisional order" means a temporary, preliminary, or tentative order which must be finalized by a subsequent order.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult alleged to need protection for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Section 103. A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 101 to 302, inclusive, of this Act, and sections 501 and 502 of this Act.

Section 104. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this Act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Section 105. (a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(1) Hold an evidentiary hearing;

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent;

(4) Order any appropriate investigation of a person involved in a proceeding;

(5) Forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4);

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the protected person;

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R 160.103, as of January 1, 2011.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Section 106. (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by

deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

Section 201. (a) In sections 201 to 209, inclusive, of this Act:

(1) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under sections 203 of this Act and section 301(e) of this Act whether a respondent has a significant connection with a particular state, the court shall consider:

(1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) The location of the respondent's property; and

(4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, drivers license, social relationship, and receipt of services.

Section 202. Sections 201 to 209, inclusive, of this Act, provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Section 203. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(A) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 206 of this Act;

(3) This state does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 204 of this Act are met.

Section 204. (a) A court of this state lacking jurisdiction under section 203 of this Act has special jurisdiction to do any of the following:

(1) Appoint a temporary guardian pursuant to § 29A-5-315 in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state unless extended by the court for up to an additional ninety days for good cause shown;

(2) Issue a protective order with respect to real or tangible personal property located in this state;

(3) Appoint a guardian or conservator for the protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 301 of this Act.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Section 205. Except as otherwise provided in section 204 of this Act, a court that has appointed a guardian or issued a protective order consistent with this Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Section 206. (a) A court of this state having jurisdiction under section 203 of this Act to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and

proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) Any expressed preference of the respondent;

(2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) The length of time the respondent was physically present in or was a legal resident of this or another state;

(4) The distance of the respondent from the court in each state;

(5) The financial circumstances of the respondent's estate;

(6) The nature and location of the evidence;

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) The familiarity of the court of each state with the facts and issues in the proceeding; and

(9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Section 207. (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) Decline to exercise jurisdiction;

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) Continue to exercise jurisdiction after considering:

(A) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 206(c) of this Act; and

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 203 of this Act.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and

travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this Act.

Section 208. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Section 209. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section 204(a)(1) or (a)(2) of this Act, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 203 of this Act, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 203 of this Act before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section 203 of this Act, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Section 301. (a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Plans for care and services for the protected person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 201(b) of this Act;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 302 of this Act; and

(2) The documents required to terminate a guardianship or conservatorship in this state.

Section 302. (a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 301 of this Act, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the protected person; or

(2) The guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 301 of this Act transferring the proceeding to this state.

(f) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under chapter 29A-5 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Section 401. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

Section 402. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

Section 403. (a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this Act and other law of this state to enforce a registered order.

Section 501. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 502. This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Section 7003(b).

Section 503. That § 29A-5-108 be amended to read as follows:

29A-5-108. A petition for the appointment of a guardian or conservator shall be filed in the county in which the minor ~~or person alleged to need protection~~ either resides or is present or, if the minor ~~or person alleged to need protection~~ has been admitted to a facility pursuant to an order of court, in the county in which that court is located. If the minor ~~or person alleged to need protection~~ neither resides in nor is present in this state, a petition for the appointment of a conservator shall be filed in a county in which the minor ~~or person alleged to need protection~~ has property or in the county having jurisdiction of a decedent's estate in which the minor ~~or person alleged to need protection~~ has an interest. The court of the county in which the proceeding is first commenced shall have exclusive jurisdiction to decide the petition unless that court determines that a transfer of venue would be in the best interests of the minor ~~or person alleged to need protection~~.

Section 503.1 That § 29A-5-109 be amended to read as follows:

29A-5-109. Following the appointment of a guardian or conservator, the court with jurisdiction over the proceeding may order the transfer of jurisdiction to another county in this state or to another state if it appears to the court by reason of the residence or location of the minor ~~or protected person~~, the location of a major portion of the property, or the residence of the guardian or conservator, that the interests of the minor ~~or protected person~~ will be best served by a transfer.

Section 504. (a) This Act applies to guardianship and protective proceedings begun after June 30, 2011.

(b) The provisions of sections 101 to 106, inclusive, and 301 to 502, inclusive, of this Act, apply to proceedings begun before [the effective date], regardless of whether a guardianship or protective order has been issued.

Signed March 17, 2011

HIGHWAYS AND BRIDGES

CHAPTER 136

(SB 59)

Counties not responsible for constructing, repairing, and maintaining roads contained in improvement districts.

ENTITLED, An Act to revise certain provisions clarifying that counties are not responsible for constructing, repairing, and maintaining roads contained in improvement districts.

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

Section 1. That § 31-12-26 be amended to read as follows:

31-12-26. Each board of county commissioners and county superintendent of highways in organized counties shall construct, repair, and maintain all secondary roads within the counties not included in any municipality, organized civil township, improvement district organized pursuant to chapter 7-25A, or county road district organized pursuant to chapter 31-12A.

Section 2. That § 31-12-27 be amended to read as follows:

31-12-27. Each board of county commissioners may levy annually a tax upon the taxable property within the county not included in any municipality, organized civil township, improvement district organized pursuant to chapter 7-25A, or county road district organized pursuant to chapter 31-12A, to carry out the provisions of § 31-12-26. If a county levies a tax, the tax shall be certified, become payable and delinquent, and, if not paid, shall draw interest and penalty as other county taxes. The tax shall be used for such purposes.

Section 3. That § 10-13-36 be amended to read as follows:

10-13-36. The governing body of a taxing district may exceed the limit pursuant to § 10-13-35 through the imposition of an excess tax levy. The governing body of a taxing district may impose an excess tax levy with an affirmative two-thirds vote of the governing body on or before July fifteenth of the year prior to the year the taxes are payable. On any excess tax levy approved after July 1, 2002, the governing body of the taxing district shall specify in the resolution the year or number of years the excess tax levy will be applied.

The requirements for an announcement made pursuant to this section are as follows:

(1) The decision of the governing body to originally impose or subsequently increase an excess tax levy shall be published within ten days of the decision;

(2) Publication shall be made at least twice in the legal newspaper designated by the governing body pursuant to law, with no fewer than five days between publication dates, before the opt out takes effect;

(3) The announcement shall be at least three newspaper columns in width and four inches in length or at least one-sixth of a page in size, whichever size is greater;

(4) The announcement shall be headed with the following statement in a typeface no less than eighteen point type: "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE OF $(fill in amount)." The remainder of the announcement shall consist of a reproduction of the "Resolution for Opt Out," including the amount that property taxes will be increased annually by the proposed opt out and a statement of the right to refer the decision of the board to a vote of the people as provided in this section. The secretary of revenue and regulation, in rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used by the taxing district for notification of taxpayers as required by this section.

However, the requirements of subdivisions (3) and (4) shall be waived if:

(A) The opt out is for less than fifteen thousand dollars; or

(B) A copy of the resolution for opt out is mailed to every property taxpayer in the local governmental unit, by first class mail or bulk mail, within twenty days of the decision to opt out; and

(C) A copy of the resolution for opt out is printed in each official newspaper in the local governmental unit's boundaries.

For the purposes of subsections (A),(B),and(C), the first publication is not deemed to have occurred until three days after the mailing is sent or the resolution is delivered to the official newspaper.

The opt out decision may be referred to a vote of the people upon a resolution of the governing body of the taxing district or by a petition signed by at least five percent of the registered voters in the taxing district and filed with the respective governing body within twenty days of the first publication of the decision. The referendum election shall be held on or before October first preceding the year the taxes are payable. If the opt out is for the purpose of increasing the secondary road levy pursuant to § 31-12-27, only the registered voters within the area of the county not included in any municipality, organized civil township, improvement district organized pursuant to chapter 7-25A, or county road district organized pursuant to chapter 31-12 may petition or vote on the referred decision. The taxing districts may not exceed the levy limits provided in chapter 10-12 except for the provisions in § 10-12-36.

Section 4. That subdivision (5) of § 7-25A-1 be amended to read as follows:

(5) "District roads," all highways, streets, roads, alleys, sidewalks, storm drains, bridges, and thoroughfares of all kinds and descriptions contained within the boundaries of the district;

Signed March 3, 2011

CHAPTER 137

(HB 1085)

Political advertising prohibited in highway rights-of-way.

ENTITLED, An Act to prohibit certain political advertising in highway rights-of-way.

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

Section 1. That § 31-28-14 be amended to read as follows:

31-28-14. No unauthorized person may erect or maintain upon any highway, any warning or direction sign, marker, signal, or light in imitation of any official sign, marker, signal, or light erected under the provisions of this chapter. No person may erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial or political campaign advertising. Nothing in this section prohibits the erection or maintenance of any sign, marker, or signal bearing thereon the name of an organization authorized to erect the sign, marker, or signal by the department or any local authority as defined in this chapter.

Section 2. That § 31-28-20 be amended to read as follows:

31-28-20. No person may place or maintain nor may any public authority permit upon any highway or public right-of-way any traffic sign or signal bearing any commercial or political campaign advertising. A violation of this section is a Class 2 misdemeanor.

Section 3. That § 31-28-22 be amended to read as follows:

31-28-22. Every sign, signal, marking, or device prohibited by §§ 31-28-19 and 31-28-20 is hereby declared to be a public nuisance, and the Department of Transportation or local authorities within their respective ~~jurisdiction may remove the same or cause it to be removed without notice~~ jurisdictions shall remove the sign, signal, marking, or device or cause it to be removed immediately. The removal may be done without notice.

Signed March 17, 2011

MOTOR VEHICLES

CHAPTER 138

(HB 1027)

Trailer licensing revised.

ENTITLED, An Act to revise the definition of a trailer for the purpose of titling a restored or rebuilt trailer.

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

Section 1. That § 32-3-53.4 be amended to read as follows:

32-3-53.4. For the purposes of ~~§§ 32-3-51 to 32-3-51.3, inclusive, and~~ §§ 32-3-53~~,~~ and 32-3-53.2, ~~and~~ a trailer is any trailer as defined in § 32-3-1 which has an actual weight of ~~two~~ three thousand pounds or greater.

Signed February 15, 2011

CHAPTER 139

(HB 1192)

Registration fees increased for motor vehicles.

ENTITLED, An Act to increase certain registration fees for the use of motor vehicles on the public highways.

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

Section 1. That § 32-5-6 be amended to read as follows:

32-5-6. License fees and compensation on a noncommercial motor vehicle which is an automobile, pickup truck, or van as provided by § 32-5-5, shall be determined by the manufacturer's shipping weight, including accessories, as follows:

(1) Two thousand pounds or less, inclusive, thirty dollars;

(2) From 2,001 to 4,000 pounds, inclusive, ~~forty-two~~ fifty-one dollars;

(3) From 4,001 to 6,000 pounds, inclusive, ~~fifty-five~~ seventy-two dollars and fifty cents;

(4) Over 6,000 pounds, ~~sixty-five~~ ninety-two dollars and fifty cents.

Section 2. That § 32-5-6.3 be amended to read as follows:

32-5-6.3. License fees on a noncommercial motor vehicle which is not an automobile, pickup truck, or van licensed pursuant to § 32-5-6 shall be determined by the gross weight of the motor vehicle as defined by subdivision 32-9-1(6), and based on the following:

(1) Eight thousand pounds or less, inclusive, ~~fifty-five~~ eighty-two dollars and fifty cents;

(2) For each additional 2,000 pounds or major fraction thereof ~~from 8,001 to 32,000 pounds, inclusive, three dollars~~ from 8,001 to 20,000 pounds, inclusive, six dollars;

(3) For ~~each additional 2,000 pounds or major fraction thereof from 32,001 to 54,000 pounds, inclusive, six dollars;~~

~~(4) For each additional 2,000 pounds or major fraction thereof from 54,001 to 80,000 pounds, inclusive, eighteen dollars;~~

~~(5) For each additional 2,000 pounds or major fraction thereof in excess of 80,000 pounds, twenty-four dollars~~ a vehicle in excess of 20,000 pounds, the total license fee shall be forty-five percent of the total license fee established for commercial vehicles of equivalent weight pursuant to § 32-9-15.

It is a Class 2 misdemeanor for a person to operate a motor vehicle licensed pursuant to this section at a gross weight in excess of the gross weight for which it has been licensed. If the owner

chooses to lower the registered weight, the plate shall be returned along with any validation decal and a new plate issued with the correct registered weight.

Section 3. That § 32-5-6.1 be amended to read as follows:

32-5-6.1. License fees for any noncommercial motor home shall be determined by the manufacturer's shipping weight, including accessories, as follows:

(1) Six thousand pounds or less, inclusive, ~~sixty~~ seventy-five dollars;

(2) From 6,001 to 8,000 pounds, inclusive, ~~eighty~~ one hundred dollars;

(3) From 8,001 to 10,000 pounds, inclusive, one hundred twenty-five dollars;

(4) For each additional 2,000 pounds or major fraction thereof, in excess of 10,000 pounds, ~~twenty~~ twenty-five dollars.

For the purposes of this section, a motor home is a vehicle designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

Section 4. That § 32-5-8 be amended to read as follows:

32-5-8. License fees and compensation for any recreational vehicle as defined in § 32-3-1 or for any noncommercial trailer and semitrailer, for use of the highways payable under § 32-5-5 and pulled by a noncommercial motor vehicle on which the license fees were paid pursuant to § 32-5-6, shall be determined upon the basis of their actual weight as follows:

(1) One thousand pounds or less, inclusive, ~~ten~~ twelve dollars and fifty cents;

(2) From 1,001 to 2,000 pounds, inclusive, ~~twenty~~ twenty-five dollars;

(3) From 2,001 to 3,000 pounds, inclusive, ~~thirty-five~~ forty dollars;

(4) From 3,001 to 4,000 pounds, inclusive, ~~forty-five~~ fifty-two dollars and fifty cents;

(5) From 4,001 to 5,000 pounds, inclusive, ~~fifty-five~~ sixty-five dollars;

(6) From 5,001 to 6,000 pounds, inclusive, ~~sixty-five~~ seventy-seven dollars and fifty cents;

(7) From 6,001 to 7,000 pounds, inclusive, ~~seventy-five~~ ninety dollars;

(8) From 7,001 to 8,000 pounds, inclusive, ~~eighty-five~~ one hundred two dollars and fifty cents;

(9) From 8,001 to 9,000 pounds, inclusive, ~~ninety-five~~ one hundred fifteen dollars;

(10) From 9,001 to 10,000 pounds, inclusive, one hundred ~~five~~ twenty-seven dollars and fifty cents;

(11) For each additional 1,000 pounds or major fraction thereof, in excess of 10,000 pounds, ~~ten~~ twelve dollars and fifty cents.

Any trailer or semitrailer licensed pursuant to this section may be pulled by a noncommercial motor vehicle licensed pursuant to § 32-5-8.1 or a commercially licensed motor vehicle if the motor vehicle is registered at a gross weight to cover the weight of the trailer and its load.

Section 5. That § 32-5-9 be amended to read as follows:

32-5-9. License fees and compensation for use of the highways payable under § 32-5-5 shall be: ~~nine~~ twelve dollars ~~and fifty cents~~ for motorcycles with a piston displacement of less than three hundred fifty cubic centimeters and ~~twelve~~ fourteen dollars and fifty cents for motorcycles with a piston displacement of three hundred fifty cubic centimeters or more.

Section 6. That § 32-6B-21 be amended to read as follows:

32-6B-21. The department shall issue metal numerical license plates to licensed dealers upon application and payment of a ~~forty-two~~ sixty-three dollar yearly fee to be paid at the time of the annual review date for each set desired. ~~Such~~ The fees shall be distributed in the manner specified in §§ 32-11-2 and 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered consecutively and shall bear as a prefix the number 77. The plates may be issued for a multiple year period. If a dealer's license is revoked or canceled or the dealer goes out of business the 77 plates shall be returned to the department. If any person operates a motor vehicle with 77 plates after the dealer license is revoked or canceled or after the dealer goes out of business, or if the person refuses to return the plates, the person is guilty of a Class 2 misdemeanor.

Section 7. That § 32-6B-23 be amended to read as follows:

32-6B-23. The department shall issue to any motorcycle dealer and trailer dealer licensed pursuant to this chapter metal number plates bearing a prefix of the letter "D" and containing a distinguishing identification number of the licensee. The dealer shall make application to the department for the plates and pay a fee of ~~ten~~ fifteen dollars for each plate. One license plate shall be displayed on the rear of any motorcycle, or trailer, semitrailer, or travel trailer, owned by the dealer while traveling on a public highway. Any vehicle owned by the licensed dealer and bearing the dealers' metal plate may be operated on the streets and highways of this state for any purpose, including demonstration by a prospective buyer. All money collected pursuant to this section shall be distributed in the manner specified in § 32-11-2 and §§ 32-11-4.1 to 32-11-9, inclusive.

Section 8. That § 32-6B-36.3 be amended to read as follows:

32-6B-36.3. The department shall issue metal numerical license plates to an auction agency upon application and payment of a ~~forty-two~~ sixty-three dollar yearly fee to be paid at the time of the annual review date for each set desired. Such fees shall be distributed in the manner specified in §§ 32-11-2 and 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered consecutively and shall bear as a prefix the number "99." The plates may be issued for a multiple year period. If an auction agency's license is revoked or canceled or the auction agency goes out of business, the "99" plates shall be returned to the department. If any person operates a motor vehicle with "99" plates after the auction agency's license is revoked or canceled or after the auction agency goes out of business, or if the person refuses to return the plates, the person is guilty of a Class 2 misdemeanor.

Section 9. That § 32-5-30 be amended to read as follows:

32-5-30. If any noncommercial motor vehicle, according to the manufacturer's model year designation, is ~~five~~ ten years old or more on January first of the year for which a license fee is required, such fee shall be seventy percent of the fee ordinarily prescribed.

Section 10. That § 32-9-15 be amended to read as follows:

32-9-15. In consideration of the unusual use of the public highways, each person, except as otherwise provided in this chapter, desiring to operate a motor vehicle, trailer, or semitrailer, upon the public highways of this state as a motor carrier, shall annually pay the commercial motor vehicle fee as follows, to the county treasurer of the county of which ~~he~~ the person is a resident, if a carrier of property; or to the Department of Revenue and Regulation, if ~~he~~ the person is not a resident of this state:

(1) Gross weight under 4000 pounds, eighty-five dollars;

(2) Gross weight of 4001 to 6000 pounds, one hundred dollars;

(3) Gross weight of 6001 to 8000 pounds, one hundred fifteen dollars;

(4) Gross weight of 8001 to 10,000 pounds, one hundred thirty dollars;

(5) Gross weight of 10,001 to 12,000 pounds, one hundred fifty dollars;

(6) Gross weight of 12,001 to 14,000 pounds, one hundred seventy-five dollars;

(7) Gross weight of 14,001 to 16,000 pounds, two hundred dollars;

(8) Gross weight of 16,001 to 18,000 pounds, two hundred twenty-five dollars;

(9) Gross weight of 18,001 to 20,000 pounds, two hundred fifty dollars;

(10) For each additional 2000 pounds or major fraction thereof in excess of 20,000 pounds, forty dollars.

(11) For each vehicle or combination of vehicles as defined in § 32-22-10 with a gross weight in excess of 78,000 pounds, seven dollars in addition to the fee schedule above.

If any commercial motor vehicle, according to the manufacturer's model year designation, is ~~five~~ ten years old or more on January first of the year for which a license fee is required, that fee is ninety percent of the fee ordinarily prescribed.

Section 11. That § 32-5-6 be amended to read as follows:

32-5-6. License fees and compensation on a noncommercial motor vehicle which is an automobile, pickup truck, or van as provided by § 32-5-5, shall be determined by the manufacturer's shipping weight, including accessories, as follows:

(1) Two thousand pounds or less, inclusive, thirty dollars;

(2) From 2,001 to 4,000 pounds, inclusive, ~~forty-two~~ sixty dollars;

(3) From 4,001 to 6,000 pounds, inclusive, ~~fifty-five~~ ninety dollars;

(4) Over 6,000 pounds, ~~sixty-five~~ one hundred twenty dollars.

Section 12. That § 32-5-6.3 be amended to read as follows:

32-5-6.3. License fees on a noncommercial motor vehicle which is not an automobile, pickup truck, or van licensed pursuant to § 32-5-6 shall be determined by the gross weight of the motor vehicle as defined by subdivision 32-9-1(6), and based on the following:

(1) Eight thousand pounds or less, inclusive, ~~fifty-five~~ one hundred dollars;

(2) For each additional 2,000 pounds or major fraction thereof ~~from 8,001 to 32,000 pounds, inclusive, three dollars~~ from 8,001 to 20,000 pounds, inclusive, ten dollars;

(3) For ~~each additional 2,000 pounds or major fraction thereof from 32,001 to 54,000 pounds, inclusive, six dollars;~~

~~(4) For each additional 2,000 pounds or major fraction thereof from 54,001 to 80,000 pounds, inclusive, eighteen dollars;~~

~~(5) For each additional 2,000 pounds or major fraction thereof in excess of 80,000 pounds, twenty-four dollars~~ a vehicle in excess of 20,000 pounds, the total license fee shall be sixty percent of the total license fee established for commercial vehicles of equivalent weight pursuant to § 32-9-15.

It is a Class 2 misdemeanor for a person to operate a motor vehicle licensed pursuant to this section at a gross weight in excess of the gross weight for which it has been licensed. If the owner chooses to lower the registered weight, the plate shall be returned along with any validation decal and a new plate issued with the correct registered weight.

Section 13. That § 32-5-6.1 be amended to read as follows:

32-5-6.1. License fees for any noncommercial motor home shall be determined by the manufacturer's shipping weight, including accessories, as follows:

(1) Six thousand pounds or less, inclusive, ~~sixty~~ ninety dollars;

(2) From 6,001 to 8,000 pounds, inclusive, ~~eighty~~ one hundred twenty dollars;

(3) From 8,001 to 10,000 pounds, inclusive, one hundred fifty dollars;

(4) For each additional 2,000 pounds or major fraction thereof, in excess of 10,000 pounds, ~~twenty~~ thirty dollars.

For the purposes of this section, a motor home is a vehicle designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

Section 14. That § 32-5-8 be amended to read as follows:

32-5-8. License fees and compensation for any recreational vehicle as defined in § 32-3-1 or for any noncommercial trailer and semitrailer, for use of the highways payable under § 32-5-5 and pulled by a noncommercial motor vehicle on which the license fees were paid pursuant to § 32-5-6, shall be determined upon the basis of their actual weight as follows:

(1) One thousand pounds or less, inclusive, ~~ten~~ fifteen dollars;

(2) From 1,001 to 2,000 pounds, inclusive, ~~twenty~~ thirty dollars;

(3) From 2,001 to 3,000 pounds, inclusive, ~~thirty-five~~ forty-five dollars;

(4) From 3,001 to 4,000 pounds, inclusive, ~~forty-five~~ sixty dollars;

(5) From 4,001 to 5,000 pounds, inclusive, ~~fifty-five~~ seventy-five dollars;

(6) From 5,001 to 6,000 pounds, inclusive, ~~sixty-five~~ ninety dollars;

(7) From 6,001 to 7,000 pounds, inclusive, ~~seventy-five~~ one hundred five dollars;

(8) From 7,001 to 8,000 pounds, inclusive, ~~eighty-five~~ one hundred twenty dollars;

(9) From 8,001 to 9,000 pounds, inclusive, ~~ninety-five~~ one hundred thirty-five dollars;

(10) From 9,001 to 10,000 pounds, inclusive, one hundred ~~five~~ fifty dollars;

(11) For each additional 1,000 pounds or major fraction thereof, in excess of 10,000 pounds, ~~ten~~ fifteen dollars.

Any trailer or semitrailer licensed pursuant to this section may be pulled by a noncommercial motor vehicle licensed pursuant to § 32-5-8.1 or a commercially licensed motor vehicle if the motor vehicle is registered at a gross weight to cover the weight of the trailer and its load.

Section 15. That § 32-5-9 be amended to read as follows:

32-5-9. License fees and compensation for use of the highways payable under § 32-5-5 shall be: ~~nine~~ fourteen dollars and fifty cents for motorcycles with a piston displacement of less than three hundred fifty cubic centimeters and ~~twelve~~ seventeen dollars for motorcycles with a piston displacement of three hundred fifty cubic centimeters or more.

Section 16. That § 32-6B-21 be amended to read as follows:

32-6B-21. The department shall issue metal numerical license plates to licensed dealers upon application and payment of a ~~forty-two~~ eighty-four dollar yearly fee to be paid at the time of the annual review date for each set desired. ~~Such~~ The fees shall be distributed in the manner specified in §§ 32-11-2 and 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered consecutively and shall bear as a prefix the number 77. The plates may be issued for a multiple year period. If a dealer's license is revoked or canceled or the dealer goes out of business the 77 plates shall be returned to the department. If any person operates a motor vehicle with 77 plates after the dealer license is revoked or canceled or after the dealer goes out of business, or if the person refuses to return the plates, the person is guilty of a Class 2 misdemeanor.

Section 17. That § 32-6B-23 be amended to read as follows:

32-6B-23. The department shall issue to any motorcycle dealer and trailer dealer licensed pursuant to this chapter metal number plates bearing a prefix of the letter "D" and containing a distinguishing identification number of the licensee. The dealer shall make application to the department for the plates and pay a fee of ~~ten~~ twenty dollars for each plate. One license plate shall be displayed on the rear of any motorcycle, or trailer, semitrailer, or travel trailer, owned by the dealer while traveling on a public highway. Any vehicle owned by the licensed dealer and bearing the dealers' metal plate may be operated on the streets and highways of this state for any purpose, including demonstration by a prospective buyer. All money collected pursuant to this section shall be distributed in the manner specified in § 32-11-2 and §§ 32-11-4.1 to 32-11-9, inclusive.

Section 18. That § 32-6B-36.3 be amended to read as follows:

32-6B-36.3. The department shall issue metal numerical license plates to an auction agency upon application and payment of a ~~forty-two~~ eighty-four dollar yearly fee to be paid at the time of the annual review date for each set desired. Such fees shall be distributed in the manner specified in §§ 32-11-2 and 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered consecutively and shall bear as a prefix the number "99." The plates may be issued for a multiple year period. If an auction agency's license is revoked or canceled or the auction agency goes out of business, the "99" plates shall be returned to the department. If any person operates a motor vehicle with "99" plates after the auction agency's license is revoked or canceled or after the

auction agency goes out of business, or if the person refuses to return the plates, the person is guilty of a Class 2 misdemeanor.

Section 19. The provisions of sections 11 to 18, inclusive, of this Act are effective on July 1, 2013.

Veto Overridden. Filed March 10, 2011.

CHAPTER 140

(HB 1207)

Consignment or auction of out-of-state titled vehicles and motorcycles.

ENTITLED, An Act to allow the consignment or auction of certain out-of-state vehicles and motorcycles.

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

Section 1. That § 32-6B-3.4 be amended to read as follows:

32-6B-3.4. Notwithstanding the provisions of subdivision 32-6B-5(4), any titled vehicle, including a vehicle owned by a vehicle dealer who has obtained a permit under the provisions of section 3 of this Act but who is licensed in another state, except a motorcycle, which is not titled in South Dakota and which is at least twenty years old may be sold at a public auction on consignment if the title of the vehicle is issued in the name of the seller. All other provisions of this chapter pertaining to consignment sales or public auctions need be met.

Section 2. That § 32-6B-3.5 be amended to read as follows:

32-6B-3.5. Notwithstanding the provisions of subdivision 32-6B-5(4), any motorcycle, including a motorcycle owned by a dealer who has obtained a permit under the provisions of section 3 of this Act but who is licensed in another state, which is not titled in South Dakota and which is at least thirty years old may be sold at a public auction on consignment if the title of the vehicle is issued in the name of the seller. All other provisions of this chapter pertaining to consignment sales or public auction need to be met.

Section 3. That § 32-6B-5 be amended to read as follows:

32-6B-5. The following persons are exempt from the provisions of this chapter:

(1) Any employee of any person licensed as a vehicle dealer if engaged in the specific performance of the employee's duties;

(2) Any financial institution chartered or licensed in any other jurisdiction that acquires vehicles as an incident to the financial institution's regular business and sells the vehicles to dealers licensed under this chapter;

(3) Any nonprofit automobile club if selling automobiles twenty years old or older under the provisions of chapter 32-3;

(4) Any person acting as an auctioneer if auctioning South Dakota titled vehicles for a licensed dealer or a person who is exempt from the provisions of this chapter;

(5) Any person engaged in the business of manufacturing or converting new vehicles if selling the vehicles to a licensed dealer holding a franchise from the original manufacturer of the vehicle;

(6) Any person engaged in the business of manufacturing or customizing motor vehicles may display but may not sell any motor vehicle at an event, if the event lasts three or more days and if the person registers with and purchases a permit from the Department of Revenue and Regulation. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. This subdivision does not apply to any customized motorcycle being built for and displayed during a sponsored event where the participants had to qualify through competition. A permit is required if any customized motorcycle is being displayed outside the sponsored event. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;

(7) Any person engaged in the business of manufacturing trailers may display but may not sell any trailers at an event, if the event lasts three or more days and if the person registers with and purchases a permit from the Department of Revenue and Regulation. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;

(8) Any person may sell motorcycles at an event, if the event lasts three or more days and if the person registers and purchases a permit from the Department of Revenue and Regulation. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. The permit shall only be issued if the new motorcycles being sold are not franchised in this state. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, if the permit is purchased at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;

(9) Any person may sell trailers at an event, if the event lasts three or more days and if the person registers and purchases a permit from the Department of Revenue and Regulation. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. The permit will only be issued if the trailers being sold are not franchised in this state. If purchased in advance of the event, the person shall pay a fee of two hundred fifty dollars for a ten-day temporary permit. However, regardless of whether or not there is a franchise in this state, any person may display a trailer at such an event. However, if the permit is purchased ~~before~~ at the event, the person shall pay a fee of five hundred dollars for the temporary permit. Any person found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation;

(10) Any person not engaged in the sale of vehicles as a business and is disposing of vehicles used solely for personal use if the vehicles were acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter;

(11) Any person not engaged in the sale of vehicles as a business who operates fleets of vehicles and is disposing of vehicles used in the person's business if the same were acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter;

(12) Any person who sells less than five vehicles in a twelve-month period, unless the person is licensed as a dealer in another state or holds himself or herself out as being in the business of selling vehicles. However, if the vehicles are travel trailers, any person who sells less than three travel trailers in a twelve-month period;

(13) Any public officer while performing the officer's official duties;

(14) Any receiver, trustee, personal representative, guardian, or other person appointed by or acting under the judgment or order of any court;

(15) Any regulated lenders as that term is defined in § 54-3-14, any insurance company authorized to do business in this state, or any financing institution as defined in and licensed pursuant to chapter 54-4 that acquires vehicles as an incident to its regular business;

(16) Any towing agency that acquires and sells a vehicle which has been towed at the request of a private landowner under the provision of chapter 32-36 or at the request of a law enforcement officer, if no vehicle is sold for an amount over two hundred dollars;

(17) Any vehicle rental and leasing company that sells its used vehicles to dealers licensed under this chapter; ~~and~~

(18) Any South Dakota nonprofit corporation which gives a donated motor vehicle to a needy family or individual; and

(19) Any dealer licensed in another state may sell any vehicle or motorcycle that is not titled in South Dakota if the vehicle is at least twenty years old and the motorcycle is at least thirty years old at a public auction on consignment if the title is issued in the name of the dealer and the dealer purchases a permit from the Department of Revenue. Before issuance of a permit, the applicant shall provide proof the applicant is a licensed dealer in the applicant's own state and has no outstanding dealer violations. If purchased in advance of the auction, the dealer shall pay a fee of two hundred fifty dollars for the permit. However, if the permit is purchased at or after the auction, the dealer shall pay a fee of five hundred dollars for the temporary permit. Any dealer found to be in violation of the provisions contained in this subdivision shall be denied a temporary permit for a period of one year from the date of violation.

Signed March 17, 2011

CHAPTER 141

(HB 1256)

The requirements for the sale of new or used vehicles, revised.

ENTITLED, An Act to revise certain provisions regarding the sale of new or used vehicles and the sale of certain emergency vehicles.

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

Section 1. That § 32-6B-4 be amended to read as follows:

32-6B-4. No person may engage in the business, either exclusively or in addition to any other occupation, of selling, ~~or may offer~~ offering to sell, ~~display, or advertise the sale of~~ or displaying new or used vehicles, without a license as provided in § 32-6B-12. A violation of this section is a Class 2 misdemeanor.

The term, offering to sell, as used in this section, does not mean traditional advertising. However, the term includes the physical presence in this state of a new or used vehicle offered for sale by a person not exempt pursuant to the provisions of § 32-6B-5. For an emergency vehicle dealer, as defined by § 32-6B-1, the term includes the submission of a bid proposal for the sale of a vehicle if the bid proposal is offered in response to a bid request originating in this state.

Signed March 10, 2011

CHAPTER 142

(HB 1026)

Fleet licensing requirements repealed.

ENTITLED, An Act to repeal fleet licensing procedures for certain vehicles.

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

Section 1. That § 32-9-55 be repealed.

Section 2. That § 32-9-56 be repealed.

Signed February 15, 2011

CHAPTER 143

(HB 1060)

Motor vehicle license fees distribution revised.

ENTITLED, An Act to revise certain provisions concerning how motor vehicle license fees are distributed in the unorganized territories of a county.

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

Section 1. That § 32-11-7 be amended to read as follows:

32-11-7. If any portion of a county is unorganized territory, the amount that would have gone to the unorganized territory under § 32-11-6, shall be retained by the county and expended by the county upon construction, reconstruction, and maintenance of roads and bridges of the unorganized portion of the county. ~~The county shall expend the money among the congressional townships in the unorganized territory according to the number of miles of maintained township roads within the unorganized territory.~~

Signed February 15, 2011

CHAPTER 144

(SB 18)

Commercial driver license requirements changed.

ENTITLED, An Act to revise certain requirements regarding a commercial driver license.

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

Section 1. That § 32-12A-1 be amended to read as follows:

32-12A-1. Terms used in this chapter mean:

(1) "Alcohol," any substance containing any form of alcohol;

(2) "Commercial driver license," or "CDL," a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle;

(3) "Commercial driver license information system," or "CDLIS," the information system established pursuant to the Commercial Motor Vehicle Safety Act (CMVSA) to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers;

(4) "Commercial driver instruction permit," a permit issued pursuant to § 32-12A-12;

(5) "Commercial motor vehicle," a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross combination weight rating of twenty-six thousand one pounds or more and the towed unit has a gross vehicle weight rating of more than ten thousand pounds;

(b) If the vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds;

(c) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(d) If the vehicle is of any size and is used in the transportation of hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F, as amended through January 1, ~~2010~~ 2011;

(6) "Controlled substance," any substance so classified under section 102(6) of the Controlled Substances Act (21 U.S.C. § 802(6)), and includes all substances listed on Schedules I through V, of 21 C.F.R. Part 1308, inclusive, as amended through January 1, ~~2010~~ 2011;

(7) "Conviction," an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated;

(8) "Department," the Department of Public Safety;

(9) "Disqualification," any of the following actions:

(a) The suspension, revocation, or cancellation of a CDL by the state or jurisdiction of issuance;

(b) Any withdrawal of a person's privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations); or

(c) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle;

(10) "Domicile," the state where a person has that person's true, fixed, and permanent home and principal residence and to which that person has the intention of returning whenever that person is absent;

(11) "Drive," to drive, operate, or be in actual physical control of a motor vehicle;

(12) "Driver," any person who drives, operates, or is in actual physical control of a commercial motor vehicle, or who is required to hold a commercial driver license;

(13) "Employer," any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle;

(14) "Endorsement," an authorization to a person's CDL required to permit the person to operate certain types of commercial motor vehicles;

(15) "Fatality," the death of a person as the result of a motor vehicle accident;

(16) "Felony," any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year;

(17) "Foreign jurisdiction," any jurisdiction other than a state of the United States;

(18) "Gross combination weight rating" or "GCWR," the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR shall be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon;

(19) "Gross vehicle weight rating," or "GVWR," the value specified by the manufacturer as the loaded weight of a single vehicle;

(20) "Hazardous materials," any material that has been designated as hazardous under 49 U.S.C. 5103 as amended through January 1, ~~2010~~ 2011, and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73, as amended through January 1, ~~2010~~ 2011;

(21) "Imminent hazard," the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment;

(22) "Medical variance," the receipt of one of the following that allows a driver to be issued a medical certificate:

(a) An exemption letter permitting operation of a commercial motor vehicle pursuant to 49 CFR part 381 or 49 CFR part 391, as amended through January 1, 2011; or

(b) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49CFR part 391, as amended through January 1, 2011;

(23) "Motor vehicle," a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power, used on highways, but does not include any vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail;

~~(23)~~(24) "Noncommercial motor vehicle," a motor vehicle or combination of motor vehicles not defined as a commercial motor vehicle;

~~(24)~~(25) "Nonresident CDL," a commercial driver license issued by a state to a person who resides in a foreign jurisdiction or a person domiciled in another state that is prohibited from issuing commercial driver licenses by the Federal Motor Carrier Safety Administration;

~~(25)~~(26) "Notice of final administrative decision," a determination rendered by an agency of competent jurisdiction when all avenues of appeal have been exhausted or time to appeal has elapsed;

~~(26)~~(27) "Operator's license," any license issued by a state to a person which authorizes the person full privileges to drive a motor vehicle;

~~(27)~~(28) "Out-of-service order," an out-of-service order as defined by 49 C.F.R. part 390.5, as of January 1, ~~2010~~ 2011;

~~(28)~~(29) "Recreational vehicle," a vehicle which is self-propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use;

~~(29)~~(30) "School bus," any motor vehicle that is used to transport sixteen or more passengers, including the driver, and is used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier;

~~(30)~~(31) "Serious traffic violation," a conviction of:

(a) Excessive speeding, involving a single charge of any speed fifteen miles per hour or more, above the posted speed limit, in violation of chapter 32-25;

(b) Reckless driving, in violation of § 32-24-1;

(c) Careless driving, in violation of § 32-24-8;

(d) Improper or erratic traffic lane changes, in violation of § 32-26-6;

(e) Following the vehicle ahead too closely, in violation of § 32-26-40;

(f) A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;

(g) Failure to stop or yield, in violation of §§ 32-29-2.1, 32-29-2.2, 32-29-3, and 32-29-4;

(h) Failure to stop or slow vehicle for a school bus, in violation of § 32-32-6;

(i) Eluding a police vehicle, in violation of § 32-33-18;

(j) Overtaking or passing another vehicle, in violation of §§ 32-26-26, 32-26-27, 32-26-28, 32-26-34, 32-26-35, 32-26-36, and 32-26-37;

(k) Driving a commercial motor vehicle without obtaining a commercial driver license, in violation of § 32-12A-6;

(l) Driving a commercial motor vehicle without a commercial driver license in the driver's possession in violation of § 32-12A-6. Any person who provides proof to the court or to the enforcement authority that issued the citation, by the date the person was required to appear in court or to pay a fine for the violation, that the person held a valid commercial driver license on the date the citation was issued, is not guilty of a serious traffic violation; or

(m) Driving a commercial motor vehicle without the proper class of commercial driver license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported in violation of § 32-12A-6;

~~(31)~~(32) "State," a state of the United States and the District of Columbia;

~~(32)~~(33) "United States," the fifty states and the District of Columbia.

Section 2. That § 32-12A-7 be amended to read as follows:

32-12A-7. Each commercial motor vehicle driver shall meet the minimum standards and qualifications established under this chapter and in accordance with 49 C.F.R. subpart 383.23 as amended through January 1, ~~2010~~ 2011. Each commercial motor vehicle driver shall obtain a commercial driver license.

Section 3. That § 32-12A-11 be amended to read as follows:

32-12A-11. No person may be issued a commercial driver license unless that person is a resident of this state, has passed a knowledge and skills test for driving a commercial motor vehicle that complies with the minimum federal standards established by federal regulation enumerated in 49 C.F.R. Part 383, Subparts G and H as amended through January 1, ~~2010~~ 2011, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the department.

The department may authorize a person, an employer, a private driver training facility, other private institution, a department, agency, or instrumentality of local government, of this state or another state, to administer the skills test specified by this section, if:

(1) The test is the same which would otherwise be administered by the department; and

(2) The third party has entered into an agreement with the department that complies with requirements of 49 C.F.R. Part 383.75 as amended through January 1, ~~2010~~ 2011. Failure to comply with agreement may result in termination of the agreement.

The department may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. Part 383.77 as amended through January 1, ~~2010~~ 2011.

No commercial driver license or commercial driver instruction permit may be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's operator's license or driving privilege is suspended, revoked, or cancelled in any state; nor may a commercial driver license be issued to a person who has a commercial driver license, noncommercial driver license, noncommercial instruction permit or commercial driver instruction permit issued by any other state unless the person first surrenders all such licenses or permits, which shall be destroyed by the department. The issuing jurisdiction shall be notified that the licensee has applied for a commercial driver license or commercial driver instruction permit in a new jurisdiction. A violation of this provision is a Class 2 misdemeanor.

Section 4. That § 32-12A-13 be amended to read as follows:

32-12A-13. The department may issue a nonresident CDL to:

(1) A person who is domiciled in a foreign jurisdiction whose commercial motor vehicle testing and licensing standards, as determined by the administrator of the Federal Motor Carrier Safety Administration, do not meet the testing standards established in 49 C.F.R. Part 383 as amended through January 1, ~~2010~~ 2011;

(2) A person who is domiciled in a state whose commercial driver licensing program has been decertified by the administrator of the Federal motor Carrier Safety Administration.

The word, nonresident, shall appear on the face of the nonresident CDL. An applicant shall surrender any nonresident CDL issued by another state. The holder of a nonresident CDL is subject to the same disqualifications and conditions applicable to a commercial driver license issued to a person domiciled in this state.

A nonresident commercial driver license issued pursuant to subdivision (1) of this section may be renewed only upon presentation of valid documentary evidence that the applicant is authorized to stay in the United States. The department may renew a nonresident commercial driver license without a skills or knowledge test if the license has been expired for a period less than one year.

Section 5. That § 32-12A-14 be amended to read as follows:

32-12A-14. The application for a commercial driver license or commercial instruction permit, shall include the following:

(1) The full legal name and current mailing and residential address of the applicant;

(2) A physical description of the applicant including sex, height, weight and eye color;

(3) Date of birth;

(4) The applicant's social security number;

(5) The applicant's signature;

(6) The applicant's color photograph;

(7) Certifications including those required by 49 C.F.R. Part 383.71(a) as amended through January 1, ~~2010~~ 2011;

(8) A consent to release driving record information; and

(9) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the ten-year period immediately preceding the date of the application.

Section 6. That § 32-12A-21 be amended to read as follows:

32-12A-21. The holder of a valid commercial driver license may drive any vehicle in the class for which that license is issued, and any lesser class of vehicle, except a motorcycle. No person may drive a vehicle requiring an endorsement unless the proper corresponding endorsement appears on that person's commercial driver license. A commercial driver license may be issued with the following classifications:

(1) Class A Combination Vehicle. Any combination of commercial motor vehicles and towed vehicles with a gross vehicle weight rating of twenty-six thousand one or more pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds. This class includes:

(a) Any vehicle designed to transport sixteen or more passengers, including the driver; and

(b) Any vehicle used in the transportation of hazardous materials that require the vehicle to be placarded under 49 C.F.R. Part 172, Subpart F, as amended through January 1, ~~2010~~ 2011;

(2) Class B Heavy Straight Vehicle. Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds or any such commercial motor vehicle towing a vehicle with a gross weight rating not exceeding ten thousand pounds. This class includes:

(a) Any vehicle designed to transport sixteen or more passengers, including the driver; and

(b) Any vehicle used in the transportation of hazardous materials which require the vehicle to be placarded under 49 C.F.R. Part 172, Subpart F, as amended through January 1, ~~2010~~ 2011;

(3) Class C Small Vehicle. Any single vehicle, or combination of vehicles, that meet neither the definition of class A nor that of class B as contained in this section. This class includes any vehicle designed to transport sixteen or more passengers, including the driver, or is used in the transportation of hazardous materials which require the vehicle to be placarded under 49 C.F.R. Part 172, Subpart F, as amended through January 1, ~~2010~~ 2011.

Section 7. That § 32-12A-23 be amended to read as follows:

32-12A-23. Restrictions to a commercial driver license shall be as follows:

(1) B --Operation only of a commercial motor vehicle which is not equipped with air brakes; ~~and~~

(2) J --Operation only of a Class B and C commercial passenger vehicle; ~~and~~

(3) K --Operation only of a Class C commercial passenger vehicle; ~~and~~

(4) W --Operation only of a restricted CDL; and

(5) V --Operation only if driver has received a medical variance that allows the driver to be issued a medical certificate.

Section 8. That § 32-12A-24 be amended to read as follows:

32-12A-24. No person under the age of eighteen may receive an endorsement on a commercial driver license to drive a school bus. Any school bus endorsed driver operating with an intrastate restriction shall meet all requirements of 49 C.F.R. Part 391 Subpart E as amended through January 1, ~~2010~~ 2011, in the area of physical qualifications.

Section 9. That § 32-12A-24.1 be amended to read as follows:

32-12A-24.1. Any person with insulin-treated diabetes mellitus, who is otherwise medically qualified under the physical examination standards of the federal motor carrier safety regulations, as provided by § 32-12A-24, may request a waiver for this condition from the department. If an applicant for an intrastate school bus endorsement meets the requirements as specified in subdivisions (1) to (7), inclusive, of this section, the department shall grant a waiver. The department shall notify each applicant and each affected school district or private contractor of its determination of eligibility for each application for a waiver. An applicant shall:

(1) Provide evidence, signed by a physician, physician assistant, or nurse practitioner that the applicant has no other disqualifying conditions including diabetes-related complications;

(2) Provide evidence, signed by a physician, physician assistant, or nurse practitioner that the applicant has had no recurrent severe hypoglycemic episodes resulting in a loss of consciousness or any severe hypoglycemic episode within the past five years;

(3) Provide evidence, signed by a physician, physician assistant, or nurse practitioner that the applicant has had no recurrent severe hypoglycemic episodes requiring the assistance of another person within the past five years;

(4) Provide evidence, signed by a physician, physician assistant, or nurse practitioner that the applicant has had no recurrent severe hypoglycemic episodes resulting in impaired cognitive functioning that occurred without warning symptoms within the past five years;

(5) Document that the applicant has been examined by a board-certified or board-eligible physician, a physician assistant, or a nurse practitioner who has conducted a complete medical examination. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

(a) The date insulin use began;

(b) Diabetes diagnosis and disease history;

(c) Hospitalization records, if any;

(d) Consultation notes for diagnostic examinations;

(e) Special studies pertaining to the diabetes;

(f) Follow-up reports;

(g) Reports of any severe hypoglycemic episode within the last five years;

(h) Two measures of glycosylated hemoglobin, the first ninety days before the last and current measure;

(i) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and any other medications or drugs taken; and

(j) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

(6) Submit a signed statement from an endocrinologist indicating the following medical determinations:

(a) The endocrinologist is familiar with the applicant's medical history for the past five years, either through actual treatment over that time or through consultation with a physician who has treated the applicant through that time;

(b) The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures that must be followed to monitor and manage the applicant's diabetes and the procedures to be followed if complications arise; and

(c) The applicant has the ability and has demonstrated the willingness to properly monitor and manage the applicant's diabetes; and

(7) Submit a separate signed statement from an ophthalmologist or optometrist that the applicant has been examined and does not have diabetic retinopathy and meets the vision standards in 49 CFR 391.41 (b)(10), as amended through January 1, ~~2010~~ 2011, or has been issued a valid medical exemption. If the applicant has any evidence of diabetic retinopathy, the applicant shall be examined by an ophthalmologist and submit a signed statement from the ophthalmologist that the applicant does not have unstable advancing disease of blood vessels in the retina, known as unstable proliferative diabetic retinopathy.

Each school bus driver that is granted a waiver for insulin-treated diabetes mellitus issued by the department shall maintain the waiver in the driver's possession at all times. Any school bus driver that is granted the waiver and has a severe hypoglycemic episode forfeits the waiver and may not reapply for five years.

The department shall promulgate rules, pursuant to chapter 1-26, necessary for the determination of eligibility and issuance of a waiver to persons with insulin-treated diabetes mellitus in accordance with the provisions of this section.

A waiver granted under this section may be issued for a maximum of two years. The driver may reapply for renewal of the waiver every two years.

Section 10. That § 32-12A-48 be amended to read as follows:

32-12A-48. The secretary of the Department of Public Safety may promulgate rules, pursuant to chapter 1-26, in the following areas:

(1) Definitions;

(2) Commercial driver license waivers;

(3) Single license requirement;

(4) Notification requirements and employer responsibilities;

(5) Federal disqualifications and penalties;

(6) Testing and licensing procedures;

(7) Vehicle groups and endorsements;

(8) Required knowledge and skills;

(9) Tests;

(10) Background check requirements;

(11) Commercial driver license document; and

(12) Other rules necessary to implement the provisions of C.F.R. 49, Chapter 3, Subchapter B, parts 383, 384, 390, 391, and 392, inclusive, as amended through January 1, ~~2010~~ 2011.

Section 11. That § 32-12A-52 be amended to read as follows:

32-12A-52. Any person is disqualified from driving a commercial motor vehicle for a period of one hundred eighty days if convicted of a first violation of an out-of-service order.

If a violation of an out-of-service order pursuant to this section occurred while transporting hazardous materials required to be placarded under 49 C.F.R. Part 172, Subpart F, as amended through January 1, ~~2010~~ 2011, or while operating a motor vehicle designed to transport sixteen or more passengers, including the driver, the operator is disqualified for a period of one hundred eighty days.

Section 12. That § 32-12A-53 be amended to read as follows:

32-12A-53. Any person is disqualified from driving a commercial motor vehicle for a period of two years if convicted of two violations of out-of-service orders in separate incidents during a ten-year period.

If the violations of out-of-service orders pursuant to this section occurred while transporting hazardous materials required to be placarded under 49 C.F.R. Part 172, Subpart F, as amended through January 1, ~~2010~~ 2011, or while operating a motor vehicle designed to transport sixteen or more passengers, including the driver, the operator is disqualified for a period of three years.

Section 13. That § 32-12A-54 be amended to read as follows:

32-12A-54. Any person is disqualified from driving a commercial motor vehicle for a period of three years if convicted of three or more violations of out-of-service orders in separate incidents during a ten-year period.

If the violations of out-of-service orders pursuant to this section occurred while transporting hazardous materials required to be placarded under 49 C.F.R. Part 172, Subpart F, as amended through January 1, ~~2010~~ 2011, or while operating a motor vehicle designed to transport sixteen or more passengers, including the driver, the operator is disqualified for a period of five years.

Section 14. That § 32-12A-58 be amended to read as follows:

32-12A-58. The state hereby adopts Title 49 of the Code of Federal Regulations, chapter 3, subpart B, parts 383 and 384, inclusive, June 17, 1994, as amended through January 1, ~~2010~~ 2011.

Section 15. That § 32-12A-62 be amended to read as follows:

32-12A-62. Any disqualification imposed in accordance with the provisions of 49 CFR part 383.52 as amended through January 1, ~~2010~~ 2011, relating to notification from the Federal Motor Carrier Safety Administration that the driver is disqualified from driving a commercial motor vehicle and is determined to constitute an imminent hazard becomes a part of the driver's record maintained by the department.

Section 16. That § 32-12A-63 be amended to read as follows:

32-12A-63. The department shall furnish to any person upon request a certified abstract of the operating record for the last three years of any person subject to the provisions of chapter 32-35. The abstract shall include enumeration of any motor vehicle accident in which the person has been involved, the person's medical certification status, and reference to any conviction of the person for a violation of any motor vehicle law as reported to the department. The department shall collect five dollars for each abstract. The fee shall be credited to the state motor vehicle fund. No governmental entity or subdivision is subject to this fee.

The department shall furnish, upon request and a payment of a fee of five dollars, full information regarding the driver record for the last three years of a person who has been issued a commercial driver license to an employer or to a prospective employer if the person has given written consent to the employer or prospective employer to obtain this information. The department shall furnish this same information to the driver upon the payment of a fee of five dollars. The information shall include the person's medical certification status, any disqualification, and any other licensing action for a violation of any state or local law relating to motor vehicle traffic control, other than a parking violation committed in any type of vehicle. The fee shall be credited to the state motor vehicle fund. No governmental entity or subdivision is subject to this fee.

Section 17. That chapter 32-12A be amended by adding thereto a NEW SECTION to read as follows:

If a commercial driver license holder's medical certification or medical variance expires, or if the Federal Motor Carrier Safety Administration notifies the department that a medical variance was removed or rescinded, the department shall do the following:

(1) Notify the commercial driver license holder that his or her medical certification or variance is not valid and that the commercial driver license privilege will be removed from the driver license unless the driver submits a current medical certificate or medical variance or changes his or her self-certification to driving only in excepted or intrastate commerce; and

(2) Downgrade the driver's commercial driver license to a noncommercial driver license within sixty days of the driver's medical certification status becoming noncertified to operate a commercial motor vehicle.

Signed February 15, 2011

CHAPTER 145

(SB 55)

Allow hunting of coyotes from snowmobiles.

ENTITLED, An Act to allow the shooting of coyotes from snowmobiles.

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

Section 1. That § 32-20A-11 be amended to read as follows:

32-20A-11. ~~No~~ Except as provided in § 32-20A-12, no person other than a law enforcement officer or conservation officer may operate or ride in any snowmobile with any firearm in ~~his~~ the person's possession unless the firearm is completely unloaded and within a carrying case which encloses the entire firearm. A violation of this section is a Class 2 misdemeanor.

Section 2. That § 32-20A-12 be amended to read as follows:

32-20A-12. No person may chase, drive, harass, kill, or attempt to kill any game animal or game bird with or from a snowmobile, except that coyotes may be taken by a landowner or lessee on the landowner's property by shooting from stationary snowmobiles through the use of firearms if the operator of the snowmobile is at least eighteen years of age. Not more than one person may be aboard the snowmobile while coyotes are being hunted or taken pursuant to this section. A violation of this section is a Class 2 misdemeanor.

Signed March 14, 2011

CHAPTER 146

(SB 5)

Warning signs for bridges and the maximum weight allowed, requirements revised.

ENTITLED, An Act to revise the maximum distance from a bridge for posting maximum vehicle weight warning signage.

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

Section 1. That § 32-22-47 be amended to read as follows:

32-22-47. The board of county commissioners of any county, the board of supervisors of any township, the board of trustees of any road district, or the ~~Transportation Commission of the South Dakota~~ Department of Transportation, ~~their officers or agents,~~ shall erect and maintain at a point on the right-of-way and within ~~one~~ six hundred feet of both entrances to any bridge and may, where ~~they deem~~ it is deemed necessary, erect and maintain at the nearest road intersection in each direction from any bridge, upon any public highway which it is the duty of the ~~boards~~ board or department to maintain and repair, a conspicuous sign specifying in large numerals, the maximum weight of any vehicle, laden or unladen, which may enter upon or cross over ~~such~~ the bridge. No

bridge signing is necessary for bridges which can accommodate motor vehicles operating under the legal weight maximums provided in § 32-22-16.

Signed February 22, 2011

CHAPTER 147

(SB 20)

Driving under the influence fourth and fifth offense, punishment changed.

ENTITLED, An Act to remove the requirement of a prior felony conviction for a fourth and subsequent driving under the influence offenses.

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

Section 1. That § 32-23-4.6 be amended to read as follows:

32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense ~~and the person has previously been convicted of a felony under § 32-23-4~~, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall order that the driver's license of any person so convicted be revoked for a period of not less than two years from the date sentence is imposed or two years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling programs.

Section 2. That § 32-23-4.7 be amended to read as follows:

32-23-4.7. If conviction for violation of § 32-23-1 is for a fifth offense, or subsequent offenses thereafter, ~~and the person has previously been convicted of a felony under § 32-23-4,~~ the person is guilty of a Class 4 felony and the court, in pronouncing sentencing, shall order that the driver's license of any person so convicted be revoked for a period of not less than three years from the date sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling programs.

Signed March 10, 2011

CHAPTER 148

(SB 28)

Limited speed zones through highway work areas, authority to create revised.

ENTITLED, An Act to revise certain provisions regarding the authority of the secretary of transportation to create limited speed zones through highway work areas and to declare an emergency.

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

Section 1. That § 32-25-19.1 be amended to read as follows:

32-25-19.1. Notwithstanding § 32-25-7 or chapter 1-26, the secretary of transportation may establish limited speed zones through highway work areas on the state trunk highways if the secretary of public safety and the secretary of transportation, after consultation with the director of the highway patrol, agree the limited speed zones are necessary for the protection of life and property. The beginning and end of the immediate work area in each limited speed zone established under this section shall be conspicuously posted with signs showing the maximum speed permissible. ~~Such signs shall be posted only during the hours when work is actually being performed.~~ The location and duration of this posting shall be filed with the secretary of transportation. A violation of the speed limit established under the provisions of this section is a Class 2 misdemeanor. Any fine for a violation of this section while workers are present shall be double the usual fine for speeding but may not exceed the maximum fine for a Class 2 misdemeanor as provided by § 22-6-2. Signs showing that ~~any~~ such a fine will be double the usual speeding fine shall be erected in advance of the regulatory speed limit signs.

Section 2. That § 32-25-7.2 be repealed.

Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 3, 2011

CHAPTER 149

(SB 4)

Pedestrian control requirements updated.

ENTITLED, An Act to update certain standards governing pedestrian control signals.

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

Section 1. That § 32-28-9.1 be amended to read as follows:

32-28-9.1. Whenever special pedestrian control signals exhibiting the words, walk or don't walk, or exhibiting a lighted international pedestrian walk or don't walk symbol are in place, the signals indicate the following:

(1) Walk or a lighted international pedestrian walk symbol.--Pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles;

(2) Don't walk or a lighted international pedestrian don't walk symbol.--No pedestrian may start to cross the roadway in the direction of the signal, but any pedestrian who has partially completed crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal or lighted international pedestrian don't walk symbol is showing.

The special pedestrian control signals shall conform to the Manual on Uniform Traffic Control Devices, ~~2003~~ 2009 Edition.

~~A violation of this section~~ Any failure by a driver to comply with the provisions of this section is a Class 2 misdemeanor. ~~A violation of this section~~ Any failure by a pedestrian to comply with the provisions of this section is a petty offense.

Signed March 3, 2011

MILITARY AFFAIRS

CHAPTER 150

(SB 6)

Sisseton National Guard Armory transferred to Sisseton.

ENTITLED, An Act to provide for the transfer of the state's interests in the Sisseton National Guard Armory to the city of Sisseton.

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

Section 1. The Department of Military and Veterans Affairs shall donate the state's interest in the National Guard armory located in Sisseton to the city of Sisseton subject to the city's acceptance of the property as the property exists on the date of acceptance.

Section 2. The Governor shall execute a quitclaim deed which shall be attested by the commissioner of School and Public Lands, to transfer all of the state's right, title and interest in the real estate and improvements commonly known as the Sisseton National Guard Armory, located at the Lots One, Two, Three, Four, Five, Six, Thirteen, Fourteen, Fifteen, Sixteen, Seventeen, Eighteen, Nineteen, Twenty, Twenty-one, Twenty-two, Twenty-three and Twenty-four Block Fifty-four, city of Sisseton in Roberts County, South Dakota, as such deed was recorded in Book 51 of Deeds on page 187 in the Roberts County Register of Deeds Office, to the city of Sisseton subject to any applicable statutory and constitutional reservations.

Signed March 3, 2011

CHAPTER 151

(HB 1245)

The salary and travel reimbursements changed for county veterans' service officers.

ENTITLED, An Act to revise certain provisions regarding the travel reimbursements for county veterans' service officers.

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

Section 1. That § 33-16-18 be amended to read as follows:

33-16-18. The Division of Veterans Affairs shall cooperate with all national, state, county, municipal, and private social agencies in securing to veterans and their dependents the benefits provided by national, state, and county laws, municipal ordinances, or public or private social agencies. To that end, the division may hold schools of instruction for county service officers, or call in for instruction individual county service officers if, in the judgment of the Department of Military and Veterans Affairs, the giving of such instructions or holding of such schools is in the best interest of the work of the division. ~~The division may pay the actual necessary expenses of any such county service officer when attending such schools of instruction away from the officer's home county, out of the funds appropriated for the administration of the Division of Veterans Affairs. The expenses may be paid out only on duly itemized vouchers presented to the state auditor and approved by the director of the division.~~

Signed March 22, 2011

CHAPTER 152

(SB 53)

Veteran's rights, benefits, and services revised.

ENTITLED, An Act to revise certain provisions relating to the Veterans Commission and to veterans' rights, benefits, and services.

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

Section 1. That § 33-16-1 be amended to read as follows:

33-16-1. For the purposes of this chapter, a veteran is a person who ~~has served in the armed forces of the United States during a time when the Congress has declared a state of war to exist, who is in such wartime service, or who is a veteran as defined by~~ meets the provisions of § 33-17-1; and who was a legal resident of South Dakota at the time of entry into service or who, following discharge, has been a resident of this state for one year. However, a nonresident in this state is entitled to any benefits available in this state to a South Dakota resident under the same conditions.

Section 2. That § 33-16-2 be amended to read as follows:

33-16-2. The Division of Veterans Affairs of the Department of Military and Veterans Affairs shall aid in meeting the emergency needs of dependents of men and women in the armed services

and shall represent the interest of ~~war~~ veterans~~,~~ and their dependents in claims they have against the federal government or other agencies growing out of the service of ~~such~~ those veterans.

Section 3. That § 33-16-4.1 be amended to read as follows:

33-16-4.1. The Veterans Commission shall be administered ~~under the direction and supervision~~ with the assistance of the Division of Veterans' Affairs and the director ~~thereof~~ of the division, but shall retain the quasi-judicial, quasi-legislative, advisory, other nonadministrative and special budgetary functions (as defined in § 1-32-1) otherwise vested in ~~it~~ the commission and shall exercise those functions independently of the director of veterans affairs. The commission shall nominate the director of veterans affairs to be appointed pursuant to § 1-46-7.

Section 4. That § 33-16-6 be amended to read as follows:

33-16-6. Meetings of the Veterans' Commission shall be held on call of the ~~chairman, vice-chairman~~ chair, vice chair, director, or of any three of its members, but not less than ~~four~~ two times in ~~a~~ each calendar year.

Section 5. That § 33-16-7.1 be amended to read as follows:

33-16-7.1. The commission may promulgate rules, pursuant to chapter 1-26, to:

(1) Provide procedures and standards for division personnel to act as agents for veterans pursuant to § 33-16-14;

(2) Provide procedures to maintain records to protect the rights of disabled veterans and their dependents pursuant to § 33-16-16;

(3) Provide procedures and standards for cooperation and administration of burial of veterans pursuant to § 33-16-17;

(4) Provide procedures and requirements to assist in securing veterans' benefits and to train county and tribal veterans service officers to provide such assistance pursuant to § 33-16-18; and

(5) ~~Provide procedures for division employees to act as conservators for certain persons pursuant to § 33-16-19; and~~

~~(6)~~ Provide procedures for investigations pursuant to § 33-16-22.

Section 6. That § 33-16-11 be amended to read as follows:

33-16-11. The director of the Division of Veterans Affairs shall, with the approval of the Department of Military and Veterans Affairs, establish and maintain a sufficient office and field force to carry out the provisions of this chapter, including representation at the ~~veterans administration facility~~ United States Department of Veterans Affairs facilities in this state.

Section 7. That § 33-16-14 be amended to read as follows:

33-16-14. The Division of Veterans Affairs shall act as the agent of any veteran, National Guard or Reserve member, and any dependent of a veteran or member of the state having a claim against the United States arising from or connected with ~~wartime~~ service in the armed forces~~, and~~. The division shall prosecute ~~such~~ the claim without charge.

Section 8. That § 33-16-17 be amended to read as follows:

33-16-17. The Division of Veterans Affairs shall cooperate in the administration of laws relating to burial of veterans and of other state laws for ~~veterans~~ veterans' benefits.

Section 9. That § 33-16-18 be amended to read as follows:

33-16-18. The Division of Veterans Affairs shall cooperate with all national, state, county, municipal, and private social agencies in securing to veterans, National Guard or Reserve members, and their dependents the benefits provided by national, state, and county laws, municipal ordinances, or public or private social agencies. To that end, the division may hold schools of instruction for county and tribal veterans service officers, or call in for instruction individual county or tribal veterans service officers if, in the judgment of the Department of Military and Veterans Affairs, the giving of such instructions or holding of such schools is in the best interest of the work of the division. The division may pay the actual necessary expenses of any such county or tribal veterans service officer when attending such schools of instruction away from the officer's home county, out of the funds appropriated for the administration of the Division of Veterans Affairs. The expenses may be paid out only on duly itemized vouchers presented to the state auditor and approved by the director of the division.

Section 10. That § 33-16-19 be repealed.

Section 11. That § 33-16-20 be repealed.

Section 12. That § 33-16-27 be amended to read as follows:

33-16-27. ~~The~~ Each county veterans' service officer shall be a veteran who has served in the armed forces of the United States~~, as that term is defined by § 33-17-1. However, any person who was qualified and held this position on July 1, 1989 may continue in such office~~ and is a citizen of the United States.

Section 13. That § 33-17-1 be amended to read as follows:

33-17-1. For the purposes of all statutes relating to rights, privileges, exemptions, and benefits (except a state bonus) of veterans and their ~~orphans and other~~ dependents, the term, veteran, means any person who:

(1) Has ~~performed qualifying military service as defined in § 33-17-2~~ served on continuous federalized active military duty for a period of at least ninety days for reasons other than training; and

(2) Has been separated or discharged from ~~the armed forces~~ such service honorably or under honorable conditions ~~or has been released to any reserve component of the armed forces of the United States~~.

Section 14. That § 33-17-2 be amended to read as follows:

33-17-2. ~~As used in § 33-17-1, the term, qualifying~~ For purposes of all statutes relating to rights, privileges, exemptions, and benefits of wartime veterans and their dependents, the term, wartime veteran, means any veteran who has performed qualifying military service or any person who has performed qualifying military service and then been released to any National Guard or Reserve component of the armed forces of the United States. Qualifying military service~~, means~~ is:

(1) Active duty in the armed forces of the United States for one day or more during the period from April 6, 1917, to November 11, 1918, inclusive;

(2) Active duty for one day or more during the period from July 28, 1914, to November 11, 1918, inclusive, performed by a citizen of the United States in the armed forces of any nation that was allied with the United States during any part of the period from April 6, 1917, to November 11, 1918, inclusive;

(3) Active duty in the armed forces of the United States for one day or more during the period from December 7, 1941, to December 31, 1946, inclusive;

(4) Active duty for one day or more during the period from September 1, 1939, to December 31, 1946, inclusive, performed by a citizen of the United States in the armed forces of any nation that was allied with the United States during any part of the period from December 7, 1941, to December 31, 1946, inclusive;

(5) Active duty in the armed forces of the United States for one day or more during the period from June 25, 1950, to May 7, 1975, inclusive;

(6) Active duty in the armed forces of the United States for one day or more during the period from August 2, 1990, until the end of hostilities as determined by the Legislature;

(7) Active duty in the armed forces of the United States for one day or more in a military action for which the veteran earned an armed forces expeditionary medal or other United States campaign, expeditionary, or service medal awarded for participation outside the boundaries of the United States in combat operations against hostile forces; or

(8) Active duty in the armed forces of the United States for one day or more if the veteran has established the existence of a service-connected disability.

Service on active duty by any ~~reserve~~ Reserve or National Guard personnel for training may not be construed as service on active duty, unless the ~~veterans' commission~~ Veterans Commission determines, by rules promulgated pursuant to chapter 1-26, that such training involved the person in direct participation in or direct support of combat operations against a hostile force.

Section 15. That § 33-17-2.1 be repealed.

Section 16. That § 33-17-14 be amended to read as follows:

33-17-14. The provisions of subdivision 43-28-2(7) apply to certificates of discharge of all persons who ~~may have served in the military forces of the United States or of any of its allies in any war in which the United States has or may hereafter engage, or who~~ are veterans as defined in § 33-17-1. The certificates shall be recorded without charge and certified copies shall be furnished to the persons named therein or their dependents without charge if requested for the purpose of presenting or prosecuting claims for compensation or pension. Otherwise, a discharge document recorded by the recorder or a designated official may be made available only to the veteran, the veteran's parents, the veteran's next of kin, the veteran's legal representative, a county veterans service officer, a veterans' organization service officer, the Department of Military and Veterans Affairs, or the veteran's designee. Any person requesting a discharge document shall complete a form containing a statement specifying the person's eligibility to receive the document based upon this section. The Department of Military and Veterans Affairs shall provide such forms to each county register of deeds.

Section 17. That § 33-17-17.1 be amended to read as follows:

33-17-17.1. The Veterans' Bonus Board is abolished, and all its functions shall be administered by the Division of Veterans Affairs with oversight of the administrative rules by the ~~Veterans'~~ Veterans Commission.

Section 18. That § 33-17-19 be amended to read as follows:

33-17-19. The director shall appoint such officers and employ such clerks, assistants, and other help as may be necessary, with utmost regard to existing veterans preference laws, and shall fix their bonds, salaries, and compensation.

Section 19. That § 33-18-22 be amended to read as follows:

33-18-22. Any wartime veteran as defined by ~~§ 33-17-1~~ § 33-17-2, who has an honorable discharge, who has maintained a residence in the state at any time in the five years preceding the date of the application, and who has no income in excess of one thousand dollars per year above the maximum income limitation for pension benefits as determined by the ~~veterans administration~~ United States Department of Veterans Affairs, is eligible for admission to the State Veterans' Home. For the purposes of this section, a residence is a physical structure in which a person resides and the term does not include a post office box or address of another mail service purchased by the veteran. A war veteran who meets the residence requirements and has a rating of total disability as defined by the ~~veterans administration~~ United States Department of Veterans Affairs for pension and compensation purposes is also eligible for admission. Membership status at the State Veterans' Home is not affected because of a medical leave of absence either in a ~~veterans' administration~~ United States Department of Veterans Affairs facility or other hospital. A veteran who has honorably served in a South Dakota regiment during a wartime period meets the residency requirement. Any veteran who is an enrolled member of a federally recognized Indian tribe located wholly or partially in the state meets the residency requirement.

Section 20. That § 33-19-1 be amended to read as follows:

33-19-1. Upon notice to the county or tribal veterans' service officer or field officer of the Division of Veterans Affairs of the death within the county of a person entitled to burial benefits under this chapter, or at the officer's own initiative in a proper case, the veterans' service officer or field officer shall implement the provisions of this chapter in reference to the burial of the deceased.

Section 21. That § 33-19-2 be amended to read as follows:

33-19-2. Any veteran as defined by § 33-17-1~~,~~ or the veteran's spouse~~,~~ shall be buried at the expense of ~~this~~ the state if:

(1) The veteran was a citizen of the United States and a resident of South Dakota for one year preceding the veteran's entrance into military service or preceding the veteran's death;

(2) The veteran's estate or the estate of the veteran's spouse, whether living or deceased, or the immediate family or relatives of the veteran or the veteran's spouse are unable to defray the expenses of the veteran's or the veteran's spouse's funeral; and

(3) The surviving spouse or relatives of the deceased veteran furnish an affidavit acceptable to the county or tribal veterans' service officer or field officer of the Division of Veterans Affairs that the estate of the decedent or of his or her surviving spouse is not sufficient to defray the funeral expenses.

Section 22. That § 33-19-6 be amended to read as follows:

33-19-6. All expenses incurred under the provisions of §§ 33-19-2 to 33-19-5, inclusive, shall be approved, allowed, and certified~~, in quadruplicate,~~ by the county or tribal veterans' service officer or field officer of the Division of Veterans Affairs upon forms provided by the Division of Veterans Affairs. The county or tribal veteran's service officer or field officer shall ~~retain one copy~~

~~of the forms and shall immediately~~ forward ~~three copies of~~ the forms to the Division of Veterans Affairs. The division shall certify and forward the forms to the state auditor.

Upon receipt of the certified forms, the state auditor shall draw a warrant on the state treasurer in favor of the person or persons entitled to the payment for the amount specified on the forms.

Section 23. That § 33-19-7 be amended to read as follows:

33-19-7. There is hereby annually appropriated out of the money in the state treasury ~~not otherwise appropriated~~ a sum sufficient to carry out the provisions of §§ 33-19-2 to 33-19-6, inclusive.

Section 24. That § 33-19-9 be amended to read as follows:

33-19-9. Each board of county commissioners of each county of this state may, as soon as the money has been appropriated, purchase not more than ten burial plots and provide for the perpetual care of the plots. ~~The cost of the plots with perpetual care may not exceed seventy-five dollars per plot.~~

The title to the burial plots is vested in the State of South Dakota, and permits for burial in the plots shall be issued by the county auditor of the respective county.

Section 25. That § 33-19-10 be amended to read as follows:

33-19-10. Any county may pay burial expense of persons described in § 33-19-8 ~~not in excess of one hundred dollars~~ for any such burial if the person dies in the county or has legal residence in the county at the time of death and if the relatives or friends of the deceased furnish affidavits acceptable to a circuit judge for the county that the estate of the decedent is not sufficient to defray the funeral expense.

Section 26. That chapter 33-19 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of § 44-11-9 or any other provision of law notwithstanding, if a funeral director, operator of a cemetery, or other individual involved with the funeral or burial of a veteran is in possession of a headstone, memorial headstone, or marker provided by the United States government in memory of the veteran, the director, operator, or individual may not retain possession of the headstone, memorial headstone, or marker pending payment for property associated with the funeral or burial or for services rendered.

Signed March 7, 2011

CHAPTER 153

(SB 51)

Nursing care renovation at the veterans' home, appropriation.

ENTITLED, An Act to revise certain provisions relating to a previous appropriation for renovation of the nursing care building on the South Dakota Veterans' Home campus and to declare an emergency.

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

Section 1. That section 1 of chapter 189 of the 2007 Session Laws be amended to read as follows:

Section 1. There is hereby appropriated from the state general fund the sum of one million eighty-two thousand seven hundred eighty-three dollars ($1,082,783), and one million eight hundred seven thousand five hundred twenty-six dollars ($1,807,526) in federal fund expenditure authority, or so much thereof as may be necessary, to the Department of Military and Veterans Affairs for the purposes of renovation of the nursing care building on the South Dakota Veterans' Home campus in Hot Springs to include the installation of fire retardant doors, a fire pump, and a sprinkler control system, the replacement of fire escapes on the building exterior, continue upgrading life and safety issues through the design and construction of a new veterans home, and the upgrade of the nurse call system.

Section 2. That chapter 189 of the 2007 Sessions Laws be amended by adding thereto a NEW SECTION to read as follows:

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2013, shall revert in accordance with the procedures prescribed in chapter 4-8.

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

Signed March 14, 2011

PUBLIC HEALTH AND SAFETY

CHAPTER 154

(SB 140)

Access to critical nursing facilities.

ENTITLED, An Act to provide for access critical nursing facilities to ensure access to health care within a reasonable distance.

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

Section 1. The Department of Social Services shall designate access critical nursing facilities annually as part of the medicaid rate setting process. The department shall designate the access critical nursing facilities according to the following criteria:

(1) No other nursing facility is located within twenty miles;

(2) The nursing facility is located in the largest municipality within thirty-five miles, unless the next closest nursing facility is located more than fifty miles from any other nursing facility;

(3) The nursing facility provides skilled nursing facility services;

(4) The nursing facility is integrated with other health care services, either through affiliation with other services or through formal agreement;

(5) The projected nursing facility demand within the county in which the facility is located is less than sixty beds in 2015; and

(6) The nursing facility agrees to relinquish any excess moratorium beds that are authorized pursuant to § 34-12-35.4.

Signed March 17, 2011

CHAPTER 155

(SB 22)

Birth centers licensed and regulated.

ENTITLED, An Act to provide for the regulation and licensure of birth centers.

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

Section 1. Any birth center licensed by the state in accordance with chapter 34-12, may operate to provide care for women before, during, and after normal pregnancy, labor, and birth.

Section 2. That § 34-12-1.1 be amended to read as follows:

34-12-1.1. Terms used in this chapter mean:

(1) "Ambulatory surgery center," any facility which is not part of a hospital and which is not an office of a dentist, whether for individual or group practice, in which surgical procedures requiring the use of general anesthesia are performed upon patients;

(2) "Assisted living center," any institution, rest home, boarding home, place, building, or agency which is maintained and operated to provide personal care and services which meet some need beyond basic provision of food, shelter, and laundry;

(3) "Chemical dependency treatment facility," any facility which provides a structured inpatient treatment program for alcoholism or drug abuse;

(4) "Health care facility," any institution, sanitarium, maternity home, <u>birth center,</u> ambulatory surgery center, chemical dependency treatment facility, hospital, nursing facility, assisted living center, rural primary care hospital, adult foster care home, inpatient hospice, residential hospice, place, building, or agency in which any accommodation is maintained, furnished, or offered for the hospitalization, nursing care, or supervised care of the sick or injured;

(5) "Hospital," any establishment with an organized medical staff with permanent facilities that include inpatient beds and is primarily engaged in providing by or under the supervision of physicians, to inpatients, any of the following services: diagnostic or therapeutic services for the medical diagnosis, treatment, or care of injured, disabled, or sick persons; obstetrical services including the care of the newborn; or rehabilitation services for injured, disabled, or sick persons. In no event may the inpatient beds include nursing facility beds or assisted living center beds unless the same are licensed as such pursuant to this chapter;

(6) "Maternity home," any institution, place, building, or agency in which, within a period of six months, more than one woman, during pregnancy, or during or after delivery, except women related by blood or marriage, are kept for care or treatment; or which has in its custody or control at any one time, two or more infants under the age of two years, unattended by parents or guardians, for the purpose of providing them with care, food, and lodging, except infants related to the one having such custody or control by blood or marriage;

(7) "Nursing facility," any facility which is maintained and operated for the express or implied purpose of providing care to one or more persons whether for consideration or not, who are not acutely ill but require nursing care and related medical services of such complexity as to require professional nursing care under the direction of a physician on a twenty-four hour per day basis; or a facility which is maintained and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who do not require the degree of care and treatment which a hospital is designed to provide, but who because of their mental or physical condition require medical care and health services which can be made available to them only through institutional facilities;

(8) "Critical access hospital," any nonprofit or public hospital providing emergency care on a twenty-four hour basis located in a rural area which has limited acute inpatient services, focusing on primary and preventive care, and which has in effect an agreement with a general hospital that provides emergency and medical backup services and accepts patient referrals from the critical access hospital. For the purposes of this subdivision, a rural area is any municipality of under fifty thousand population;

(9) "Adult foster care home," a family-style residence which provides supervision of personal care, health services, and household services for no more than four aged, blind, physically disabled, developmentally disabled, or socially-emotionally disabled adults;

(10) "Inpatient hospice," any facility which is not part of a hospital or nursing home which is maintained and operated for the express or implied purpose of providing all levels of hospice care to terminally ill individuals on a twenty-four hour per day basis; ~~and~~

(11) "Residential hospice," any facility which is not part of a hospital or nursing home which is maintained and operated for the express or implied purpose of providing custodial care to terminally ill individuals on a twenty-four hour per day basis; and

(12) "Birth center," any health care facility at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

Section 3. Any birth center shall be located within thirty minutes normal driving time of a hospital licensed pursuant to chapter 34-12 that provides routine birth services.

Section 4. Except as provided in section 5 of this Act, no person may establish or operate a birth center in this state without an appropriate license issued under this Act.

Section 5. The following facilities are exempt from the requirements of this Act:

(1) A hospital licensed pursuant to chapter 34-12; and

(2) A critical access hospital licensed pursuant to chapter 34-12.

Section 6. An applicant for a birth center license shall submit an application to the Department of Health on a form prescribed by the department. The application shall be accompanied by a

nonrefundable license fee of five hundred dollars. The department shall issue a license if, after inspection and investigation, the department finds that the application and birth center meet the requirements of this Act. The birth center license is renewable annually on a form prescribed by the department.

Section 7. The Department of Health shall promulgate rules pursuant to chapter 1-26 for the issuance, renewal, denial, suspension, and revocation of a license to operate a birth center. The department shall adopt, by rules promulgated pursuant to chapter 1-26, minimum standards to protect the health and safety of mothers and infants of a birth center. The rules shall establish minimum standards regarding:

(1) Facility safety, including fire safety and construction, ADA accessibility, and sanitation;

(2) Qualifications and supervision of professional and nonprofessional personnel, including certification in neonatal and maternal CPR;

(3) Emergency equipment and procedures to provide emergency care;

(4) Medical records and reports;

(5) Birthing room requirements, including minimum size requirements;

(6) Support areas for patients, including toilet, hand washing station, and bath/shower facility;

(7) Infection control, including cleaning and laundry requirements, scrub area, decontamination, disinfection, sterilization, and storage of sterile supplies, storage for soiled product, and disposal of medical waste;

(8) Medication control;

(9) Quality assurance;

(10) Information on and access to patient follow-up care;

(11) Informed consent and disclosure requirements;

(12) Patient screening, assessment, and monitoring, including transport protocols and physician referral protocols; and

(13) Administrative and public areas, including staff support areas, reception area, family room, public restroom with toilet and hand washing station, nourishment area, record storage, and provisions for drinking water.

Section 8. A birth center shall adopt, implement, and enforce a written risk assessment system that conforms to the patient assessment protocols established pursuant to section 7 of this Act. A birth center shall perform the risk assessment of a potential client prior to accepting the client for admission and shall only admit a client that has been assessed to have a low-risk pregnancy. A birth center client shall be continually assessed to identify if her condition deviates from a low-risk pregnancy at any time during the pregnancy, delivery, or postpartum period. The birth center shall refer or transfer the client to a physician or hospital in accordance with the standards established pursuant to section 7 of this Act.

Signed March 10, 2011

CHAPTER 156

(SB 139)

Foster home care for veterans exempt from state regulation.

ENTITLED, An Act to exempt from state regulation certain medical foster home care for veterans.

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

Section 1. That chapter 34-12 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this chapter do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans. The South Dakota Department of Veterans Affairs shall provide an annual report to the Governor and Legislature by December first of each year outlining the scope and effectiveness of the medical foster home program in South Dakota.

Signed March 10, 2011

CHAPTER 157

(SB 21)

Specialty resort and vacation home exit door requirements modified.

ENTITLED, An Act to eliminate the requirement for single action hardware on primary exit doors for specialty resorts and vacation homes.

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

Section 1. That § 34-18-22.1 be amended to read as follows:

34-18-22.1. Any specialty resort establishment with less than ten occupants shall meet the following minimum fire safety standards:

(1) Any primary exit that leads to the exterior of the structure shall be capable of unlocking from the interior ~~with single action hardware~~ without the use of a key or special knowledge or effort, free from obstruction, and clearly marked with illuminated exit signs. Any sleeping room with a direct exit to the exterior of the building is exempt from this requirement;

(2) There shall be a smoke detector in each sleeping room. The owner or manager shall test any battery operated smoke detector at least twice a year;

(3) Any sleeping room shall be equipped with an operable egress window. Any sleeping room with a direct exit to the exterior of the building is exempt from this requirement; and

(4) Portable fire extinguishers with a minimum 2-A rating shall be made available on each floor and shall be inspected and tagged annually.

Section 2. That § 34-18-22.2 be amended to read as follows:

34-18-22.2. Any specialty resort establishment with ten or more occupants shall meet the following minimum fire safety standards:

(1) Each floor where occupants are sleeping shall have access to at least two remote exits;

(2) Any primary exit that leads to the exterior of the structure shall be capable of unlocking from the interior ~~with single action hardware~~ without the use of a key or special knowledge or effort, free from obstruction, and clearly marked with illuminated exit signs. Any sleeping room with a direct exit to the exterior of the building is exempt from this requirement;

(3) There shall be a smoke detector in each sleeping room. The owner or manager shall test any battery operated smoke detector at least twice a year;

(4) Any sleeping room shall be equipped with an operable egress window. Any sleeping room with a direct exit to the exterior of the building is exempt from this requirement; and

(5) Portable fire extinguishers with a minimum 2-A rating shall be made available on each floor and shall be inspected and tagged annually.

Section 3. That § 34-18-22.3 be amended to read as follows:

34-18-22.3. Any vacation home establishment shall meet the following minimum fire safety standards:

(1) Each floor where ten or more occupants are sleeping shall have access to at least two remote exits;

(2) Any primary exit that leads to the exterior of the structure shall be capable of unlocking from the interior ~~with single action hardware,~~ without the use of a key or special knowledge or effort and free from obstruction. Any sleeping room with a direct exit to the exterior of the building is exempt from this requirement;

(3) There shall be a smoke detector in each sleeping room. The owner or manager shall test any battery operated smoke detector at least twice a year;

(4) Any sleeping room shall be equipped with an operable egress window. Any sleeping room with a direct exit to the exterior of the building is exempt from this requirement; and

(5) A portable fire extinguisher with a minimum 2-A rating shall be made available on each floor and shall be inspected and tagged annually.

Signed February 24, 2011

CHAPTER 158

(HB 1240)

Cottage food operations exempt from certain licensure requirements.

ENTITLED, An Act to exempt certain sales of non-temperature-controlled baked goods from certain licensing requirements.

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

Section 1. That chapter 34-18 be amended by adding thereto a NEW SECTION to read as follows:

Any person selling non-temperature-controlled baked goods from the person's own primary residence is exempt from the licensing and license fee provisions of this chapter under the following conditions:

(1) Any non-temperature-controlled baked goods sold from a person's own primary residence is for consumption off the premises;

(2) Any non-temperature-controlled baked goods sold from a person's own primary residence meets the requirements of § 34-18-37; and

(3) The total gross receipts from the sale of non-temperature-controlled baked goods from the person's own primary residence does not exceed five thousand dollars in a calendar year.

Signed March 17, 2011

CHAPTER 159

(SB 15)

Accredited prevention and treatment facility requirements changed.

ENTITLED, An Act to revise the definition of accredited prevention or treatment facilities and to authorize the Division of Drug and Alcohol Abuse to inspect these facilities and access their records.

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

Section 1. That subdivision (1) of § 34-20A-2 be amended to read as follows:

(1) "Accredited prevention or treatment facility," a private or public agency meeting the standards prescribed in § 34-20A-27 and listed under § 34-20A-47, or a private or public agency or facility surveyed and accredited by the Joint Commission; an Indian Health Service's quality assurance review under the Indian Health Service Manual, Professional Standards-Alcohol/Substance Abuse; or the Commission on Accreditation of Rehabilitation Facilities<u>; or the Council on Accreditation;</u> under the drug and alcohol treatment standards incorporated and adopted by the division in rules promulgated pursuant to chapter 1-26, if proof of such accreditation, with accompanying

recommendations, progress reports and related correspondence are submitted to the Division of Drug and Alcohol Abuse in a timely manner;

Section 2. That § 34-20A-44 be amended to read as follows:

34-20A-44. The Division of Drug and Alcohol Abuse shall inspect accredited prevention or treatment facilities to insure compliance with this chapter. For purposes of inspection, the division shall have access to the facility and its records at reasonable times and in a reasonable manner. This section does not apply to facilities accredited pursuant to accreditation by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, ~~or~~ an Indian Health Service's quality assurance review under the Indian Health Service Manual, Professional Standards-Alcohol/Substance Abuse, or the Council on Accreditation.

Section 3. That § 34-20A-44.1 be amended to read as follows:

34-20A-44.1. If a public or private agency or facility is considered to be an accredited prevention or treatment facility by reason of compliance with accreditation by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, ~~or~~ an Indian Health Service's quality assurance review under the Indian Health Service Manual, Professional Standards-Alcohol/Substance Abuse, or the Council on Accreditation, as described in § 34-20A-2, the Division of ~~Alcohol and~~ Drug and Alcohol Abuse retains the right of access to all facility premises and relevant records to monitor compliance or investigate complaints brought against the facility.

Signed February 8, 2011

CHAPTER 160

(HB 1015)

Controlled substances list increased.

ENTITLED, An Act to place certain substances on the controlled substances schedule and to declare an emergency.

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

Section 1. That § 34-20B-14 be amended to read as follows:

34-20B-14. Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, is included in Schedule I, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Bufotenine;

(2) Diethyltryptamine;

(3) Dimethyltryptamine;

(4) 5-methoxy-N, N-Dimethyltryptamine;

(5) 5-methoxy-3, 4-methylenedioxy amphetamine;

(6) 4-bromo-2, 5-dimethoxyamphetamine;

(7) 4-methoxyamphetamine;

(8) 4-methoxymethamphetamine;

(9) 4-methyl-2, 5-dimethoxyamphetamine;

(10) Hashish and hash oil;

(11) Ibogaine;

(12) Lysergic acid diethylamide;

(13) Mescaline;

(14) N-ethyl-3-piperidyl benzilate;

(15) N-methyl-3-piperidyl benzilate;

(16) 1-(-(2-thienyl)cyclohexyl) piperdine;

(17) Peyote, except that when used as a sacramental in services of the Native American church in a natural state which is unaltered except for drying or curing and cutting or slicing, it is hereby excepted.;

(18) Psilocybin;

(19) Psilocyn;

(20) Tetrahydrocannabinol, other than that which occurs in marijuana in its natural and unaltered state;

(21) 3, 4, 5-trimethoxy amphetamine;

(22) 3, 4-methylenedioxy amphetamine;

(23) 3-methoxyamphetamine;

(24) 2, 5-dimethoxyamphetamine;

(25) 2-methoxyamphetamine;

(26) 2-methoxymethamphetamine;

(27) 3-methoxymethamphetamine;

(28) Phencyclidine;

(29) 3, 4-methylenedioxymethamphetamine (MDMA);

(30) 3, 4-methylenedioxy-N-ethylamphetamine;

(31) N-hydroxy-3, 4-methylenedioxyamphetamine;

(32) 4-methylaminorex (also known as 2-Amino-4-methyl/x-5-phenyl-2-oxazoline);

(33) 2,5 Dimethoxy-4-ethylamphetamine;

(34) N,N-Dimethylamphetamine;

(35) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine;

(36) Aminorex;

(37) Cathinone;

(38) Methcathinone;

(39) 2,5-Dimethoxy-4-ethylamphetamine (DOET);

(40) Alpha-ethyltryptamine;

(41) 4-Bromo-2,5-dimethoxy phenethylamine;

(42) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);

(43) 1-(3-trifluoromethylphenyl) piperazine (TFMPP);

(44) Alpha-methyltryptamine (AMT);

(45) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);

(46) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

(47) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(48) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(49) 1-Butyl-3-(1-naphthoyl)indole;

(50) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole; and

(51) 1-Pentyl-3-(1-naphthoyl)indole.

Section 2. That § 34-20B-17 be amended to read as follows:

34-20B-17. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, is included in Schedule II, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Diphenoxylate;

(5) Fentanyl;

(6) Isomethadone;

(7) Levomethorphan;

(8) Levorphanol;

(9) Metazocine;

(10) Methadone;

(11) Methadone-intermediate, 4-cyano-2-dimethylamine-1, 4-diphenyl butane;

(12) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(13) Pethidine;

(14) Pethidine-intermediate, A, 4-cyano-1-methyl-4-phenylpiperidine;

(15) Pethidine-intermediate, B, ethyl-4-phenylpiperidine-4-carboxylate;

(16) Pethidine-intermediate, C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(17) Phenazocine;

(18) Piminodine;

(19) Racemethorphan;

(20) Racemorphan;

(21) Sufentanil;

(22) Alfentanil;

(23) Carfentanil;

(24) Levo-alphacetylmethadol, also known as levo-alpha-acetylmethadyl acetate or LAAM;

(25) Remifentanil;

(26) Oxymorphone;

(27) Oripavine (3-O-demethylthebaine or 6,7,8,14-tetradehydro-4,5-alpha-epoxy-6-methoxy-17-methylmorphinan-3-ol);

(28) 4-anilino-N-phenethyl-4-piperidine (ANPP).

Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 24, 2011

CHAPTER 161

(HB 1217)

Abortion services regulated.

ENTITLED, An Act to establish certain legislative findings pertaining to the decision of a pregnant mother considering termination of her relationship with her child by an abortion, to establish certain procedures to better insure that such decisions are voluntary, uncoerced, and informed, and to revise certain causes of action for professional negligence relating to performance of an abortion.

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

Section 1. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

The Legislature finds that as abortion medicine is now practiced in South Dakota that:

(1) In the overwhelming majority of cases, abortion surgery and medical abortions are scheduled for a pregnant mother without the mother first meeting and consulting with a physician or establishing a traditional physician-patient relationship;

(2) The surgical and medical procedures are scheduled by someone other than a physician, without a medical or social assessment concerning the appropriateness of such a procedure or whether the pregnant mother's decision is truly voluntary, uncoerced, and informed, or whether there has been an adequate screening for a pregnant mother with regard to the risk factors that may cause complications if the abortion is performed;

(3) Such practices are contrary to the best interests of the pregnant mother and her child and there is a need to protect the pregnant mother's interest in her relationship with her child and her health by passing remedial legislation;

(4) There exists in South Dakota a number of pregnancy help centers, as defined in this Act, which have as their central mission providing counseling, education, and other assistance to pregnant mothers to help them maintain and keep their relationship with their unborn children, and that such counseling, education, and assistance provided by these pregnancy help centers is of significant value to the pregnant mothers in helping to protect their interest in their relationship with their children; and

(5) It is a necessary and proper exercise of the state's authority to give precedence to the mother's fundamental interest in her relationship with her child over the irrevocable method of termination of that relationship by induced abortion.

Section 2. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

The physician's common law duty to determine that the physician's patient's consent is voluntary and uncoerced and informed applies to all abortion procedures. The requirements expressly set forth in this Act, that require procedures designed to insure that a consent to an abortion is voluntary and uncoerced and informed, are an express clarification of, and are in addition to, those common law duties.

Section 3. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

No surgical or medical abortion may be scheduled except by a licensed physician and only after the physician physically and personally meets with the pregnant mother, consults with her, and performs an assessment of her medical and personal circumstances. Only after the physician completes the consultation and assessment complying with the provisions of this Act, may the physician schedule a surgical or medical abortion, but in no instance may the physician schedule such surgical or medical abortion to take place in less than seventy-two hours from the completion of such consultation and assessment except in a medical emergency as set forth in § 34-23A-10.1 and subdivision 34-23A-1(5). No physician may have the pregnant mother sign a consent for the abortion on the day of this initial consultation. No physician may take a signed consent from the pregnant mother unless the pregnant mother is in the physical presence of the physician and except on the day the abortion is scheduled, and only after complying with the provisions of this Act as it pertains to the initial consultation, and only after complying with the provisions of subdivisions 34-23A-10.1(1) and (2). During the initial consultation between the physician and the pregnant mother, prior to scheduling a surgical or medical abortion, the physician shall:

(1) Do an assessment of the pregnant mother's circumstances to make a reasonable determination whether the pregnant mother's decision to submit to an abortion is the result of any coercion, subtle or otherwise. In conducting that assessment, the physician shall obtain from the pregnant mother the age or approximate age of the father of the unborn child, and the physician shall determine whether any disparity in the age between the mother and father is a factor in creating an undue influence or coercion;

(2) Provide the written disclosure required by subdivision 34-23A-10.1(1) and discuss them with her to determine that she understands them;

(3) Provide the pregnant mother with the names, addresses, and telephone numbers of all pregnancy help centers that are registered with the South Dakota Department of Health pursuant to this Act, and provide her with written instructions that set forth the following:

(a) That prior to the day of any scheduled abortion the pregnant mother must have a consultation at a pregnancy help center at which the pregnancy help center shall inform her about what education, counseling, and other assistance is available to help the pregnant mother keep and care for her child, and have a private interview to discuss her circumstances that may subject her decision to coercion;

(b) That prior to signing a consent to an abortion, the physician shall first obtain from the pregnant mother, a written statement that she obtained a consultation with a pregnancy help center, which sets forth the name and address of the pregnancy help center, the date and time of the consultation, and the name of the counselor at the pregnancy help center with whom she consulted;

(4) Conduct an assessment of the pregnant mother's health and circumstances to determine if any of the risk factors associated with abortion are present in her case, completing a form which for each factor reports whether the factor is present or not;

(5) Discuss with the pregnant mother the results of the assessment for risk factors, reviewing with her the form and its reports with regard to each factor listed;

(6) In the event that any risk factor is determined to be present, discuss with the pregnant mother, in such manner and detail as is appropriate so that the physician can certify that the physician has made a reasonable determination that the mother understands the information, all material information about any complications associated with the risk factor, and to the extent available all information about the rate at which those complications occurs both in the general population and in the population of persons with the risk factor;

(7) In the event that no risk factor is determined to be present, the physician shall include in the patient's records a statement that the physician has discussed the information required by the other parts of this section and that the physician has made a reasonable determination that the mother understands the information in question;

(8) Records of the assessments, forms, disclosures, and instructions performed and given pursuant to this section shall be prepared by the physician and maintained as a permanent part of the pregnant mother's medical records.

Section 4. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

On the day on which the abortion is scheduled, no physician may take a consent for an abortion nor may the physician perform an abortion, unless the physician has fully complied with the provisions of this Act and first obtains from the pregnant mother, a written, signed statement setting forth all information required by subsection (3)(b) of section 3 of this Act. The written statement signed by the pregnant mother shall be maintained as a permanent part of the pregnant mother's medical records.

Section 5. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

The Department of Health shall maintain a registry of pregnancy help centers located in the state of South Dakota. The Department shall publish a list of all pregnancy help centers which submit a written request or application to be listed on the state registry of pregnancy help centers. All pregnancy help centers seeking to be listed on the registry shall be so listed without charge, if they submit an affidavit that certifies that:

(1) The pregnancy help center has a facility or office in the state of South Dakota in which it routinely consults with women for the purpose of helping them keep their relationship with their unborn children;

(2) That one of its principal missions is to educate, counsel, and otherwise assist women to help them maintain their relationship with their unborn children;

(3) That they do not perform abortions at their facility, and have no affiliation with any organization or physician which performs abortions;

(4) That they do not now refer pregnant women for abortions, and have not referred any pregnant women for an abortion at any time in the three years immediately preceding July 1, 2011;

(5) That they have a medical director licensed by South Dakota to practice medicine or that they have a collaborative agreement with a physician licensed in South Dakota to practice medicine to whom women can be referred;

(6) That they shall provide the counseling and interviews described in this Act upon request by pregnant mothers; and

(7) That they shall comply with the provisions of section 11 of this Act as it relates to discussion of religious beliefs.

For purposes of placing the name of a pregnancy help center on the state registry of pregnancy help centers maintained by the Department of Health, it is irrelevant whether the pregnancy help center is secular or faith based. The Department of Health shall immediately provide a copy of the registry of pregnancy health centers to all physicians, facilities, and entities that request it. The

registry shall be regularly updated by the Department of Health in order to include a current list of pregnancy help centers and shall forward all updated lists to all physicians, facilities, and entities that previously requested the list. The Department of Health shall accept written requests or applications to be placed on the state registry of pregnancy help centers from pregnancy help centers after enactment but prior to the effective date of this Act.

Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

A pregnancy help center consulted by a pregnant mother considering consenting to an abortion, as a result of the provisions of this Act, shall be permitted to interview the pregnant mother to determine whether the pregnant mother has been subject to any coercion to have an abortion, and shall be permitted to inform the pregnant mother in writing or orally, or both, what counseling, education, and assistance that is available to the pregnant mother to help her maintain her relationship with her unborn child and help her care for the child both through the pregnancy help center or any other organization, faith-based program, or governmental program. During the consultation interviews provided for by this Act, the pregnancy help centers, their agents and employees, may not discuss with the pregnant mothers religion or religious beliefs, either of the mother or the counselor, unless the pregnant mother consents in writing. The pregnancy help center may, if it deems it appropriate, discuss matters pertaining to adoption. The pregnancy help center is under no obligation to communicate with the abortion provider in any way, and is under no obligation to submit any written or other form of confirmation that the pregnant mother consulted with the pregnancy help center. The pregnancy help center may voluntarily provide a written statement of assessment to the abortion provider, whose name the woman shall give to the pregnancy help center, if the pregnancy help center obtains information that indicates that the pregnant mother has been subjected to coercion or that her decision to consider an abortion is otherwise not voluntary or not informed. The physician shall make the physician's own independent determination whether or not a pregnant mother's consent to have an abortion is voluntary, uncoerced, and informed before having the pregnant mother sign a consent to an abortion. The physician shall review and consider any information provided by the pregnancy help center as one source of information, which in no way binds the physician, who shall make an independent determination consistent with the provisions of this Act, the common law requirements, and accepted medical standards. Any written statement or summary of assessment prepared by the pregnancy help center as a result of counseling of a pregnant mother as a result of the procedures created by this Act, may be forwarded by the pregnancy help center, in its discretion, to the abortion physician. If forwarded to the physician, the written statement or summary of assessment shall be maintained as a permanent part of the pregnant mother's medical records. Other than forwarding such documents to the abortion physician, no information obtained by the pregnancy help center from the pregnant mother may be released, without the written signed consent of the pregnant mother or unless the release is in accordance with federal, state, or local law.

Nothing in this Act may be construed to impose any duties or liability upon a pregnancy help center.

Section 7. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Terms as used in this Act mean:

(1) "Pregnancy help center," any entity whether it be a form of corporation, partnership, or proprietorship, whether it is for profit, or nonprofit, that has as one of its principal missions to provide education, counseling, and other assistance to help a pregnant mother maintain her relationship with her unborn child and care for her unborn child, which entity has a medical director who is licensed to practice medicine in the state of South Dakota, or that it has a collaborative agreement with a physician licensed in

South Dakota to practice medicine to whom women can be referred, which entity does not perform abortions and is not affiliated with any physician or entity that performs abortions, and does not now refer pregnant mothers for abortions, and has not referred any pregnant mother for abortions for the three-year period immediately preceding July 1, 2011;

(2) "Risk factor associated with abortion," any factor, including any physical, psychological, emotional, demographic, or situational factor, for which there is a statistical association with an increased risk of one or more complications associated with legal abortion, such that there is a less than five percent probability that the statistical association is due to sampling error. To be recognized as a risk factor associated with legal abortion, the statistical information must have been published in the English language, after 1972, in at least one peer-reviewed journal indexed by the search services maintained by the United States National Library of Medicine (PubMed or MEDLINE, or any replacement services subsequently established by the National Library) or in at least one peer-reviewed journal indexed by any search service maintained by the American Psychological Association (PsycINFO, or any replacement service) and the date of first publication must be not less than twelve months before the date of the initial consultation described in section 3 of this Act;

(3) "Complications associated with abortion," any adverse physical, psychological, or emotional reaction, for which there is a statistical association with legal abortion, such that there is a less than five percent probability that the statistical association is due to sampling error. To be recognized as a complication associated with legal abortion, the statistical information must have been published in the English language, after 1972, in at least one peer-reviewed journal indexed by the search services maintained by the United States National Library of Medicine (PubMed or MEDLINE, or any replacement services subsequently established by the National Library) or in at least one peer-reviewed journal indexed by any search service maintained by the American Psychological Association (PsycINFO, or any replacement service) and the date of first publication must be not less than twelve months before the date of the initial consultation described in section 3 of this Act;

(4) "Coercion," exists if the pregnant mother has a desire to carry her unborn child and give birth, but is induced, influenced, or persuaded to submit to an abortion by another person or persons against her desire. Such inducement, influence, or persuasion may be by use of, or threat of, force, or may be by pressure or intimidation effected through psychological means, particularly by a person who has a relationship with the pregnant mother that gives that person influence over the pregnant mother.

Section 8. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any woman who undergoes an abortion, or her survivors, where there has been an intentional, knowing, or negligent failure to comply with the provisions of sections 3 and 4 of this Act may bring a civil action, and obtain a civil penalty in the amount of ten thousand dollars, plus reasonable attorney's fees and costs, jointly and severally from the physician who performed the abortion and the abortion facility where the abortion was performed.

This amount shall be in addition to any damages that the woman or her survivors may be entitled to receive under any common law or statutory provisions, to the extent that she sustains any injury. This amount shall also be in addition to the amounts that the woman or other survivors of the deceased unborn child may be entitled to receive under any common law or statutory provisions, including but not limited to the wrongful death statutes of this state.

Section 9. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

In any civil action presenting a claim arising from a failure to comply with any of the provisions of this chapter, the following shall apply:

(1) The failure to comply with the requirements of this chapter relative to obtaining consent for the abortion shall create a rebuttable presumption that if the pregnant mother had been informed in accordance with the requirements of this chapter, she would have decided not to undergo the abortion;

(2) If the trier of fact determines that the abortion was the result of coercion, and it is determined that if the physician acted prudently, the physician would have learned of the coercion, there is a nonrebuttable presumption that the mother would not have consented to the abortion if the physician had complied with the provisions of this Act;

(3) If evidence is presented by a defendant to rebut the presumption set forth in subdivision (1), then the finder of fact shall determine whether this particular mother, if she had been given all of the information a reasonably prudent patient in her circumstance would consider significant, as well as all information required by this Act to be disclosed, would have consented to the abortion or declined to consent to the abortion based upon her personal background and personality, her physical and psychological condition, and her personal philosophical, religious, ethical, and moral beliefs;

(4) The pregnant mother has a right to rely upon the abortion doctor as her source of information, and has no duty to seek any other source of information, other than from a pregnancy help center as referenced in sections 3 and 4 of this Act, prior to signing a consent to an abortion;

(5) No patient or other person responsible for making decisions relative to the patient's care may waive the requirements of this chapter, and any verbal or written waiver of liability for malpractice or professional negligence arising from any failure to comply with the requirements of this chapter is void and unenforceable.

Section 10. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this Act repeals, by implication or otherwise, any provision not explicitly repealed.

Section 11. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

If any provision of this Act is found to be unconstitutional or its enforcement temporarily or permanently restrained or enjoined by judicial order, the provision is severable.

Signed March 22, 2011

CHAPTER 162

(HB 1056)

Additional time period for fireworks.

ENTITLED, An Act to establish an additional time period during which fireworks may be sold and discharged and to revise certain provisions regarding county regulation of fireworks.

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

Section 1. That § 34-37-2.2 be amended to read as follows:

34-37-2.2. In addition to licenses available in § 34-37-2, two special retail licenses may be obtained for sales to out-of-state residents. The first is a sixty-six day license from the first day of May through the fifth day of July with a required fee of one thousand dollars. The second option is a fifty-seven day license from the sixth day of July through the thirty-first day of August with a required fee of one thousand dollars. The fifty-seven day special retail license also allows the retail sale of fireworks to residents and nonresidents during the period beginning December twenty-eighth and extending through January first, as provided in § 34-37-10. A copy of the South Dakota law which prohibits the discharge of fireworks and a map of the Black Hills Forest Fire Protection District shall be provided with every sale of fireworks under a license granted pursuant to this section, except for sales occurring from the twenty-seventh day of June through the fifth day of July.

Section 2. That § 34-37-10 be amended to read as follows:

34-37-10. No person, firm, or corporation may offer fireworks for sale to individuals at retail ~~before the twenty-seventh day of June and after the fifth day of July~~ except during the period beginning June twenty-seventh and extending through July fifth and during the period beginning December twenty-eighth and extending through January first. Any person obtaining the special sixty-six day or the special fifty-seven day retail licenses may sell fireworks to out-of-state residents for the periods of time designated in § 34-37-2.2. Retail sales to residents and nonresidents during the December twenty-eighth through January first period may only be made by holders of a special fifty-seven day retail license established pursuant to § 34-37-2.2. Retail sales are not permitted after twelve a.m. or prior to seven a.m. from the twenty-seventh day of June through the fifth day of July and from the twenty-eighth day of December through the first day of January.

Section 3. That § 34-37-16.1 be amended to read as follows:

34-37-16.1. Except as otherwise provided in this chapter, it is unlawful for a person to discharge fireworks in this state ~~after the fifth day of July or prior to the twenty-seventh day of June~~ except during the period beginning June twenty-seventh and extending through July fifth and during the period beginning December twenty-eighth and extending through January first. A violation of this section is a Class 2 misdemeanor.

Section 4. That § 34-37-19 be amended to read as follows:

34-37-19. Any county may, by resolution, regulate or prohibit the use of fireworks outside the boundaries of any municipality in those areas where the fire danger, as determined by use of the South Dakota grassland fire danger index published by the National Weather Service, has reached the extreme category in that county during the period from June twentieth to July second, inclusive, and during the period from December twenty-eighth to January first, inclusive. During any such period, the county's action is suspended if the grassland fire danger index falls below the very high category and ~~shall~~ again ~~become~~ becomes effective if the grassland fire danger index reaches the extreme category.

Signed March 8, 2011

CHAPTER 163

(HB 1014)

911 emergency surcharge criteria modified.

ENTITLED, An Act to revise certain provisions regarding the purpose of the 911 emergency surcharge and to provide rule-making authority to the 911 Coordination Board to establish allowable recurring and nonrecurring costs for the operation of a public safety answering point.

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

Section 1. That § 34-45-4 be amended to read as follows:

34-45-4. Upon compliance with § 34-45-2, the governing body may assess a monthly uniform charge in an amount not to exceed seventy-five cents per service user line. The proceeds of this charge shall be used to pay for allowable nonrecurring and recurring costs of the 911 system. Any prepaid wireless telecommunications service provider shall remit the 911 emergency surcharge for each active prepaid wireless telecommunication service user account to the South Dakota 911 coordination fund. The proceeds of the South Dakota 911 coordination fund are continuously appropriated for reimbursement of allowable nonrecurring and recurring costs of 911 service and operating expenses of the board. No such charge may be imposed upon more than one hundred service user lines or equivalent service, per customer account billed, per month. In the case of multi-station network systems, service user lines shall be equal to the number of calls that can simultaneously be made from such system to the public switched telephone network.

Section 2. That § 34-45-18.2 be amended to read as follows:

34-45-18.2. The board may promulgate rules pursuant to chapter 1-26 setting:

(1) Minimum technical, operational, and procedural standards for the operation and utilization of a public safety answering point;

(2) Requirements and amounts for reimbursement of recurring and nonrecurring costs; ~~and~~

(3) Standards for coordination of effective 911 service on a statewide basis; and

(4) Allowable expenditures of the 911 emergency surcharge proceeds collected pursuant to § 34-45-4.

~~Moreover, prior to December 31, 2010, the board shall promulgate rules specifying alternative arrangements that can be utilized by a public safety answering point to comply with ARSD 50:02:04:02(2).~~ A public safety answering point shall comply with ARSD 50:02:04:02(2) if the Legislature increases the monthly uniform charge, regardless of the amount of the increase. Furthermore, no public safety answering point may be required to comply with the provisions of ARSD 50:02:04:02(2) if the public safety answering point forswears the acceptance of revenue from any future legislative increase in the monthly uniform charge and formally resolves to continue to maintain itself pursuant to all other statutes, rules, and standards.

Signed February 8, 2011

CHAPTER 164

(HB 1244)

An appropriation for costs related to disasters in the state.

ENTITLED, An Act to make an appropriation for costs related to disasters in the state.

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

Section 1. There is hereby appropriated from the general fund the sum of thirteen million three hundred seventy-eight thousand three hundred forty-seven dollars ($13,378,347), or so much thereof as may be necessary, to the special emergency and disaster special revenue fund for costs related to disasters in South Dakota.

Section 2. The secretary of public safety may approve vouchers and the state auditor may 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 prescribed in chapter 4-8.

Signed March 17, 2011

ENVIRONMENTAL PROTECTION

CHAPTER 165

(SB 1)

Style and form revisions for Department of Environment and Natural Resources.

ENTITLED, An Act to make form and style revisions to certain statutes related to natural resources.

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

Section 1. That § 1-40-6 be amended to read as follows:

1-40-6. The Board of Water and Natural Resources shall annually elect from its members such officers as it deems advisable. A majority of the board members ~~shall be required to constitute~~ constitutes a quorum. The members ~~shall be~~ are removable for cause only.

Section 2. That § 1-40-17 be amended to read as follows:

1-40-17. A majority of the appointed members of the Water Management Board ~~shall constitute~~ constitutes a quorum. A majority of those present and voting ~~shall be~~ is sufficient to perform official functions of the board.

Section 3. That § 1-40-25 be amended to read as follows:

1-40-25. The Board of Minerals and Environment ~~shall consist~~ consists of nine members appointed by the Governor, not all of whom ~~shall~~ may be from the same political party. The terms of the members of the board ~~shall be~~ are for four years. ~~Each present member of the former Board of Environmental Protection, however, shall continue his existing term on the board without this order affecting the length or conditions of the present term. Appointments to fill vacancies created by the expiration of the terms of present members of the former Board of Environmental Protection shall be for four years. The terms of members of the board first appointed after July 1, 1981, shall be such that no more than three and no less than two members of the board, including those members continuing from the former Board of Environmental Protection, shall have terms expiring in any one calendar year. The length of such initial terms shall be designated by the Governor.~~ Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term.

Section 4. That § 1-40-26 be amended to read as follows:

1-40-26. The Board of Minerals and Environment shall annually elect from its members such officers as it deems advisable. A majority of the board members ~~shall be required to constitute~~ constitutes a quorum. The board shall hold meetings at the call of the ~~chairman~~ chair or a majority of the members, but ~~there shall be held~~ at least one meeting shall be held every three months.

Section 5. That § 34-44-22 be amended to read as follows:

34-44-22. In addition to the requirements under § 34-44-21, the person providing a training course for which approval is sought shall demonstrate ~~his~~ the person's ability and proficiency to conduct the training to the department's satisfaction.

Section 6. That § 34A-1-4 be amended to read as follows:

34A-1-4. The secretary ~~shall have power to~~ may secure necessary scientific, technical, administrative, and operational services, including laboratory facilities by contract or otherwise.

Section 7. That § 34A-1-5 be amended to read as follows:

34A-1-5. The administration of this chapter ~~shall be~~ is the responsibility of the secretary ~~of water and natural resources~~ except that the Board of Minerals and Environment shall perform any quasi-judicial, quasi-legislative, advisory, and special budgetary functions set out in this chapter. The board, with the concurrence of the secretary ~~of water and natural resources~~ may enforce those regulations promulgated pursuant to chapter 34-21 which pertain to the release of radioactive substances into the atmosphere.

Section 8. That § 34A-1-9 be amended to read as follows:

34A-1-9. The department ~~shall have power to~~ may:

(1) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement, and control~~.~~;

(2) Determine by means of field studies and sampling the degree of air pollution in the state ~~and the several parts thereof.~~;

(3) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state ~~and the several parts thereof,~~ and make recommendations to appropriate public and private bodies with respect ~~thereto.~~ to such effects; and

(4) Collect and disseminate information and conduct educational and training programs relating to air pollution.

Section 9. That § 34A-1-10 be amended to read as follows:

34A-1-10. The department may:

(1) Advise, consult, and cooperate with agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.;

(2) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide them with technical and consultative assistance therefor.;

(3) Encourage voluntary cooperation by persons, or affected groups to achieve the purposes of this chapter.; and

(4) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof of the source, device, or system, concerning the efficacy of such the device or system, or the air pollution problem that may be related to the source, device, or system. Nothing in any such consultation may be construed to relieve relieves any person from compliance with this chapter, rules and regulations in force pursuant thereto any rules in force pursuant to this chapter, or any other provisions of law.

Section 10. That § 34A-1-13 be amended to read as follows:

34A-1-13. The board shall have power to may require access to records relating to emissions which cause or contribute to air pollution.

Section 11. That § 34A-1-19 be amended to read as follows:

34A-1-19. Whenever If the board finds that there are methods, machines, devices, or construction features which are reasonably feasible that will prevent or significantly reduce the emission of air resulting in pollution and that the public interest will be served thereby by preventing or reducing the emission, it may require the use of such methods and the installation of such features, machines, or devices; provided, however, that. However, the owner or operator of an air contaminant source may use any methods, construction features, machines, or devices which are as effective as those required by the board. The owner or operator of an air contaminant source may apply to the board for permission to use alternative methods, construction features, machines, or devices upon a showing by the owner or operator that the alternative methods, construction features, machines, or devices are as effective as those required by the board. Any person who violates this section is subject to § 34A-1-39.

Section 12. That § 34A-1-23 be amended to read as follows:

34A-1-23. Nothing in § 34A-1-19 or 34A-1-21 shall be construed to authorize authorizes the board to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices, or equipment otherwise available.

Section 13. That § 34A-1-25 be amended to read as follows:

34A-1-25. No variance ~~shall~~ may be granted pursuant to §§ 34A-1-24 to 34A-1-35, inclusive, until the board has considered the relative interests of the applicant, the owners of property likely to be affected by the discharges, and the general public.

Section 14. That § 34A-1-26 be amended to read as follows:

34A-1-26. In determining whether ~~or not~~ to grant a variance ~~shall be granted by the board it shall take into consideration whether or not~~ the board shall consider whether the facility was in existence on July 1, 1970~~, and if such~~. If the facility was constructed after July 1, 1970, the board shall consider whether ~~or not such~~ the facility was in compliance at the time of its construction.

Section 15. That § 34A-1-29 be amended to read as follows:

34A-1-29. A variance or renewal ~~shall not be~~ is not a right of the applicant or holder ~~thereof~~ of the variance or renewal but ~~shall be in~~ is at the discretion of the board.

Section 16. That § 34A-1-30 be amended to read as follows:

34A-1-30. Any variance or renewal ~~thereof~~ of the variance shall be granted within the requirements of § 34A-1-27 ~~and,~~ for time periods and under conditions consistent with the reasons ~~therefor~~ for the variance or renewal, and within the limitations set forth in §§ 34A-1-31 to 34A-1-33, inclusive. Any violation of a variance granted pursuant to this section is subject to § 34A-1-39.

Section 17. That § 34A-1-33 be amended to read as follows:

34A-1-33. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in §§ 34A-1-31 and 34A-1-32, ~~it shall be for not~~ the variance may not be for more than three years.

Section 18. That § 34A-1-34 be amended to read as follows:

34A-1-34. Any variance granted pursuant to §§ 34A-1-24 to 34A-1-35, inclusive, may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the board on account of the variance, no renewal ~~shall~~ may be granted, unless following proceedings under chapter 1-26, the board finds the renewal is justified. No renewal ~~shall~~ may be granted except on application ~~therefor~~ for a renewal. Any such application shall be made ~~prior to~~ before the expiration of the variance.

Section 19. That § 34A-1-35 be amended to read as follows:

34A-1-35. Nothing in §§ 34A-1-24 to 34A-1-34, inclusive, and no variance or renewal granted pursuant ~~thereto shall be construed to prevent or limit~~ to §§ 34A-1-24 to 34A-1-34, inclusive, prevents or limits the application of the emergency provisions and procedures of §§ 34A-1-45 and 34A-1-46 to any person or ~~his~~ the person's property.

Section 20. That § 34A-1-36 be amended to read as follows:

34A-1-36. Each municipality and each county may, with the approval of the Board of Minerals and Environment, establish and thereafter administer ~~programs~~ within its jurisdiction an air pollution control program which provides by ordinance or local law for requirements as strict or more strict and more extensive than those imposed by this chapter and ~~regulations~~ rules issued ~~thereunder~~ under this chapter, or, upon prior review and approval by the board, less restrictive requirements. The air pollution control jurisdiction authorized pursuant to this section ~~shall apply~~ applies to state facilities located within the boundaries of the municipality or county ~~in the event~~ if the municipality or county has been found to be in violation of National Ambient Air Quality Standards.

Section 21. That § 34A-1-39 be amended to read as follows:

34A-1-39. Any person subject to this section, as provided in this chapter, is liable for a civil penalty not to exceed ten thousand dollars per day of violation or for damages to the environment of the state, or both. An action for the recovery of a civil penalty shall, upon demand, be tried to a jury.

Section 22. That § 34A-1-41 be amended to read as follows:

34A-1-41. Any duly authorized officer, employee, or representative of the department may enter and inspect that part of any property, premise, or place in which ~~he~~ the officer, employee, or representative has reasonable grounds to believe is the source of air pollution at any reasonable time for the purpose of investigating the air pollution or of ascertaining the state of compliance with this chapter and rules ~~and regulations in force pursuant thereto. No person shall~~ promulgated pursuant to this chapter. No person may refuse entry or access to any authorized representative of the department who requests entry for the purpose of ~~such~~ investigation, and who presents appropriate credentials; nor ~~shall~~ may any person obstruct, hamper, or interfere with any such investigation.

Section 23. That § 34A-1-43 be amended to read as follows:

34A-1-43. In addition to any other powers conferred on it by law the board ~~shall have power to~~ may hold hearings relating to any aspect of or matter in the administration of this chapter, and in connection ~~therewith~~ with the hearings, exercise the powers granted by chapter 1-26.

Section 24. That § 34A-1-44 be amended to read as follows:

34A-1-44. In addition to any other powers conferred on it by law the board ~~shall have power to~~ may issue ~~such~~ orders ~~as may be~~ necessary to effectuate the purposes of this chapter and enforce ~~the same~~ the provisions of this chapter by all appropriate administrative and judicial proceedings.

Section 25. That § 34A-1-45 be amended to read as follows:

34A-1-45. ~~Any other provisions of law to the contrary notwithstanding, if~~ If the secretary finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and requires immediate action to protect human health or safety, the secretary shall order ~~such person or persons~~ the person to reduce or discontinue immediately the emission of air contaminants. ~~Such~~ The emergency order ~~shall become~~ is effective immediately on service upon the person ~~or persons~~ responsible ~~therefor~~ for the emission, and any person to whom such an order is directed shall comply ~~therewith~~ with the order immediately.

Section 26. That § 34A-1-47 be amended to read as follows:

34A-1-47. If the secretary has reason to believe that a violation of any provision of this chapter or rule ~~pursuant thereto has occurred, he~~ promulgated pursuant to this chapter has occurred, the secretary may cause written notice to be served upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, and the facts alleged to constitute a violation ~~thereof~~ of this chapter, and may include an order that necessary corrective action be taken within a reasonable time. Any person who violates an order pursuant to this section is subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment, or both.

Section 27. That § 34A-1-48 be amended to read as follows:

34A-1-48. Any order issued pursuant to § 34A-1-47 ~~shall become~~ becomes final unless, no later than twenty days after the date the notice and order are served, the person ~~or persons~~ named ~~therein request~~ in the order requests in writing a hearing before the board. Upon such request, the board shall proceed in compliance with chapter 1-26.

Section 28. That § 34A-1-49 be amended to read as follows:

34A-1-49. In lieu of an order, the board ~~chairman~~ chair may schedule a contested case under chapter 1-26 before the board. Nothing in this chapter ~~shall prevent~~ prevents the department from notifying an alleged violator of violations and negotiating a consent agreement instead of initiating proceedings under § 34A-1-47. Any consent agreement shall be approved by the board.

Section 29. That § 34A-1-52 be amended to read as follows:

34A-1-52. Action pursuant to § 34A-1-39 or the second paragraph of § 34A-1-14 ~~shall not be~~ is not a bar to enforcement of this chapter or rules in force pursuant ~~thereto~~ to this chapter, and orders made pursuant to this chapter by injunction or other appropriate remedy.

Section 30. That § 34A-1-53 be amended to read as follows:

34A-1-53. Nothing in this chapter ~~shall prevent~~ prevents the department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

Section 31. That § 34A-1-54 be amended to read as follows:

34A-1-54. Nothing in this chapter ~~shall be construed to abridge, limit, or otherwise impair~~ abridges, limits, or otherwise impairs the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings ~~therefor~~ for damages or other relief.

Section 32. That § 34A-1-55 be repealed.

Section 33. That § 34A-1-58 be amended to read as follows:

34A-1-58. Concurrent with the submittal of a permit application pursuant to this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee not to exceed twenty-five dollars per ton of each regulated pollutant as determined by the provisions of Title V of the Federal Clean Air Act, 42 U.S.C. 7401 et seq. as amended to January 1, ~~1992~~ 2011, or a lesser amount as set by the secretary by rules promulgated pursuant to chapter 1-26. The secretary may exclude any amount of regulated pollutant emitted by any source in excess of four thousand tons per year in determining the amount of fee required for any operating source. The secretary shall develop a fee structure which equitably assesses an annual fee for administration costs and an annual fee based on emissions, the sum of which covers the estimated total costs of administering a delegated state air quality program. The secretary shall, by rules promulgated pursuant to chapter 1-26, annually adjust the fee, if necessary, in accordance with the consumer price index for that calendar year. The fee shall be used to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:

(1) Reviewing and acting on any application for a permit or permit revision;

(2) Implementing and enforcing the terms and conditions of the permit if the permit is issued. This amount does not include any court costs or other costs associated with any enforcement action;

(3) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs;

(4) Preparing generally applicable regulations or guidance;

(5) Modeling, analysis, or demonstrations;

(6) Preparing inventories and tracking emissions; and

(7) Providing support to sources under the small business stationary source technical and environmental compliance assistance program.

For any existing source of air contaminants that is subject to Title V of the Federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended to January 1, ~~1992~~ 2011, and that is not required to hold an air quality permit from the department as of January 1, 1992, the board may, as a condition of continued operation, require by rules promulgated pursuant to chapter 1-26 that the owner or operator of the source pay the annual fee provided for in this section. Nothing in this section allows the department to charge any one source of air contaminants more than one annual fee that is designed to cover the costs identified in this section. The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment under this section to the owner or operator of the air contaminant source. The fee levied in this section is in addition to all other fees and taxes levied by law.

Section 34. That subdivision (6) of § 34A-2-2 be amended to read as follows:

(6) "Pollution," such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state as exceeds that permitted by state effluent or water quality standards, including ~~but not limited to~~ change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life;

Section 35. That § 34A-2-6 be amended to read as follows:

34A-2-6. The secretary ~~shall have the authority to~~ may establish and conduct a continuing planning process consistent with the requirements of the Federal Water Pollution Control Act, as amended to January 1, 2011, including ~~but not limited to~~ the establishment and application of maximum daily loads of pollutants.

Section 36. That § 34A-2-11 be amended to read as follows:

34A-2-11. The Water Management Board shall promulgate rules pursuant to chapter 1-26 to establish water quality standards and to classify water according to its beneficial uses. The board shall consider environmental, technical, social, and economic factors and present use, persons adversely affected, natural background waters in relationship to the contaminants and pollutants contained ~~therein~~ in the waters, existing degradation, and irretrievable man-induced conditions placed on those waters. The standards shall protect the public health and welfare and the use of the waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses in accordance with the Federal Water Pollution Control Act as amended to January 1, ~~1993~~ 2011. A violation of standards promulgated pursuant to this section is subject to § 34A-2-75.

Section 37. That § 34A-2-13 be amended to read as follows:

34A-2-13. The board shall promulgate rules pursuant to chapter 1-26 to formulate effluent standards, which include as a minimum all categories for which the federal government has set standards pursuant to the Federal Water Pollution Control Act, as amended to January 1, ~~1993~~ 2011. The state standards shall be at least as stringent as the standards adopted by the federal government. Any person who violates these standards is subject to § 34A-2-75.

Section 38. That § 34A-2-15 be amended to read as follows:

34A-2-15. Any industrial user of publicly owned treatment works who violates pretreatment standards is subject to § 34A-2-75. The secretary or the owner of a publicly owned treatment works shall implement all provisions of section 307 of the Federal Water Pollution Control Act as amended to January 1, ~~1992~~ 2011, including issuing pretreatment industrial user permits to significant industrial users in accordance with §§ 34A-2-30 and 34A-2-36.

Section 39. That § 34A-2-24 be amended to read as follows:

34A-2-24. Notwithstanding § 34A-2-22, discharge of wastes into waters of the state which reduce the quality of such waters below the water quality level existing on March 27, 1973, will be allowed ~~when and~~ if it is affirmatively demonstrated to the board and the board finds by a majority vote of its members, after a public hearing on such request, that there may be a discharge, ~~which~~ if the discharge will not result in the violation of applicable water standards, ~~which~~ and if the discharge is found justifiable as a result of necessary economic or social development. The board may not allow a discharge if the discharge results in a violation of the existing water standards.

Section 40. That § 34A-2-29 be amended to read as follows:

34A-2-29. The secretary, under such conditions as ~~he~~ the secretary may prescribe, may require the submission of such plans, specifications, and other information as ~~he~~ the secretary deems necessary to carry out the provisions of this chapter or to carry out ~~the rules and regulations adopted~~ rules promulgated pursuant to the provisions of this chapter.

Section 41. That § 34A-2-33 be amended to read as follows:

34A-2-33. The secretary may certify, in accordance with rules promulgated by the board pursuant to chapter 1-26, that an applicant for a federal license or permit necessary to conduct any activity which may result in a discharge into waters of the state has satisfactorily shown that ~~he~~ the applicant will comply with sections 301, 302, 306, and 307 of the Federal Water Pollution Control Act as amended to January 1, ~~1993~~ 2011. This section and § 34A-2-34 shall be interpreted to implement the purposes of section 401 of the Federal Water Pollution Control Act as amended to January 1, ~~1993~~ 2011.

Section 42. That § 34A-2-35 be amended to read as follows:

34A-2-35. Before issuing any permit pursuant to § 34A-2-36, the secretary shall provide an opportunity for public hearing, with notice ~~thereof~~ of the opportunity for hearing, in accordance with applicable laws, rules, and regulations. If the recommendation of the department pursuant to § 34A-2-24, 34A-2-27, or 34A-2-36, is not contested, that recommendation shall become a final determination on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with ~~his~~ the recommendation.

Section 43. That § 34A-2-37 be amended to read as follows:

34A-2-37. The secretary shall require as permit conditions under § 34A-2-36 the achievement of:

(1) Effluent limitations based upon the application of such levels of treatment, technology, and processes as are required under the Federal Water Pollution Control Act, as amended to January 1, ~~1993~~ 2011;

(2) Any more stringent effluent limitations necessary to meet water quality criteria established pursuant to any state or federal law, rule, or regulation.

Effluent limitations prescribed under this section shall be achieved in the shortest reasonable period of time consistent with state or federal law, and any regulations or rules promulgated thereunder.

Section 44. That § 34A-2-39.1 be amended to read as follows:

34A-2-39.1. The secretary may issue an extension to a point source or nonpoint source discharger, ~~which extension may not be in conflict with federal law,~~ in which to meet state water quality standards or effluent standards if the extension is not in conflict with federal law, and if it is determined that:

(1) The violation was the result of actions or conditions outside the control of the discharger;

(2) The discharger has acted in good faith;

(3) There has been a commitment of necessary resources to achieve compliance at the earliest date probable;

(4) The extension would not result in imposition of any additional controls on any other point or nonpoint source;

(5) Facilities necessary for compliance are under construction and will be completed at the earliest date probable.

Section 45. That § 34A-2-43 be amended to read as follows:

34A-2-43. No permit ~~shall~~ may be issued authorizing any of the following discharges:

(1) The discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste;

(2) Any discharge which the secretary of the army, acting through the chief of engineers, finds would substantially impair anchorage and navigation of any waters of the United States;

(3) Any discharge to which the administrator of the ~~environmental protection agency, or his designee,~~ Environmental Protection Agency has objected, pursuant to any right provided to the administrator under the Federal Water Pollution Control Act, as amended to January 1, 2011;

(4) Any discharge which is in conflict with an areawide waste treatment management plan, approved under the Federal Water Pollution Control Act, as amended to January 1, 2011.

Section 46. That § 34A-2-48 be amended to read as follows:

34A-2-48. The secretary shall issue orders to any person to clean up any material which ~~he~~ the person or ~~his~~ the person's employee, agent, or subcontractor had accidentally or purposely dumped,

spilled, or otherwise deposited in or in such proximity to state waters that they may pollute state waters. A violation of an order issued pursuant to this section is subject to § 34A-2-75.

Section 47. That § 34A-2-49 be amended to read as follows:

34A-2-49. Any permit issued pursuant to this chapter may be revoked, modified, or suspended, in whole or in part, during its term for cause, including ~~but not limited to~~ the following:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

Section 48. That § 34A-2-50 be amended to read as follows:

34A-2-50. If the secretary recommends denial of an application for a permit, or revokes, suspends, or modifies a permit, ~~he~~ the secretary shall give written notice of ~~his~~ the action to the applicant or holder, who may request a hearing before the secretary. ~~Such~~ The hearing shall be held within thirty days after receipt of written request. The secretary may affirm, modify, or reverse ~~his~~ the secretary's initial decision based upon the evidence presented at the hearing.

Section 49. That § 34A-2-53 be amended to read as follows:

34A-2-53. If the secretary has reason to believe that a violation of this chapter or any rule made or permit issued under it is threatened or has occurred, ~~he~~ the secretary shall cause written notice to be served personally or by mail upon the alleged violator or ~~his~~ the alleged violator's agent. The notice shall state the provisions alleged to be violated, the facts alleged to constitute a violation, the nature of any corrective action proposed to be required, and the time within which such action is to be taken. For the purpose of this chapter, service by mail ~~shall be~~ is deemed complete on the date of mailing.

Any person who violates an order issued pursuant to this section is subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state, or both.

Section 50. That § 34A-2-54 be amended to read as follows:

34A-2-54. In a notice given under § 34A-2-53, the secretary may also require the alleged violator to appear for a public hearing to be conducted before the board, and to answer the charges made against ~~him~~ the alleged violator. In such event, the notice shall also meet the requirements of § 1-26-17, and notice shall be given in a manner which will reasonably inform the public.

Section 51. That § 34A-2-70 be amended to read as follows:

34A-2-70. Upon issuing an order pursuant to § 34A-2-68, the secretary shall fix a place and time for a hearing before the board, not later than five days thereafter, unless the person to whom the order is directed ~~shall request~~ requests a later time. The secretary may deny a request for a later time if ~~he~~ the secretary finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted by the board in the manner specified in §§ 34A-2-53 to 34A-2-60, inclusive.

Section 52. That § 34A-2-75 be amended to read as follows:

34A-2-75. Any person subject to this section, as provided in this chapter, is guilty of a Class 1 misdemeanor. In addition to a jail sentence authorized by § 22-6-2, a Class 1 misdemeanor imposed by this chapter is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state, or both.

Section 53. That § 34A-2-79 be amended to read as follows:

34A-2-79. A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. ~~This chapter shall not be construed to abridge or alter~~ Nothing in this chapter abridges or alters any rights or action of remedies in equity or under the common law or statutory law, criminal or civil, nor ~~shall~~ may any provision of this chapter be construed as estopping the state or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Section 54. That § 34A-2-80.1 be amended to read as follows:

34A-2-80.1. Municipalities, counties, conservation districts, and other political subdivisions of the state may join together under chapter 1-24 to form a separate agency to act as a waste treatment management agency under § 34A-2-80 and for the purpose of planning, consulting, and coordinating their efforts to implement area-wide waste treatment under the Federal Water Pollution Control Act, as amended to January 1, ~~1986~~ 2011, within designated water quality management areas.

Section 55. That § 34A-2-86 be amended to read as follows:

34A-2-86. The secretary shall establish a project priority list of municipalities, sewer or sanitary districts, state institutions, and other political subdivisions, ~~who~~ that are eligible for federal water pollution project grants for the purpose of ~~his~~ the secretary certifying to the federal government that allotted federal grant funds are, or ~~shall~~ will be, available for a project and that a particular project is higher than other projects on the project priority list eligible for such funds.

Section 56. That § 34A-2-87 be amended to read as follows:

34A-2-87. The Board of Water and Natural Resources shall promulgate pursuant to chapter 1-26 and the secretary shall implement rules for the effective administration of such federally allotted funds in conjunction with state grants, for such projects including the determination of need, priority of construction, and standards for construction consistent with the requirements of the Federal Water Pollution Control Act as amended to January 1, ~~1993~~ 2011. The secretary and Board of Water and Natural Resources shall seek to achieve expeditious approval and certification of grant applications, sound environmental planning, cost effectiveness in distribution of grant funds, and an appreciation of the numerous public pollution control needs in the state as allowed under the federal act.

Section 57. That § 34A-2-93 be amended to read as follows:

34A-2-93. The board may promulgate rules pursuant to chapter 1-26:

(1) To establish surface and ground water quality standards;

(2) To establish design and installation requirements for on-site wastewater systems;

(3) To establish criteria for water pollution control facilities, to include facilities constructed for the protection and monitoring of groundwater;

(4) To establish the present and future beneficial uses of all waters under this chapter;

(5) To establish procedures for granting variances from water quality standards;

(6) To establish procedures for conducting inspections;

(7) To establish contested case procedures;

(8) To establish secondary treatment standards for wastewater facilities;

(9) To establish standards for surface water discharge permits;

(10) To establish pretreatment standards and requirements for local pretreatment programs;

(11) To establish standards for aboveground and underground storage tanks;

(12) To establish financial responsibility requirements for owners of underground and aboveground storage tanks;

(13) To establish standards for the remediation and cleanup of contaminated soils. The standards relating to cleanup of petroleum contamination shall be based upon risk to human health and safety as determined by the board. The board may adopt standards relating to cleanup of contamination consistent with the American Society for Testing and Materials Standard ES38-94, entitled Emergency Standard Guide for Risk Based Corrective Action Applied at Petroleum Release Sites, as in effect on January 1, ~~1995~~ 2011, or other generally accepted risk-based cleanup methods;

(14) To establish standards for bulk chemical storage facilities;

(15) To establish requirements for underground injection control;

(16) To establish a groundwater discharge permit program;

(17) To establish a delegated national pollutant discharge elimination system program as provided for under 40 CFR Part 123 as amended to January 1, ~~1993~~ 2011, and wastewater pretreatment program as provided for under 40 CFR Part 403 as amended to January 1, ~~1993~~ 2011;

(18) To establish a priority listing for projects funded under the construction grant program; and

(19) To establish requirements for approval of plans for water pollution control facilities and water supply systems.

The board shall also hold any hearings necessary for the proper administration of this chapter and initiate any action in court for the enforcement of this chapter.

Section 58. That § 34A-2-94 be amended to read as follows:

34A-2-94. Any records, reports, or information obtained under this chapter shall, in the case of effluent data, be related to any applicable effluent limitations, pretreatment, or new source performance standards, and shall be available to the public~~, except that~~. However, upon a showing satisfactory to the secretary by any person that records, information, or particular part thereof (other than effluent data, permit applications, and permits) to which the secretary has access under this chapter, if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the secretary shall consider ~~such~~ the record, report, or information, or particular

portion ~~thereof~~ of the record, report, or information, confidential, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the state or federal government concerned with carrying out this chapter, or when relevant, in any proceeding under this chapter.

Section 59. That § 34A-2-95 be repealed.

Section 60. That § 34A-2-98 be amended to read as follows:

34A-2-98. Terms used in this section and § 34A-2-99~~, unless the context otherwise requires,~~ mean:

(1) "Department," Department of Environment and Natural Resources;

(2) "Local designated agencies," agencies of subdivisions of state government which are designated by the Governor to carry out specific portions of this section and § 34A-2-99~~.~~;

(3) "Nonoperational storage tank," any underground storage tank in which regulated substances may not be deposited or from which regulated substances may not be dispensed;

(4) "Regulated substance," any substance defined in section 101(4) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended to January 1, 2011, but not including any substance regulated as a hazardous waste under subtitle (C), and petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, 60 degrees fahrenheit and 14.7 pounds per square inch absolute;

(5) "Underground storage tank," any tank or combination of tanks including connected underground pipes which contains an accumulation of regulated substances, and the volume of which, including the volume of the connected underground pipes, is ten percent or more beneath the surface of the ground. This term does not include:

(a) A farm or residential tank with a capacity of one thousand one hundred gallons or less used for storing motor fuel for noncommercial purposes;

(b) A tank used for storing heating oil for consumptive use on the premises where stored;

(c) A septic tank;

(d) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 2011, the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 2011, or a pipeline which is an intrastate pipeline facility regulated under state laws comparable to the provisions of law referred to above;

(e) A surface impoundment, pit, pond or lagoon;

(f) A storm water or wastewater collection system;

(g) A flow-through process tank;

(h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor; and

(j) Any pipes connected to any tank which is described in subsections (a) to (i), inclusive, of this subdivision.

Section 61. That § 34A-2-99 be amended to read as follows:

34A-2-99. The board shall ~~adopt~~ promulgate rules, pursuant to chapter 1-26 to develop:

(1) Requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) Requirements for the reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) Requirements for taking corrective action in response to a release from an underground storage tank. The standards relating to cleanup of petroleum contamination shall be based upon risk to human health and safety as determined by the board. The board may adopt standards relating to cleanup of contamination consistent with the American Society for Testing and Materials Standard ES38-94, entitled Emergency Standard Guide for Risk Based Corrective Action Applied at Petroleum Release Sites, as in effect on January 1, ~~1995~~ 2011, or other generally accepted risk-based cleanup methods;

(5) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(6) Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) Standards of performance for new underground storage tanks;

(8) Requirements for notifying the department or local designated agency of the existence of any operational or nonoperational underground storage tank;

(9) Requirements for providing the information required on the form issued pursuant to section 9002(b)(2) of the Federal Resource Conservation Recovery Act reauthorization of 1984, as amended to January 1, 2011.

A violation of rules promulgated pursuant to this section is subject to § 34A-2-75.

Section 62. That § 34A-2-100 be amended to read as follows:

34A-2-100. The term ~~"~~, above ground stationary storage tank~~"~~, as used in this section and §§ 34A-2-101 and 34A-2-102 means~~:~~ any stationary tank or combination of stationary tanks above ground, including connected pipes~~,~~ which stores an accumulation of regulated substances as defined in § 34A-2-98.

This term does not include:

(1) Any farm or residential tank used for storing motor fuels for noncommercial purposes;

(2) Any tank used for storing heating oil or motor fuels for consumptive use on the premises where stored;

(3) Any septic tank;

(4) Any pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 2011;

(5) Any surface impoundment, pit, pond, or lagoon;

(6) Any storm water or wastewater collection system;

(7) Any flow-through process tank;

(8) Any liquid trap or associated gathering lines directly related to oil and gas production and gathering operations;

(9) Any storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor;

(10) Any pipes connected to any tank which is exempted in this subdivision; and

(11) Any tanks used for storing pesticides regulated under chapter 38-21, except those regulated pursuant to Subtitle I of the Federal Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), as amended to January 1, 2011.

Section 63. That § 34A-2-101 be amended to read as follows:

34A-2-101. The board shall ~~adopt~~ promulgate rules pursuant to chapter 1-26 to develop procedures necessary to safeguard the public health and welfare and prevent pollution of the waters of the state from the leakage, spillage, release, or discharge of regulated substances from above ground stationary storage tanks. These rules shall be exercised in substantial conformity with the current codes and standards recommended by the National Fire Protection Association for the storage of flammable and combustible liquids as contained in NFPA30 in effect on January 1, ~~1987~~ 2011. The rules shall provide the following:

(1) Requirements for maintaining a leak detection system, an inventory system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) Requirements for maintaining records of any monitoring or leak detection system or inventory control system;

(3) Requirements for the reporting of any releases and corrective action taken in response to a release from any above ground stationary storage tank;

(4) Requirements for taking corrective action in response to a release from any above ground stationary storage tank;

(5) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(6) Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating any above ground stationary storage tank;

(7) Standards of performance, including~~, but not limited to,~~ design, construction, installation, and compatibility standards for new above ground stationary storage tanks;

(8) Requirements for notifying the department or local designated agency of the existence of any operational or nonoperational above ground stationary storage tank; and

(9) Requirements for providing tank information required on the form provided by the department.

A violation of these rules is subject to § 34A-2-75.

Section 64. That § 34A-2-114 be amended to read as follows:

34A-2-114. In order to enhance economic development, provide improved coordination between governmental agencies, and safeguard the public health, safety, welfare, and the environment of this state through a customer service approach, the department ~~shall be~~ is delegated authority to administer the national pollutant discharge elimination system permit program for all direct and indirect pretreatment surface water discharge systems as provided in section 402 of the Federal Water Pollution Control Act as amended to January 1, ~~1992~~ 2011. A reasonable fee upon these systems shall be imposed, as provided in §§ 34A-2-117 to 34A-2-120, inclusive, in order to defray the department's costs of administering this program.

Section 65. That § 34A-2-115 be amended to read as follows:

34A-2-115. ~~In~~ For purposes of administering the provisions of this chapter, the term, sewage sludge ~~is~~, means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

~~In~~ For purposes of administering the provisions of this chapter, the term, toxic pollutants ~~are,~~ means any pollutant listed as toxic under section 307(a) of the Federal Water Pollution Control Act as amended to January 1, ~~1992~~ 2011, or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the Federal Water Pollution Control Act as amended to January 1, ~~1992~~ 2011.

~~In~~ For purposes of administering the provisions of this chapter, ~~a~~ the term, significant industrial user ~~is~~, means any discharger subject to categorical pretreatment standards~~;~~ and any other industrial user that discharges an average of twenty-five thousand gallons per day or more of process wastewater, excluding sanitary, noncontact cooling and boiler blowdown wastewaters, to the publicly owned treatment works or that contributes a process wastestream which makes up more than five percent of the average dry weather hydraulic or organic capacity of the publicly owned treatment works treatment plant; or one that is designated as such by the secretary on the basis that the industrial user has a reasonable chance of adversely affecting the publicly owned treatment works operation or violating a pretreatment standard or requirement.

Section 66. That § 34A-2-116 be amended to read as follows:

34A-2-116. A pretreatment program shall be developed for any publicly owned treatment works or combination of publicly owned treatment works operated by the same authority as

required by section 307 of the Federal Water Pollution Control Act as amended to January 1, ~~1992~~ 2011. The owner of any publicly owned treatment works that is required to develop a program may request the secretary to assume local pretreatment responsibilities for that publicly owned treatment works.

Section 67. That § 34A-2-117 be amended to read as follows:

34A-2-117. There is hereby imposed an annual fee upon all facilities permitted under the national pollutant discharge elimination system program provisions of section 402 of the Federal Water Pollution Control Act, 33 U.S.C. 1342, as amended to January 1, ~~1992~~ 2011, except for feedlot facilities, stormwater discharge systems and construction dewatering activities. The fee shall be assessed as provided in §§ 34A-2-118 to 34A-2-120, inclusive.

Section 68. That § 34A-2-119 be amended to read as follows:

34A-2-119. For industrial and governmental treatment works with significant water quality loadings, the fee imposed in § 34A-2-117 is as follows:

(1) Meat products processing as defined by 40 CFR 432 as amended to January 1, ~~1992~~ 2011:

(a) Process water (0.50 mgd or greater)--$30,000 per year;

(b) Process water (0.25 mgd or greater and less than 0.50 mgd)--$10,000 per year;

(c) Process water (less than 0.25 mgd)--$600 per year; and

(d) Noncontact cooling water--$600 per year;

(2) Corn wet milling as defined by 40 CFR 406 Subpart A as amended to January 1, ~~1992~~ 2011:

(a) Process water (0.50 mgd or greater)--$30,000 per year;

(b) Process water (0.25 mgd or greater and less than 0.50 mgd)--$10,000 per year;

(c) Process water (less than 0.25 mgd)--$600 per year; and

(d) Noncontact water--$600 per year;

(3) Ore mining and dressing as defined by 40 CFR 440 as amended to January 1, ~~1992~~ 2011:

(a) Large scale gold and silver mines:

(i) Process water--$30,000 per year; and

(ii) Mine drainage water--$5,000 per year; and

(b) Gold placer mining process water--$5,000 per year;

(4) Mineral mining and processing as defined by 40 CFR 436 as amended to January 1, ~~1992~~ 2011:

(a) Dimension stone--$600 per year;

(b) Crushed stone--$600 per year;

(c) Sand and Gravel--$600 per year;

(d) Mineral pigments--$600 per year; and

(e) Small scale mines--$600 per year;

(5) Federal treatment works, excluding Ellsworth Air Force Base--$600 per year;

(6) Steam electric power generating as defined by 40 CFR 423 as amended to January 1, ~~1992~~ 2011:

(a) 0.50 mgd or greater--$17,500 per year;

(b) Less than 0.50 mgd–$6,250 per year; and

(c) Noncontact cooling water--$600 per year; and

(7) Electrical transformer reclamation--$5,000 per year.

The secretary pursuant to the procedures contained in chapter 1-26 may establish the fee for any industrial or governmental treatment works with significant water quality loadings or that discharges toxic pollutants and is not included in the categories above, not to exceed ~~$30,000~~ thirty thousand dollars per year.

Section 69. That § 34A-2-122 be amended to read as follows:

34A-2-122. The obligation to pay the annual fee imposed by §§ 34A-2-117 to 34A-2-120, inclusive, is on the owner or operator of a surface water discharge or pretreatment system and accrues on July first, for all nonpublicly-owned facilities. The fee is due and payable by July thirty-first and shall be remitted to the Department of Revenue and Regulation along with such forms as may be prescribed by the secretary of revenue and regulation in rules promulgated pursuant to chapter 1-26.

The obligation to pay the annual fee imposed by §§ 34A-2-117 to 34A-2-120, inclusive, is on the owner or operator of a surface water discharge or pretreatment system and accrues on January first for all publicly-owned facilities. The fee is due and payable by January thirty-first and shall be remitted to the Department of Revenue and Regulation along with such forms as may be prescribed by the secretary of revenue and regulation in rules promulgated pursuant to chapter 1-26.

The obligation to pay the application fee imposed by §§ 34A-2-117 to 34A-2-120, inclusive, is on the owner or operator of a facility requesting either coverage under a general permit or water quality certification under section 401 of the Federal Water Pollution Control Act as amended to January 1, ~~1992~~ 2011. The application fee for such water quality certification does not apply to treatment works already required to submit a fee under other provisions of §§ 34A-2-117 to 34A-2-120, inclusive. The fee is due and payable and shall be remitted to the Department of Environment and Natural Resources along with such application forms as may be prescribed by the secretary of environment and natural resources in rules promulgated pursuant to chapter 1-26.

Section 70. That § 34A-3-8 be amended to read as follows:

34A-3-8. If a vacancy occurs in the appointed membership of the board, the secretary may appoint a member for the remaining portion of the unexpired term created by the vacancy. The

membership of any board member who leaves his or her field of employment or who moves from the State of South Dakota ~~shall be automatically terminated~~ automatically terminates.

Section 71. That § 34A-3-11 be amended to read as follows:

34A-3-11. The secretary shall ~~have the duty and authority~~:

(1) ~~To hold~~ Hold at least one examination each year at the designated time and place for the purpose of examining candidates for certification~~.~~;

(2) ~~To advertise~~ Advertise and promote the program of certification of water and wastewater works operators~~.~~;

(3) ~~To encourage~~ Encourage other operators to become certified other than those required to do so by law~~.~~;

(4) ~~To distribute~~ Distribute applications and notices~~.~~;

(5) ~~To receive~~ Receive and evaluate applications~~.~~;

(6) ~~To collect~~ Collect fees, not exceeding ten dollars for both initial and an annual renewal fee~~.~~;

(7) ~~To prepare~~ Prepare, conduct, and grade examinations~~.~~;

(8) ~~To maintain~~ Maintain records of operator qualifications and certification, and maintain a register of certified operators~~.~~;

(9) ~~To promote~~ Promote and schedule regular training schools and programs.

Section 72. That § 34A-3-13 be amended to read as follows:

34A-3-13. It is a Class 2 misdemeanor for any person, firm, or corporation, municipal or private, operating a water supply system or wastewater system to operate the water treatment plant, wastewater treatment plant, water distribution and wastewater collection systems unless the competency of the operator who is in direct responsible charge is certified by the secretary~~; provided, that every~~. Each operator who is in direct responsible charge shall ~~have~~, within one year from the date of his or her employment ~~to,~~ become certified under the ~~provision~~ provisions of this chapter. It is a Class 2 misdemeanor for any person to perform the duties of an operator without being certified.

Section 73. That § 34A-3-15 be amended to read as follows:

34A-3-15. Each applicant shall be examined by the ~~secretary or his duly authorized representative. Such~~ department. The examination shall consist of such questions and such phases of the practice as may be prescribed from time to time by ~~said secretary~~ the department.

If the applicant ~~shall~~ satisfactorily ~~pass~~ passes the examination required, and ~~has shown himself to be otherwise possessed of the necessary qualifications, he~~ demonstrates possession of the necessary qualifications, the applicant shall be certified.

Section 74. That § 34A-3-19 be amended to read as follows:

34A-3-19. The secretary ~~is hereby authorized to charge every~~ may charge each applicant a fee not to exceed ten dollars which ~~fee~~ shall accompany the application. The request of each person so certified for an annual renewal certification shall be accompanied by a fee which shall be

established by the secretary but which ~~shall~~ may not exceed ten dollars. ~~All receipts from such~~ The fees shall be deposited in the state treasury to be credited to the Board of Certification fund, which ~~fund~~ shall be used to pay expenses of the board and to administer the provisions of this chapter. Any surplus at the end of the fiscal year shall be retained by the board for future expenditures.

Section 75. That § 34A-3-21 be amended to read as follows:

34A-3-21. The secretary ~~is hereby authorized to~~ may suspend or revoke a certificate issued ~~hereunder~~ under this chapter on violation of any of the provisions of this chapter or ~~the rules and regulations issued pursuant thereto~~ any rules promulgated pursuant to this chapter.

Section 76. That § 34A-3-22 be amended to read as follows:

34A-3-22. No certificate ~~shall~~ may be suspended or revoked except in compliance with chapter 1-26.

Section 77. That § 34A-3-25 be repealed.

Section 78. That § 34A-3A-1 be amended to read as follows:

34A-3A-1. It is hereby declared to be the public policy of the state to achieve and maintain safe drinking water for the public which will protect human health and safety and prevent the creation of public nuisances. To these ends it is the purpose of this chapter to ensure that public water systems in the state meet or exceed minimum standards for drinking water quality and to foster cooperation and coordination with other state and local agencies, other states, and the federal government pursuant to the Federal Safe Drinking Water Act, Public Law 93-523, as amended to ~~July 1, 1986~~ January 1, 2011.

Section 79. That subdivision (8) of § 34A-3A-2 be amended to read as follows:

(8) "Public water system," a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if ~~such~~ the system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year and as provided for in 40 CFR sections 141.2 and 142.2 as amended to ~~April 28, 1998~~ January 1, 2011;

Section 80. That § 34A-3A-3 be amended to read as follows:

34A-3A-3. The Water Management Board shall promulgate rules, pursuant to chapter 1-26, establishing:

(1) Safe drinking water standards with maximum contaminant levels necessary to protect public health and safety. No maximum contaminant level may be more stringent than those established under the Federal Safe Drinking Water Act, as amended to January 1, ~~1988~~ 2011; and

(2) Procedures to ensure compliance with this chapter including~~, but not limited to,~~ quality control, testing, monitoring, record keeping, reporting, and public notice.

A violation of the rules adopted pursuant to this section is subject to a civil action by the State of South Dakota in circuit court for the recovery of a civil penalty not to exceed five hundred dollars for each day of violation.

Section 81. That § 34A-3A-19 be amended to read as follows:

34A-3A-19. In order to safeguard the public health, safety, and welfare of this state through a customer service approach, the state shall retain administration of the public water system supervision program as provided in the ~~federal~~ Federal Safe Drinking Water Act as amended to January 1, ~~1992~~ 2011. In order to meet the increasing delegation requirements the result of the 1986 amendments to the Federal Safe Drinking Water Act, a fee shall be imposed upon the users of drinking water facilities as provided in § 34A-3A-20 to defray the costs to the state of administering the program.

Section 82. That § 34A-3A-20 be amended to read as follows:

34A-3A-20. There is hereby imposed an annual fee upon all public water systems under the provisions of section 1411 of the Federal Safe Drinking Water Act, 42 U.S.C. 300F et seq. as amended to ~~June 19, 1986~~ January 1, 2011. The fee is assessed as follows:

(1) For community water systems including municipalities, rural water systems, housing subdivisions, trailer parks, sanitary districts, religious colonies, and government operated water systems, the fee shall be based upon 1990 census data for municipalities, population served for nonmunicipalities, and the following fee table:

Population Range	Fee ($)
25 to 50	15
51 to 100	30
101 to 200	60
201 to 300	100
301 to 400	140
401 to 500	180
501 to 600	220
601 to 700	260
701 to 800	300
801 to 900	340
901 to 1,000	380
1,001 to 2,000	600
2,001 to 3,000	1,000
3,001 to 4,000	1,400
4,001 to 5,000	1,800
5,001 to 6,000	2,200
6,001 to 7,000	2,600
7,001 to 8,000	3,000
8,001 to 9,000	3,400
9,001 to 10,000	3,800
10,001 to 11,000	4,200
11,001 to 12,000	4,600

12,001 to 13,000	5,000
13,001 to 14,000	5,400
14,001 to 15,000	5,800
15,001 to 16,000	6,200
16,001 to 17,000	6,600
17,001 to 18,000	7,000
18,001 to 19,000	7,400
19,001 to 20,000	7,800
20,001 to 30,000	10,000
30,001 to 40,000	14,000
40,001 to 50,000	18,000
50,001 to 60,000	22,000
60,001 to 70,000	26,000
70,001 to 80,000	30,000
80,001 to 90,000	34,000
90,001 to 100,000	38,000
100,001 or more	41,000

(2) For noncommunity water systems including private campgrounds, government-operated campgrounds, interstate highway rest areas, tourist attractions, gas stations, motels, public and private schools, and other systems providing drinking water to the public--$10.00 minimum.

The fee imposed by this section is in addition to any other fee or tax.

Section 83. That § 34A-3A-21 be amended to read as follows:

34A-3A-21. From the amount recovered pursuant to § 34A-3A-20 and appropriated through § 34A-3A-22, the department shall expend such sums as are necessary to pay the cost of initial lead and copper monitoring as required by the Federal Safe Drinking Water Act as amended to January 1, ~~1992~~ 2011, and the rules promulgated by the U.S. Environmental Protection Agency thereunder.

Section 84. That § 34A-3A-25 be amended to read as follows:

34A-3A-25. In order to carry out the requirements of the ~~federal~~ Federal Safe Drinking Water Act as amended to ~~August 6, 1996~~ January 1, 2011, the secretary of environment and natural resources shall promulgate rules, pursuant to chapter 1-26, establishing:

(1) Procedures for a supplier of water to demonstrate that a new system intended to be a public water system has the technical, managerial, and financial capacity to achieve and maintain compliance with all relevant local, state, and federal requirements;

(2) Procedures for the department to issue certificates of approval to new water suppliers once a technical, managerial, and financial capacity review, consistent with provisions of this chapter, is completed. The rules shall provide that a new system intended to be

a public water system, after October 1, 1999, may not operate until it has been issued a certificate of approval;

(3) The development and implementation of a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity to comply with all relevant local, state, and federal requirements; and

(4) Such other rules as may be necessary to implement the provisions of the ~~federal~~ Federal Safe Drinking Water Act as amended to ~~August 6, 1996~~ January 1, 2011, in a state drinking water program approved by the United States Environmental Protection Agency.

A violation of any rule adopted pursuant to this section is subject to the penalties provided for in § 34A-3A-3.

Section 85. That § 34A-5-1 be amended to read as follows:

34A-5-1. ~~Whenever~~ If any populated area ~~without~~ outside the boundary of any municipality ~~shall be so situated that the sewage thereof~~ is situated so that the sewage of the populated area becomes, or may become, a menace to the residents of ~~said~~ the populated area or to the residents of any municipality adjacent ~~thereto~~ to the populated area, the ~~same~~ populated area may be incorporated as a sanitary district ~~under this chapter as provided therein~~ as provided in this chapter.

Section 86. That § 34A-5-3 be amended to read as follows:

34A-5-3. Any person making application for the organization of a sanitary district shall first cause an accurate map to be made of the territory intended to be ~~embraced within the limits of such~~ included in the sanitary district, showing the boundaries and area ~~thereof, and the accuracy thereof~~ of the district. The accuracy of the map shall be verified by the affidavit of a surveyor. The map may be completed by reviewing records and legal descriptions at a county register of deeds office.

Section 87. That § 34A-5-7 be amended to read as follows:

34A-5-7. If the board of county commissioners ~~shall be~~ is satisfied that the requirements of this chapter have been fully complied with, the board shall issue an order declaring that the territory shall, with the assent of the electors as specified in § 6-16-2, in an election as provided in §§ 6-16-4 to 6-16-6, inclusive, be an incorporated sanitary district by the name specified in the application. The name shall be different from that of any other sanitary district in this state.

Section 88. That § 34A-5-14 be amended to read as follows:

34A-5-14. ~~Such~~ Any sanitary district~~, created and~~ established under this chapter~~, shall be~~ is a governmental subdivision of this state and a public body, corporate and politic.

Section 89. That § 34A-5-21.2 be amended to read as follows:

34A-5-21.2. A sanitary district trustee shall be a resident of the sanitary district ~~he~~ the trustee represents.

Section 90. That § 34A-5-22 be amended to read as follows:

34A-5-22. The members of the board of trustees shall organize by electing one of ~~their number president, whose duty it shall be to~~ the members to serve as president. The president shall preside over all meetings of the board and ~~to~~ shall call all special meetings of the board ~~when he~~ if the president or a majority of the board deems such a meeting necessary ~~and, in case the president should fail or refuse to call such meeting or meetings, then such meeting or meetings~~. If the

president fails or refuses to call a special meeting, a special meeting may be called by a majority of the board.

Section 91. That § 34A-5-27 be amended to read as follows:

34A-5-27. The board of trustees ~~shall have the power to~~ may employ and prescribe the duties and fix the compensation of all necessary officers and employees of ~~said~~ the sanitary district, and ~~to~~ may employ such additional engineering, legal, financial, and other professional assistance as ~~it may deem~~ the board deems necessary.

Section 92. That § 34A-5-28 be amended to read as follows:

34A-5-28. No trustee or employee of a sanitary district ~~shall~~ may be directly or indirectly interested in any contract, work, or business of the district, or the sale of any article, the expense, price, or cost of which is paid by ~~such~~ the district, nor in the purchase of any real, personal, or other property belonging to the district, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of ~~said~~ the district.

Section 93. That § 34A-5-32 be amended to read as follows:

34A-5-32. ~~In the event~~ If a sanitary district commences a condemnation action and files a declaration of taking and obtains an order of possession as provided in chapter 31-19, and later abandons the action when the property is no longer necessary for public purposes or the use of which the property was originally sought to be condemned no longer exists, the board of trustees of a sanitary district, upon order of the circuit court in which the condemnation action is pending, shall convey ~~such~~ the property to the original owner and the original owner shall return the deposit on file with the clerk of courts. This section ~~shall apply~~ applies to any condemnation action abandoned by a sanitary district, organized under this chapter, prior to the effective date ~~hereof~~ of this section.

Section 94. That § 34A-5-33 be amended to read as follows:

34A-5-33. The board of trustees of a sanitary district may sell and convey real property held by a sanitary district, the title to which has been obtained from any source, and which is not required for public purposes and has been or is about to be abandoned for public purposes. ~~Such~~ The sale and conveyance shall be conducted~~,~~ in accordance with chapter 6-13. In order to make ~~such sale or sales~~ the sale, the board of trustees may employ real estate agents and incur other necessary expenses.

Any real property which any sanitary district ~~shall sell~~ sells under the terms of this section shall first be offered for sale to the prior fee holder~~, his heirs~~ or the prior fee holder's heirs or assigns from whom ~~said~~ the real property was originally purchased ~~who shall~~. The prior fee holder, heirs, and assigns have the right of first refusal to purchase ~~said~~ the real property at its appraised value.

Section 95. That § 34A-5-34 be amended to read as follows:

34A-5-34. The board of trustees ~~shall have the power to~~ may enter into contracts with any municipality for the purpose of using the facilities of ~~said~~ the municipality for the treatment and disposal of sewage of the district or making ~~such~~ the facilities of the district available to the municipality.

Section 96. That § 34A-5-36 be amended to read as follows:

34A-5-36. The board of trustees ~~shall have the power to fix~~ may:

(1) Fix reasonable rates and charges for services furnished and made available by the district to users of its facilities~~, to provide~~;

(2) Provide for the collection ~~thereof, to pledge~~ of the charges;

(3) Pledge the net revenues derived from ~~such~~ the charges to the payment of bonds made payable wholly or partly from the revenues~~, and to make~~; and

(4) Make and enforce on behalf of the district all covenants relating to~~ the~~:

(a) The proper operation and maintenance of the facilities~~, insurance~~;

(b) Insurance against hazards of loss and liability~~, the~~;

(c) The administration, expenditure and auditing of the income and revenues ~~thereof, the~~ of the district;

(d) The expenditure of the bond proceeds~~, and, without limitation, all~~; and

(e) All other matters affecting the security of the bonds, which the board of trustees ~~may determine~~ determines to be necessary or desirable for the purpose of selling the bonds upon terms advantageous to the district and maintaining its credit and ability to engage in further financing when and as necessary.

Section 97. That § 34A-5-37 be amended to read as follows:

34A-5-37. ~~In the event of the issuance of~~ If revenue bonds are issued in accordance with the provisions of chapter 9-40, the sanitary district shall ~~be obligated~~, until all such bonds and interest ~~thereon~~ on the bonds are fully paid, ~~to~~ fix such rates and charges and ~~to~~ revise them from time to time in such manner that the collections ~~thereof~~ of the charges will be adequate to~~ pay~~:

(1) Pay all current, reasonable, and necessary expenses of the operation and maintenance of all facilities whose revenues are pledged for the payment of the bonds~~, and to produce~~;

(2) Produce net revenues, in excess of such current costs of operation and maintenance, at all times sufficient to pay the principal and interest due on the bonds ~~and to accumulate~~; and

(3) Accumulate and maintain reserves for the further security ~~thereof~~ of the bonds in such amounts as ~~may be~~ are agreed in the resolutions authorizing the bonds.

Section 98. That § 34A-5-38 be amended to read as follows:

34A-5-38. ~~In the event of the issuance of bonds~~ If bonds are issued in lieu of special assessment certificates in accordance with the provisions of chapter 9-43, the sanitary district board of trustees may provide that ~~such~~ rates and charges shall be ~~so~~ fixed and from time to time revised ~~as~~ to produce net revenues at all times sufficient, with special assessments and interest pledged to the bond fund and actually collected and received ~~therein~~ in the bond fund, to pay all principal and interest when due on ~~such~~ the bonds and to create and maintain such further reserves for the security ~~thereof~~ of the bonds as may be agreed in the resolutions authorizing ~~such~~ the bonds. Bonds issued and secured as authorized in ~~the preceding sentence~~ this section may be designated as special assessment and revenue bonds, and may be issued to finance an improvement or a group of improvements to the facilities of the district, ~~when~~ if any portion of the cost ~~thereof~~ of the improvement is to be paid by the levy of special assessments.

Section 99. That § 34A-5-39 be amended to read as follows:

34A-5-39. ~~When~~ If a sanitary district has been established in accordance with the procedures provided in this chapter, no further proceedings ~~shall be~~ are required under the provisions of §§ 9-48-26 to 9-48-31, inclusive, and funds derived from ~~its~~ the district's sewer rates and charges ~~shall not be~~ are not subject to the limitations provided in those sections.

Section 100. That § 34A-5-40 be amended to read as follows:

34A-5-40. The board of trustees ~~shall have the power to~~ may cause the amount of any charges, and interest and penalties ~~thereon~~ on the charges, for sewer service rendered or made available to any land within the district, which are due and unpaid on the first day of October in each year to be certified by the clerk of the district to the county auditor in the manner provided in § 10-12-7 together with any taxes levied by the district for corporate purposes~~, and all~~. All amounts so certified shall be inserted by the county auditor upon the tax list of the current year and shall be payable and delinquent at the same time and shall incur penalty and interest and shall be collected by the same procedure as real estate taxes on the same property. In the event of a tax sale or the issuance of a tax deed, the provisions of §§ 9-43-39 to 9-43-41, inclusive, shall apply to all amounts so certified and then delinquent, in the same manner as delinquent installments of special assessments.

Section 101. That § 34A-5-41 be amended to read as follows:

34A-5-41. The board of trustees of any sanitary district incorporated under this chapter may submit to the voters of the district at an annual election or a special election called and held in accordance with chapter 9-13 the question whether the district shall be authorized to acquire and operate a water system, or the application for incorporation filed in accordance with § 34A-5-6 may request such authority. Upon approval of the grant of such authority by a majority of the qualified electors voting on the question, or upon entry of the order incorporating the district if the application has requested such authority, the board of trustees ~~shall be authorized to acquire~~ may:

(1) Acquire and operate water mains, hydrants, intakes, wells, storage tanks and reservoirs, treatment plants, and all other facilities used or useful for the supply and distribution of water~~, and to acquire~~;

(2) Acquire and operate any of such facilities~~, and to contract~~; and

(3) Contract for the service of any such facilities owned by the adjacent municipality or for the use of district facilities by the municipality~~; and in~~.

In connection with all such matters the district and its board of trustees ~~shall~~ have all powers ~~herein~~ granted in this chapter with reference to sewer facilities. In the exercise of such powers the board of trustees may purchase any existing facilities used or useful ~~therefor~~ in the exercise of such powers, or may contract for the construction of any such facilities in the manner provided in chapters 5-18 and 5-19.

Section 102. That § 34A-5-42 be amended to read as follows:

34A-5-42. On petition in writing signed by not less than twenty percent of the legal voters residing within the district, as shown by the vote for the member of the board of trustees receiving the highest vote at large at the last preceding annual election ~~therein~~ in the district or upon its own motion, the board of trustees by proper resolution may declare its intention to annex territory lying adjacent to the district or exclude territory being upon the border ~~thereof. Such~~ of the district. The resolution shall describe ~~said~~ the property, the intended action, and the time and place the trustees will meet to consider the adoption of the resolution ~~and~~. The resolution shall be published once a week for two consecutive weeks ~~prior to~~ before the time set for ~~such~~ the hearing.

Section 103. That § 34A-5-43 be amended to read as follows:

34A-5-43. At the time of the hearing, or of any adjournment ~~thereof~~ of the hearing, the trustees shall consider any objections to ~~such~~ the proposed resolution and may adopt ~~such~~ the resolution, with or without amendment, as it may deem proper ~~but no~~. However, no amendment ~~shall~~ may be made affecting any property not described in the original resolution. No such resolution ~~shall~~ may be adopted ~~until the same~~ unless the resolution has been approved by the board of county commissioners of the county ~~wherein such~~ in which the land is situated.

Section 104. That § 34A-5-44 be amended to read as follows:

34A-5-44. Upon failure of the board of trustees to grant the request contained in the petition of the voters ~~said~~, the petitioners or any party feeling aggrieved thereby may within thirty days after the decision of the board of trustees or county commissioners, or within ninety days after the filing of the petition ~~where~~ if no action has been taken ~~thereon~~ on the petition by the board, present their petition or appeal to the circuit court for the county in which ~~said~~ the district or the greater portion ~~thereof~~ of the district is situated by filing ~~such~~ the petition or appeal with the clerk of courts. Notice of ~~such~~ the filing shall be served by the petitioners upon the president of the board of trustees together with a notice of the time and place, when and where a hearing will be ~~had thereon~~ held on the petition, at least ten days before the date of ~~such~~ the hearing. If ~~upon the hearing the court shall find~~ the court finds that the request of the petitioners ought to be granted and can be granted without injustice to the district, the court shall so order. If the court ~~shall find~~ finds against the petitioners, the petition or appeal shall be dismissed at the cost of the petitioners.

Section 105. That § 34A-5-45 be amended to read as follows:

34A-5-45. ~~Whenever~~ If the limits of any district are changed by resolution or by decree of court ~~it shall be the duty of~~, the president of the board of trustees ~~to~~ shall cause an accurate map of the territory, together with a copy of the resolution or decree, duly certified, to be recorded in the office of the register of deeds of the county or counties in which ~~such~~ the territory is situated and thereupon ~~such~~ the territory ~~shall be~~ becomes a part of ~~said~~ the district or ~~be excluded therefrom~~ is excluded from the district, as the case may be.

Section 106. That § 34A-5-48 be amended to read as follows:

34A-5-48. If the voters of each corporation approve the formation of the consolidated sanitary district by a majority of their votes cast on the consolidation question, the governing body of each corporation shall so declare by resolution~~, and~~. Each governing body shall cause a certified copy of all proceedings taken for the consolidation to be filed with its auditor or clerk ~~and~~, with the secretary of state, and in the office of the register of deeds of the county, who shall record the ~~same~~ copy. When ~~such~~ the certified copies are ~~so~~ filed, the consolidation ~~shall be~~ is effective and complete, and the consolidated sanitary district ~~shall have each and~~ has all of the powers conferred upon a sanitary district by this chapter, for the purpose of the construction or acquisition and operation of sewer facilities or both water and sewer facilities, as ~~shall have been~~ authorized by the voters.

Section 107. That § 34A-5-49 be amended to read as follows:

34A-5-49. The consolidated sanitary district ~~shall~~ may not, however, by virtue of its incorporation, acquire any of the property or assume any of the debts, obligations, or liabilities of any municipality or sanitary district included within its boundaries.

Section 108. That § 34A-5-55 be repealed.

Section 109. That subdivision (17) of § 34A-6-1.3 be amended to read as follows:

(17) "Solid waste," any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, ~~1989~~ 2011, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, ~~1989~~ 2011;

Section 110. That § 34A-6-1.5 be amended to read as follows:

34A-6-1.5. The board shall adopt a statewide comprehensive solid waste management plan. The plan shall be prepared in cooperation with all municipalities and counties in the state and shall be approved pursuant to the rule-making procedure of chapter 1-26. The plan shall cover a fifteen-year time period and shall serve as the basis for the board's decisions on the need for additional facilities to be issued permits under § 34A-6-1.13. The plan shall include an analysis of the volume and composition of solid waste from all sources~~,~~; projection of changes in volume and composition~~,~~; an inventory of all existing and planned solid waste facilities and their permit status~~,~~; an evaluation of the capacity of existing facilities~~,~~; an assessment of special site or other facility characteristics which may affect the suitability of facilities for continued or future operation~~,~~; an evaluation of the adequacy of existing capacity to handle the anticipated future volume and composition of waste~~,~~; an evaluation of the feasibility and desirability of achieving waste stream volume or contaminant reductions through source reductions, recycling, waste type segregation, compaction, incineration, or other technology~~,~~; an assessment of the need for new facilities on the basis of these analyses~~,~~; and a facility plan for meeting these needs which shall consider among other things location, site suitability, appropriateness of facility type, and the utility and desirability of shared or regional facilities. The plan shall be updated from time to time as circumstances ~~shall~~ warrant. A comprehensive updating of the plan shall be undertaken no later than the tenth anniversary of the date on which the plan was approved by the board.

The board shall consider in its comprehensive solid waste management plan 40 CFR parts 257 and 258 of the environmental protection agency solid waste disposal facility disposal criteria as proposed August 30, 1988, and as subsequently amended to January 1, 2011. Pending completion of the comprehensive solid waste management plan, the board shall continue to act on pending applications, new permit applications, and renewal applications.

Section 111. That § 34A-6-1.13 be amended to read as follows:

34A-6-1.13. The board or the secretary, after public notice and opportunity for public hearing, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation, or abandonment of a solid waste facility. After publication of the secretary's recommendation on a permit application as provided for under § 34A-6-1.14, if no petition for contested case is timely filed, the recommendation of the secretary becomes the final determination on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with ~~his~~ the secretary's recommendation. The board may issue a permit in a contested case on the basis of information in the application itself or on the basis of evidence received at a hearing, if any, on the matter only if the board finds that the facility will meet the requirements of §§ 34A-6-1.1 to 34A-6-1.38, inclusive, and is in the public interest.

The board may deny any permit in a contested case if it finds that the applicant, or any officer, director, or manager ~~thereof~~ of the applicant, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed permitted premises in whole or part:

(1) Has misrepresented a material fact in applying to the board for a permit;

(2) Has been convicted of a felony or other crime involving moral turpitude;

(3) Has violated the environmental laws of any state or the United States;

(4) Has had any permit revoked under the environmental laws of any state or the United States; or

(5) Has otherwise demonstrated through previous actions ~~that he lacks the~~ the lack of character or competency to reliably carry out the obligations imposed by §§ 34A-6-1.1 to 34A-6-1.38, inclusive.

For the purpose of this section, the conduct and reputation of any owner or proposed manager or operator may be imputed to the applicant.

Section 112. That § 34A-6-1.14 be amended to read as follows:

34A-6-1.14. The board shall ~~by rule prescribe~~ promulgate rules pursuant to chapter 1-26 to specify the procedure for permit issuance, amendment, suspension, revocation, and reinstatement. The rules shall ~~conform to chapter 1-26 and shall~~ address application form and contents~~,~~; application completeness review~~,~~; departmental investigation and evaluation of applications~~,~~; the form, content, and method and timing of publication or other service of the notice of application and departmental recommendation~~,~~; intervention by interested parties~~,~~; scheduling and conduct of hearings~~,~~; prehearing discovery~~,~~; continuances~~,~~; and other matters as necessary to effectuate the permitting process. The secretary may recommend approval, denial, or approval with such terms, conditions, or modifications as ~~it~~ the secretary deems necessary to comply with §§ 34A-6-1.1 to 34A-6-1.38, inclusive, and to protect the public interest. A notice of application and the recommendation of the secretary shall~~, at a minimum,~~ be published in at least one official newspaper of the county in which the facility is located. A hearing may be held only if a petition requesting a hearing is filed by the secretary, any member of the board, the applicant, or an interested person within thirty days after the publication of the notice and recommendation. If a petition for hearing is not timely filed, the recommendation of the secretary becomes the final decision on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with ~~his~~ the secretary's recommendation.

Section 113. That § 34A-6-1.22 be amended to read as follows:

34A-6-1.22. If the secretary has reason to believe that a violation of §§ 34A-6-1.1 to 34A-6-1.38, inclusive, has occurred, ~~he~~ the secretary shall cause written notice to be served personally or by mail upon the alleged violator or ~~his~~ the alleged violator's agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute a violation, the nature of any corrective action proposed to be required, and the time within which such action is to be taken. For the purpose of §§ 34A-6-1.1 to 34A-6-1.38, inclusive, service by mail ~~shall be~~ is deemed complete on the date of mailing.

Section 114. That § 34A-6-1.23 be amended to read as follows:

34A-6-1.23. In a notice given under § 34A-6-1.22, the secretary may also require the alleged violator to appear for a public hearing to be conducted before the board, and to answer the charges made against ~~him~~ the alleged violator. If the secretary does not require an alleged violator to appear for a public hearing pursuant to this section, the alleged violator, a member of the board, or an interested person may request the board to conduct such a hearing. Such request shall be in writing and shall be filed with the board no later than ten days after service of a notice under § 34A-6-1.22. If such a request is filed, a hearing shall be held as soon as practicable. In such event, notice of

hearing shall be provided which meets the requirements of § 1-26-17, and notice shall also be given in a manner which will reasonably inform the public.

Section 115. That § 34A-6-1.27 be amended to read as follows:

34A-6-1.27. Upon issuing an order pursuant to § 34A-6-1.26, the secretary shall fix a place and time for a hearing before the board, not later than five days ~~thereafter~~ after the order is issued, unless the person to whom the order is directed ~~shall request~~ requests a later time. The secretary may deny a request for a later time if ~~he~~ the secretary finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted by the board in compliance with chapter 1-26 and rules promulgated by the board pursuant to chapter 1-26.

Section 116. That § 34A-6-1.34 be amended to read as follows:

34A-6-1.34. The board may enforce through its permit procedures those ~~regulations~~ rules promulgated by the secretary pursuant to chapter 34-21 ~~which~~ that pertain to the land disposal of radioactive substances. The department is designated the agency for all state purposes of the Federal Solid Waste Disposal Act (Public Law 89-272) as amended to January 1, ~~1989~~ 2011, and the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616) as amended to January 1, ~~1989~~ 2011.

Section 117. That § 34A-6-1.38 be amended to read as follows:

34A-6-1.38. In addition to the solid waste disposal fee assessed by the state under § 34A-6-1.17 and by a political subdivision under § 34A-6-29, a county or municipality may impose and levy a solid waste disposal fee upon the disposal of solid waste at a solid waste facility within, or operated under, its jurisdiction. Fees imposed under this section ~~shall be~~ are in addition to all other fees and taxes levied by law.

The fee ~~herein~~ imposed in this section shall be paid by the owner of the solid waste disposal facility and remitted to the county or municipal treasurer. The obligation to pay the fee accrues at the time the solid waste is disposed of at the solid waste facility. The owner of the facility ~~shall have the authority to~~ may collect these fees from persons disposing of solid waste at ~~his~~ the facility. The fee imposed by this section ~~shall be~~ is due and payable by the owner on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on ~~such form or forms as may be~~ a form prescribed by the county or municipal treasurer. Each person required to pay the fee imposed by this section shall keep complete and accurate records in ~~such form as~~ a form required by the county or municipal treasurer ~~may require~~.

The county or municipality may distribute shares of this fee to ~~such~~ municipalities and school districts within its boundary as it ~~in its discretion~~ deems appropriate considering the location of the facility and the impacts on the representation jurisdiction.

Section 118. That § 34A-6-24 be amended to read as follows:

34A-6-24. Any municipality may grant and regulate franchises for the purpose of collection and disposal of solid waste, as ~~solid waste is~~ defined ~~by~~ in subdivision 34A-6-1.3(17), ~~originating in such~~ if the solid waste originates in the municipality or in a zone adjacent ~~thereto,~~ to the municipality that is not a part of another municipality, and does not ~~to~~ exceed two miles around the boundaries of ~~such~~ the municipality. ~~Such~~ The franchise may not be granted for a longer period than ten years.

Section 119. That § 34A-6-25 be amended to read as follows:

34A-6-25. No franchise ~~shall~~ may be granted by any municipality pursuant to § 34A-6-24 unless the governing body of the municipality ~~shall submit~~ submits the proposition of issuing ~~such~~ the franchise to a vote of the electors at a general or special election called for that purpose. Before submitting ~~such~~ the proposition, the governing body shall first approve the proposed franchise by ordinance ~~duly adopted~~, incorporating the proposed franchise in full and providing for submission of ~~such~~ the proposition at an election to be held not sooner than thirty days after the publication ~~thereof~~ of the election and proposition. The notice of election and the proposition shall refer to ~~such~~ the ordinance by number and shall include the full title ~~thereof~~ of the ordinance. No such franchise or franchise ordinance ~~shall be~~ is effective unless the proposal to grant the ~~same be~~ franchise is approved at ~~such~~ the election by a majority vote of the electors.

Section 120. That § 34A-6-29 be amended to read as follows:

34A-6-29. The governing body of a municipality, county, or subdivision may levy and collect ~~such~~ fees and charges and require ~~such~~ licenses as are necessary to discharge their responsibility~~, and such~~. The fees, charges, and licenses shall be based on a fee schedule set forth in an ordinance or resolution. ~~In the event~~ If any fee, charge, or license so levied, other than a municipal garbage collection fee, becomes delinquent, ~~it~~ the delinquency may be certified to the county treasurer and shall be collected by the county treasurer in the following year as a condition precedent to payment of the real property tax on the lot or parcel of land with respect to which the fee, charge, or license was levied. The chief fiscal officer of a municipality shall collect a delinquent municipal garbage collection fee as a condition precedent to the payment of any water, sewer, utility, or other charge collected by the municipality.

Section 121. That § 34A-6-50 be repealed.

Section 122. That § 34A-6-55 be amended to read as follows:

34A-6-55. The Board of Minerals and Environment shall cause any existing large-scale solid waste facility to cease operation unless ~~or until~~ legislative approval as prescribed in § 34A-6-53 has been obtained.

Section 123. That § 34A-6-59 be amended to read as follows:

34A-6-59. The Legislature finds that the implementation of federal regulations under subtitle D of the Resource Conservation and Recovery Act, P.L. 94-580, as amended to January 1, ~~1992~~ 2011, will reduce the available landfill capacity in the state for the disposal of municipal solid waste. The Legislature further finds:

(1) That maximum solid waste source reduction, reuse, recycling, and composting are preferable to land disposal, are the most economically sound and environmentally safe methods of solid waste management and are in the best interest of the state in order to protect public health and the environment and to conserve resources, energy, and tax dollars; and

(2) That education, research, development, and innovation in the design, management, and operation of source reduction, reuse, recycling, and composting are essential in reducing operating costs and providing incentives for the use of these systems and operations and their products.

Section 124. That § 34A-6-70 be amended to read as follows:

34A-6-70. Each county and first class municipality shall prepare or have prepared, on or before January 1, 1993, a solid waste evaluation coordinated with the state solid waste management plan provided for in § 34A-6-1.5. The evaluation shall cover a fifteen-year time

period, shall serve as the basis for county and municipal decisions on the need for facilities, and shall be provided to the board for its consideration in determining whether to issue facility permits under § 34A-6-1.13. The evaluation shall include an analysis of the current and projected volume of solid waste, disposal capacity including all existing and planned facilities, the potential for source reduction, reuse, recycling, resource recovery, and shared and regional recycling and waste management facilities. The evaluation shall include a full accounting of the true and total cost, including the long-term costs, of all options analyzed in the evaluation. Counties and municipalities subject to this section shall consider in their solid waste evaluation, 40 CFR parts 257 and 258 of the environmental protection agency solid waste disposal criteria commonly known as "RCRA subtitle D regulations," as finally adopted and published in the ~~federal register~~ Federal Register on October 9, 1991, and as amended to January 1, ~~1992,~~ 2011; the statewide comprehensive solid waste management plan; and all rules ~~adopted~~ promulgated by the board.

Section 125. That subdivision (5) of § 34A-7-1 be amended to read as follows:

(5) "Litter," any discarded, used, or unconsumed substance or waste, including ~~but not limited to,~~ any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic, or paper containers or other packaging construction material, abandoned motor vehicle, as defined in § 32-36-2, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly;

Section 126. That § 34A-7-3 be amended to read as follows:

34A-7-3. For purposes of § 34A-7-2, ~~"~~ the term, property held out to the public for the transaction of business~~" includes, but is not limited to~~, includes commercially operated parks, campgrounds, drive-in restaurants, automobile service stations, business parking lots, car washes, shopping centers, marinas, boat launching areas, industrial parking lots, boat moorage and fueling stations, piers, beaches and bathing areas, airports, roadside rest stops, drive-in movies, and shopping malls~~; and "~~. For purposes of § 34A-7-2, the term, property held out to the public for assemblage, recreation, or as a public way~~" includes, but is not limited to~~, includes any property that is publicly owned or operated for any of the purposes stated in the definition in this section for "property held out to the public for the transaction of business" but excludes state highway rights of way and rest areas located ~~thereon~~ on state highway rights of way.

Section 127. That § 34A-7-7 be amended to read as follows:

34A-7-7. No person ~~shall~~ may dump, deposit, drop, throw, discard, or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public or private property or upon or into any river, lake, pond, stream, or body of water in this state except as permitted by law~~, nor shall any person~~. No person may transport by any means garbage or refuse from any dwelling, residence, place of business, farm, or other site to and deposit such material in, around, or on top of trash barrels or other receptacles placed along public highways or at roadside rest areas. A violation of this section is a Class 2 misdemeanor.

Section 128. That § 34A-7-8 be amended to read as follows:

34A-7-8. In addition to any penalty imposed under this chapter, a person convicted of violating § 34A-7-7 while operating a motor vehicle ~~shall be~~ is considered to have been convicted of a moving traffic violation. A report of conviction of the provisions of this chapter shall be forwarded to the Department of Public Safety by the court~~, or the judge thereof,~~ within ten days after the date the conviction is entered.

The penalties prescribed in this section are in addition to, and not in lieu of, any penalties, rights, remedies, duties, or liabilities otherwise imposed or conferred by law.

Section 129. That § 34A-7-9 be amended to read as follows:

34A-7-9. No person ~~shall~~ may allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance or in such a manner that the litter may be blown or otherwise carried by the natural elements onto the real property of another person. A violation of this section is a Class 2 misdemeanor.

Section 130. That § 34A-7-14 be amended to read as follows:

34A-7-14. Municipalities and counties ~~are hereby authorized~~ may by ordinance ~~to~~ regulate litter, ~~to~~ provide penalties for violations of such ordinances, ~~to~~ establish procedures for court appearances for violations, and ~~to~~ provide penalties for failure to appear on a written promise.

Section 131. That § 34A-7-15 be amended to read as follows:

34A-7-15. Except as otherwise provided, ~~whenever~~ if any person is arrested for a violation of any municipal ordinance adopted pursuant to this chapter, the arresting law enforcement officer or other municipal enforcement officer shall take the name and address of ~~such~~ the person and issue a complaint or otherwise notify ~~him~~ the person in writing to appear at a time and place to be specified in ~~such~~ the complaint or notice~~, such time to~~. The time shall be at least five days after ~~such~~ the arrest unless the person arrested ~~shall demand~~ demands an earlier hearing. ~~Such officer shall thereupon and upon the giving by such person of his written promise to appear at such time and place forthwith, release him~~ If the person gives written promise to appear at the designated time and place, the officer shall release the person from custody. Any person refusing to give such written promise to appear may be prosecuted as in the manner of other violations of city ordinances.

Section 132. That § 34A-9-2 be amended to read as follows:

34A-9-2. As used in this chapter, ~~unless the context otherwise requires, "actions" include~~ the term, actions, includes:

(1) New and continuing projects or activities directly undertaken by any public agency, or supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more public agencies;

(2) Policy, regulations, and procedure-making; or

(3) The issuance by one or more public agencies of a lease, permit, license, certificate, or other public entitlement to an applicant.

Section 133. That § 34A-9-3 be amended to read as follows:

34A-9-3. As used in this chapter, ~~unless the context otherwise requires, "actions" do not include~~ the term, actions, does not include:

(1) Enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(2) Actions of a ministerial nature, involving no exercise of discretion;

(3) Emergency actions responding to an immediate threat to public health or safety;

(4) Proposals for legislation; or

(5) Actions of an environmentally protective regulatory nature.

Section 134. That § 34A-9-7 be amended to read as follows:

34A-9-7. An environmental impact statement shall be prepared in accordance with the procedural requirements relating to citizen participation of the National Environmental Policy Act of 1969 as amended to January 1, ~~1992~~ 2011, and implementing regulations adopted pursuant to that act, and shall include, at a minimum, a detailed statement setting forth the following:

(1) A description of the proposed action and its environmental setting;

(2) The environmental impact of the proposed action including short-term and long-term effects;

(3) Any adverse environmental effects ~~which~~ that cannot be avoided ~~should~~ if the proposal ~~be~~ is implemented;

(4) Alternatives to the proposed action;

(5) Any irreversible and irretrievable commitments of resources ~~which~~ that would be involved in the proposed action ~~should it be~~ if it is implemented;

(6) Mitigation measures proposed to minimize the environmental impact; and

(7) The growth-inducing aspects of the proposed action.

Section 135. That § 34A-9-11 be amended to read as follows:

34A-9-11. ~~In order to~~ To avoid duplication of effort and to promote consistent administration of federal and state environmental policies, the environmental impact statement required by this chapter need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, ~~1993~~ 2011, if the statement complies with the requirements of this chapter.

Section 136. That § 34A-9-12 be amended to read as follows:

34A-9-12. The requirements of this chapter ~~shall~~ do not apply to actions undertaken or approved ~~prior to~~ before March 2, 1974.

Section 137. That § 34A-10-2.1 be amended to read as follows:

34A-10-2.1. Any person making application to the Water Management Board or the Board of Minerals and Environment for a permit, a license, or an extension, amendment, or renewal of an existing permit or license, which authorizes activity that could result in a significant risk of pollution, contamination, or degradation of the environment and that is not covered by a performance or damage bond or other financial assurance instrument, may be required, as a condition of the permit, to provide financial assurance guaranteeing the performance of corrective actions to contain, mitigate, and remediate all pollution, contamination, or degradation which may be caused by ~~such~~ the activity. The financial assurance in a reasonable and proper amount shall be in a form and an amount approved by the board, and may include~~,~~ ~~but is not limited to~~ insurance, company net worth considerations, a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit.

Section 138. That § 34A-10-2.2 be amended to read as follows:

34A-10-2.2. All right and title in any bond or other security required by the Water Management Board or the Board of Minerals and Environment under any provision of this title, Title 45, or Title 46 for the protection of the environment or reclamation of lands or other resources shall be in the state until ~~such time as~~ the board by order releases the security. ~~Such~~ The bond or other security does not constitute an asset of the person required to provide it, and may not be cancelled, assigned, revoked, disbursed, replaced, or allowed to terminate without board approval. The bond or other security shall be in a form and a reasonable and proper amount approved by the board, and may include~~, but is not limited to~~ a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit. The board may permit the use of financial assurance other than a bond, including company net worth considerations. Interest earned on any bond or deposit made under § 34A-10-2.1 shall be returned annually to the person required to provide the bond.

Section 139. That § 34A-10-2.5 be amended to read as follows:

34A-10-2.5. The secretary of the Department of Environment and Natural Resources may bring an action without furnishing of bond, for an injunction against any person who fails to comply with an order issued by the secretary or any official under ~~his~~ the secretary's supervision having authority to issue such order by virtue of this title, Title 45, or Title 46. The court to which the department applies for an injunction may issue a temporary injunction, if it finds ~~that~~ there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

Section 140. That § 34A-10-3 be amended to read as follows:

34A-10-3. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against ~~him~~ the plaintiff in an action brought under this chapter, the court may order the plaintiff to post a surety bond or cash not to exceed five hundred dollars.

Section 141. That § 34A-10-4 be amended to read as follows:

34A-10-4. The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his or her findings to the court in the action.

Section 142. That § 34A-10-5 be amended to read as follows:

34A-10-5. If, in an action pursuant to § 34A-10-1, administrative, licensing, or other proceedings are required or available to determine the legality of the defendant's conduct, the court shall remit the parties to such proceedings~~, which~~. The proceedings shall be conducted in accordance with and subject to the provisions of chapters 34A-1 and 34A-2. In so remitting the court may grant temporary equitable relief ~~where~~ if necessary for the protection of the air, water, and other natural resources or the public trust ~~therein~~ in such resources from pollution, impairment, or destruction. In so remitting the court shall retain jurisdiction of the action pending completion ~~thereof~~ of the action for the purpose of determining whether adequate protection from pollution, impairment, or destruction has been afforded.

Section 143. That § 34A-10-6 be amended to read as follows:

34A-10-6. ~~Where, as to~~ If judicial review of any administrative, licensing, or other proceeding~~, judicial review thereof~~ is available, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Section 144. That § 34A-10-8 be amended to read as follows:

34A-10-8. In any ~~such~~ administrative, licensing, or other proceedings, as described in § 34A-10-2, and in any judicial review ~~thereof~~ of the proceedings, any alleged pollution, impairment, or destruction of the air, water, or other natural resources or the public trust ~~therein,~~ in the resources shall be determined~~, and no~~. No conduct ~~shall~~ may be authorized or approved which does, or is likely to ~~have such effect so long as~~ pollute, impair, or destroy the air, water, or other natural resources or the public trust in the resources, if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

Section 145. That § 34A-11-3 be amended to read as follows:

34A-11-3. The Department of Environment and Natural Resources is designated as the agency for all state purposes of the Federal Resource Conservation Recovery Act as amended to January 1, ~~1986~~ 2011, and the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), as amended to January 1, 2011.

Section 146. That § 34A-11-9 be amended to read as follows:

34A-11-9. The Board of Minerals and Environment may promulgate rules, pursuant to chapter 1-26, governing the generation, transportation, treatment, storage, and disposal of hazardous wastes necessary to execute the provisions of this chapter. The rules may include~~, but are not limited to~~ ownership, location, design, construction, operation, and maintenance of hazardous waste management facilities, financial responsibility, personnel training, record keeping, reporting, labeling, monitoring, container use, inspections, closure, post-closure procedures and requirements, contingency planning, enforcement, and use of a manifest system to assure all hazardous wastes are designated for treatment, storage, or disposal at a permitted hazardous waste management facility. The board may ~~adopt rules which~~ promulgate rules pursuant to chapter 1-26 that are consistent with the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. § 1801 et seq.), as amended to January 1, 2011, and the regulations ~~thereunder~~ adopted pursuant to that Act.

A violation of the rules adopted pursuant to this section is subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state, or both.

Section 147. That § 34A-11-11 be amended to read as follows:

34A-11-11. Any person may file a complaint with the secretary of environment and natural resources regarding a violation of this chapter. The secretary may conduct an investigation of the alleged violation and make a written report of the investigation to the person. If the secretary determines that a violation has occurred, ~~he~~ the secretary may take whatever enforcement action he or she considers appropriate.

Section 148. That § 34A-11-15 be amended to read as follows:

34A-11-15. Any permit issued pursuant to this chapter may be revoked, modified, or suspended, in whole or in part, during its term for cause, including~~, but not limited to,~~ the following:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresenting or failing to disclose fully all relevant facts; or

(3) A change in condition or discovery of new information which requires a temporary or permanent reduction, or termination of the permitted activity.

Section 149. That § 34A-11-17 be amended to read as follows:

34A-11-17. If the secretary of environment and natural resources determines that a person is in violation of this chapter, or any rule ~~made hereunder, he~~ promulgated pursuant to this chapter, the secretary may cause written notice and an order to be served personally or by mail upon the alleged violator or ~~his~~ the alleged violator's agent. The notice and order shall state the statute or rule allegedly violated, the pertinent facts, the nature of any corrective action that may be required and the time within which the action is to be taken. A notice and order may include a suspension or revocation of a permit issued under this chapter. For purposes of this chapter, service by mail is considered complete on the date of mailing.

Section 150. That § 34A-11-23 be amended to read as follows:

34A-11-23. ~~This chapter may not be construed to abridge or alter~~ Nothing in this chapter abridges or alters any rights of action or remedies in equity or under the common law or statutory law, criminal or civil~~, nor may it~~. Nothing in this chapter may be construed as estopping any person in the exercise of ~~his~~ the person's rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Section 151. That § 34A-11-26 be amended to read as follows:

34A-11-26. In addition to the hazardous waste disposal fee assessed by the state under § 34A-11-25, a county or municipality may impose and levy a hazardous waste disposal fee upon the disposal of hazardous waste at any hazardous waste disposal facility within, or operated under, its jurisdiction excluding those facilities disposing of hazardous waste in a process of energy recovery. Fees imposed under this section ~~shall be~~ are in addition to all other fees and taxes levied by law. The incineration or thermal destruction of hazardous waste ~~shall be~~ is considered disposal for the purpose of this fee.

The fee imposed by this section shall be paid by the owner of the hazardous waste disposal facility and remitted to the county or municipal treasurer. The obligation of the owner to pay the fee accrues at the time hazardous waste is disposed of at a hazardous waste disposal facility. The owner of the facility may collect these fees from persons disposing of hazardous waste at ~~his~~ the owner's facility. The fee imposed by this section ~~shall be~~ is payable on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on ~~such~~ forms ~~as may be~~ prescribed by the county or municipal treasurer. Each person required to pay the fee imposed by this section shall keep complete and accurate records in ~~such form as the county or municipal treasurer may require~~ a form required by the county or municipal treasurer.

The county or municipality may distribute shares of this fee to the municipalities and school districts within its boundary as it deems appropriate considering the location of the facility and the impacts on the representation jurisdiction.

Section 152. That subdivision (8) of § 34A-12-1 be amended to read as follows:

(8) "Regulated substance," the compounds designated by the department under §§ 23A-27-25, 34A-1-39, 34A-6-1.3(17), 34A-11-9, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68, including pesticides and fertilizers regulated by the Department of Agriculture~~,~~; the hazardous substances designated by the Federal Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act ~~Amendments of 1972, Pub.L. 92-500 as amended by the~~ and Clean Water Act ~~of 1977, Pub.L. 95-217,~~ (33 United States

Code sections 1251 to 1387, inclusive), as amended to January 1, 2011; the toxic pollutants designated by Congress or the Federal Environmental Protection Agency pursuant to section 307 of the Toxic Substances Control Act~~, Pub.L. 99-519,~~ (15 United States Code sections 2601 to 2671, inclusive), as amended to January 1, 2011; the hazardous substances designated by the Federal Environmental Protection Agency pursuant to ~~section 101 of~~ the Comprehensive Environmental Response, Compensation, and Liability Act ~~of 1980, Pub.L. 96-510,~~ (42 United States code sections 9601 to 9675, inclusive), as amended to January 1, 2011; and petroleum, petroleum substances, oil, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, substances, or additives to be utilized in the refining or blending of crude petroleum or petroleum stock, and any other oil or petroleum substance. This term does not include sewage and sewage sludge;

Section 153. That § 34A-12-3.1 be amended to read as follows:

34A-12-3.1. A subfund of the regulated substances response fund is hereby created for recovered leaking underground storage tank trust fund moneys. The subfund shall be separately maintained and administered in the manner required by the Superfund Amendments and Reauthorization Act of 1986 as amended as of January 1, ~~1990~~ 2011. Moneys deposited in the subfund ~~shall~~ may be disbursed and used only for the purposes authorized under subtitle I of the Resources Conservation Recovery Act as amended~~, October 1986~~ to January 1, 2011.

Section 154. That § 34A-13-6 be amended to read as follows:

34A-13-6. If the director has reason to believe that a release has occurred, ~~he~~ the director shall notify the department. The director may undertake reasonable, independent investigations, in addition to any investigation of the department, necessary to identify the existence, source, nature, and extent of a release, the responsible persons, and the extent of danger to the public health, safety, and welfare or the environment.

Section 155. That § 34A-13-7 be amended to read as follows:

34A-13-7. Any person who the director has reason to believe is a covered party, or the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release or a corrective action, shall, if requested by the director ~~or his designee~~, furnish to the director any information that person has or may reasonably obtain that is relevant to the release. Failure on the part of the covered party to do so allows denial of benefits under this chapter pursuant to subdivision 34A-13-8.5(6).

Section 156. That § 34A-13-8 be amended to read as follows:

34A-13-8. The director ~~or his designee,~~ may, upon presentation of official fund credentials:

(1) Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the director under § 34A-13-7; and

(2) Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under § 34A-13-7, conducting surveys and investigations, and taking corrective action.

Failure ~~on the part of~~ by the covered party to allow access to the property and examination or copying of the documents authorized in this section allows denial of benefits under this chapter pursuant to subdivision § 34A-13-8.5(6).

Section 157. That § 34A-13-9.1 be amended to read as follows:

34A-13-9.1. Reimbursement, without a corrective action plan, may be allowed for tank pulling ~~provided~~ if petroleum contamination in the backfill area exceeds standards established by the department and ~~further provided that~~ if the tank pulling removes petroleum contamination to department standards. No reimbursement may be provided for upgrade of a release site taken during a corrective action.

Section 158. That § 34A-13-41 be amended to read as follows:

34A-13-41. The board shall provide reimbursement to licensed petroleum marketers, and other tank owners as defined by the board pursuant to rule for liability to third parties. Coverage ~~shall~~ may only be extended to tanks which are regulated in §§ 34A-2-98 and 34A-2-100, excluding tanks which are exempted from coverage requirements by rules promulgated pursuant to chapter 1-26 by the Board of Water Management, in any amount not to exceed nine hundred ninety thousand dollars as described in §§ 34A-13-8.1 and 34A-13-40 and set forth in §§ 34A-13-42 to 34A-13-46, inclusive.

Section 159. That § 34A-14-19 be amended to read as follows:

34A-14-19. Any member or employee of the authority who has, will have, or later acquires a personal interest, direct or indirect, in any transaction with the authority shall immediately disclose the nature and extent of ~~such~~ the interest in writing to the authority as soon as ~~he~~ the member or employee has knowledge of such actual or prospective interest. ~~Such~~ The disclosure shall be entered upon the minutes of the authority. Upon ~~such~~ the disclosure, ~~such~~ the member or employee may not participate in any action by the authority authorizing ~~such~~ the transaction. Actions taken when ~~such~~ the member or employee reasonably believed that ~~he~~ the member or employee had no and would not have any conflict are not invalidated because of such conflict. The fact that a member is also an officer or owner of an organization is not deemed to be a direct or indirect interest unless:

(1) ~~Such~~ The member has an ownership interest of greater than ten percent in ~~such~~ the organization; or

(2) The transaction in question does not involve all similar organizations, but rather involves only the authority and ~~such~~ the organization.

Section 160. That subdivision (4) of § 34A-15-2 be amended to read as follows:

(4) "Third parties," persons, partnerships, limited liability ~~company~~ companies, corporations, associations, organizations, or legal entities other than governmental entities seeking to enforce federal, state, or local environmental statutes, ordinances, regulations, permits, or orders; and

Section 161. That § 45-1-2 be amended to read as follows:

45-1-2. ~~It shall be the duty of the state geologist to~~ The state geologist shall carry on and continue surveys of the state in relation to geology, natural history, archaeology, and anthropology, particularly studying and emphasizing the economic geology of this state.

Section 162. That § 45-1-3 be amended to read as follows:

45-1-3. ~~It is the duty of the state geologist, when so~~ The state geologist, if requested by the commissioner of school and public lands, ~~to~~ shall examine any state or school land in this state and make a written report to the commissioner of school and public lands concerning the geology ~~thereof~~ of the state or school land and ~~such~~ other related matters ~~relating thereto as may be embraced~~ included in the request.

Section 163. That § 45-1-4 be repealed.

Section 164. That § 45-2-4.2 be amended to read as follows:

45-2-4.2. The state geologist ~~is hereby directed to~~ shall continue the making of the actual geological survey of the lands, and earth, and the area beneath the surface of the lands of this state as provided by this chapter.

The survey ~~shall be~~ is for the purpose of discovery, or aiding in the discovery, development, and industrial exploitation of such natural products, consisting of minerals, oil, gas, or other substances or commodities, among the natural and physical resources of the state, and of all by-products in connection with each ~~and every one~~ of the natural products of the state.

Section 165. That § 45-2-4.3 be amended to read as follows:

45-2-4.3. The state geologist ~~is hereby authorized to create such expense, including~~ may incur expenses for equipment, ~~men~~ personnel, materials, and ~~all things necessary, or which may be considered necessary, in the carrying out of~~ other items necessary for conducting surveys and implementing the provisions of this chapter ~~in the making of said survey or surveys, including.~~ Authorized expenses include the cost of placing all information secured at the disposition of the Governor and the executive office, and as may be otherwise provided by law, for use in the advertising and development of the resources of ~~said~~ the State of South Dakota.

~~These expenditures~~ Expenditures authorized under this section shall be paid out on warrants drawn by the state auditor on vouchers approved by the state geologist.

Section 166. That § 45-4-1 be amended to read as follows:

45-4-1. No location of a mining claim ~~shall~~ may be made until the discovery of the vein or lode within the limits of the claim located.

Section 167. That § 45-4-2 be amended to read as follows:

45-4-2. Before filing a location certificate pursuant to § 45-4-4, the discoverer shall locate ~~his~~ the claim:

(1) By erecting a monument at the place of discovery and ~~post thereon~~ posting on the monument a plain sign or notice containing the name of the lode, the name of ~~the locator or locators, and~~ any locator, the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side of the lode; and

(2) By marking the surface boundaries of the claim.

Section 168. That § 45-4-3 be amended to read as follows:

45-4-3. ~~Such surface~~ Surface boundaries shall be marked by eight substantial posts, hewed or blazed on the side or sides facing the claim and plainly marked with the name of the lode and the corner, end, or side of the claim that they respectively represent and sunk in the ground; one at each corner and one at the center of each side line and one at each end of the lode. ~~When~~ If it is impracticable ~~on account~~ because of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

Section 169. That § 45-4-4 be amended to read as follows:

45-4-4. The discoverer of a lode shall within sixty days from the date of discovery record ~~his~~ the claim in the office of the register of deeds of the county in which ~~such~~ the lode is located by a location certificate which shall contain:

(1) The name of the lode;

(2) The name of the locator or locators;

(3) The date of location;

(4) If a lode claim, the number of linear feet in length claimed along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein~~, and~~; the general course of the vein or lode as near as may be~~; and such~~; and a description of the claim located by reference to some natural object or permanent monument as will identify the claim.

Any location certificate of a lode claim ~~which shall~~ that does not contain the ~~matters~~ information specified in this section ~~shall be~~ is void.

Section 170. That § 45-4-5 be amended to read as follows:

45-4-5. No location certificate ~~shall~~ may claim more than one location whether the location ~~be~~ is made by one or several locators. If ~~it~~ the certificate purports to claim more than one location, it ~~shall be absolutely~~ is void except as to the first location ~~therein described, and if they~~ described in the certificate. If the locations are described together or so that it cannot be ~~told~~ determined which location is first described, the certificate ~~shall be void as to all~~ is void for all locations described in the certificate.

Section 171. That § 45-4-6 be amended to read as follows:

45-4-6. The length of any lode claim ~~hereafter located within this state~~ may equal but ~~shall~~ not exceed fifteen hundred feet along the vein or lode.

The width of a lode claim shall be three hundred feet on each side of the center of the vein or lode~~, provided that~~. However, any county may, at any general election, determine upon a width less than three hundred feet but not less than twenty-five feet on each side of the vein or lode.

Section 172. That § 45-4-7 be amended to read as follows:

45-4-7. The register of deeds ~~shall be entitled to~~ may receive the fee as established by subdivisions 7-9-15(1) and (2) for each location certificate recorded and certified by ~~him~~ the register of deeds and shall furnish the ~~locator or~~ locators with a certified copy of ~~such~~ the certificate if demanded.

Section 173. That § 45-4-8 be amended to read as follows:

45-4-8. If ~~at any time~~ the locator of any mining claim ~~heretofore or hereafter located or his assigns shall apprehend that his~~ or the locator's assigns:

(1) Believes that the original certificate was defective~~,~~ or erroneous~~, or~~;

(2) Believes that the requirements of the law ~~had not been~~ were not complied with before filing ~~or shall be desirous of changing his~~; or

(3) Desires to change the surface boundaries ~~or of taking~~ of the claim or to take in any part of an overlapping claim which has been abandoned ~~and he shall be desirous of securing the benefit of this chapter, such locator or his~~;

the locator or the locator's assigns may file an additional certificate subject to the provisions of this chapter. ~~Such~~ No such relocation ~~does not interfere~~ interferes with the existing rights of others at the time of ~~such~~ the relocation, and no such relocation ~~or the record thereof shall preclude~~ nor the record of any such relocation precludes the claimant from proving any such title as ~~he~~ the claimant may have held under any previous location.

Section 174. That § 45-4-10 be amended to read as follows:

45-4-10. The location or location certificate of any lode claim ~~shall be construed to include~~ includes all surface ground within the surface lines ~~thereof~~ of the lode claim and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of ~~such~~ the lode claim lines extended vertically ~~with such~~ and including parts of the lodes or ledges as they continue by dip beyond the side lines of the claim ~~but shall~~. The lode claim does not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

Section 175. That § 45-4-14 be amended to read as follows:

45-4-14. Any person, firm, association, or corporation who makes or sinks discovery shafts, open cuts, adits, or equivalents ~~thereto,~~ on a mining claim~~,~~ or on mineral property, ground, or premises shall ~~forthwith, while using the same~~ immediately, while using the discovery shafts, open cuts, adits, or equivalents, make them secure and safe ~~in a manner~~, either by means of a substantial fence or otherwise, ~~so as~~ to guard against the possibility of livestock falling into or ~~in any manner~~ becoming injured or destroyed by reason of ~~such~~ the openings~~; and before abandoning the same~~,. Before abandoning the discovery shafts, open cuts, adits, or equivalents, the person, firm, association, or corporation shall fill in or slope such openings, as a further precaution. Any person, firm, association, or corporation that fails or refuses to fully comply with this section is liable in damages for injury to or destruction of livestock caused thereby to the owner ~~thereof~~ of the livestock and ~~shall further be~~ is guilty of a Class 2 misdemeanor.

Section 176. That § 45-4-16 be amended to read as follows:

45-4-16. In all actions in any circuit court of this state ~~wherein~~ in which the title or right of possession to any mining claim ~~shall be~~ is in dispute, the court ~~or judge thereof~~ may, upon application of any of the parties to ~~such~~ the suit, enter an order for the underground as well as surface survey of ~~such~~ the part of the property in dispute as may be necessary to a just determination of the question involved.

Section 177. That § 45-4-17 be amended to read as follows:

45-4-17. ~~Such order~~ The order specified in § 45-4-16 shall designate some competent surveyor not related to any of the parties to ~~such~~ the suit ~~or in anywise~~ nor in any way interested in the result of the ~~same; and upon~~ suit to conduct the survey. Upon the application of the party adverse to ~~such~~ the application, the court may also appoint some competent surveyor to be selected by ~~such~~ the adverse applicant ~~whose duty it shall be to~~ who shall attend ~~upon such~~ the survey and observe the method of making the ~~same~~ survey at the cost of the party asking ~~therefor. It shall also be lawful in such order to~~ for the survey. The order may specify the names of witnesses named by either party, not exceeding three on each side, ~~to examine such property, who shall be allowed to enter into such property and examine the same~~ who may enter into and examine the property.

Section 178. That § 45-4-18 be amended to read as follows:

45-4-18. No such order ~~shall~~ may be made for survey and inspection except in open court or in chambers upon notice of at least six days, and ~~not then except~~ only by agreement of parties or upon the affidavit of two or more persons that ~~such~~ the survey and inspection is necessary to the just determination of the suit~~, which~~. The affidavits shall state the facts in ~~such~~ the case and ~~wherein~~ the necessity for the survey ~~exists; nor shall such order~~. No such order may be made unless it appears that the party asking ~~therefor~~ for the order has been refused the privilege of survey and inspection by the adverse party.

Section 179. That § 45-4-19 be amended to read as follows:

45-4-19. ~~Such court or judge thereof~~ The court may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of ~~such~~ the property ~~when such~~ if removal is shown to be necessary to a just determination of the question involved.

Section 180. That § 45-4-20 be amended to read as follows:

45-4-20. Any person who associates with another to obtain possession of a lode, gulch, or placer claim, then in the actual possession of another, by force and violence or by threats of violence or by stealth, and ~~carry~~ who carries out such purpose by:

(1) Making threats against the person or persons in possession;

(2) Entering ~~such~~ the lode or mining claim for ~~the purpose aforesaid~~ such purposes; or

(3) Entering a lode, gulch, placer claim, quartz mill, or other mining property, or, not being upon ~~such~~ the property but being within hearing ~~of the same~~ distance of the property, and making threats or use of any language, sign, or gesture calculated to intimidate any person ~~or persons~~ at work on the property or from continuing work ~~thereon or therein~~ on or in the property, or intimidating others from ~~engaging to work thereon or therein~~ working on or in the property,

~~are~~ is guilty of a Class 1 misdemeanor.

Section 181. That § 45-4-21 be amended to read as follows:

45-4-21. On trials under § 45-4-20, proof of a common purpose of two or more persons to obtain possession of property ~~as aforesaid,~~ or to intimidate laborers as set forth in § 45-4-20, accompanied or followed by any of the acts specified, by any of them, ~~shall be~~ is sufficient evidence to convict ~~anyone~~ any person committing such acts, although the parties may not be associated together at the time of committing the ~~same~~ acts.

Section 182. That § 45-4-22 be amended to read as follows:

45-4-22. The circuit court ~~or any judge thereof shall have power to~~ may issue writs of injunction for affirmative relief having the force and effect of a writ of restitution restoring any person to the possession of any mining property ~~from~~:

(1) From which ~~he~~ the person may have been ousted by force and violence or by fraud~~, or from~~;

(2) From possession of which ~~he~~ the person is kept by threats~~, or whenever~~; or

(3) If such possession was taken from ~~him~~ the person by entry of the adverse party on a Sunday or legal holiday or while the party in possession was temporarily absent ~~therefrom; the~~ from the property.

The granting of ~~such writ to extend~~ the writ extends only to the right of possession under the facts of the case ~~in~~ with respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had been issued.

Section 183. That § 45-5-1 be amended to read as follows:

45-5-1. ~~The owner of~~ If a mine or mining claim~~, whether~~ patented under the laws of the United States or held under the local laws and customs of this state~~, whenever such mine or claim~~ is so situated that it cannot be conveniently worked without a road providing access ~~or~~; without a ditch, cut, or flume to convey water ~~thereto~~ to the mining claim or water and tailings ~~therefrom~~ from the mining claim; or without a connecting shaft or tunnel ~~which~~; and if the road, ditch, cut, flume, shaft, or tunnel would necessarily pass over, under, through, or across any lands or mining claims owned or occupied by others under a patent from the United States or otherwise ~~shall be~~, the owner of the mine or mining claim is entitled to a right-of-way for ~~such~~ the road, ditch, cut, flume, shaft, or tunnel over, under, through, and across ~~such other realty~~ the other lands or mining claims upon compliance with the provisions of this chapter~~, or whenever such~~. If the mine or mining claim cannot be conveniently worked without the necessary construction on property owned either in total or in part by others of devices, treatment and tailings ponds, or other installations for treatment of air or water pollution in order to comply with state or federal air and water pollution statutes, rules, or regulations, the owner of ~~a~~ the mine or mining claim ~~shall be entitled to~~ may exercise the power of eminent domain as to the surface estate only~~, and in~~. In the exercise of eminent domain, the owner may proceed as condemnation proceedings are conducted by the state Department of Transportation pursuant to chapter 31-19, or as may otherwise be provided.

Section 184. That § 45-5-2 be amended to read as follows:

45-5-2. ~~Whenever the owner of any mining claim shall desire to work the same and to enable him to do so~~ If, in order to enable the owner of a mining claim to successfully and conveniently work the claim, it is necessary that ~~he~~ the owner have a right-of-way for any of the purposes ~~mentioned~~ set forth in § 45-5-1, and ~~such~~ if such a right-of-way ~~shall not have~~ has not been acquired by agreement between ~~him~~ the owner of the mining claim and the owner of the claim over, under, across, or upon which ~~he~~ the owner of the mining claim seeks to establish ~~such~~ the right-of-way, ~~he~~ the owner of the mining claim may present to the judge of the circuit court for the county in which the desired right-of-way or some part ~~thereof~~ of the right-of-way is situated, and file with the clerk of ~~said~~ the court a petition ~~praying~~ requesting that ~~such~~ the right-of-way be awarded ~~to him. Such~~. The petition shall be verified and contain a ~~particular~~ description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim ~~or claims~~ on lands to be affected by ~~such~~ the right or privilege, with the names of the occupants or owners ~~thereof; it~~ of the lands. The petition may also set forth any tender or offer mentioned in § 45-5-14 and shall demand the relief sought.

Section 185. That § 45-5-3 be amended to read as follows:

45-5-3. Upon the filing of ~~such~~ a petition with the clerk of ~~such~~ the court pursuant to § 45-5-2, the judge shall ~~direct an~~ order ~~to issue to~~ the owners named in the petition of mining claims and lands to be affected by the proceeding~~, directing each of them~~ to appear before the judge on a day ~~therein named, which shall~~ named in the order, not ~~be~~ less than ten days from the service ~~thereof~~ of the order, and show cause why ~~such~~ the right-of-way should not be allowed as ~~prayed for. Such~~ requested. The order shall be served on each of the parties in the manner prescribed by law for serving summons in a civil action.

Section 186. That § 45-5-4 be amended to read as follows:

45-5-4. Upon the return day of the order or upon any day to which the hearing ~~shall be~~ is adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties~~;~~

~~and if upon such hearing he~~. If upon the hearing the judge is satisfied that the claim of the petitioner should be worked by means of the privilege ~~prayed for, he~~ requested, the judge shall make an order adjudging and awarding to the petitioner ~~such~~ the right-of-way, and shall appoint three commissioners who shall be disinterested residents of the county to assess the damage resulting to the lands or claims affected by ~~such~~ the order.

Section 187. That § 45-5-5 be amended to read as follows:

45-5-5. The commissioners ~~so~~ appointed pursuant to § 45-5-4 shall be sworn or affirmed to discharge their duties faithfully and impartially~~, and~~. They shall proceed without unreasonable delay to examine the premises ~~and~~, shall assess the damage resulting from ~~such~~ the right or privilege ~~prayed for~~ requested, and shall report the amount to the judge appointing them~~; and if such~~. If the right-of-way ~~shall affect~~ affects the property of more than one person or company, ~~such~~ the report shall contain an assessment of the damages to each company or person.

Section 188. That § 45-5-6 be amended to read as follows:

45-5-6. Upon the payment of the sum assessed as damages to the persons to whom it shall be awarded or a tender ~~thereof~~ of the sum to them, the person petitioning ~~shall be entitled to the right-of-way prayed for in his~~ is entitled to the right-of-way requested in the petition and may immediately proceed to occupy ~~the same and to erect thereon such work and structures and make thereon such excavations~~ the right-of-way and erect works and structures and conduct excavations in the right-of-way as may be necessary to the use and enjoyment of the right-of-way ~~so awarded~~.

Section 189. That § 45-5-11 be amended to read as follows:

45-5-11. The prosecution of any appeal ~~shall~~ may not hinder, delay, or prevent the respondent from exercising all the rights and privileges mentioned in § 45-5-6, ~~provided that the respondent shall file~~ if the respondent files with the clerk of the court in which the appeal is pending a bond with sufficient sureties to be approved by the clerk in double the amount of the assessment appealed from, conditioned that the respondent will pay to the appellant whatever amount ~~he~~ the appellant may recover in the action, not exceeding the amount of ~~such~~ the bond.

Section 190. That § 45-5-12 be amended to read as follows:

45-5-12. If the appellant ~~recover~~ recovers fifty dollars more damages than the commissioners ~~shall~~ have awarded or if the respondent ~~shall offer~~ offers to allow judgment against ~~him~~ the respondent to be taken, the respondent shall pay the costs of the appeal; otherwise the appellant shall pay ~~such~~ the costs.

Section 191. That § 45-5-13 be amended to read as follows:

45-5-13. The costs and expenses under the provisions of this chapter, except as ~~herein~~ otherwise provided in this chapter, shall be paid by the party making the application.

Section 192. That § 45-5-14 be amended to read as follows:

45-5-14. If the applicant ~~shall~~, before the commencement of ~~such~~ the proceeding, ~~have~~ has tendered to the parties owning or occupying ~~such~~ the lands or mining claims a sum equal to or more than the amount of damages assessed by the commissioners, all of the costs and expenses shall be paid by the party or parties owning the lands or claims affected by ~~such~~ the right-of-way and who appeared and resisted the claim of the applicant.

Section 193. That § 45-5A-5 be amended to read as follows:

45-5A-5. The mineral developer shall give the surface owner written notice of proposed mineral development, other than exploration activities, at least thirty days ~~prior to~~ before the date operations are commenced. This notice shall be given to the record surface owner at ~~his~~ the surface owner's address as shown by the records of the county register of deeds at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice shall be a form prepared by the Department of Environment and Natural Resources advising the surface owner of his or her rights and options under this chapter.

Section 194. That § 45-5A-6 be amended to read as follows:

45-5A-6. The mineral developer ~~shall be~~ is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the mineral developer. The mineral developer ~~shall also be~~ is also responsible for all damages to property, real or personal, resulting from an interference caused by mineral development.

Section 195. That § 45-5A-7 be amended to read as follows:

45-5A-7. The affected surface owner, to receive compensation, ~~under~~ pursuant to §§ 45-5A-8 and 45-5A-9, shall notify the mineral developer, in writing, of the damages sustained by the affected surface owner within two years after the injury becomes apparent or should have become apparent to a reasonable ~~man~~ person.

Section 196. That § 45-6-72 be amended to read as follows:

45-6-72. Together with the annual ~~one hundred dollar~~ license fee, the operator shall submit the following information for each location mined during the previous year: the tonnage of material removed, a map showing the areas mined, the areas reclaimed, and the acreage of each.

Section 197. That § 45-6-69 be amended to read as follows:

45-6-69. The operator shall submit notification, consisting of a map of the affected area and the information required in the newspaper notice to the South Dakota Department of Environment and Natural Resources, the South Dakota Department of Game, Fish and Parks, the South Dakota Department of Education, and the local conservation district, of ~~his~~ the operator's intent to commence mining at a new mine site at least thirty days ~~prior to~~ before beginning mining operations.

Section 198. That § 45-6-76 be amended to read as follows:

45-6-76. It is a violation of the terms and conditions of an operator's license to refuse entry or access to any authorized representative of the Board of Minerals and Environment who, after presenting appropriate credentials, requests entry for the purpose of inspection under §§ 45-6-64 to 45-6-77, inclusive. No operator may obstruct, hamper, or interfere with any such investigation. ~~If he so requests, the~~ The operator of the mining site may request and shall receive a report within ten days after the inspection setting forth the observations made by the person making the inspection which relate to compliance with §§ 45-6-64 to 45-6-77, inclusive.

Section 199. That § 45-6B-5 be amended to read as follows:

45-6B-5. Any person desiring to engage in a mining operation shall make written application to the Board of Minerals and Environment for a permit for each mining operation on forms furnished by the board. The permit, if approved, ~~shall authorize~~ authorizes the operator

to engage in the mining operation on the affected lands described in ~~his~~ the application for the life of the mine. The application shall consist of:

(1) One copy of the application pursuant to § 45-6B-6;

(2) A reclamation plan pursuant to § 45-6B-7 submitted with the application;

(3) An accurate map of the affected lands pursuant to § 45-6B-10 submitted with the application;

(4) The application fee pursuant to § 45-6B-14; and

(5) A post-closure plan for mine waste disposal facilities.

Section 200. That § 45-6B-22 be amended to read as follows:

45-6B-22. In determining whether the surety of an operator shall be guaranteed by a corporate surety bond and in determining the form of surety to be provided by the operator if other than a bond, the Board of Minerals and Environment shall consider, with respect to the operator, such factors as ~~his~~ the operator's financial status, ~~his~~ assets within the state, ~~his~~ past performance on contractual agreements, and ~~his~~ facilities available to carry out the planned work. The operator shall supply evidence of financial responsibility for all surety other than a bond.

Section 201. That § 45-6B-27 be amended to read as follows:

45-6B-27. The penalty of the surety shall from time to time be increased or reduced by the Board of Minerals and Environment so that the bond covers the cost of reclamation which would accrue to the state, if the state were required to reclaim the affected areas within the permit or in accordance with the number of acres to which the bond is no longer operative because of the operator's withdrawal of acreage or by reason of ~~his~~ the operator's performance of his or her obligations subsequent to the issuance of the permit.

Section 202. That § 45-6B-28 be amended to read as follows:

45-6B-28. Any person ~~has the right to~~ may file written objections to or statements in support of an application for a mining permit with the Board of Minerals and Environment. Such material shall be filed with the board not more than twenty days after the date of last publication of notice pursuant to § 45-6B-16. The board shall hold a hearing pursuant to § 45-6B-30 on the question of whether the permit should be granted. The applicant shall be notified by the board or department within ten days of receipt of any objections to ~~his~~ the application and be ~~supplied with~~ provided a copy of the written objections.

Section 203. That § 45-6B-33.1 be amended to read as follows:

45-6B-33.1. Before making a determination pursuant to subdivision 45-6B-33(6), the board shall require the applicant to submit a socioeconomic impact study. The socioeconomic impact study shall be prepared at the operator's expense by a contractor approved by the board. An applicant may request board approval of a contractor at any time before or after filing a permit application.

~~A~~ The socioeconomic impact study ~~required by this section~~ shall evaluate the potential impacts of the proposed mining operation including~~, but not limited to,~~ the following areas:

(1) Population base;

(2) Employment and income;

(3) Tax base;

(4) Housing;

(5) Community services, including~~, but not limited to,~~ schools, law enforcement and fire protection, solid waste, water and wastewater, and roads; and

(6) Recreational opportunities or other beneficial uses of land within and adjacent to the permit area.

If applicable, a study shall include an evaluation of the cumulative impacts of the proposed operation considered together with existing operations in the surrounding region. If an applicant is required to submit a socioeconomic impact study to a county government pursuant to county zoning ordinance or requirements, the board shall determine upon receipt of an application for a mining operation permit whether the required county socioeconomic impact study will satisfy the board requirements for such a study as provided for in this section.

Section 204. That § 45-6B-45 be amended to read as follows:

45-6B-45. Depending on the reclamation plan approved by the board, the operator shall meet the following requirements:

(1) If the choice of reclamation is forest planting, the operator may, with the approval of the Board of Minerals and Environment, select the type of trees to be planted. Planting methods and care of stock shall be governed by good planting practices. If the operator is unable to acquire sufficient planting stock of desired tree species from the state or elsewhere at a reasonable cost, ~~he~~ the operator may defer planting until planting stock is available to plant such land as originally planned, or ~~he~~ the operator may select an alternative method of reclamation;

(2) If the choice of reclamation is rangeland restoration, the affected land shall be restored to the satisfaction of the board to slopes commensurate with the proposed land use and shall not be too steep to be traversed by livestock. The legume seed shall be properly inoculated in all cases. The area may be seeded either by hand, or power or by the aerial method. The species of grasses and legumes and the rates of seeding to be used per acre shall be determined primarily by recommendations from the state agricultural experiment stations, and experienced reclamation personnel of the operator, after considering other research or successful experience with range seeding. No grazing may be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local conservation district, if any, shall determine when grazing may start;

(3) If the choice of reclamation is for agricultural or horticultural crops which normally require the use of farm equipment, the operator shall grade so that the area can be traversed with farm machinery. Preparation for seeding or planting, fertilization and seeding, or planting rates shall be governed by general agricultural and horticultural practices, except where research or experience in such operations differs with these practices;

(4) If the choice of reclamation is for the development of the affected land for homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, the requirements necessary for such reclamation shall be agreed upon by the operator, landowner, and the board. ~~"Industrial or other uses"~~ The term, industrial or other uses, may not be construed to include future mineral exploration or

development unless the board, operator, landowner, and local board of county commissioners agree that reclamation for future mineral exploration or development will result in a beneficial future use of the affected land.

The board may require reasonable modifications in the requirements necessary for reclamation ~~prior to~~ before approving a reclamation plan under this chapter.

Section 205. That § 45-6B-47 be amended to read as follows:

45-6B-47. Any mining operation permit may be transferred. If one operator succeeds another at any uncompleted operation, ~~he~~ the successor operator shall make application for a transfer to the Board of Minerals and Environment. The board may not deny a transfer unless the operation is not in compliance or cannot be brought into compliance, with all applicable local, state, and federal laws pertaining to the operation ~~prior to~~ before the transfer, or unless the successor operator is in violation of state statutes, rules, mining permit conditions, or requirements with respect to any mining operation in the state. The board shall release the first operator from all liability as to that particular reclamation operation and shall release ~~his~~ the first operator's surety as to ~~such~~ the operation if the successor operator assumes, as part of ~~his~~ the successor operator's obligation under this chapter, all liability for the reclamation of the affected land, and ~~his~~ the obligation is covered by an appropriate surety as to ~~such~~ the affected land. Notice of a transfer shall be given to the board and accompanied by a one hundred dollar transfer fee.

Section 206. That § 45-6B-48 be amended to read as follows:

45-6B-48. If the secretary of environment and natural resources has reason to believe that a violation of an order, permit, notice of intent, or rule issued under the authority of this chapter has occurred, written notice shall be given to the operator of the alleged violation. The notice shall be served personally or by registered mail upon the alleged violator or ~~his~~ the alleged violator's agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute the violation and shall recommend possible corrective action.

Section 207. That § 45-6B-72 be amended to read as follows:

45-6B-72. It is a violation of a mining permit's terms and conditions to refuse entry or access to any authorized representative of the Board of Minerals and Environment who after presenting appropriate credentials requests entry for the purpose of inspection under this chapter; nor ~~shall~~ may any person obstruct, hamper, or interfere with any such investigation. If requested, the operator of the mining site ~~shall~~ is entitled to receive a report setting forth the observations made by the person making the inspection which relate to compliance with this chapter.

Section 208. That § 45-6B-87 be amended to read as follows:

45-6B-87. Nothing in this chapter relieves the holder of any large-scale gold or silver surface mining permit from any of the requirements of the Clean Air Act of 1955, as amended to January 1, 2011, the Clean Water Act of 1977, as amended to January 1, 2011, the South Dakota Air Quality Act (chapter 34A-1), the Federal Water Pollution Control Act of 1972, as amended to January 1, 2011, the Safe Drinking Water Act (P.L. 93-523), as amended to January 1, 2011, the Mine Safety and Health Administration regulations (30 C.F.R. Part 3830), as amended to January 1, 2011, United States Forest Service surface mining and exploration reclamation requirements (43 C.F.R., page 228), as amended to January 1, 2011, Bureau of Land Management mining and exploration requirements (43 C.F.R. Part 3800), as amended to January 1, 2011, the Mined Land Reclamation Act (this chapter), the regulated substance discharges statutes in chapter 34A-12, the Resource Conservation and Recovery Act of 1976, as amended to January 1, 2011, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P.L. 95-510), as amended to January 1, 2011, the Toxic Substance

Control Act of 1976 (P.L. 94-469), as amended to January 1, 2011, Lawrence County extractive industries ordinances, as amended to January 1, 2011, and all rules and regulations promulgated to implement existing statutes, including rules dealing with air pollution, control of visible emissions, open burning, control of particulate emissions, control of sulfur compound emissions, new source performance standards, standards of performance for storage vessels of petroleum liquids, air standards, spill control plans, buried tanks, water pollution, public water systems, and dredge and fill permit requirements.

Section 209. That § 45-6B-96 be amended to read as follows:

45-6B-96. The board may not issue new permits to or amendments to existing permits for presently operating large-scale gold or silver surface mining operations for expanded acres of surface mining disturbed lands until reclamation has been performed in accord with § 45-6B-97, except that presently operating large-scale gold or silver surface mining operations ~~shall not be~~ are not subject to this provision until the permitted acres of surface mining disturbed lands ~~shall~~ total two hundred acres more per each individual permit than its permitted surface mining disturbed land total acreage as of January 1, 1992.

Section 210. That § 45-6B-99 be amended to read as follows:

45-6B-99. Presently operating or new underground mining operations ~~shall not be~~ are not subject to the provisions of §§ 45-6B-94 to 45-6B-99, inclusive.

Section 211. That § 45-6C-20 be amended to read as follows:

45-6C-20. Criteria which shall be considered to determine the amount of surety necessary to guarantee the costs of reclamation of affected public and private lands and facilities ~~shall include, but not be limited to~~ include:

(1) Potential damages to unique and natural historical sites, springs, natural or ~~man made~~ man-made water storage and transport facilities, domestic and public water wells and water supply, waste water transport, storage and treatment facilities, or crops;

(2) Topography;

(3) Climatic, soil, and vegetative conditions;

(4) Estimated costs per test hole site to reclaim disturbed surface areas; and

(5) Estimated cost per test hole site to plug each test hole.

Section 212. That § 45-6C-21 be amended to read as follows:

45-6C-21. In determining whether the surety of an operator shall be guaranteed by a corporate surety bond and in determining the form of surety to be provided by the operator if other than a bond, the Board of Minerals and Environment shall consider, with respect to the operator, such factors as ~~his~~ the operator's financial status, ~~his~~ assets within the state, ~~his~~ past performance on contractual agreements, and ~~his~~ facilities available to carry out the planned work. The operator shall supply evidence of financial responsibility for all surety other than a bond.

Section 213. That § 45-6C-33 be amended to read as follows:

45-6C-33. The operator shall restore each drill site and other affected land as nearly as possible to its original condition including~~, but not limited to,~~ backfilling all mudpits, scattering

any drill cuttings left on the surface, reseeding the drill site and approach trails, removing shot wire, or other action as may be necessary.

Section 214. That § 45-6C-36 be amended to read as follows:

45-6C-36. If the secretary of environment and natural resources has reason to believe that a violation of this chapter has occurred, written notice shall be given to the operator of the alleged violation. ~~Such~~ The notice shall be served personally or by registered mail upon the alleged violator or ~~his~~ the alleged violator's agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute the violation and shall recommend possible corrective action.

Section 215. That § 45-6C-51 be amended to read as follows:

45-6C-51. Any person engaged in recreational, hobby, amateur, or field activities independently or sponsored by educational institutions or by organizations involved in earth science activities including~~, but not limited to,~~ geology, mineralogy, paleontology, treasure hunting, gold panning, archaeology, and noncommercial agate and gem hunting and using hand-held tools and equipment is exempt from the provisions of this chapter.

Section 216. That § 45-6C-53 be amended to read as follows:

45-6C-53. Any exploration notice of intent may be transferred. If one operator succeeds another at any uncompleted exploration operation, ~~he~~ the successor operator shall make application for a transfer to the Board of Minerals and Environment. The board may not deny a transfer unless the operation is not in compliance or cannot be brought into compliance, with all applicable local, state, and federal laws pertaining to the operation ~~prior to~~ before the transfer, or unless the successor operator is in violation of state statutes, rules, notice restrictions, mining permit conditions, or requirements with respect to any exploration or mining operation in the state. The board shall release the first operator from reclamation liability as to that particular exploration operation and shall release ~~his~~ the first operator's surety posted to cover the costs of reclamation if the successor operator assumes, as part of ~~his~~ the successor operator's obligation under this chapter, all liability for the reclamation of the affected land not completed by the first operator and reclamation of any additional lands affected under the notice. The obligation to complete this reclamation shall be covered by an appropriate surety. The successor may only conduct exploration work authorized in the notice and shall comply with the terms and conditions established when the original notice was issued. Notice of a transfer shall be given to the board and shall be accompanied by a two hundred fifty dollar transfer fee.

Section 217. That § 45-6D-20 be amended to read as follows:

45-6D-20. Criteria which shall be considered to determine the amount of surety necessary to guarantee the costs of reclamation of affected public and private lands and facilities ~~shall~~ include~~, but not be limited to~~:

(1) Potential damages to unique and natural historical sites, springs, natural or man made water storage and transport facilities, domestic and public water wells and water supply, waste water transport, storage and treatment facilities or crops;

(2) Topography;

(3) Climatic, soil, and vegetative conditions;

(4) Estimated costs per test hole site to reclaim disturbed surface areas; and

(5) Estimated cost per test hole site to plug each test hole.

Section 218. That § 45-6D-21 be amended to read as follows:

45-6D-21. In determining whether the surety of an operator shall be guaranteed by a corporate surety bond and in determining the form of surety to be provided by the operator if other than a bond, the Board of Minerals and Environment shall consider, with respect to the operator, such factors as ~~his~~ the operator's financial status, ~~his~~ assets within the state, ~~his~~ past performance on contractual agreements, and ~~his~~ facilities available to carry out the planned work. The operator shall supply evidence of financial responsibility for all surety other than a bond.

Section 219. That § 45-6D-26 be amended to read as follows:

45-6D-26. Any person ~~has the right to~~ may file written objections to or statements in support of an application for a uranium exploration operation permit with the Board of Minerals and Environment. ~~Such~~ The material for intervention shall be filed with the board not more than twenty days after the date of last publication of notice pursuant to § 45-6D-12. The board shall hold a hearing pursuant to § 45-6D-28 on the question of whether the permit should be granted. The applicant shall be notified by the board or Department of Environment and Natural Resources within five days of receipt of any objections to ~~his~~ the application and shall be ~~supplied with~~ provided a copy of the written objections.

Section 220. That § 45-6D-38 be amended to read as follows:

45-6D-38. The operator shall restore each drill site and other affected land as nearly as possible to its original condition including~~, but not limited to,~~ backfilling all mudpits, scattering any drill cuttings left on the surface, reseeding the drill site and approach trails, removing shot wire, or other action as may be necessary.

Section 221. That § 45-6D-52 be amended to read as follows:

45-6D-52. If the secretary of environment and natural resources determines that any violation of any provisions of this chapter or of any notice, permit, or rule issued or promulgated under authority of this chapter exists, the board, not less than forty-eight hours after service of the notice required by § 45-6D-51, may issue a cease and desist order. The order shall set forth the provisions alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of shall be terminated and shall recommend possible corrective action. The order shall be served personally or by registered mail upon the alleged violator or ~~his~~ the alleged violator's agent for service of process.

Section 222. That § 45-6D-62 be amended to read as follows:

45-6D-62. It is a violation of a uranium exploration operation permit's terms and conditions to refuse entry or access to any authorized representative of the Board of Minerals and Environment who, after presenting appropriate credentials requests entry for the purpose of inspection under this chapter; nor ~~shall~~ may any person obstruct, hamper, or interfere with any such investigation. If requested, the operator of the uranium exploration site shall receive a report setting forth the observations made by the person making the inspection which relate to compliance with this chapter.

Section 223. That § 45-6D-64 be amended to read as follows:

45-6D-64. The Department of Agriculture, the Department of Environment and Natural Resources, the Department of Game, Fish and Parks, the Department of Education, the commissioner of school and public lands, and local conservation districts shall furnish the Board of Minerals and Environment ~~and its designees~~, as far as practicable, whatever data and technical assistance the board may request and deem necessary for the performance of total reclamation and enforcement duties.

Section 224. That § 45-9-5 be amended to read as follows:

45-9-5. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.

Section 225. That § 45-9-6 be amended to read as follows:

45-9-6. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require the taking of tests of oil or gas wells.

Section 226. That § 45-9-8 be amended to read as follows:

45-9-8. Without limiting its general authority, the Board of Minerals and Environment may classify, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

Section 227. That § 45-9-9 be amended to read as follows:

45-9-9. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~state geologist~~ secretary of environment and natural resources, specific authority to require metering or other measuring of oil, gas, or product.

Section 228. That § 45-9-10 be amended to read as follows:

45-9-10. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require that wells not be operated with inefficient gas-oil or water-oil ratios, and to fix their ratios, and to limit production from wells with inefficient gas-oil or water-oil ratios.

Section 229. That § 45-9-12 be amended to read as follows:

45-9-12. Without limiting its general authority, the Board of Minerals and Environment may regulate, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to regulate the production of oil and gas from any field, pool, or area, where physical waste is created.

Section 230. That § 45-9-14 be amended to read as follows:

45-9-14. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require the drilling, casing, operation, and plugging of wells in such manner as to prevent:

(1) Reasonably preventable escape of oil or gas out of one pool into another;

(2) The detrimental intrusion of water into an oil or gas pool that is avoidable by efficient operations;

(3) The pollution of fresh-water supplies by oil, gas, or salt water; and

(4) Blow-outs, cavings, seepages, and fires.

Section 231. That § 45-9-15 be amended to read as follows:

45-9-15. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require the furnishing of a plugging and performance bond in the amount of five thousand dollars per well drilled, or twenty thousand dollars blanket, with good and sufficient surety, conditioned for the performance of the duty to plug each dry or abandoned well, to restore the premises, insofar as possible, to the condition ~~which existed prior to~~ that existed before the filing of the application to drill; and conditioned on the proper performance of all of the requirements of §§ 45-9-5 to 45-9-18, inclusive. The condition of the bond insofar as it relates to restoration of the surface ~~shall be~~ is deemed to have been complied with if the landowner or lessee and the producer or driller adopt a different plan as approved by the board. The board may require additional bond if the circumstances require.

Section 232. That § 45-9-15.1 be amended to read as follows:

45-9-15.1. The Board of Minerals and Environment shall require the furnishing of a surface restoration bond ~~when~~ if the landowner or lessee is not a party to the oil or gas leasing agreement in the amount of two thousand dollars per well drilled, or ten thousand dollars blanket, with good and sufficient surety, conditioned for the performance of the duty to restore the premises, insofar as possible, to the condition which existed ~~prior to~~ before the filing of the application to drill. The term, premises, as used ~~herein is deemed to include~~ in this section, includes the surface property of the landowner or lessee, both real and personal, and the ingress to and the egress from ~~such~~ the real property.

Section 233. That § 45-9-16 be amended to read as follows:

45-9-16. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require that every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state ~~shall~~ keep and maintain complete and accurate records of the quantities ~~thereof, which~~ of the oil or gas. The records shall be available for examination by the board or its agents upon request.

Section 234. That § 45-9-17 be amended to read as follows:

45-9-17. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require the filing with the board of reports or plats that it may prescribe.

Section 235. That § 45-9-18 be amended to read as follows:

45-9-18. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the ~~office of the state geologist~~ secretary of environment and natural resources, specific authority to require the ~~making and filing in the office of the state geologist within thirty days after the completion or abandonment of the well~~ filing of all mechanical well logs, directional surveys, and reports on well location, drilling, and production~~, and for~~ with the secretary within thirty days after the completion or abandonment of the well. The board may also require the filing free of charge of samples and core chips and of complete cores, if taken, ~~when~~ and if requested ~~in the office of the state geologist~~, with the secretary within six months after the completion or abandonment of the well~~; provided, however, that~~. However, the log and samples and cores of an exploratory or wildcat well may, upon written request by the operator, be held confidential until six months after the completion of the well.

Section 236. That § 45-9-22 be amended to read as follows:

45-9-22. An order establishing spacing units shall specify the size and shape of the units, which ~~shall be such as~~ will in the opinion of the Board of Minerals and Environment result in the efficient and economical development of the pool as a whole. The size of the spacing units ~~shall~~ may not be smaller than the maximum area that can be efficiently and economically drained by one well.

Section 237. That § 45-9-24 be amended to read as follows:

45-9-24. ~~Where~~ If spacing units of different sizes or shapes exist in a pool, the Board of Minerals and Environment shall, if necessary, ~~when~~ and if production is limited due to physical waste, ~~make such adjustment of~~ adjust the allowable production from ~~the well or wells drilled thereon~~ any wells drilled in the pool so that each person entitled ~~thereto~~ to a share of the production in each spacing unit ~~will have~~ has a reasonable opportunity to produce or receive his or her just and equitable share of the production.

Section 238. That § 45-9-27 be amended to read as follows:

45-9-27. Upon application, if the ~~office of the state geologist~~ secretary of environment and natural resources finds that a well drilled at the prescribed location would not be likely to produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such wells or for other good cause shown, the ~~office of the state geologist is authorized to~~ secretary may permit the well to be drilled at a location other than that prescribed by ~~such~~ the spacing order.

Section 239. That § 45-9-31 be amended to read as follows:

45-9-31. In the absence of voluntary pooling, the Board of Minerals and Environment, upon the application of any interested person, shall enter an order pooling all interests in the spacing unit for the development and operation ~~thereof~~ of the spacing unit, and for the sharing of production ~~therefrom~~ from the spacing unit. Each such pooling order shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive without unnecessary expense, his or her just and equitable share.

Section 240. That § 45-9-32 be amended to read as follows:

45-9-32. Each such pooling order shall authorize the drilling, equipping, and operation of a well on the spacing unit; shall provide who may drill and operate the well; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate ~~therein~~ in such well drilling, equipping, and operation; and shall ~~make provision~~ provide for ~~the~~ payment ~~by all those who elect to participate therein~~ of the reasonable actual cost ~~thereof~~ of the well drilling, equipping, and operation by all those who elect to participate, plus a reasonable charge for supervision and interest.

Section 241. That § 45-9-33 be amended to read as follows:

45-9-33. If requested, each such pooling order shall provide for one or more just and equitable alternatives whereby an owner who does not elect to participate in the risk and cost of the drilling and operation of a well may elect to surrender his or her leasehold interest to the participating owners on some reasonable basis and for a reasonable consideration ~~which if~~. If such terms are not agreed upon, they shall be determined by the Board of Minerals and Environment~~, or~~. The owner may elect to participate in the drilling and operation of the well, on a limited or carried basis, upon terms and conditions determined by the board to be just and reasonable.

Section 242. That § 45-9-35 be amended to read as follows:

45-9-35. If ~~one or more of the owners shall drill, equip, and operate, or pay~~ any of the owners drills, equips, and operates, or pays the costs of drilling, equipping, and operating a well for the benefit of another person as provided for in an order of pooling, then ~~such owner or owners shall be~~ the owner is entitled to the share of production from the spacing unit accruing to the interest of ~~such~~ the other person, exclusive of a royalty not to exceed one-eighth of the production, until the market value of ~~such~~ the other person's share of the production exclusive of ~~such~~ the royalty, equals the sums payable by or charged to the interest of ~~such~~ the other person. If there is a dispute as to the costs of drilling, equipping, or operating a well, the Board of Minerals and Environment shall determine ~~such~~ the costs.

Section 243. That § 45-9-43 be amended to read as follows:

45-9-43. An order providing for unit operations may be amended by an order made by the Board of Minerals and Environment in the same manner and subject to the same conditions as an original order providing for unit operations~~, provided~~ under the following conditions:

(1) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners ~~shall~~ is not ~~be~~ required; and

(2) No such order of amendment ~~shall~~ may change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning oil and gas rights in ~~such~~ the tract, or change the percentage for the allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in ~~such~~ the tract.

Section 244. That § 45-9-46 be amended to read as follows:

45-9-46. All operations, including~~, but not limited to,~~ the commencement, drilling, or operation of a well upon any portion of the unit area ~~shall be~~ are deemed for all purposes the conduct of such operations upon each separately owned tract in the area by the several owners ~~thereof~~ of the tracts. The portion of the unit production allocated to a separately owned tract in a unit area ~~shall~~ is, when produced, ~~be~~ deemed, for all purposes, to have been actually produced from ~~such~~ the tract by a well drilled ~~thereon~~ on the tract.

Section 245. That § 45-9-49 be amended to read as follows:

45-9-49. Except to the extent that the parties affected ~~so~~ agree, no order providing for unit operations ~~shall~~ may be construed to result in a transfer of ~~all or~~ any part of the title of any person to the oil and gas rights in any tract in the unit area.

Section 246. That § 45-9-50 be amended to read as follows:

45-9-50. No division order or other contract relating to the sale or purchase of production from a separately owned tract ~~shall~~ may be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to ~~such~~ the tract until terminated in accordance with the provisions ~~thereof~~ of the order or contract.

Section 247. That § 45-9-52 be amended to read as follows:

45-9-52. An agreement for the unit or cooperative development or operation of a field, pool, or part ~~thereof~~ of the field or pool, may be submitted to the Board of Minerals and Environment for approval as being in the public interest or reasonably necessary to prevent waste or protect correlative rights. ~~Such~~ The approval ~~shall constitute~~ constitutes a complete defense to any suit charging violation of any statute of the state relating to trusts and monopolies on account ~~thereof~~ of the agreement or on account of operations conducted pursuant ~~thereto~~ to the agreement. The failure to submit such an agreement to the board for approval ~~shall~~ does not for that reason imply

or constitute evidence that the agreement or operations conducted pursuant ~~thereto~~ to the agreement are in violation of laws relating to trusts and monopolies.

Section 248. That § 45-9-55 be amended to read as follows:

45-9-55. The Board of Minerals and Environment ~~has authority, and it is its duty, to make such investigations as are proper~~ shall conduct investigations necessary to determine whether waste exists or is imminent or whether other facts exist ~~which~~ that justify action by the board.

Section 249. That § 45-9-59 be amended to read as follows:

45-9-59. The Board of Minerals and Environment ~~shall have the power to~~ may summon witnesses, ~~to~~ administer oaths, and ~~to~~ require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

Section 250. That § 45-9-60 be amended to read as follows:

45-9-60. ~~In case of failure or refusal on the part of any person~~ If any person refuses to comply with the subpoena issued by the Board of Minerals and Environment, or ~~in case of the refusal of any witness~~ if any witness refuses to testify ~~as~~ to any matter ~~regarding~~ on which ~~he~~ the witness may be interrogated and which is pertinent to the hearing or investigation, any circuit court in the state, upon the application of the board, may in term time or vacation issue an attachment for ~~such~~ the person and compel ~~him~~ the person to comply with ~~such~~ the subpoena, and to ~~attend~~ appear before the board and produce such records, books, and documents for examination, and to give ~~his~~ testimony. ~~Such court shall have the power to~~ The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify ~~therein~~ in the case.

Section 251. That § 45-9-70 be amended to read as follows:

45-9-70. The ~~office of the state geologist~~ secretary of environment and natural resources, acting for the Board of Minerals and Environment, ~~has authority to~~ may shut down any operation and place under seal any property or equipment for failure to comply with the oil and gas law or rules ~~and regulations, to~~, may enter upon any land and perform any operation that the operator fails to perform ~~when ordered so to do~~ if ordered to do so in writing, and ~~to~~ may recommend cancellation of any state lease and forfeiture under the bond for noncompliance with the applicable law, lease terms, and ~~regulations~~ rules.

Section 252. That § 45-9-71 be amended to read as follows:

45-9-71. ~~Whenever~~ If it appears that any person is violating or threatening to violate any provision of this chapter, or any rule~~, regulation,~~ or order of the Board of Minerals and Environment, and unless the board without litigation can effectively prevent violation or threat of violation, the board shall bring suit against ~~such~~ the person in the circuit court for any county where the violation ~~occurs~~ is occurring or is threatened, to restrain ~~such~~ the person from continuing ~~such~~ the violation or from carrying out the threat of violation. Upon the filing of any such suit, summons issued to ~~such~~ the person may be directed to the sheriff of any county in this state for service by ~~such~~ the sheriff ~~or his deputies~~. In any such suit, the court ~~shall have~~ has jurisdiction to grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the ~~fact~~ facts may warrant, including temporary restraining orders and preliminary injunctions.

Section 253. That § 45-9-72 be amended to read as follows:

45-9-72. If the Board of Minerals and Environment ~~shall fail~~ fails to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule~~, regulation,~~ or order

of the board within ten days after receipt of written request to do so by any person who is or will be adversely affected by ~~such~~ the violation, the person making ~~such~~ the request may bring suit in ~~his~~ the person's own behalf to restrain ~~such~~ the violation or threatened violation in any court in which the board might have brought suit. The board shall be made a party defendant in ~~such~~ the suit in addition to the person violating or threatening to violate a provision of this chapter, or rule~~, regulation,~~ or order of the board, and the action shall proceed and injunctive relief may be granted to the board without bond in the same manner as if suit had been brought by the board.

Section 254. That § 46-1-4 be amended to read as follows:

46-1-4. It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use ~~thereof~~ of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is ~~and shall be~~ limited to ~~such water as shall be~~ an amount of water reasonably required for the beneficial use to be served, and such right does not ~~and shall not~~ extend to the waste or unreasonable use or unreasonable method of diversion of water.

Section 255. That § 46-1-9 be amended to read as follows:

46-1-9. The term ~~"~~, vested rights~~"~~, used in this title~~, unless the context otherwise clearly requires,~~ means:

(1) The right of a riparian owner to continue to use water actually applied to any beneficial use on March 2, 1955, or within three years immediately ~~prior to~~ before that date to the extent of the existing beneficial use made of the water;

(2) Use for domestic purposes as that term is defined in subdivision 46-1-6(7);

(3) The right of a riparian owner to take and use water for beneficial purposes if the riparian owner was engaged in the construction of works for the actual application of the water to a beneficial use on March 2, 1955, ~~provided~~ and if the works were completed and water was applied to use within a reasonable time thereafter;

(4) Rights granted before July 1, 1955, by court decree;

(5) Uses of water under diversions and applications of water ~~prior to~~ before the passage of the 1907 water law and not subsequently abandoned or forfeited.

Section 256. That § 46-2-18 be amended to read as follows:

46-2-18. The provisions of chapter 1-26 notwithstanding, the chief engineer may, after appropriate investigation, issue an order to any person to shut off or limit ~~his~~ the person's use of surface or groundwater, or to plug or otherwise control a well. The order may be issued only to protect another user who has higher or earlier priority or to cause a user of water to discontinue the use of water to which ~~he~~ the user has no legal right. Upon a refusal to obey ~~his~~ the order, the chief engineer may request a court of proper jurisdiction to issue a temporary restraining order or injunction to effectuate the provisions of ~~his~~ the order.

Section 257. That § 46-2-19 be amended to read as follows:

46-2-19. The chief engineer ~~or his authorized agents~~, in the performance of ~~their respective~~ duties under this title, may enter upon the lands of any person making appropriative use of the

waters of the state after the chief engineer ~~or his authorized agents have~~ has made a reasonable attempt to notify the owner or possessor of the property of the entry. This section does not apply to entry into a house or the curtilage of a home.

Section 258. That § 46-2A-23 be amended to read as follows:

46-2A-23. Following the issuance of a recommendation to approve an application pursuant to § 46-2A-2, the chief engineer may publish, at the expense of the applicant, a notice to determine ~~if~~ whether any person opposes the application or recommendation of the chief engineer. The notice shall be published as provided for in § 46-2A-4, and the notice shall contain the information provided for in subdivisions 46-2A-4(1), (2), (3), (5), (6), and (10). The notice is not required to refer to a board meeting or hearing date. In addition, the notice shall include a statement that if the applicant intends to contest the recommendation, the applicant shall file a petition with the chief engineer, and any interested person who intends to oppose or support the application or recommendation shall file a petition with the chief engineer and the applicant. Any petition shall be filed within ten days of the second published notice.

If no petition to contest the recommendation or to oppose an application is timely filed, the chief engineer, following receipt of proof of publication, shall act on the application consistent with ~~his~~ the chief engineer's recommendation as provided by rules promulgated by the Water Management Board pursuant to chapter 1-26 delegating authority to the chief engineer to issue uncontested permits pursuant to §§ 46-1-16 and 46-2-3.1, without hearing by the board.

If a petition to contest the recommendation or to oppose the application is timely filed, the chief engineer shall provide notice of a board hearing pursuant to § 1-26-17. The notice shall also include a statement that the recommendation of the chief engineer is not final or binding upon the board and is subject to the decision of the board based on evidence and record of the public hearing. A statement shall also be included in the notice that the applicant or any interested person who has filed a petition to oppose or support an application, may file a written notice with the chief engineer requesting postponement of the original hearing date. The written notice requesting postponement shall be filed within twenty days of the date of the notice scheduling the board hearing, but not less than ten days before the date the application is scheduled for hearing. Upon timely receipt of a written notice, the chief engineer shall cancel the original hearing and reschedule the hearing not less than twenty days after the original hearing date. Notice of hearing shall be provided by personal service or by first class mail to the applicant and parties of record.

Section 259. That § 46-3A-1 be amended to read as follows:

46-3A-1. As used in this chapter:

(1) The term ~~"~~, weather modification~~"~~, means performing any activity with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere;

(2) The terms ~~"~~, experimentation~~"~~, and ~~"~~, research and development~~"~~, mean theoretical exploration and experimentation and the extension of investigative findings and theories of a scientific or technical nature in the practical application for experimental and demonstrative purposes, including the experimental producing and testing of model devices, equipment, materials, and processes;

(3) The term ~~"~~, person~~"~~, means any person, firm, association, organization, partnership, company, corporation, private or public, county, first or second class municipality, trust, or other public agencies;

(4) The term ~~"~~, operation~~"~~, means the performance of weather modification activities entered into for the purpose of producing, or attempting to produce, a certain modifying effect within one geographical area over one continuing time interval not exceeding one year.

Section 260. That § 46-3A-12 be amended to read as follows:

46-3A-12. The Department of Environment and Natural Resources, in order to carry into effect the provisions of this chapter, ~~is authorized and empowered to~~ may enter into any contracts or memoranda of agreement as are necessary~~; to~~ and may accept funds from the state Legislature and from private and public sources~~, in carrying out the provisions of this chapter~~.

Section 261. That § 46-3A-30 be amended to read as follows:

46-3A-30. The Department of Environment and Natural Resources shall administer and enforce the provisions of this chapter~~, provided, however, that~~. However, the Water Management Board ~~shall retain~~ retains the authority and policy powers reserved to it by § 46-3A-5.

Section 262. That § 46-3A-31 be repealed.

Section 263. That § 46-4-3 be amended to read as follows:

46-4-3. Any person desiring to ~~avail himself of~~ take advantage of any of the rights provided in this chapter shall file a location notice with the register of deeds of the county in which the right is located and shall mail a copy of the notice to the Water Management Board.

Section 264. That § 46-4-5 be amended to read as follows:

46-4-5. The right of any person to continue the use of water from any dry-draw is a vested right, to the extent it is not abandoned or forfeited and:

(1) The water had actually been applied to a beneficial use on March 18, 1957, or within three years immediately ~~prior thereto~~ before that date to the extent of the actual beneficial use ~~thereof~~ of the water; or

(2) The dry-draw owner was engaged in the construction of works for the actual application of water to a beneficial use on March 18, 1957, ~~provided that such~~ if the works were completed and water actually applied for such use within a reasonable time ~~thereafter~~ after that date, to the extent of actual beneficial use ~~thereof~~ of the water; or

(3) The dry-draw owner filed a location notice and constructed or was in the process of constructing the dry-draw structure on December 31, 1982, ~~provided that~~ if the works were completed and water actually applied to beneficial use within a reasonable time after that date to the extent of actual beneficial use.

Section 265. That § 46-5-1 be amended to read as follows:

46-5-1. No landowner may prevent the natural flow of a stream, or of a natural spring from where it starts its definite course, or of a natural spring arising on his or her land which flows into and constitutes a part of the water supply of a natural stream, nor pursue nor pollute any of these, except as provided by § 46-5-2.

Section 266. That § 46-5-6.1 be amended to read as follows:

46-5-6.1. The seventy acre restriction ~~contained~~ set forth in § 46-5-6 ~~shall~~ does not apply to permits to appropriate water for irrigation from the Missouri River. The Water Management Board shall establish by rules ~~and regulations~~ promulgated pursuant to chapter 1-26, acreage restrictions to apply to permits to appropriate water for irrigation from the Missouri River.

Section 267. That § 46-5-11 be amended to read as follows:

46-5-11. Water Management Board rules ~~and regulations~~ shall, in addition to providing the form and manner of preparing and presenting an application, require the applicant to state the amount of water, ~~period or~~ periods of annual use, and all other data necessary for proper description and limitation of the right applied for, together with such information, maps, field notes, plans, and specifications as may be necessary to show the method and practicability of construction.

Section 268. That § 46-5-25 be amended to read as follows:

46-5-25. The work of construction shall be diligently prosecuted to completion~~, and if~~. If one-fifth of the work ~~shall not be~~ is not completed within one-half the time allowed, as determined by the Water Management Board, ~~it~~ the board may accept and approve an application for the use of ~~all or~~ any of the waters included in the permit issued to the prior applicant, and the right to use ~~such~~ the waters under the former permit ~~shall thereupon be~~ are forfeited~~; but~~. However, the Water Management Board shall allow an extension of time ~~on~~ at the request of the prior applicant, equal to the time during which work was prevented by the operation of law beyond the power of ~~such~~ the applicant to avoid. This section does not apply to permits or licenses issued under § 46-5-8.1.

Section 269. That § 46-5-37 be amended to read as follows:

46-5-37. ~~When~~ If any person entitled to the use of appropriated water fails to use beneficially ~~all or~~ any part of ~~such~~ the water for the purpose for which it was appropriated, for a period of three years, ~~such~~ the unused water shall revert to the public and shall be regarded as unappropriated public water.

Section 270. That § 46-5-37.1 be amended to read as follows:

46-5-37.1. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if ~~he~~ the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

Section 271. That § 46-5-38.1 be amended to read as follows:

46-5-38.1. Water Management Board approval of an application to appropriate water for future use is a reservation of a definite amount of water with a specified priority date and is not a grant of authority to construct the works or to put the water to beneficial use. ~~Prior to~~ Before the time that the holder of a future use permit initiates construction of the works and puts water to beneficial use, ~~he~~ the holder shall file an application for a water permit pursuant to the procedure contained in chapter 46-2A. If the holder of the future use permit is granted a water permit to develop only a portion of the water reserved by the future use permit, ~~he~~ the holder shall apply for and receive an additional water permit, or permits, before developing and using the remaining water reserved in the future use permit. Permits for future uses shall be reviewed by the board every seven years and ~~shall be~~ are subject to cancellation if the board determines that the permit holder cannot demonstrate a reasonable need for a future use permit.

Section 272. That § 46-5-47 be amended to read as follows:

46-5-47. No person may construct facilities on any watercourse to control floods for the purpose of preventing or alleviating damage without a permit issued pursuant to the procedure contained in chapter 46-2A. The permit may be approved subject to conditions deemed necessary, including~~, but not limited to,~~ conditions to safeguard water supplies for existing water permits and licenses, to assure the safety of works, and to prevent damage to property. No person may construct works in a manner not approved in the permit for those works. This section applies only to watercourses whose flow exceeds that of a dry-draw as defined in subdivision 46-1-6(8).

Section 273. That § 46-5-50 be amended to read as follows:

46-5-50. For purposes of § 46-5-51, the term, "drip irrigation," means a planned irrigation system in which water is applied directly to the root zone of plants by means of applicators, such as orifices, emitters, porous tubing, or perforated pipe, that are operated under low pressure and are placed on or below the surface of the ground.

Section 274. That § 46-6-1 be amended to read as follows:

46-6-1. The term ~~"~~ "vested rights", as used in this chapter, ~~unless the context otherwise plainly requires, shall mean~~ means:

(1) Beneficial uses of groundwater under diversions and applications of water ~~prior to~~ before February 28, 1955;

(2) The right to take and use groundwater for beneficial purposes ~~where~~ if an owner or lawful agent was engaged in the construction of works for the actual application of water to a beneficial use on February 28, 1955, ~~provided such works shall be~~ if the works are completed and water is actually applied for such use within a reasonable time ~~thereafter~~ after that date.

Section 275. That § 46-6-11 be amended to read as follows:

46-6-11. On each well drilled the driller shall keep accurate records and complete a record of well construction on a form supplied by the chief engineer. If for any reason well construction is begun but not completed, the well driller shall complete the record of well construction to the extent possible. Within one month of completion of a well driller's work on a well, ~~he~~ the well driller shall file all well construction records with the chief engineer for placement on permanent file. ~~The public shall have access to the records~~ Access to the records is available to the public at any time during normal business hours.

Section 276. That § 46-6-15 be amended to read as follows:

46-6-15. ~~It shall be the duty of the~~ The owner of an uncontrolled artesian well ~~to~~ shall notify the Water Management Board in writing of the location and size of the well. ~~By~~ An uncontrolled artesian well is ~~meant~~ one that cannot be controlled by mechanical means.

Section 277. That § 46-6-30 be amended to read as follows:

46-6-30. The chief engineer, during or immediately following construction of a well, may order the owner or driller of the well to properly construct or repair the well if ~~he~~ the chief engineer determines that there is a serious and imminent threat to health or property. The chief engineer, upon failure of an owner or driller to comply with an order issued pursuant to this section, may enter upon the property where the well is located and plug or otherwise control the well. The cost of plugging or controlling the well shall be borne by the owner of the property and

shall be recorded with the county register of deeds as a lien against the property until paid. This section does not limit any other remedy against an owner or driller of a well.

Section 278. That § 46-6-31 be amended to read as follows:

46-6-31. The chief engineer, ~~when~~ if plugging or otherwise controlling a well pursuant to the provisions of §§ 46-6-29 and 46-6-30, shall comply with the bidding provisions of chapter 5-18 unless ~~he~~ the chief engineer determines that compliance with those provisions will result in harm to health or property or will result in an unreasonable waste of water.

Section 279. That § 46-7-5 be amended to read as follows:

46-7-5. The chief engineer may inspect any works described in § 46-7-3, including abandoned works, to determine ~~the safety of the works~~ whether the works are safe. If works are found to be unsafe, the chief engineer shall notify the owner and shall order the owner to make changes necessary to secure the safety of the works, allowing a reasonable time, not to exceed six months, for putting the works in a safe condition. The order may specify that if the owner fails to make the repairs in the time allowed, the chief engineer may enter the property and put the works in a safe condition. Any costs incurred shall be borne by the owner in accordance with § 46-7-5.1. The owner may contest the order of the chief engineer by filing a protest in writing with the chief engineer within twenty days of the service of the order upon ~~him~~ the owner. Upon receiving the protest, the chief engineer shall schedule the matter for hearing with the board in accordance with the provisions of chapter 46-2A. The filing of the written protest suspends the operation of the chief engineer's order until further action by the board. The board may affirm, modify, or reverse the order of the chief engineer. No owner of unsafe works as determined by the chief engineer or, after a protest and hearing, by the board may fail or refuse to make changes necessary to secure the works' safety pursuant to the order. The chief engineer, the state, or its employees ~~shall~~ do not incur any liability, either sovereign or personal, as a result of the duties imposed by this section or other provisions related to the inspection and repair, maintenance, or alteration of works or the notification to owners of unsafe conditions.

Section 280. That § 46-7-5.1 be amended to read as follows:

46-7-5.1. Upon failure or refusal of an owner of unsafe works to make the changes necessary to secure the safety of the works pursuant to the chief engineer's order or order of the board as applicable, the chief engineer may enter upon the property where the works are located and make the necessary changes. The cost of the work shall be borne by the owner of the works and may be recorded as a lien against any property of the owner until paid. This section does not limit any other remedy against the owner of the works. The chief engineer shall comply with the bidding provisions of chapter 5-18 unless ~~he~~ the chief engineer determines that compliance with those provisions will result in harm to public health or property.

Section 281. That § 46-7-5.5 be amended to read as follows:

46-7-5.5. The provisions of §§ 46-7-5.4 to 46-7-5.11, inclusive, only apply to privately owned high-hazard dams constructed ~~prior to~~ before January 1, 1990, if the owner and ~~his~~ the owner's immediate family are the only persons residing below the dam within the flood plain. The ~~flood plain will be determined by the~~ chief engineer shall determine the flood plain.

Section 282. That § 46-7-5.8 be amended to read as follows:

46-7-5.8. The owner's affidavit referred to in § 46-7-5.7 shall:

(1) Be in a form prescribed and approved by the board;

(2) Identify and describe the dam in question;

(3) State the construction date of the dam;

(4) Acknowledge that the owner is aware that the unsafe condition exists;

(5) State that the owner refuses to correct the unsafe condition;

(6) Include a description of the flood plain as determined by the chief engineer;

(7) State that no one other than the owner and ~~his~~ the owner's immediate family reside within the flood plain;

(8) Include the owner's express assumption of all liability for any claim, injury, or damage resulting from failure of the dam, specifically holding the state, the board, the department, the chief engineer, and all officers, agents, or employees of the state harmless from any ~~and all~~ liability and damages for claims, injuries, damages, and costs, including attorney's fees resulting from failure of the dam;

(9) Acknowledge that the owner is aware that the provisions of §§ 46-7-5.4 to 46-7-5.11, inclusive, only apply to privately owned high-hazard dams constructed ~~prior to~~ before January 1, 1990, if the owner and ~~his~~ the owner's immediate family are the only persons residing below the dam within the flood plain; and

(10) State that if any individual other than the owner establishes a habitation within the flood plain, the owner will report the name, address, and location of the individual to the chief engineer within ten days.

Section 283. That § 46-10-2.1 be amended to read as follows:

46-10-2.1. The court conducting a general adjudication may~~, in its discretion,~~ direct the chief engineer of the Water Management Board to deposit with the court certified copies of every water permit, water license, certificate of construction, or other document or order and every cancellation of each document or order in the river system and all other sources involved, within ~~such time as is~~ a time set by the court. This section ~~shall not be construed to in~~ does not in any manner limit the powers of the court.

Section 284. That § 46-10-3.3 be amended to read as follows:

46-10-3.3. An action for general adjudication is commenced by the filing of a complaint in circuit court in any case in which the named defendants number one hundred or more. In such a case personal service of a summons and complaint ~~shall~~ is not ~~be~~ required but may be made. If personal service is not made, the court shall order service to be made by the plaintiff on named defendants by mailing a court approved notice of the action by registered or certified mail, return receipt requested~~, and the~~. The court shall order the plaintiff to obtain service on all unnamed defendants by publication of ~~said~~ the notice for four consecutive weeks in a newspaper published in each of the counties within which interest in rights to use of the water and water rights may be affected by the adjudication. If there is no newspaper in one or more of ~~said~~ the counties, then publication for ~~such~~ the counties shall be in one or more newspapers published in the state, and of general circulation within ~~such~~ the counties. If publication is in a daily newspaper, one insertion a week ~~shall be~~ is sufficient.

Section 285. That § 46A-1-4 be amended to read as follows:

46A-1-4. The enactment of this chapter ~~shall not be construed as creating~~ does not create any right to water or the use ~~thereof nor as affecting~~ of water and does not affect any existing legislation with respect to water or water rights, except as expressly ~~may be provided herein, nor~~

~~shall anything herein contained affect or be construed as affecting~~ provided in this chapter. Nothing in this chapter affects vested water rights.

Section 286. That § 46A-1-5 be repealed.

Section 287. That § 46A-1-11 be amended to read as follows:

46A-1-11. ~~Whenever~~ If the Board of Water and Natural Resources determines that it is necessary to carry out any of the objects and purposes of the water plan, through the construction of a water facility ~~which~~ that has been established by the Legislature as a part of the State Water Resources Management System, ~~it~~ the board shall, in cooperation with such federal, state, and local agencies or entities or private interests as may be concerned, prepare preliminary cost estimates, estimates of resources, if any, to be contributed from all other sources ~~in aid thereof~~ to aid in the construction, and estimates of the revenues ~~which~~ that might be anticipated from the facility from all purposes and functions~~, and~~. The board shall adopt a resolution declaring that the public interest and necessity require the carrying out of these objects and purposes and requesting that the Legislature authorize the construction of this part of the State Water Resources Management System.

Section 288. That § 46A-1-15 be amended to read as follows:

46A-1-15. The Board of Water and Natural Resources shall along with its review of the state water plan consider, in cooperation with the Game, Fish and Parks Commission, the designation of certain rivers or sections of rivers as "wild, scenic, and recreational rivers" upon which no development ~~shall occur which~~ may occur that is detrimental to the natural and scenic beauty of the designated river.

Section 289. That § 46A-1-18 be amended to read as follows:

46A-1-18. In addition to its other powers, the district may enter into financing arrangements with any public entity or person to loan the proceeds of the district's interim notes to any public entity or person for a project anywhere within this state ~~and to~~. The district may adopt the necessary resolution ~~therefor,~~ for the loan without specific authorization of the Legislature and without regard to the limitations, provisions, or requirements of any other law except this chapter and chapter 46A-2, and in addition to the aggregate indebtedness otherwise authorized by the Legislature ~~provided that~~ if an agency of the State of South Dakota or an agency or instrumentality of the United States government~~,~~ has committed itself to make a grant or loan to ~~such~~ the public entity or person. Under this section, the district may only provide interim financing less than or equal to the combined federal and state grant or loan commitments on each project and may not apply the proceeds of the interim notes and financing to any purpose other than expenses allowed by § 46A-1-17 and the project for which the financing arrangement is made. The person or public entity receiving this interim financing may apply the proceeds of the district's interim notes to the project without specific authorization of the project by the Legislature.

Notes to make loans pursuant to this section may be issued before the district has entered into any financing arrangement if the principal amount of notes does not exceed the amount which the district estimates to be required to enter into financing arrangements and if a grant or loan commitment is received before the district lends note proceeds pursuant to any financing arrangement.

Section 290. That § 46A-1-23 be amended to read as follows:

46A-1-23. All such notes and the interest ~~thereon~~ on the notes may be secured by a pledge of, and payable from, any income and revenue (subject to the prior payment of the operation and maintenance expenses of any project) derived from the project to be undertaken with the

proceeds of the notes; the proceeds to be derived from the sale of any revenue bonds for permanent financing authorized to be issued under this chapter; ~~such~~ the project itself; any funds, property, or obligation of any public entity or person with whom the district has entered into a financing arrangement under § 46A-1-18 in connection with ~~such~~ the project; the proceeds of the notes; ~~and~~ or any grant or loan to be made by an agency or instrumentality of the United States government~~, including, but not limited to, the Farmers Home Administration,~~ in connection with ~~such~~ the project.

Section 291. That § 46A-1-24 be amended to read as follows:

46A-1-24. The district, in order further to secure the payment of the interim notes, ~~is, in addition to the foregoing, authorized and empowered to~~ may make any other or additional covenants, terms, and conditions not inconsistent with the provisions of this chapter, and do ~~any and all acts and things as~~ anything that may be necessary or convenient or desirable in order to secure payment of its interim notes, or in the discretion of the district, as will tend to make the interim notes more acceptable to lenders, notwithstanding that the covenants, acts, or things may not be enumerated ~~herein~~ in this chapter.

Section 292. That § 46A-1-26 be amended to read as follows:

46A-1-26. The notes may be executed by the chairman of the board and shall be attested by the secretary of the Department of ~~Water~~ Environment and Natural Resources. The district may by resolution provide that any signatures, other than the authentication signature of the trustee, on the notes may be printed, lithographed, engraved, or otherwise reproduced ~~thereon~~ on the notes. The notes shall be sold in ~~such~~ a manner and at ~~such~~ a price ~~as the district shall by resolution determine~~ determined by the district by resolution.

Section 293. That § 46A-1-29 be amended to read as follows:

46A-1-29. Upon presentation of a request to authorize the construction of a water facility of the state water resources management system by the Board of Water and Natural Resources in accordance with § 46A-1-11, the board shall provide a plan for financing the construction of the project to the Legislature, including, in the case of a project to be financed under § 46A-1-49, a general description of the anticipated financing agreement with the participating persons or public entities. If the board deems it necessary to request authorization for the issuance of bonds by the district, the Legislature shall determine whether such authorization shall be given in the same act as it authorizes the inclusion of construction of ~~such~~ the project as part of the state water resources management system. ~~In the event~~ If the Legislature authorizes the issuance of bonds for the construction of the facilities, it shall specify the amount of bonds ~~which~~ that may be issued by the district for construction of ~~such~~ the project, including any amount of bonds issued to fund a debt service reserve for the bonds or for capitalized interest during construction of the project. Pursuant to authorization by the Legislature, the district ~~shall have the power to~~ may issue bonds to acquire or construct or arrange for construction of, or to enter into a financing agreement with persons or public entities for, any one project, or more than one, or to refund bonds heretofore or hereafter issued for each project or facility or to fund a debt service reserve for ~~such~~ the bonds or for capitalized interest during construction of ~~such~~ the project and to provide for the security and payment of ~~said~~ the bonds and for the rights of the holders ~~thereof~~ of the bonds. The board may issue bonds in the amount of up to thirty percent greater than the specific amount authorized by the Legislature for financing any specific project ~~in the event that~~ if increases in construction costs, changes in engineering designs, or minor changes in the area or number of persons served by a project require such an increase to complete the project, ~~provided that~~ and if the amount of funds obtained from the district through its bonding power ~~shall~~ does not exceed the authorization of the Legislature by more than thirty percent for any specific project.

Section 294. That § 46A-1-30 be amended to read as follows:

46A-1-30. The district may issue bonds authorized by the Legislature pursuant to § 46A-1-29 or by § 46A-1-31 for the following purposes, which are hereby determined to be in the public interest and to constitute lawful and public purposes:

(1) To acquire, construct, plan, or arrange for acquisition and construction of any one project, or more than one;

(2) To issue bonds to effectuate § 46A-2-16;

(3) To refund bonds heretofore and hereafter issued, including the refunding of bonds in advance of their call or maturity date ~~which~~. The refunding bonds may be partially or wholly secured by and payable from obligations of the United States government or the income ~~therefrom~~ from such obligations;

(4) To fund a debt service reserve for the bonds;

(5) To provide for capitalized interest during the estimated construction period of the projects and for a period of one year thereafter;

(6) For any ~~or all~~ of the preceding purposes;

(7) To enter into financing agreements to make loans pursuant to § 46A-1-49;

(8) To provide for the payment of the costs of issuance of ~~such~~ the bonds. At no time may district indebtedness exceed the aggregate indebtedness authorized by the Legislature pursuant to § 46A-1-29, plus any additional amount authorized by that section, less the cumulative regular amortization payments made on each bond issue, except as specifically provided by § 46A-1-31. The bonds shall be authorized by resolution of the Board of Water and Natural Resources. The resolution may provide that any signatures, other than the authentication signature of the trustee, on the bonds may be printed, lithographed, engraved, or otherwise reproduced ~~thereon~~ on the bond;

(9) To purchase or otherwise finance or provide for the purchase or payment of loans made by the United States ~~Farmers' Home Administration~~ Department of Agriculture, as provided in § 46A-1-31;

(10) To purchase or otherwise finance or provide for the purchase or payment of bonds or other obligations of any public entity or person in connection with the water pollution control revolving fund program and the drinking water revolving fund program, as provided in § 46A-1-31.

Section 295. That § 46A-1-31 be amended to read as follows:

46A-1-31. In addition to the aggregate indebtedness authorized by the Legislature and Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may issue bonds in an amount not to exceed in aggregate eight million dollars at any time for the purpose of financing projects as defined in subdivision 46A-2-4(5) ~~which~~ that are components of the statewide water plan subject to the provisions of §§ 46A-1-49 to 46A-1-52, inclusive. In addition to the aggregate indebtedness authorized by the Legislature and Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may issue bonds in any amount at any time for the purpose of purchasing or otherwise financing or providing for the purchase or payment of loans made by the United States ~~Farmers' Home Administration~~ Department of Agriculture to any person or public entity, whether or not the person or public entity or the project financed with the loan are located in South Dakota or formed under or recognized by South Dakota law, as community facilities loans or water and waste disposal loans~~, which~~. The purchasing, financing, or payment activities are hereby determined to be components of the state

water plan and are authorized without regard to § 46A-2-20. The district may enter into financing agreements with the persons or public entities to secure and provide for the payment of the bonds, without regard to § 46A-2-20 or §§ 46A-1-63.1 to 46A-1-69, inclusive. The district may make payments or deposits for the purchase or payment of the loans from funds obtained from the persons or public entities, whether or not bonds have been issued. The purchase or payment of loans for persons or public entities or projects located outside of the State of South Dakota is hereby authorized and declared to be a public purpose ~~whenever~~ if, at the discretion and in the determination of the district, the purchase or payment is expected to result in economies of scale, fees, interest savings, financing, or other benefits to the district, South Dakota persons, or public entities or the State of South Dakota. The district, in the proceedings for the issuance of the bonds, shall establish the manner in which the trustee shall manage and disperse any savings for the benefit of the persons and public entities whose community facilities loans and water and waste disposal loans have been purchased or prepaid by the district. In addition to the aggregate indebtedness authorized by the Legislature and the Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may also issue bonds in any amount at any time for the purpose of funding all or part of the revolving funds required for either the state water pollution control revolving fund program or the state drinking water revolving fund program or both under either the federal Clean Water Act, as amended to January 1, 2011, or federal Safe Drinking Water Act, as amended to January 1, 2011, or both. The bonds issued for these revolving fund programs shall be used to purchase or otherwise finance or provide for the purchase or payment of bonds or other obligations, including the refinancing of obligations previously issued or for projects previously completed~~, which~~. The purchasing, financing, or payment activities are hereby determined to be components of the state water facilities plan and are authorized without regard to § 46A-2-20. The district may enter into financing agreements with ~~such~~ the persons or public entities to secure and provide for the payment of ~~such~~ the bonds, without regard to § 46A-2-20 or §§ 46A-1-63.1 to 46A-1-69, inclusive. The district may pledge or assign to or hold in trust for the benefit of the holder or holders of the bonds those moneys appropriated by the Legislature for the purpose of funding state contributions to the state water pollution control revolving fund program and the state drinking water revolving fund program~~, which~~. The moneys may be held and invested pursuant to a trust agreement for the payment of the principal of, premium, if any, and interest on, the bonds.

Section 296. That § 46A-1-36 be amended to read as follows:

46A-1-36. The district ~~shall have power to~~ may covenant with or for the benefit of the holder ~~or holders of the~~ of any bonds issued under this chapter that ~~so long as~~ if any such bonds ~~shall~~ remain outstanding and unpaid, the district will fix, maintain, and collect in such installments as may be agreed upon, all revenues authorized to be pledged under § 46A-1-33~~, the aggregate of which~~ until the bonds and accruing interest have been paid in accordance with their terms. The aggregate revenues shall be sufficient at all times to pay all necessary expenses of the operation and maintenance of any project, to pay the bonds at maturity and accruing interest ~~thereon~~ on the bonds in accordance with their terms, and to create and maintain all reserves ~~therefor~~ for the bonds as provided by the resolution authorizing ~~said~~ the bonds~~, until said bonds and accruing interest have been paid in accordance with their terms~~.

Section 297. That § 46A-1-37 be amended to read as follows:

46A-1-37. The district ~~shall have the power to~~ may covenant that ~~so long as~~ if any of the bonds issued under this chapter ~~shall~~ remain outstanding and unpaid, ~~it~~ the district will not, except upon such terms and conditions as may be determined, voluntarily create or cause to be created any debt, lien, mortgage, pledge, assignment, encumbrance, or other charge having priority to the lien of the bonds issued under this chapter upon any of the income and revenues derived from all revenues pledged pursuant to § 46A-1-33, or convey or otherwise alienate any project or the real estate upon which ~~such~~ the project ~~shall be~~ is located, except at a price sufficient to pay all the bonds issued for ~~such~~ the project then outstanding and interest accrued

~~thereon~~ on the bonds, and then only in accordance with any agreements with the holder ~~or holders of such~~ of the bonds.

Section 298. That § 46A-1-38 be amended to read as follows:

46A-1-38. The district ~~shall have power to~~ may covenant with or for the benefit of the holder ~~or holders of~~ of any bonds issued under this chapter as to all matters deemed advisable by the district including:

(1) The purposes, terms, and conditions for the issuance of additional parity or junior lien bonds that may thereafter be issued, and for the payment of the principal, redemption premiums, and interest on ~~such~~ the bonds;

(2) The kind and amount of all insurance to be carried, the cost of which shall be charged as an operation and maintenance expense of any project;

(3) The operation, maintenance, and management of any project to assure the maximum use and occupancy ~~thereof~~ of the project; the accounting for, and the auditing of, all income revenue from, and all expenses of, any project; the employment of engineers and consultants; and the keeping of records, reports, and audits of any project;

(4) The obligation of the district to maintain any project in good condition and to operate the ~~same~~ project at all times in an economical and efficient manner;

(5) The terms and conditions for creating and maintaining debt service funds, reserve funds, and such other special funds as may be created in the resolution authorizing ~~said~~ the bonds, separate and apart from all other funds and accounts of ~~said~~ the district and ~~said~~ the institution;

(6) The procedure by which the terms of any contract with the holders of the bonds may be amended, the amount of bonds the holders of which must consent ~~thereto~~ to the amendment, and the manner in which consent may be given;

(7) Providing the procedure for refunding ~~such~~ the bonds;

(8) Such other covenants as may be deemed necessary or desirable to assure a successful operation of any project and the prompt payment of the principal of and interest upon the bonds so authorized.

Section 299. That § 46A-1-39 be amended to read as follows:

46A-1-39. The district ~~shall have power to~~ may vest in a trustee ~~or trustees~~ the right to receive ~~all or~~ any part of the proceeds of the bonds and ~~all or~~ any part of the income and revenue pledged and assigned to, or for the benefit of, the holder ~~or holders~~ of bonds issued under this chapter~~, and~~; the right to hold, apply, and dispose of the ~~same and~~ bonds; and the right to enforce any covenant made to secure or pay or in relation to the bonds~~;~~. The district may execute and deliver a trust agreement ~~or trust agreements which may set~~ setting forth the powers and duties of and the remedies available to the trustee ~~or trustees and,~~ limiting the liabilities ~~thereof and~~ of the trustee, describing what occurrences ~~shall~~ constitute events of default, and prescribing the terms and conditions upon which the trustee ~~or trustees~~ or the holder ~~or holders~~ of any specified amount or percentage of the bonds may exercise such right and enforce any ~~and all~~ such covenants and resort to remedies as may be appropriate.

Section 300. That § 46A-1-40 be amended to read as follows:

46A-1-40. The district ~~shall have power to covenant to perform any and all acts and to do any and all such things~~ may covenant to perform any act and to do anything as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the district tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated ~~herein, it being the intention hereof~~ in this section or this chapter. It is the intention of this chapter to ~~give~~ empower the district issuing bonds pursuant to this chapter ~~power~~ to make all covenants, to perform all acts, and to do all things not inconsistent with the Constitution of the State of South Dakota.

Section 301. That § 46A-1-42 be amended to read as follows:

46A-1-42. ~~All~~ Any bonds issued pursuant to this chapter ~~shall be~~ are obligations of the district payable only in accordance with the terms ~~thereof and shall not be~~ of the bonds and are not obligations general, special, or otherwise, of the State of South Dakota. Such bonds ~~shall~~ do not constitute a debt, legal or moral, of the State of South Dakota, and ~~shall not be~~ are not enforceable against the state~~, nor shall payment thereof be~~. Payment of the bonds is not enforceable out of any funds of the district other than the income and revenues pledged and assigned to, or in trust for the benefit of, the holder or holders of ~~such~~ the bonds.

Section 302. That § 46A-1-44 be amended to read as follows:

46A-1-44. The bonds bearing the signatures of officers of the district in office on the date of the signing ~~thereof shall be~~ of the bonds are valid and binding obligations, notwithstanding that before the delivery ~~thereof~~ of and payment ~~therefor any or all persons whose signatures appear thereon shall~~ for the bonds any person whose signature appears on the bonds may have ceased to be ~~such officers~~ an officer. The validity of the bonds ~~shall not be~~ is not dependent on nor affected by the validity or regularity of any proceedings to acquire any project financed by the bonds, or to refund outstanding bonds, or taken in connection ~~therewith~~ with the bonds.

Section 303. That § 46A-1-48 be amended to read as follows:

46A-1-48. Notwithstanding the provisions of any other law, no moneys derived from the sale of bonds or notes issued under the provisions of this chapter, or pledged or assigned to or in trust for the benefit of the holder or holders ~~thereof, shall~~ of the bonds or notes, may be required to be paid into the state treasury.

Section 304. That § 46A-1-49 be amended to read as follows:

46A-1-49. In addition to its other powers, the district may, by appropriate resolution of the Board of Water and Natural Resources, enter into financing agreements with any public entity or person to loan the proceeds of the district's bonds to any public entity or person for a project within or without a water development district, subject to the requirement of § 46A-2-20, without regard to the limitations, provisions, or requirements of any other law except chapter 46A-2 and this chapter. The persons or public entities receiving this financing ~~shall have the authority and power to~~ may apply the borrowed funds to the project without further authorization of ~~such~~ the project by the Legislature.

Section 305. That § 46A-1-53 be amended to read as follows:

46A-1-53. ~~Section 46A-1-48 shall not be construed as limiting~~ The provisions of § 46A-1-48 do not limit the power of the district to agree in connection with the issuance of any of its bonds as to the custody and the disposition of the moneys received from the sale of ~~such~~ the bonds or from the income and revenues pledged or assigned to or in trust for the benefit of the holder ~~or holders thereof~~ of the bonds.

Section 306. That § 46A-1-56 be amended to read as follows:

46A-1-56. The district ~~shall have power to~~ may issue negotiable refunding bonds for the following purposes:

(1) To refund unpaid matured bonds;

(2) To refund unpaid matured coupons evidencing interest upon its unpaid matured bonds; and

(3) To refund interest at the coupon rate upon its unpaid matured bonds that has accrued since the maturity of those bonds.

Section 307. That § 46A-1-58 be amended to read as follows:

46A-1-58. The district s~~hall have power, also, to~~ may issue negotiable refunding bonds ~~hereunder~~ under the provisions of this chapter to refund bonds at or ~~prior to~~ before their maturity or which by their terms are subject to redemption before maturity, or both, in an amount necessary to refund:

(1) The principal amount of the bonds to be refunded;

(2) The interest to accrue up to and including the maturity date or dates, or to the next succeeding redemption date ~~thereof~~ of the bonds; and

(3) The applicable redemption premiums, if any.

Section 308. That § 46A-1-59 be amended to read as follows:

46A-1-59. Refunding bonds issued pursuant to § 46A-1-58 may be sold at ~~such price as the district shall determine~~ a price determined by the district. All proceeds received at the sale ~~thereof~~ of the refunding bonds (excepting the accrued interest received) shall be used:

(1) If the bonds to be refunded are then due, for the payment ~~thereof~~ of the bonds;

(2) If the bonds to be refunded are voluntarily surrendered with the consent of the holder or holders ~~thereof~~ of the bonds, for the payment ~~thereof~~ of the bonds;

(3) If the bonds to be refunded are then subject to prior redemption by their terms, for the redemption ~~thereof~~ of the bonds;

(4) If the bonds to be refunded are not then subject to payment or redemption, to purchase direct obligations of the United States of America ~~so long as such~~ if the obligations will mature at such ~~time or~~ times, with interest ~~thereon~~ on the obligations or the proceeds received ~~therefrom~~ from the obligations, to provide funds adequate to pay when due or called for redemption ~~prior to~~ before maturity the bonds to be refunded, together with the interest accrued ~~thereon~~ on the bonds and any redemption premium due ~~thereon, and such~~ on the bonds. The proceeds or obligations of the United States of America shall, with all other funds legally available for such purpose, be deposited in escrow with a banking corporation, or national banking association, located in and doing business in the State of South Dakota, with power to accept and execute trusts, or any successor thereto, which is also a member of the federal deposit insurance corporation and of the federal reserve system, to be held in an irrevocable trust solely for and until the payment and redemption of the bonds so to be refunded~~, and any~~. Any balance remaining in ~~said~~ the escrow after the payment and retirement of the bonds to be refunded shall be returned to ~~said~~ the district to be used and held for use as revenues pledged for the payment of ~~said~~ the refunding bonds; or

(5) For any combination ~~thereof~~ of the purposes specified in subdivisions (1) to (4), inclusive, of this section.

Section 309. That § 46A-1-90 be amended to read as follows:

46A-1-90. The South Dakota Conservancy District in carrying out the authority established in subdivision 46A-2-2(7) through a contractual agreement with the federal government to upgrade federal hydroelectric facilities shall ensure that the power realized from upgrading federal hydroelectric facilities is marketed subject to the statutory limitation contained in section 5 of the Flood Control Act of 1944, 16 U.S.C. § 825s, as amended to January 1, ~~1992~~ 2011. Funds accruing to the district under such contracts shall be deposited into the South Dakota water and environment fund established by § 46A-1-60 for the purposes of debt service of any bond indebtedness incurred pursuant to the upgrade of federal hydroelectric facilities and for grants and loans authorized from the water and environment fund.

Section 310. That § 46A-1-94 be amended to read as follows:

46A-1-94. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a twenty-seven million nine hundred ninety-nine thousand two hundred fifty dollar Perkins County Rural Water System as generally described in the report, Final Engineering Report, for Perkins County Rural Water System Inc., Bison, South Dakota, dated January 2003, is hereby authorized for the purpose of providing safe and adequate municipal, rural, and industrial water supplies in Perkins County.

The Legislature finds that it is in the best interest of the Perkins County rural water system to provide a portion of the nonfederal matching requirements as enumerated in P.L. 106-136 as amended to January 1, ~~2004~~ 2011, through the state water resources management system revolving loan program. The Board of Water and Natural Resources may provide loans under the state water resources management system revolving loan program in amounts not to exceed a total of four million five hundred thousand dollars to the Perkins County rural water system to provide a portion of the nonfederal matching requirements as enumerated in P.L. 106-136 as amended to January 1, ~~2004~~ 2011. No disbursements may be made under the loans authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

Notwithstanding the provisions of § 46A-1-66, no interest may accrue until the Board of Water and Natural Resources certifies the completion of the construction of the project as authorized. The initial loan repayment ~~shall be~~ is due and payable one year following the certification of construction completion. Loan terms and conditions shall be set by the Board of Water and Natural Resources.

The Board of Water and Natural Resources may provide grants in amounts not to exceed two million five hundred thousand dollars, or so much thereof as may be necessary, to the Perkins County Rural Water System project to provide the State of South Dakota's portion of the nonfederal matching requirements for the project. No disbursements may be made under the grant authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

The loan and grant authorized by this section may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 2001, as indicated by engineering costs indices applicable for the type of construction involved.

Section 311. That § 46A-1-104 be amended to read as follows:

46A-1-104. The brownfields revitalization and economic development program subfunds are hereby continuously appropriated to the South Dakota Board of Water and Natural Resources.

Money received for these programs may be used only for purposes authorized by the federal Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118) as amended to January 1, ~~2004~~ 2011.

Section 312. That § 46A-1-105 be amended to read as follows:

46A-1-105. Any eligible entity may establish a brownfields program to prevent, assess, safely clean up, promote the economic development of, and sustainably reuse eligible brownfields sites as authorized in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended to January 1, ~~2004~~ 2011, and in the Small Business Liability Relief and Brownfields Revitalization Act, P.L. 107-118 as amended to January 1, ~~2004~~ 2011.

Section 313. That § 46A-2-6 be amended to read as follows:

46A-2-6. The Department of ~~Water~~ Environment and Natural Resources ~~shall have the power to~~ may equip, operate, and maintain an office as the principal place of business for the district and to establish other offices as required.

Section 314. That § 46A-2-11 be amended to read as follows:

46A-2-11. The Board of Water and Natural Resources ~~shall have the power to~~ may sue and be sued in the name of the district.

Section 315. That § 46A-2-14 be amended to read as follows:

46A-2-14. The Board of Water and Natural Resources may acquire, under the provisions of this chapter and chapters 46A-3A to 46A-3E, inclusive, by purchase or lease, all real and other property as may be necessary for the construction, maintenance, and operation of any ~~or all~~ water resources ~~projects~~ project; hold and use the property, lease, or otherwise dispose of any part ~~or parcel thereof,~~ of the property; or sell the property if not required for water resources project use, and no longer necessary to its use. The board may enter into rental or other agreements with local project sponsors to allow local project sponsors to use property controlled by the board or Department of ~~Water~~ Environment and Natural Resources according to terms and conditions specified by the board. In carrying out this section the board shall follow the procedures required in the case of counties under the laws of South Dakota.

Section 316. That § 46A-2-19 be amended to read as follows:

46A-2-19. The district may sell, grant, convey, assign, lease, or otherwise transfer perfected water rights or permits to appropriate water for energy industry use to energy industry users for such consideration and under such terms and conditions as are fixed by contract or instrument of conveyance. ~~Such~~ The contracts ~~shall~~ represent the entire financial obligation for the use of water owed by an energy industry user to the State of South Dakota and no further fee, tax, or assessment ~~shall~~ may be levied against ~~such~~ the user except for an ad valorem tax as assessed under chapter 10-37. Any such contract may provide that for failure to perform any condition of performance, for breach, for failure of consideration, or for failure to perform any other contractual obligation, the transfer ~~shall be~~ is void. If the Board of Water and Natural Resources determines that such a failure to perform a condition of performance or breach has occurred, it may file with the division of water rights a notice to cancel the permit or license evidencing ~~such~~ the transfer after complying with any notice of breach provision or other condition precedent to cancellation specified in the contract.

Section 317. That § 46A-2-21 be amended to read as follows:

46A-2-21. The district, may, notwithstanding § 46A-2-20, exercise the power of eminent domain as provided by law ~~when~~ if necessary for the purposes of acquiring and securing any

right, title, interest, estate, or easement necessary for any project for which the district has entered into a financing arrangement under § 46A-1-18, which cannot be acquired by negotiation. However, this power ~~shall~~ may not be exercised in connection with any project ~~which~~ that may provide or assist in providing water for use in a coal slurry pipeline.

Section 318. That § 46A-2-22 be amended to read as follows:

46A-2-22. The Board of Water and Natural Resources may become a party to long or short-term contracts as principal or guarantor for payment for such services or for performance of construction, operation, or maintenance work as is deemed beneficial or advisable by the board~~, provided that~~. However, nothing contained in this chapter or chapters 46A-3A to 46A-3E, inclusive, ~~shall permit said~~ permits the board to enter into any contracts or agreements ~~whatsoever as shall~~ that obligate the State of South Dakota beyond the extent of ~~said~~ the board's then current annual ~~or biennial~~ appropriation.

Section 319. That § 46A-2-25 be amended to read as follows:

46A-2-25. The Board of Water and Natural Resources ~~shall have the power to~~ may accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public sources for the purpose of aiding and promoting the construction, maintenance, and operation of any ~~or all water resources projects~~ water resource project.

Section 320. That § 46A-2-26 be amended to read as follows:

46A-2-26. The Board of Water and Natural Resources ~~shall have the power to~~ may cooperate with and ~~to~~ may furnish assurances of cooperation and act as principal and guarantor or either to enter into a contract~~, or contracts,~~ with the United States of America, with public entities of South Dakota, or with persons for the performance of obligations entered into with the United States for the construction, operation, or maintenance of water resources projects or for accomplishment of the purposes and intents of this chapter and chapters 46A-3A to 46A-3E, inclusive.

Section 321. That § 46A-2-31 be amended to read as follows:

46A-2-31. The district, upon recommendation by the Board of Water and Natural Resources and approval of the Governor, may enter into contracts with the United States for the marketing of water service from federal projects. ~~Any such contracts~~ No such contract entered into by the state ~~shall not~~ may prejudice state interests and rights to water resources within the boundaries of the state pursuant to state and federal statutes. Such contracts shall be for the express purpose of compensating the United States for the storage facilities provided by federal water projects. ~~Prior to~~ Before the implementation ~~such~~ the contracts shall be recommended to the Legislature for inclusion in the state water resources management system pursuant to chapter 46A-1.

Section 322. That § 46A-2-33 be amended to read as follows:

46A-2-33. The Board of Water and Natural Resources ~~shall have the power to~~ may exercise the necessary power and authority of a subdistrict board of directors, ~~when such~~ if the subdistrict has been dissolved under provisions of chapter 46A-3, until ~~such time as~~ all responsibilities, obligations, and contractual commitments of ~~such~~ the dissolved subdistrict ~~shall~~ have been satisfied. The board ~~shall~~ may not levy taxes on any election district as defined in § 46A-3-8 for the continuation of any project not supported by a majority of the election district voters in a subdistrict election called by the board for that purpose unless the subdistrict's contracting authority specifically approves the project or contract and the tax levy allowable ~~therefor~~ for the contract or project.

Section 323. That § 46A-2-37 be amended to read as follows:

46A-2-37. The provisions of this chapter and chapters 46A-3A to 46A-3E, inclusive, ~~shall not be construed to, in any manner,~~ do not abrogate or limit the rights, powers, duties, and functions of the State Water Management Board, but ~~shall be held to be~~ are supplementary ~~thereto and in aid thereof. Nor shall said chapters be construed as limiting or in any way affecting~~ to and in aid of such rights, powers, duties, and functions. Chapters 46A-3A to 46A-3E, inclusive, do not limit or affect the laws of this state relating to the organization and maintenance of irrigation districts, water user districts, drainage districts, soil conservation districts, or watershed districts~~, nor from infringing upon or establishing~~. Chapters 46A-3A to 46A-3E, inclusive, do not infringe upon or establish any rights superior to any existing water rights, ~~nor as precluding~~ and do not preclude the establishment of any such or similar public entity wholly or in part within the boundaries of the district created by this chapter.

Section 324. That § 46A-3A-8 be amended to read as follows:

46A-3A-8. Fifteen percent of the owners of real property in a geographical area, as shown by the records in the offices of the register of deeds of the county wherein ~~such~~ the real property is situated, may petition the Board of Water and Natural Resources to submit to an election the question of whether ~~such~~ the geographical area shall become a water development district. If land is sold under a contract for deed, which is of record in the office of the register of deeds in the county wherein ~~such~~ the land is situated, both the landowner and ~~his~~ the landowner's individual purchaser of ~~such~~ the land, as named in ~~such~~ the contract for deed, shall be treated as owners of real property.

Section 325. That § 46A-3A-9 be amended to read as follows:

46A-3A-9. A petition arising under the provisions of § 46A-3A-8 shall describe the exact boundaries of the area to be included within the proposed water development district, and each person signing the petition shall add to ~~his~~ the person's signature, in ~~his~~ the person's own handwriting, ~~his~~ the person's place of residence, and the date of signing. The petition may contain more than one page, and each page shall have identical headings~~, and any~~. Any number of identical petition forms may be circulated and each be a part of the petition, but each of the identical petition forms must be verified by the circulator as follows:

"I, the undersigned, being first duly sworn, hereby depose that I circulated the above and foregoing petition, containing ____ signatures; that I personally witnessed each of the persons named upon ~~said~~ the petition place their signatures ~~thereon~~ on the petition and add in their own handwriting the information set forth after their respective signatures.

_____

P.O. Address

_____

Subscribed and sworn to before me this _____ day of _____, ~~19~~ 20____

_____

Notary Public".

Section 326. That § 46A-3A-15 be amended to read as follows:

46A-3A-15. If all of the election districts within a proposed water development district become a part of ~~such~~ the water development district as ~~hereinbefore~~ provided in this chapter on approval ~~thereof~~ of the proposed district by sixty percent or more of the votes cast in ~~such~~ the election districts, or ~~in the event that~~ if the Board of Water and Natural Resources ~~shall establish~~

establishes a water development district pursuant to the provisions of § 46A-3A-14 ~~where less than all of such~~ for which not all of the election districts become a part ~~thereof~~ of the water development district, the board shall by resolution create and establish the water development district, give it a name and, upon filing a true copy of ~~such~~ the resolution with the secretary of state, the water development district shall become a political subdivision of the state with the authority, powers, and duties prescribed by this chapter.

Section 327. That § 46A-3B-11 be amended to read as follows:

46A-3B-11. At the first meeting in January of each year, designated as the annual meeting of the water development district, the directors shall elect a ~~chairman, a vice-chairman~~ chair, a vice chair, and a secretary from among their membership. The officers shall hold office until the next annual meeting of the water development district or until their successors have been elected. In addition, the directors shall appoint a treasurer who may or may not be a director and who shall serve at the pleasure of the board of directors or until ~~his~~ a successor is appointed. The treasurer shall be bonded in such amounts and with such sureties as the directors ~~shall~~ may specify ~~and~~, conditioned on faithful performance of the treasurer's duties. The ~~chairman, vice-chairman~~ chair, vice chair, secretary, and treasurer ~~shall~~ constitute the officers of the board of directors~~, provided that the~~. The treasurer, if not a director, ~~shall have~~ has no voting privileges.

Section 328. That § 46A-3C-2 be amended to read as follows:

46A-3C-2. The petition of dissolution pursuant to § 46A-3C-1 shall request that the water development district be dissolved and shall include the legal name of the water development district. Each person signing the petition shall add to ~~his~~ the person's signature, in ~~his~~ the person's own handwriting, ~~his~~ the person's place of residence and the date of signing. The petition may contain more than one page, and each page shall have identical headings~~, and any~~. Any number of identical petition forms may be circulated and each be a part of the petition. Every page of the petition containing signatures shall have upon it and below the signatures an affidavit by the circulator in substantially the following form:

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF _____)

I, the undersigned _____, being first duly sworn, depose and say, that I am the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on ~~said~~ the petition sheet personally signed ~~said~~ the petition in my presence; that I believe that each of ~~said~~ the signers is a resident at the address written opposite ~~his~~ the signer's name; and that I stated to every petitioner before ~~he affixed his~~ the signer affixed his or her signature the legal effect and nature of ~~said~~ the petition.

_____

Circulator

Subscribed and sworn to before me this _____ day of _____, ~~19~~20____.

_____

Notary Public

Section 329. That § 46A-3E-3 be amended to read as follows:

46A-3E-3. Only those landowners who contractually agree for special assessments to finance a water delivery project may be specially assessed. The provisions of § 46A-3E-4 notwithstanding, any person who wishes to join a water delivery project after a petition has been filed with the water development district board of directors pursuant to § 46A-3E-4 may contractually agree to join the project. However, a person contractually joining a water delivery project late may be required to make special payments in addition to special assessments in order to bear ~~his~~ the person's fair share of project costs.

Section 330. That § 46A-3E-10 be amended to read as follows:

46A-3E-10. The board of directors of a water development district shall at the time of the organization of the board and annually thereafter on a date established by the district, but not later than the first of September, adopt a budget and prepare an operations and budget report. The report shall present estimates and itemizations of all the expenses and obligations of the water development district, including~~, but not limited to,~~ expenses of directors, expenses of operating the office, debt service~~,~~ and retirement, and obligations and liabilities to the United States for which provisions must be made. ~~Prior to~~ Before approval of the budget by the district board of directors, a public hearing shall be held. Notice of the hearing shall be published once each week for two successive weeks in the water development district's official newspapers. The notice shall state the time and place of the hearing, its purpose, and that at the hearing all persons interested may appear, either in person or by representative, and be heard and given an opportunity for a full and complete discussion of all items in the budget. With the first notice, the budget shall be published in a form approved by the auditor general. At the conclusion of the hearing, the water development district board may eliminate or amend any portion of the budget before adoption.

Section 331. That § 46A-4-2 be amended to read as follows:

46A-4-2. The term~~"~~, elector~~"~~, as used in this chapter and chapters 46A-5 to 46A-7, inclusive, means any person, the United States of America, the State of South Dakota or any political subdivision ~~thereof~~ of the state, or any corporation authorized to do business in the state and owning not less than thirty-five acres of land within any district. If the elector is the owner or entryman of land in more than one division of the irrigation district and resides without the district, ~~he shall be~~ the elector is considered an elector in ~~that~~ the division of the district in which the major portion of ~~his~~ the elector's land is situated. If the qualifying thirty-five acres or more of land is sold under a contract for deed which is of record in the office of the register of deeds of the county, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as an elector.

Section 332. That § 46A-4-3.1 be amended to read as follows:

46A-4-3.1. Each elector signing a petition shall add to ~~his~~ the elector's signature, in ~~his~~ the elector's own handwriting, ~~his~~ the elector's post office address, the legal description of sufficient land to qualify ~~him~~ as an elector, and the date of signing. The petition may contain any number of pages, and each page shall have an identical heading ~~and any~~. Any number of identical petition forms may be circulated as a part of the petition. Every page of a petition containing signatures shall have below the signatures an affidavit by the circulator in substantially the following form:

State of South Dakota)

) SS

County of _____)

I, the undersigned, being first duly sworn, depose and say that I am the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on ~~said~~

the petition sheet personally signed ~~said~~ the petition in the presence of the affiant; that ~~he~~ the affiant believes that each of ~~said~~ the signers is an owner or entryman of the land described opposite ~~his~~ the signer's signature, to be included within the proposed district, and residing at the address written opposite ~~his~~ the signer's name~~,~~; and that affiant stated to every petitioner before ~~he~~ the petitioner affixed his or her signature the legal effect and nature of ~~said~~ the petition.

_____

Circulator

Subscribed and sworn to before me this _____ day of _____, ~~19~~20____.

_____

Notary Public

Section 333. That § 46A-4-9 be amended to read as follows:

46A-4-9. ~~Where ditches or canals were constructed prior to~~ Any ditch or canal constructed before July 1, 1917, of sufficient capacity to water the lands for which the water was appropriated, ~~such ditches and franchises and~~ together with the land subject to be watered ~~thereby shall be~~ by the ditch, canal, or franchise, is exempt from the operation of this chapter, ~~except when~~ unless an irrigation district ~~shall be~~ is formed under the provisions of this chapter for the purpose of purchasing ~~such~~ the ditches, canals, and franchises. This chapter and chapters 46A-5 to 46A-7, inclusive, ~~shall not be construed in any way to~~ do not affect the rights of ditches already constructed.

Section 334. That § 46A-4-10 be amended to read as follows:

46A-4-10. In no case ~~shall~~ may any land be held by any district or taxed for irrigation purposes ~~which~~ if the land cannot from any natural cause be irrigated ~~thereby~~ by the district.

Section 335. That § 46A-4-12 be amended to read as follows:

46A-4-12. The Board of Water and Natural Resources may make changes in the proposed boundaries as it deems proper and shall exclude from the district proposed by the petitioners land that is not susceptible of irrigation by the proposed system of works. The board may not allow land which will not be benefited by irrigation by the system of works or a portion thereof to be included in the proposed district. Upon written request by an owner or entryman ~~prior to~~ before the board's hearing on the question of formation, the board shall exclude ~~his~~ the owner's or entryman's land from the proposed district.

Section 336. That § 46A-4-17 be amended to read as follows:

46A-4-17. No person ~~shall be entitled to~~ may vote at any election held under the provisions of this chapter unless ~~he shall be~~ the person is a qualified elector as provided in § 46A-4-2.

Section 337. That § 46A-4-22 be amended to read as follows:

46A-4-22. If the majority of the lands within the district are unentered public lands, a majority of the board of directors shall be appointed by the secretary of the interior~~, and~~. The directors shall be residents of the state and are subject to removal from office, and any vacancy shall be filled by ~~said~~ the secretary of the interior~~, which~~. The directors shall hold office until ~~such time that~~ the unentered public lands within the district constitute a minority of the total area, after which a general election shall be called by ~~said~~ the board of directors, when their successors shall be elected.

Section 338. That § 46A-4-25 be amended to read as follows:

46A-4-25. Each year after establishing the district, there shall be elected for a term of three years one or more members of the board of directors, as the case may be. The member of the board of directors from each division shall be nominated as ~~hereinafter~~ provided in this chapter and shall be elected by receiving the highest number of votes cast by the electors of the division in the irrigation district for which ~~he~~ the member is to serve as a director. The regular election of such districts shall be held on the last Tuesday in October.

Section 339. That § 46A-4-30 be amended to read as follows:

46A-4-30. If there is no question to be submitted to the electors and if only one nominating petition for any vacancy to be filled has been filed, then no election ~~shall~~ may be held to fill the vacancy; and the secretary shall issue a certificate of election to the nominee in the same manner as to a successful candidate after election. If no nominating petition has been filed, the incumbent ~~shall~~ is entitled to remain in office for an additional term.

Section 340. That § 46A-4-33 be amended to read as follows:

46A-4-33. ~~Prior to~~ Before the time for posting the notices, the board of directors ~~must~~ shall appoint from each precinct participating in the election from the electors ~~thereof~~ of the precinct, one clerk and two judges, who shall constitute a board of election for ~~such~~ the precinct, in any election not conducted under a district system of voting by mail. If the board fails to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member ~~thereof~~ of the board of election. The board of directors ~~must~~ shall, in its order appointing the board of election, designate the hour and place in the precinct where the election ~~must~~ will be held.

Section 341. That § 46A-4-34 be amended to read as follows:

46A-4-34. One of the judges shall be ~~chairman~~ chair of the election board and may administer all oaths required in the progress of an election~~, and~~. The chair may appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk ~~thereof~~ of the board of election, may administer and certify oaths required to be administered during the progress of an election.

Section 342. That § 46A-4-36 be amended to read as follows:

46A-4-36. The board of directors ~~must~~ shall meet at its usual place of meeting on the first Monday after each election and canvass the return. If at the time of meeting the returns from each precinct in the district in which the polls were opened have been received, the board of directors ~~must~~ shall proceed to canvass the returns~~; but~~. However, if ~~all~~ some of the returns have not been received, the canvass ~~must~~ shall be postponed from day to day until all the returns have been received, or until postponements have been had. The canvass ~~must~~ shall be made in public and by opening the returns and ascertaining the vote of the district for each person voted for and declaring the results ~~thereof~~ of the canvass. No list, tally paper, or certificate returned from any election ~~shall~~ may be set aside or rejected for want of form if it can be satisfactorily understood.

Section 343. That § 46A-4-37 be amended to read as follows:

46A-4-37. The board of directors shall declare ~~elected~~ the person having the highest number of votes cast for each vacancy elected. The secretary shall immediately make out and deliver to that person a certificate of election, signed by ~~him~~ the secretary and authenticated with the seal of the district.

Section 344. That § 46A-4-38 be amended to read as follows:

46A-4-38. The secretary of the board of directors ~~must~~ shall, as soon as the result is declared, enter upon the records of ~~such~~ the board and file in the office of the auditor of ~~the county or counties where such~~ each county in which the district is located a statement of ~~such results, which statement must~~ the results. The statement shall show:

(1) The whole number of votes cast in the district and in each division of the district;

(2) The names of the persons voted for;

(3) The office to fill which each person was voted for;

(4) The number of votes given in each precinct for each of such persons; and

(5) The number of votes given in the district for each of such persons.

Section 345. That § 46A-4-39 be amended to read as follows:

46A-4-39. In case of a vacancy in the office of a member of the board of directors, the vacancy shall be filled by appointment by a majority of the remaining members of the board. Any director so appointed shall hold ~~his~~ office until the next general election of ~~such~~ the division and until ~~his~~ the director's successor is elected and qualified. The district treasurer shall be appointed by the board of directors and shall serve at the pleasure of the board.

Section 346. That § 46A-4-42 be amended to read as follows:

46A-4-42. ~~In case~~ If any district organized ~~hereunder~~ under this chapter is appointed fiscal agent of the United States or is authorized by the United States ~~is authorized~~ to make collections of money for and on behalf of the United States in connection with any federal reclamation project, ~~such~~ the treasurer and each director shall execute an additional official bond in such sum as the secretary of the interior may require~~;~~. The bond shall be conditioned for the faithful discharge of the duties of ~~his~~ the office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization~~, such~~. The additional bonds ~~to~~ shall be approved, recorded, and filed as provided in § 46A-4-41 for other official bonds, and any such additional bonds may be sued upon by the United States or any person injured by the failure of ~~such~~ the officer or the district fully, promptly, and completely to perform their respective duties.

Section 347. That § 46A-4-46 be amended to read as follows:

46A-4-46. All records of the board of directors ~~must~~ shall be open to the inspection of any elector during business hours, and ~~such~~ the board shall cause to be published at the close of each regular or special meeting a brief statement of the proceedings ~~thereof~~ of the board in one newspaper of general circulation in the district, at the legal rate for advertising legal notices~~, and~~. The board shall file an itemized list of all expenditures approved at any such meeting at the office of the auditor of the county or counties where ~~such~~ the district is located within ten days of any such meeting.

Section 348. That § 46A-4-49 be amended to read as follows:

46A-4-49. No director or officer named in this chapter, or chapters 46A-5 to 46A-7, inclusive, may be interested in any manner, directly or indirectly, in any contract awarded, or to be awarded, by the irrigation district board, or in the profits to be derived ~~therefrom, nor may he~~ from the contract. No such director or officer may receive any bonds, gratuity, or bribe. ~~Such a~~ Any such director or officer who is interested in any manner, directly or indirectly, in any

contract awarded, or to be awarded, by the board of directors provided for in ~~said~~ chapters 46A-5 to 46A-7, inclusive, or in the profits derived ~~therefrom~~ from the contract, or who receives any bonds, gratuity, or bribe, is guilty of a Class 5 felony.

Section 349. That § 46A-4-50 be amended to read as follows:

46A-4-50. The boundaries of any irrigation district organized under the provisions of this chapter may be changed, and tracts of land included within the boundaries of ~~such~~ the district at or after its organization under the provisions of this chapter may be excluded ~~therefrom,~~ from the district in the manner prescribed in this chapter~~; but neither such~~. However, neither a change of boundaries of the district nor ~~such~~ an exclusion of lands from the district ~~shall~~ may impair or affect its organization, or its rights in or to property, or any of its rights or privileges, of whatever kind or nature~~; nor shall it~~. No such boundary change or exclusion of lands may affect, impair, or discharge any contract, obligation, lien, or charge for or upon which ~~it~~ the district is or might become liable or chargeable, had such change of its boundaries not been made or had not any land been excluded from the district.

Section 350. That § 46A-4-52 be amended to read as follows:

46A-4-52. ~~In case~~ If any contract has been made between the district and the United States as provided in chapters 46A-5 and 46A-6, no change ~~shall~~ may be made in the boundaries of the district ~~and the~~. The board of directors ~~shall~~ may make no order changing the boundaries of the district until the secretary of the interior ~~shall assent thereto~~ assents to the change in writing and ~~such assent be~~ the assent is filed with the board of directors.

Section 351. That § 46A-4-54 be amended to read as follows:

46A-4-54. A conservator or personal representative of an estate, who is appointed as such under the laws of this state and who, as ~~such~~ conservator or personal representative, is entitled to the possession of the lands belonging to the estate which ~~he~~ the conservator or personal representative represents, may on behalf of his or her ward or the estate which he or she represents, upon being ~~thereunto~~ authorized by the proper court, sign and acknowledge the petition provided in this chapter ~~provided~~, and may show cause, as provided in this chapter ~~provided~~, why the boundaries of a district should not be changed.

Section 352. That § 46A-4-56 be amended to read as follows:

46A-4-56. The board of directors at the time and place mentioned in the notice, or at such other time ~~or times~~ to which the hearing of the petition may be adjourned, shall ~~proceed to~~ hear the petition and all objections ~~thereto,~~ to the petition presented in writing by any person. The failure of any person interested in the district or in the matter of the proposed change of its boundaries to ~~so~~ show cause in writing ~~shall be deemed and taken as~~ is deemed an assent ~~on his part~~ by the person to the change of the boundaries of the district as prayed for in the petition, or to such a change ~~thereof~~ in the boundaries as will include a part of the lands. The filing of ~~such~~ the petition with the board ~~shall be deemed and taken as~~ is deemed an assent ~~on the part of each and all of such petitioners~~ by each petitioner to ~~such~~ a change of the boundaries ~~as~~ that may include the whole or any portion of the lands described in the petition.

Section 353. That § 46A-4-57 be amended to read as follows:

46A-4-57. ~~The board of directors, if it~~ If the board of directors deems it not ~~for~~ in the best interests of the district that a change of its boundaries be ~~so~~ made ~~as~~ to include ~~therein~~ in the district the lands mentioned in the petition, ~~shall order that the petition be rejected. But if it deems it for~~ the board shall reject the petition. However, if the board deems it in the best interest of the district that the boundaries of the district be changed and if no person interested in the proposed change of its boundaries shows cause in writing why the proposed change should not

be made, or if having shown cause, withdraws the ~~same~~ objection, or if having shown cause ~~shall~~ does not withdraw the ~~same~~ objection and the board of directors deems it ~~for~~ in the best interests of the district that the district boundaries ~~thereof~~ be so changed, the board shall by resolution order that the boundaries of the district be ~~so~~ changed ~~as~~ to include ~~therein~~ in the district the lands mentioned in the petition, or some part ~~thereof~~ of such lands. The resolution shall describe the exterior boundaries of the lands ~~which the board is of the opinion should~~ to be included within the boundaries of the district ~~when changed~~. The order shall describe the entire boundaries of the district as they will be after the boundary change ~~thereof~~, and for that purpose the board may cause a survey to be made of such portions of ~~such~~ the boundaries as ~~is deemed~~ the board deems necessary.

Section 354. That § 46A-4-58 be amended to read as follows:

46A-4-58. No provision of this chapter ~~may authorize or empower~~ authorizes or empowers the board of directors to include any land within ~~its~~ the district unless the owner or lessee ~~thereof shall pay or obligate~~ of the land pays or obligates the land to pay the same assessments or charges as all other lands have originally paid or have been obligated for~~. This shall include~~, including the cost of studies, construction, operation, and maintenance charges and the cost of water deliveries.

Section 355. That § 46A-4-59 be amended to read as follows:

46A-4-59. The board of directors to whom ~~such~~ a petition to include land within the district is presented may require, as a condition precedent to the granting of the ~~same~~ petition, that the petitioners shall severally pay to ~~such~~ the district such prospective sums to be determined by the board, as nearly as the same can be estimated, ~~the several amounts to be determined by the board,~~ as ~~such~~ the petitioners or their grantors would have been required to pay to ~~such~~ the district, as assessments, had ~~such~~ the lands been included in ~~such~~ the district at the time the ~~same~~ district was originally formed.

Section 356. That § 46A-4-60 be amended to read as follows:

46A-4-60. Upon the adoption of the resolution specified in § 46A-4-57, if twenty-five percent of the electors of the district have made written protests against the proposed inclusion of lands within the district and have not withdrawn the ~~same~~ protests, the board of directors shall order that an election be held within the district to determine whether the boundaries of the district shall be changed as mentioned in the resolution, and shall fix the time at which ~~such~~ the election shall be held ~~and~~. The board shall cause notice ~~thereof~~ of the election to be given, posted, and published, and ~~such~~ the election shall be held and conducted~~, the~~. The returns ~~thereof~~ of the election shall be made and canvassed, the result of the election ascertained and declared, and all things pertaining ~~thereto~~ to the election conducted in the manner prescribed by chapter 46A-6 in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at the election shall ~~have~~ contain the words, "for change of boundary" or "against change of boundary," or ~~words~~ equivalent ~~thereto~~ terms. The notice of election shall describe the boundaries in such manner and terms that the boundary can be readily traced.

Section 357. That § 46A-4-61 be amended to read as follows:

46A-4-61. If at ~~such~~ the election a majority of all the votes cast ~~shall be~~ are against ~~such~~ the change of boundaries, the board of directors shall order that the petition be denied and ~~shall~~ may proceed no further in the matter. ~~But~~ However, if a majority of ~~such votes be in favor of such~~ the votes are in favor of the change, or if no election is held due to a lack of sufficient written protests as provided in § 46A-4-60, the board shall ~~thereupon~~ order the boundaries of the district to be changed in accordance with the resolutions adopted by the board. The order shall describe the entire boundaries of the district, and for that purpose the board may cause a survey of such portions ~~thereof~~ of the district to be made as the board may deem necessary.

Section 358. That § 46A-4-62 be amended to read as follows:

46A-4-62. ~~Upon a change of~~ If the boundaries of a district ~~being made~~ are changed, a copy of the order of the board of directors ordering ~~such~~ the change, certified by the president and secretary of the board, shall be filed for record in the office of the Board of Water and Natural Resources and also the register of deeds office of each county within which are situated any of the lands of the district~~, and thereupon the~~. The district shall ~~be and~~ remain an irrigation district as fully, to every intent and purpose, as if the lands which are included in the district by the boundary change ~~of such boundaries~~ had been included ~~therein~~ in the district at the original organization of the district.

Section 359. That § 46A-4-64 be amended to read as follows:

46A-4-64. In case of the inclusion of any land within any district by proceedings under this chapter, the board of directors ~~must~~ shall, at least thirty days ~~prior to~~ before the next succeeding general election, make an order redividing ~~such~~ the district into three, five, or seven divisions, as nearly equal in size as may be practicable~~, which~~. The divisions shall be numbered, and one director shall thereafter be elected by each division. For the purposes of elections the board of directors ~~must~~ shall establish a convenient number of election precincts in the district and define the precinct boundaries ~~thereof, which precincts~~. The precincts may be changed from time to time as the board ~~may deem~~ deems necessary.

Section 360. That § 46A-4-65 be amended to read as follows:

46A-4-65. The owner ~~or owners~~ in fee of ~~one or more tracts~~ any tract of land, entrymen of unpatented lands, and the secretary of the interior for unentered public lands, which constitute a portion of an irrigation district, may file with the board of directors of the district a petition praying that such tracts and any other ~~tracts~~ contiguous ~~thereto may~~ tracts be excluded and taken from the district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district and also the lands of each of ~~such~~ the petitioners ~~which~~ that are included within ~~such~~ the boundaries~~; but the~~. The description of ~~such~~ the lands need not be more particular nor certain than is required when the lands are entered in the assessment book by the county director of equalization; ~~such~~ and the petition ~~must~~ shall be acknowledged in the same manner and form as required in case of a conveyance of land.

Section 361. That § 46A-4-66 be amended to read as follows:

46A-4-66. The secretary of the board of directors shall ~~cause~~ publish a notice of the filing of ~~such~~ the petition ~~to be published~~ once each week for at least two successive weeks in some newspaper published in the county where the office of the board of directors is situated~~, and if~~. If any portion of ~~such~~ the territory to be excluded lies within another county ~~or counties~~, then ~~such~~ the notice shall be ~~so~~ published in a newspaper published within each of ~~such~~ the counties~~; or if~~. If no newspaper ~~be~~ is published ~~therein, then~~ in such counties, notice shall be provided by posting ~~such~~ the notice for the same time in at least three public places in the district~~, and in~~. In the case of the posting of notices, one ~~of~~ such ~~notices must~~ notice shall be posted on the lands proposed to be excluded. The notice shall state the filing of ~~such~~ the petition, the names of the petitioners, a description of the lands mentioned in ~~such~~ the petition, and the prayer of the petition~~; and it~~. The notice shall notify all persons interested in or that may be affected by ~~such~~ the change of the boundaries of the district to appear at the office of the board, at a time named in the notice, and show cause in writing~~, if any they have,~~ why the change in the boundaries of ~~such~~ the district, as proposed in ~~such~~ the petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be at the next regular meeting of the board ~~next~~ after the expiration of the time for the publication of the notice.

Section 362. That § 46A-4-67 be amended to read as follows:

46A-4-67. The board of directors, at the time and place mentioned in the notice or at the time ~~or times~~ to which the hearing of ~~such~~ the petition may be adjourned, shall ~~proceed to~~ hear the petition and all objections ~~thereto~~ to the petition, presented in writing by any person, showing cause why the ~~prayer of such~~ petition should not be granted. The failure of any person interested in the district to show cause, in writing, why the tract or tracts of land mentioned in the petition should not be excluded from ~~such district shall be~~ the district is deemed an assent by ~~him~~ the person to the exclusion of ~~such tract or tracts~~ the tract of land, or any part ~~thereof; and the~~ of the tract. The filing of ~~such~~ the petition with ~~such~~ the board ~~shall be~~ is deemed an assent by each ~~and all of such petitioners~~ petitioner to the exclusion of the lands mentioned in the petition, or any part ~~thereof~~ of the lands.

Section 363. That § 46A-4-68 be amended to read as follows:

46A-4-68. If there ~~be~~ are outstanding bonds of the district or if the district ~~shall have~~ has entered into a contract with the United States as provided in chapters 46A-5 and 46A-6, the board of directors may adopt a resolution to the effect that the board deems it to be for the best interests of the district that the lands mentioned in the petition, or some portion ~~thereof~~ of the lands, should be excluded from the district. The resolution shall describe ~~such~~ the lands so that the boundaries ~~thereof~~ of the lands can be readily traced. The ~~holder or~~ holders of any such outstanding bonds may give their consent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district ~~and in case~~. If any contract has been made with the United States, the secretary of the interior may assent to ~~such~~ the change. The assent may be acknowledged by the ~~several holders of such~~ holders of the bonds in the same manner and form as required in case of a conveyance of land, except the assent of the secretary of the interior need not be acknowledged. The assent shall be filed with the board and shall be recorded in the minutes of the board~~; and such~~. The minutes, or a certified copy ~~thereof, shall be~~ of the minutes, are admissible in evidence with the same effect as the assent; but if ~~such~~ the assent of the bondholders, and in case of any contract with the United States ~~such~~ the assent of the secretary of the interior, is not filed, the board shall deny and dismiss the petition~~; provided, however, that~~. However, if the resolution ~~or resolutions~~ authorizing the issuance of the outstanding bonds explicitly ~~provide~~ provides that no bondholder assent ~~shall be~~ is required for the exclusion of lands from the district or if the resolution ~~or resolutions provide~~ provides that the bondholder assent ~~shall be~~ is required only under certain specified conditions, then the terms of the resolution ~~or resolutions~~ shall prevail and no bondholder assent need ~~necessarily~~ be obtained as provided in this section.

Section 364. That § 46A-4-69 be amended to read as follows:

46A-4-69. ~~The~~ If the board of directors~~, if it~~ deems it not ~~for~~ in the best interests of the district that the lands mentioned in the petition, or some portion ~~thereof~~ of the lands, should be excluded from the district, the board shall order that the petition be denied. If ~~it~~ the board deems it ~~for~~ in the best interests of the district, the board may order that the lands mentioned in the petition, or some portion ~~thereof~~ of the lands, be excluded from the district ~~and if less~~ under the following conditions:

(1) Less than twenty-five percent of the electors of the district show cause in writing why the lands or some portion ~~thereof~~ of the lands should not be excluded from the district or, having shown cause, withdraw ~~the same, and also, if there~~ their objection;

(2) There are no outstanding bonds of the district, or, if there are outstanding bonds of the district, no bondholder assent to exclusion is required as provided by § 46A-4-68 and by the resolution ~~or resolutions~~ authorizing the issuance of the outstanding bonds~~, and no~~; and

(3) There is no contract between the district and the United States~~, then the board may order that the lands mentioned in the petition or some defined portion thereof is excluded~~.

Section 365. That § 46A-4-80 be amended to read as follows:

46A-4-80. If any tract of land, or any part ~~thereof~~ of a tract of land, to which ~~such~~ the water right attached ~~shall~~ at any time ~~become~~ becomes subirrigated, to the extent that water is no longer of any benefit ~~thereon~~ on the land for irrigation purposes, the owner or entryman ~~thereof~~ of the land may ~~make application~~ apply to the irrigation district board to relieve ~~such land so subirrigated~~ the subirrigated land from the district assessment as provided in chapter 46A-7~~; releasing in such~~. In the application, the landowner or entryman releases all claim to ~~such~~ the water right as may belong to or has been applied to or upon ~~such~~ the land, until ~~such time as such~~ the land may be drained and water for irrigation is again beneficial~~; and such~~. The landowner or entryman may apply for a permit to transfer ~~such~~ the water right to any other lands to which the ~~same~~ water may be beneficially applied and to have ~~such~~ the new or additional tract included within the boundaries of ~~such~~ the district as provided by law and the exclusion of such lands and the inclusion of the new tract as ~~herein contemplated~~ provided in this section. The board may thereupon make the appropriate order of suspension of assessments, of the exclusion and inclusion of the lands and the transfer of the water right. A certified copy of ~~such~~ the order shall be recorded in the office of the register of deeds in the county in which ~~such~~ the land is situated~~; and thereafter~~. After the order has been recorded, all the obligations against the land from which ~~such~~ the water right has been taken, arising by reason of ~~such~~ the water right, shall ~~thereupon~~ be canceled and ~~such~~ the obligation shall follow and attach with ~~such~~ the water right to the land so included, if any.

Section 366. That § 46A-4-81 be amended to read as follows:

46A-4-81. ~~Whenever~~ If a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, ~~shall~~ petition the board of directors to call a special election for the purpose of submitting to the qualified electors of ~~such~~ the irrigation district a proposition to vote on the discontinuance of ~~such~~ the irrigation district and a settlement of its bonded and other indebtedness, ~~it shall be the duty of~~ the board of directors ~~to~~ shall call an election, setting forth the object of the ~~same, and to cause a notice of such election to be published~~ election. The board shall publish a notice of the election in some newspaper in each of the counties in which the district is located, and in which a newspaper is published, for a period of thirty days ~~prior to such~~ before the election, setting forth the time and place for holding ~~such~~ the election in each of the voting precincts in the district~~; and it~~. The board shall also ~~cause~~ post a written or printed notice of ~~such election to be posted~~ the election in some conspicuous place in each of the voting precincts.

Section 367. That § 46A-4-82 be amended to read as follows:

46A-4-82. ~~In case~~ If a contract has been made with the United States, no action ~~shall~~ may be taken by the board of directors for the dissolution of any irrigation district, as ~~herein~~ provided in this chapter, unless the assent of the secretary of the interior ~~thereto~~ to the dissolution in writing has been filed with the secretary of the board of directors and a certified copy ~~thereof~~ of the assent filed with the register of deeds of each county where ~~such~~ the district lands are situated.

Section 368. That § 46A-4-83 be amended to read as follows:

46A-4-83. ~~It shall be the duty of the directors to~~ The directors shall provide ballots to be used at an election called pursuant to § 46A-4-81, on which shall be written or printed the words: "For dissolution, Yes," and "For dissolution, No~~," which~~." The ballots shall be placed in the hands of the proper election officers in the several voting precincts of ~~such district prior to~~ the district

before the opening of the polls on the day of ~~such election; and~~ the election. The election shall be conducted in all respects in the same manner as provided for the election of officers of the district.

Section 369. That § 46A-4-84 be amended to read as follows:

46A-4-84. The return of the election, together with the ballots cast ~~thereat~~ at the election, shall be certified by the ~~several~~ election boards of ~~such~~ the district to the board of directors within three days ~~from and after such election, which~~ after the election. The board shall, on or before the third day after ~~such~~ the election, canvass ~~such~~ the returns and declare the result of ~~such~~ the election~~, which~~. The result shall be at once recorded in the records of the district board.

Section 370. That § 46A-4-85 be amended to read as follows:

46A-4-85. If a majority of the votes ~~shall be~~ are "For dissolution, No," there ~~shall~~ may not be another election upon the question of a dissolution of the district during the year in which ~~such~~ the election was held.

Section 371. That § 46A-4-87 be amended to read as follows:

46A-4-87. For the purpose of raising money to pay any ~~and all~~ indebtedness of the district, ~~such~~ the board of directors may sell and dispose of the canal, franchises, and other property belonging to the district at not less than a valuation to be fixed by a board of three appraisers~~, one member of which~~. One member of the board of appraisers shall be appointed by the board of directors of ~~such~~ the district~~; one to~~ and one shall be appointed by the board of county commissioners of the county in which the district was originally organized~~, which~~. The two appraisers shall elect a third. ~~Such~~ The board of appraisers shall be sworn by any officer authorized by law to administer oaths and who has an official seal, to appraise the canal, franchises, and other property of the district at its cash value~~; and, as soon thereafter as practicable, such~~. As soon as practicable, the appraisers shall make an appraisement and shall report in writing their appraisement of all the property owned by the district~~;~~ to the board of directors.

Section 372. That § 46A-4-89 be amended to read as follows:

46A-4-89. The board of directors ~~shall have power to reject any and all bids which~~ may reject any bids that are not, in the judgment of the board, a fair and just consideration for the property~~; and after~~. After bids are thus rejected by the board, ~~it~~ the board may by private negotiations with any person sell and convey by deed, executed by ~~such~~ the board, all of the property for part cash and part in deferred payments, bearing the same interest as the bonded indebtedness of ~~such~~ the district~~; and in case~~. If the district has no bonded indebtedness, the interest upon ~~such~~ the deferred payments shall be ~~such as may be~~ as agreed upon by the board and the purchaser, not exceeding the rate allowed by law. ~~Such~~ The deferred payments ~~shall be~~ are a lien upon all the property thus sold by the board ~~which shall~~ and have the same force and effect as a mortgage against ~~such~~ the property and may, when due, be foreclosed in the manner provided by law for the foreclosure of mortgages.

Section 373. That § 46A-4-90 be amended to read as follows:

46A-4-90. In addition to ~~such~~ the lien, the board of directors may require the purchaser of the property to furnish the district with ~~such~~ additional security upon all deferred payments ~~as in its judgment shall make such payments secure; and all~~. All notes, bonds, mortgages, and other securities shall be made out to and in the name of the irrigation district, and shall be, together with the money received from ~~such~~ the sale, deposited with the county treasurer of the county in which the district was originally organized ~~and shall~~. The notes, bonds, mortgages, and other securities may be paid out only upon warrants duly authorized by the board of directors of the

district, signed by the president and secretary of ~~such~~ the board. All actions at law or in equity brought for the purpose of collecting such indebtedness, shall be brought in the name of ~~such~~ the district by counsel employed by the district board~~; and in case the board shall be~~. If the board is disorganized, such employment shall be by the board of county commissioners.

Section 374. That § 46A-4-91 be amended to read as follows:

46A-4-91. ~~In all cases where~~ If bonds and other obligations of irrigation districts ~~shall be issued, such~~ are issued, the bonds and obligations ~~shall become~~ are subject to redemption by the board of directors of any irrigation district, as soon as the property and franchise of ~~such~~ the district ~~shall be sold after such~~ are sold after the district has elected to dissolve as a district, as ~~herein~~ provided in this chapter.

Section 375. That § 46A-4-92 be amended to read as follows:

46A-4-92. After a sale of the property and franchises of the district, the board of directors shall, with the amount realized from ~~such~~ the sale, together with ~~such~~ other funds ~~as such district may have~~ of the district, make settlement, payment, and redemption, if possible, of all outstanding bonded and other indebtedness of the district~~, but shall in~~. However, in no case may the district pay more than the par value of ~~such~~ the outstanding bonds with interest up to the time of payment plus any redemption premium agreed upon by the district at the time the outstanding bonds are issued.

Section 376. That § 46A-4-94 be amended to read as follows:

46A-4-94. After all the property of the district ~~shall be~~ is disposed of and all of the obligations of such district ~~shall have been~~ are paid, the directors of ~~such~~ the district shall file in the office of the county auditor of each county in which ~~such~~ the district is located, and in the office of the Board of Water and Natural Resources, a report attested by the secretary and under the seal of the board of directors, stating that the district has disposed of its property and franchises and ~~become~~ is disorganized and dissolved~~, which~~. The report shall be recorded in the miscellaneous record of ~~such~~ the counties~~; and if~~. If any person~~, having~~ who has any claim against ~~such~~ the district that is not settled or disposed of at the time of the filing of ~~such~~ the report~~, shall fail or neglect~~ fails or neglects to bring suit upon ~~such~~ the claim within five years from the time of the filing of ~~such~~ the report, ~~such~~ the claim ~~shall be~~ is forever barred against ~~such~~ the district as well as against all persons and property ~~therein~~ in the district.

Section 377. That § 46A-4-95 be amended to read as follows:

46A-4-95. All irrigation districts, created under the provisions of this chapter, and ~~additions thereto, and deletions therefrom~~ any addition to or deletion from any such district, heretofore established or purporting to be established or adjusted pursuant to the provisions of this chapter and chapters 46A-5 to 46A-7, inclusive, and having a de facto existence of at least one year, are hereby declared to be valid and legally created political subdivisions of the state~~, and the~~. The regularity and validity of the creation of ~~such~~ the irrigation districts or any boundary adjustments ~~thereof shall not be~~ of the districts are not open to question in any court in this state~~, and all~~. All acts and proceedings of any such irrigation district or of its board of directors, or both, leading up to the authorization and execution of an existing contract between any such irrigation district and the United States of America, and all acts and proceedings of any such irrigation district or of its board of directors, or both, leading up to the issuance and deliverance of bonds of any such irrigation district are hereby legalized, ratified, confirmed, and declared valid to all intents and purposes~~ and all~~. All such existing contracts and outstanding bonds are hereby legalized and declared to be valid and legal obligations of and against the irrigation district executing or causing the execution of the ~~same~~ contracts or bonds.

Section 378. That § 46A-5-6 be amended to read as follows:

46A-5-6. The board of directors, its agents, and employees~~, shall have the right to~~ may enter upon any land within the district to make surveys~~;~~ and may locate the line of any canal ~~or canals~~ and the necessary branches for ~~such~~ the location. The board of directors ~~shall also have the right to~~ may acquire, either by purchase or condemnation, all lands and waters and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, canals, power plants ~~of any kind or nature~~, pumping stations ~~of any kind or nature~~, and lands for reservoirs for storage of water and all necessary appurtenances. The board of directors ~~shall also have the right to~~ may acquire by purchase or condemnation, for the use of ~~such~~ the district, any irrigation works, power plant, pumping station, ditches, canals, or reservoirs already constructed. In case of purchase, the bonds of the district ~~hereinafter in this title provided for~~ may be used at their par value in payment, as provided in this title.

Section 379. That § 46A-5-10 be amended to read as follows:

46A-5-10. The board of directors ~~shall have the power to~~ may construct ~~such~~ works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume ~~which~~ that the route of ~~such canal or canals~~ the canal may intersect or cross, in such manner as to afford security to life and property~~; but~~. However, the board shall restore the ~~same, when so crossed or intersected,~~ stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume to its former state as near as may be, or in ~~such~~ a manner ~~as~~ that will not unnecessarily ~~to~~ impair its usefulness~~; and every~~. Any company whose railroad ~~shall be~~ is intersected or crossed by such works ~~shall~~ may unite with the board in forming ~~such~~ the intersections and crossings, and grant the privileges ~~aforesaid, and if such~~ specified in this section. If the railroad company and ~~such~~ the board, or the owners and controllers of the property, thing, or franchise ~~so~~ to be crossed, cannot agree upon the amount to be paid ~~therefor~~ for the crossing, or the points or the manner of the crossing, the ~~same~~ issues shall be ascertained and determined in all respects as provided in condemnation proceedings.

Section 380. That § 46A-5-12 be amended to read as follows:

46A-5-12. The board of directors ~~is hereby authorized to~~ may take conveyances or other assurances for all property acquired by it under the provisions of chapters 46A-4 to 46A-7, inclusive, in the name of ~~such~~ the irrigation district, ~~to and~~ for the uses and purposes ~~herein expressed, and to~~ provided in this chapter. The board may institute and maintain any ~~and all~~ actions and proceedings at law or in equity~~,~~ necessary or proper in order to carry out fully the provisions of ~~said~~ chapters 46A-4 to 46A-7, inclusive, and to enforce, maintain, protect, or preserve any ~~and all~~ rights, privileges, and immunities created by ~~said~~ those chapters or acquired in pursuance ~~thereof~~ of such rights, privileges, and immunities. In all actions or proceedings the board may sue, appear, and defend, in person or by attorney, and in the name of ~~such~~ the irrigation district.

Section 381. That § 46A-5-13 be amended to read as follows:

46A-5-13. After adopting a plan of ~~canal or~~ canals, storage reservoirs, and works, the board of directors shall ~~give notice, by publication thereof~~ publish notice of the plan, not less than twenty days after it is adopted, in one newspaper published in each of the counties in which the district is situated, if a newspaper is published ~~therein~~ in the counties, and in such other newspapers as ~~it may deem~~ the board deems advisable, calling for bids for the construction of the work or any portion ~~thereof; if~~ of the work. If less than the whole work is advertised, the portion so advertised ~~must~~ shall be particularly described in ~~such~~ the notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals ~~therefor~~ for the work, and that the contract will be let to the lowest responsible bidder~~, stating~~. The notice shall state the time and place for opening the proposals, which at the time and place shall be opened in public~~; and as~~. As soon as convenient ~~thereafter~~ after the bids are opened, the board shall let such work, either in part or as a whole, to the lowest

responsible bidder ~~or it~~. Alternatively, the board may reject any ~~or all bids~~ bid and readvertise for proposals, or may proceed to construct the work under its own superintendence.

Section 382. That § 46A-5-17 be amended to read as follows:

46A-5-17. The provisions of §§ 46A-5-13 to 46A-5-16, inclusive, ~~shall~~ do not apply in case of any contract between the district and the United States.

Section 383. That § 46A-5-18 be amended to read as follows:

46A-5-18. The board of directors may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water ~~therefrom~~ under the provisions of the federal reclamation acts and all acts amendatory thereof, or supplementary thereto, and the rules and regulations established ~~thereunder; or the~~ under such acts, as amended to January 1, 2011. The board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract.

Section 384. That § 46A-5-19 be amended to read as follows:

46A-5-19. ~~In case any contract has been or may hereafter be~~ If any contract is made with the United States as ~~herein~~ provided in this chapter, bonds of the district may be deposited with the United States at ninety percent of their par value, to secure the amount to be paid by the district to the United States under any such contract~~, and~~. The bonds may be held by ~~it~~ the United States, and ~~when~~ if deemed desirable, or ~~when~~ if the appraised value of the land is double the bonded indebtedness, ~~sold by it, and~~ the bonds may be sold by the United States. The net proceeds received from the sale of the bonds shall be applied to the liquidation of the contract indebtedness of the district to the United States~~, the~~. The interest and principal on ~~such~~ the bonds ~~to~~ shall be provided for by assessment and levy as in the case of other bonds of the district and regularly paid to the United States, to be applied as provided in ~~such~~ the contract.

Section 385. That § 46A-5-20 be amended to read as follows:

46A-5-20. If bonds of the district are not deposited with the United States pursuant to § 46A-5-19, ~~it shall be the duty of~~ the board of directors ~~to~~ shall include as part of any levy or assessment provided for in this title an amount sufficient to meet each year all payments accruing under the terms of any contract made pursuant to § 46A-5-18.

Section 386. That § 46A-5-21 be amended to read as follows:

46A-5-21. The board of directors may accept on behalf of the district appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of the money for and on behalf of the United States in connection with any federal reclamation project, organized ~~hereunder~~ under this title as an irrigation district, whereupon the district ~~shall be authorized so to~~ may act and ~~to~~ assume the duties and liabilities incident to such action~~, and such board shall have full power to~~. The board may do ~~any and all things~~ anything required by the federal statutes in connection ~~therewith~~ with such duties and liabilities, and all things required by the rules and regulations established by any department of the federal government in regard ~~thereto~~ to such duties and liabilities.

Section 387. That § 46A-5-23 be amended to read as follows:

46A-5-23. ~~It shall be the duty of the~~ The board of directors ~~to~~ shall keep the water flowing through the ditches and canals under its control to the full capacity of ~~such~~ the ditches and canals in times of high water and when the ~~same~~ water can be beneficially applied to the lands thereunder and does not interfere with the rights of other appropriators.

Section 388. That § 46A-5-25 be amended to read as follows:

46A-5-25. ~~In case the water supply shall not be~~ If the water supply is not sufficient to supply continuously the lands susceptible of irrigation ~~therefrom, it shall be the duty of~~ from the water supply, the board of directors ~~to~~ shall apportion, in a just and equitable proportion, a certain amount of ~~such~~ the water upon certain or alternate days to different localities, as ~~it may, in its judgment, think~~ the board deems best for the interests of all concerned and with due regard to the legal and equitable rights of all.

Section 389. That § 46A-5-26 be amended to read as follows:

46A-5-26. Every irrigation district within this state ~~shall be~~ is liable in damages for negligence in delivering or failure to deliver water to the users from its canal to the same extent as private persons and corporations~~; provided that~~ if the person suffering ~~such~~ damage ~~shall~~, within thirty days after such negligence or failure, ~~serve~~ serves a notice in writing on the ~~chairman~~ chair of the board of directors of ~~such~~ the district, setting forth ~~particularly~~ the acts or omissions on the part of the district which it is claimed constitute such negligence or failure, and that ~~he~~ the person expects to hold ~~such~~ the district liable for whatever damages may result~~; and provided further that such~~. Such action ~~shall~~ may be brought ~~within~~ not later than one year from the time the cause of action accrues.

Section 390. That § 46A-5-27 be amended to read as follows:

46A-5-27. Nothing contained in chapters 46A-4 to 46A-7, inclusive, ~~shall be deemed to authorize~~ authorizes any person to divert the waters of any river, creek, stream, canal, or ditch from its channel, ~~whereby~~ so that the vested right of any person having any interest in ~~such~~ the river, creek, stream, canal, or ditch, or the waters ~~thereof~~ of the river, creek, stream, canal, or ditch, is invaded or interfered with, unless previous compensation ~~be ascertained and paid therefor~~ has been determined and paid under the laws of this state authorizing the taking of private property for public use.

Section 391. That § 46A-5-28 be amended to read as follows:

46A-5-28. The board of directors of any irrigation district may appropriate money from its general fund for the purpose of advertising the district's possibilities and advantages to the world as a home and as a location for agriculture, factories, and other legitimate enterprises. ~~Such~~ The appropriation ~~shall~~ may not exceed the sum of two and one-half cents for each irrigable acre within ~~such~~ the irrigation district.

Section 392. That § 46A-6-1 be amended to read as follows:

46A-6-1. ~~The~~ Neither the board of directors, ~~or~~ nor any other officers of an irrigation district, ~~shall have no power to~~ may incur any debt or liability, either by issuing bonds or otherwise, in excess of the express provisions of chapters 46A-4 to 46A-7, inclusive, and any debt or liability incurred in excess of such express provisions ~~shall be and remain absolutely~~ is void.

Section 393. That § 46A-6-2 be amended to read as follows:

46A-6-2. The board of directors of any ~~such~~ irrigation district may enter into contracts for a supply of water for the irrigation of the lands within ~~such~~ the irrigation district with any person or with the United States~~; the~~. The source of supply of ~~such~~ the water may be either within or without the boundaries of this state, and ~~such~~ the water supply may be either the entire supply of water for ~~such~~ the district or to supplement an appropriation already made by ~~such~~ the district.

Section 394. That § 46A-6-3 be amended to read as follows:

46A-6-3. If the contract provided in § 46A-6-2 provides for payment of the entire purchase price of ~~such~~ the water supply within one year after the making of ~~such~~ the contract, the board of directors of ~~such~~ the district shall, at the time of entering into ~~such~~ the contract, pass a resolution that a levy shall be made sufficient to raise ~~such~~ a sum ~~as is~~ necessary to pay ~~such~~ the purchase price ~~and the~~. The board of directors shall thereafter, and at the same time the levy for other taxes of ~~such~~ the district is made, levy a tax against the taxable property of the district sufficient to raise and pay ~~such~~ the sum.

Section 395. That § 46A-6-5 be amended to read as follows:

46A-6-5. Any organized irrigation district ~~heretofore organized or hereafter to be organized~~ may whenever it appears necessary, proper, or beneficial to drain any of the land within ~~said~~ the district, either for the benefit of the land actually requiring drainage or for the protection of other lands within ~~said~~ the district, whether the irrigation works have been actually acquired or constructed or not, cause drainage canals and works to be constructed~~, and for such purpose such district shall have all the authority herein granted for levying~~. For these purposes, the district may levy special assessments or otherwise ~~providing~~ provide funds necessary ~~properly to drain such~~ to properly drain the lands, ~~entering~~ enter upon lands for the purpose of making surveys, ~~exercising~~ exercise the right of eminent domain, ~~contracting~~ and contract for the construction of necessary ditches~~, and further shall have the right to extend such~~. The district may extend the drainage ditches outside of the limits of ~~such~~ the district for the purpose of conducting the drainage water to other lands upon which the ~~same~~ water may be lawfully used or to return the ~~same~~ water to some natural watercourse. The powers ~~herein granted shall~~ granted in this section include the power to enter into a contract with the United States of America to carry out and effectuate all proper drainage of the district or any part ~~thereof,~~ of the district; and any such contract shall be treated, to all intents and purposes, as if made under the provisions of this chapter.

Section 396. That § 46A-6-7 be amended to read as follows:

46A-6-7. The board of directors shall submit the contract referred to in § 46A-6-6 to the electors of the irrigation district at a general election, or at a special election called for that purpose. If a special election is called for that purpose, notice of election shall be given, the election shall be conducted, and the votes shall be canvassed, so far as practicable, in the manner provided for elections held for the purpose of voting upon the issuance of bonds. The ballots at ~~such~~ the election shall have printed ~~thereon~~ on the ballots "For the approval of contract for drainage of contiguous lands outside the boundaries of the irrigation district," and "Against approval of contract for drainage of contiguous lands outside the boundaries of the irrigation district." The notice of election need not give the entire contract ~~but it shall be~~. It is sufficient if ~~it~~ the notice states in a general way the substance ~~thereof~~ of the contract. If a majority of the voters voting on the proposition vote for approval of the contract, the board of directors ~~shall be authorized to enter into such~~ may enter into the contract.

Section 397. That § 46A-6-8 be amended to read as follows:

46A-6-8. The board of directors of any irrigation district established and organized under ~~and by virtue of~~ the laws of South Dakota, ~~whenever~~ if deemed advisable and ~~to~~ in the best interests of the district, ~~shall have the power and authority to~~ may enter into any contract with the United States supplementing or amending any original contract with the United States, ~~said~~ if the original contract ~~having been~~ was entered into pursuant to the provisions of chapters 46A-4 to 46A-7, inclusive~~; provided, that such~~, and if the supplementary or amendatory contract does not increase the amount of principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract.

Section 398. That § 46A-6-9 be amended to read as follows:

46A-6-9. ~~In case~~ If any supplementary or amendatory contract ~~shall be~~ is made with the United States under § 46A-6-8, no election ~~shall be~~ is necessary, nor ~~shall~~ is the board of directors of ~~such~~ the irrigation district ~~be~~ required to proceed for a judicial confirmation of the making of ~~such~~ the contract and the terms ~~thereof~~ of the contract. It ~~shall be~~ is sufficient in the case of a contract made with the United States under § 46A-6-8 for the board of directors of any irrigation district to authorize the execution of the ~~same~~ contract by its president and secretary by appropriate resolution adopted at any regular or special meeting of the board of directors.

Section 399. That § 46A-6-15 be amended to read as follows:

46A-6-15. Any resolution ~~or resolutions~~ authorizing the issuance of bonds of the irrigation district may contain covenants and agreements on the part of the district to protect and safeguard the security and payment of ~~such~~ the bonds~~, which~~. The covenants and agreements shall be a part of the contract with the holders of the bonds ~~thereby authorized~~, including agreements for ~~the~~ setting aside ~~of~~ reserves or debt service funds and the regulation, investment, and disposition ~~thereof, and including~~ of the reserves or debt service funds; agreements ~~as~~ on the use of trustees to further protect the interest of bondholders~~,~~; and ~~including~~ any other agreements, of a like or different nature, ~~which~~ that in any way affect the security or protection of bonds of the district.

Section 400. That § 46A-6-16 be amended to read as follows:

46A-6-16. Bonds authorized and issued as provided in § 46A-5-4 for the purpose of being delivered to the United States and held or sold by it, shall be in the form, terms, and denominations as may be fixed by the secretary of the interior in carrying out the provisions of the act of Congress of June 17, 1902, (32 Stat. 388) ~~and all acts amendatory thereof or supplementary thereto, or that may be enacted as amendatory or supplementary thereto~~, as amended to January 1, 2011, and any acts that are supplementary to the act.

Section 401. That § 46A-6-19 be amended to read as follows:

46A-6-19. ~~Such~~ The bonds, and the interest ~~thereon~~ on the bonds, shall be paid by revenue derived from an annual assessment upon the real property of the district~~, and all~~. All real property of the district ~~shall be and remain~~ is liable to be assessed for such payments as provided in chapter 46A-7, and for all payments due or to become due to the United States under any contract between the district and the United States~~, accompanying which contract~~ for which bonds of the district have not been deposited with the United States.

Section 402. That § 46A-6-29 be amended to read as follows:

46A-6-29. Any irrigation district ~~heretofore or hereafter~~ organized under the laws of this state for irrigation or drainage purposes ~~is authorized and empowered to~~ may enter into contracts with the United States whereby the bonds of the district are guaranteed by the United States, or financial credit is extended by the United States to the district, ~~and~~ for the sale, purchase or use of any canal, ditch, reservoir, right-of-way, irrigation or drainage system, or other property owned or to be acquired for the use of ~~such~~ the district.

Section 403. That § 46A-6-30 be amended to read as follows:

46A-6-30. Any ~~such district is authorized to~~ irrigation district may accept any of the provisions of any act of Congress of the United States applicable to ~~such~~ the district and ~~to~~ may obligate itself to comply with ~~such~~ laws, rules, and regulations ~~as may be~~ promulgated by any department of the United States ~~in pursuance of such act, and irrigation~~ pursuant to the act. Irrigation districts contracting with the United States under the provisions of this chapter shall be governed in all matters by the laws of the state relating to irrigation or drainage districts, as the case may be, except in such things as may be otherwise provided for such districts. This section ~~shall~~ does not limit the rights ~~which~~ of any irrigation district ~~has~~ under existing laws to

purchase a water supply, or otherwise contract, and ~~shall be~~ is cumulative ~~thereto~~ to such existing laws.

Section 404. That § 46A-6-31 be amended to read as follows:

46A-6-31. The board of directors may, ~~in their discretion, before or after~~ in connection with ~~the~~ making ~~of~~ any contract with the United States or others, ~~the~~ levying ~~of~~ any assessment, or taking ~~of~~ any particular steps or action, commence a special proceeding in the circuit court, in and by which the proceedings of ~~such board and of said~~ the district leading up to or including the making of any such contract, and the validity of any of the terms ~~thereof~~ of the contract, the levying of any such assessment, or the taking of any particular steps or action, shall be judicially examined, approved, and confirmed or disapproved and disaffirmed. The practice and procedure for the confirmation of any step or action provided for shall ~~be~~ conform as nearly as possible ~~in conformity~~ with the practice and procedure now provided for the confirmation before the issuance and sale of bonds of irrigation districts. The court may approve and confirm ~~such~~ the proceedings in part and may disapprove and declare illegal or invalid other and subsequent parts of the proceedings ~~and insofar~~. Insofar as possible, the court shall remedy and cure all defects in ~~said~~ the proceedings.

Section 405. That § 46A-6-36 be amended to read as follows:

46A-6-36. ~~In case~~ If an irrigation district organized under the laws of this state~~,~~ enters into a contract with the United States for the payment of charges due the United States in connection with a federal reclamation project, and ~~such~~ the district contract is inconsistent in any respect with the individual water right contracts between the United States and the landowners of the district, ~~such~~ the district contract will be taken as amendatory of individual water right contracts affecting district land, the owners, mortgagees, or lienors of which fail to answer ~~said~~ the petition. ~~Provided however, that such~~ However, the contract entered into with the United States, providing for a different deficiency assessment, ~~has been~~ shall be approved by a majority vote of the owners of land at an election properly called for such purpose.

Section 406. That § 46A-6-37 be amended to read as follows:

46A-6-37. Upon the hearing of ~~such~~ the special proceeding the court ~~shall have power and jurisdiction to~~ may examine and determine the legality and validity of, and approve and confirm or disapprove and disaffirm, each ~~and all~~ of the proceedings for the organization of ~~such~~ the district, ~~from and~~ including the petition for the organization of the district and all other steps and matters ~~which~~ that may affect the legality or validity of the proceedings and objects set forth in the petition, including any proceedings connected with the voting and issuing of bonds by the district. The court in inquiring into the regularity, legality, or correctness of ~~such~~ the proceedings ~~must~~ shall disregard any error, irregularity, or omission ~~which~~ that does not affect the substantial rights of the parties~~, and it~~. The court may approve and confirm ~~such~~ the proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings, and insofar as possible the court shall remedy and cure all defects in ~~such~~ the proceedings. The court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed by this chapter. The costs of the special proceeding may be allowed and apportioned between the parties in the discretion of the court.

Section 407. That § 46A-6-38 be amended to read as follows:

46A-6-38. If the court ~~shall determine~~ determines the proceedings for the organization of the district to be legal and valid and the proceedings for the voting and issuing of the bonds legal and valid, the board of directors shall then ~~proceed to~~ prepare a written statement, beginning with the filing of the petition for the organization of the district and including all subsequent proceedings for the organization of the district, the voting and issuing of such bonds or other objects of such petition, and ending with the decree of the court finding the proceedings for the organization of

the district and subsequent proceedings legal and valid~~; and when~~. If the proceedings are for the confirmation of a bond issue, the board shall present ~~such~~ the written statement and the bonds to the Department of ~~Water~~ Environment and Natural Resources and ~~such~~ the written statement shall be certified under oath by the board of directors of the district~~, and the~~. The Department of ~~Water~~ Environment and Natural Resources shall record the statement and register the bonds in its office, and no such bonds ~~shall~~ may be issued or be valid unless they ~~shall be so~~ are registered and have endorsed ~~thereon~~ on the bonds a certificate of the Department of ~~Water~~ Environment and Natural Resources showing that ~~such~~ the bonds are issued pursuant to law, the date filed in the office of ~~such~~ the department being the basis of ~~such~~ the certificate.

Section 408. That § 46A-6-39 be amended to read as follows:

46A-6-39. The board of directors of any irrigation district in this state sustaining contractual relations with the United States ~~shall have the power to~~ may borrow funds for the purpose of making any necessary payments ~~thereon~~ on the contracts, and ~~to~~ may pledge the credit of the district for the payment of the ~~same~~ contracts.

Section 409. That § 46A-6-40 be amended to read as follows:

46A-6-40. The board of directors ~~shall have the power to~~ may borrow funds to meet the necessities of any unforeseen or unusual conditions arising in the operation and maintenance of the irrigation system of ~~said district and to~~ the district and may pledge the credit of ~~such~~ the district for the payment ~~thereof~~ of the debt.

Section 410. That § 46A-6-41 be amended to read as follows:

46A-6-41. The total sum borrowed by any district under the provisions of §§ 46A-6-39 and 46A-6-40 ~~shall~~ may at no time exceed two-thirds of the amount of the general fund levy of ~~such~~ the district for the preceding year. If the levy for the then current year ~~shall be~~ is insufficient to provide for the payment of the sum ~~or sums so~~ borrowed, then ~~such~~ the payment shall be provided for in the levy for the next ensuing year.

Section 411. That § 46A-6-43 be amended to read as follows:

46A-6-43. The board of directors may draw from time to time from the construction fund and deposit, in the county treasury of the county where the office of the board is situated, any sum in excess of twenty-five thousand dollars. The county treasurer ~~is hereby authorized and required to~~ shall receive and receipt for the ~~same~~ deposit and place the ~~same~~ deposit to the credit of the district~~, and he shall be responsible upon his~~. The county treasurer is responsible on the treasurer's official bond for the safekeeping and disbursement of the ~~same as in this chapter provided. He shall pay out the same, or any part thereof~~ deposit as provided in this chapter. The county treasurer shall pay out the deposit, or any part of the deposit, only to the treasurer of the district and upon the order of the board, signed by the president and attested by the secretary. The county treasurer shall report in writing on the second Monday in each month the amount of money in the county treasury credited to the district, the amount of receipts for the month preceding, and the amount of money paid out~~; the~~. The report shall be verified and filed with the secretary of the board.

Section 412. That § 46A-6-47 be amended to read as follows:

46A-6-47. No claim ~~shall~~ may be paid by the district treasurer until the ~~same shall have~~ claim has been allowed by the board of directors, and only upon warrants signed by the president and countersigned by the secretary. All warrants shall be drawn and payable to the claimant or bearer, the same as county warrants.

Section 413. That § 46A-6-48 be amended to read as follows:

46A-6-48. If the district treasurer does not have sufficient money on hand to pay any warrant when it is presented for payment, ~~he shall endorse thereon~~ the district treasurer shall endorse on the warrant "Not paid for want of funds," the date, and ~~his~~ the treasurer's signature. From the time of presentation until paid, the warrant shall draw interest at a rate to be negotiated by the parties.

Section 414. That § 46A-6-49 be amended to read as follows:

46A-6-49. The district treasurer shall keep a register ~~in which he shall enter~~ that lists each warrant presented for payment, ~~showing~~ the date and amount of ~~such~~ the warrant, to whom payable, the date of the presentation of payment, the date of payment, and the amount paid in redemption ~~thereof, and all~~ of the warrant. All warrants shall be paid in the order of their presentation for payment to the district treasurer.

Section 415. That § 46A-7-1 be amended to read as follows:

46A-7-1. For the purpose of defraying the expenses of the organization of an irrigation district, and for the purpose of defraying all expenses incurred in formulating a general plan for the proposed operation of an irrigation district including surveys, maps, estimates, examinations, and plans made in order to demonstrate the practicability of such general plan, all as authorized by §§ 46A-5-2 and 46A-5-3, and for the purpose of defraying all expenses related to the care, operation, management, repair, and improvement of such portions of its canal and works as are completed and in use, including salaries of officers and employees, the board of directors ~~thereof~~ of the district may either fix rates of tolls and charges and collect the ~~same~~ tolls and charges from all persons using such works for irrigation or other purposes, or may provide for the payment of such expenditures by assessments ~~therefor~~, or by both ~~such~~ tolls and assessments~~; if~~. If by assessment, ~~such~~ the levy shall be made upon the completion and equalization of the assessment roll in accordance with the benefit received; and the board ~~shall have~~ has the same powers and functions for the purposes of ~~such~~ the levy as are now possessed by boards of county commissioners in this state~~, and such~~. The assessment shall be collected as provided in this chapter.

Section 416. That § 46A-7-3 be amended to read as follows:

46A-7-3. The board of directors may at any time~~, when in its judgment deemed advisable,~~ call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any of the purposes provided for in chapters 46A-4 to 46A-7, inclusive. ~~Such~~ The election ~~must~~ shall be called upon the notice prescribed, and the ~~same~~ election shall be held and the result ~~thereof~~ of the election determined and declared in all respects in conformity with the provisions of ~~said~~ chapters 46A-4 to 46A-7, inclusive. The notice ~~must~~ shall specify the amount of money proposed to be raised, and the purpose for which it is intended to be raised~~, at such election; the~~. The ballots shall contain the words "Assessment--Yes," "Assessment--No." If a majority of the votes are "Assessment--Yes," the board shall, at the time of the annual levy ~~thereunder~~, levy an assessment sufficient to raise the amount voted~~; the~~. The assessment ~~so levied and computed~~ shall be entered upon the assessment roll and upon the tax list by the county auditor and collected at the same time and in the same manner as other assessments~~, and all~~. All revenue laws of this state for the collection of real estate taxes and sale of land for taxes ~~are hereby made applicable~~ apply to the assessment ~~herein~~ provided for~~; and when collected such~~ in this section. When collected, the assessment shall be paid ~~over~~ by the county treasurer to the district treasurer for the purpose specified in the notice of ~~such~~ the special election.

Section 417. That § 46A-7-4 be amended to read as follows:

46A-7-4. The director of equalization ~~must~~ shall, between the first Monday in May and the first Monday in July in each year, examine each tract or legal subdivision of land in an irrigation

district including entered and unentered public lands of the United States, subject ~~thereto~~ to the irrigation district under the act of Congress approved August 11, 1916, entitled "An Act to promote the irrigation of arid lands," ~~and~~ as amended to January 1, 2011. The director of equalization shall determine the benefits ~~which~~ that will accrue to each ~~of such tracts or subdivisions~~ tract or subdivision on account of the construction or acquisition of ~~such~~ the irrigation works~~, and the~~. The amount so apportioned or distributed to each ~~of such tracts or subdivisions~~ tract or subdivision as finally equalized or confirmed by the court, as the case may be, ~~shall be and remain~~ is the basis for fixing the annual assessments levied against ~~such~~ the tracts or subdivisions in carrying out the purposes of chapters 46A-4 to 46A-7, inclusive.

Section 418. That § 46A-7-6 be amended to read as follows:

46A-7-6. The director of equalization shall make ~~or cause to be made~~ a list of ~~such~~ the apportionment or distribution~~, which~~. The list shall contain a complete description of each subdivision or tract of land of ~~such~~ the district, with the amount and rate per acre of ~~such~~ the apportionment or distribution of cost and the name of the owners ~~thereof; or he~~ of the subdivision or tract. Alternatively, the director of equalization may prepare a map on a convenient scale showing each of such subdivisions or tracts with the rate per acre of ~~such~~ the apportionment entered ~~thereon. Where~~ on the map. If all lands on any map or section of a map are assessed at the same rate, a general statement to that effect ~~shall be~~ is sufficient. ~~Such~~ The list or map shall be made in duplicate, one of which shall be filed in the office of the Department of Environment and Natural Resources and the other shall remain in the office of the board of directors for public inspection.

Section 419. That § 46A-7-7 be amended to read as follows:

46A-7-7. ~~Whenever~~ If any irrigation district, organized under the laws of this state, ~~shall have~~ has contracted with the United States for a supply of water for the irrigation of lands within the district, the construction of irrigation or drainage works, or the operation ~~thereof~~ of such works, or both, or other purposes authorized by law, the board of directors ~~is authorized to~~ may make the assessments intended to meet the obligations of the district under ~~such~~ the contract in accordance with the method and terms as provided by ~~such~~ the contract~~, and no~~. No apportionment of benefits by the director of equalization ~~shall be~~ is necessary ~~when~~ if so provided in ~~said~~ the contract.

Section 420. That § 46A-7-8 be amended to read as follows:

46A-7-8. On or before the fifteenth day of July in each year, the director of equalization ~~must complete his~~ shall complete the assessment roll and deliver it to the secretary of the board of directors~~, who must~~. The board shall immediately give notice ~~thereof~~ of the assessment and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication once each week for at least two consecutive weeks in a newspaper published in each of the counties comprising the district. The time fixed for the meeting ~~shall~~ may not be less than ten nor more than twenty days from the first publication of the notice; and in the meantime the assessment rolls ~~must~~ shall remain in the office of the secretary for the inspection of all persons interested.

Section 421. That § 46A-7-13 be amended to read as follows:

46A-7-13. ~~Where~~ If an irrigation district organized under the laws of this state is under contract with the United States providing for a different deficiency assessment than is prescribed in § 46A-7-12, the provisions of ~~such~~ the contract shall govern ~~such~~ the district in making its assessments, ~~provided such~~ if the contract has been approved by the necessary majority vote of the owners of the land affected at an election properly called for such purpose.

Section 422. That § 46A-7-14 be amended to read as follows:

46A-7-14. ~~In case of the neglect or refusal of a~~ If the board of directors of any irrigation district neglects or refuses to cause an assessment and levy to be made as ~~in this chapter~~ provided in this chapter, the assessment of property made for the preceding year shall be adopted and shall be the basis of assessment for the district~~, and the~~. The county commissioners of the county in which the district was originally organized shall cause an assessment roll of ~~such~~ the district to be prepared and shall make the levy for the payment of the principal and interest on bonds ~~and~~, to meet all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, and to meet the expenses for organizing and operating ~~such~~ the district, in the same manner and with like effect as if the ~~same~~ levy had been made by ~~such~~ the board of directors~~; and the~~. The expense incident ~~thereto~~ to making the levy shall be borne by ~~such~~ the district.

Section 423. That § 46A-7-15 be amended to read as follows:

46A-7-15. ~~In any cases where~~ If the board of directors has made a levy or assessment under any contract between the United States and the district, and the United States ~~shall~~ thereafter ~~modify or supplement such~~ modifies or supplements the contract or agreement ~~so as~~ to eliminate certain charges under ~~said~~ the contract or agreement or ~~so as to make such~~ to make the charges due at a later date ~~or dates~~ than originally provided in ~~said~~ the contract or agreement, ~~said~~ the board ~~is empowered to~~ may direct the cancellation of ~~said~~ the levy or assessment ~~theretofore~~ previously made to raise funds to pay the United States that are under ~~such~~ the modification or supplemental contract or agreement made due and payable at a later date ~~or dates~~.

Section 424. That § 46A-7-16 be amended to read as follows:

46A-7-16. The secretary of the board of directors ~~must~~ shall compute and enter in separate columns of the assessment books the respective sums of dollars and cents in each fund, together with the sum payable by each tract obligated to the United States by contract, if any, for the payment of water charges to be paid on the property ~~therein enumerated; and the~~. The secretary shall certify to the auditor of the county in which the land is located the amount of ~~such~~ the taxes in each fund levied upon each tract of land by ~~such~~ the board, including sums due the United States, and the auditor shall enter the amount of each in separate columns of the tax list of ~~his~~ the county~~; and all~~. All tax lists when delivered to the county treasurer shall contain all taxes in each fund levied on each tract of land by the board of ~~such~~ the irrigation district.

Section 425. That § 46A-7-21 be amended to read as follows:

46A-7-21. All such taxes collected and paid to the county treasurer shall be received by ~~such~~ the treasurer in ~~his~~ the treasurer's official capacity ~~and he shall be~~. The treasurer is responsible for the safekeeping, disbursement, and payment ~~thereof~~ of the taxes, the same as for other money collected ~~by him as such treasurer~~ in the treasurer's official capacity.

Section 426. That § 46A-7-22 be amended to read as follows:

46A-7-22. In addition to other provisions of the laws of this state for the collection of assessments levied against the acreage of an irrigation district, the board of directors of any irrigation district~~,~~ organized within a United States reclamation project ~~is hereby authorized and empowered to~~ may make collections of all assessments levied against the acreage of ~~said~~ the irrigation district through the office of ~~said~~ the board.

Section 427. That § 46A-7-26 be amended to read as follows:

46A-7-26. In districts ~~which are following~~ that use the alternative method of collecting assessments, as provided for by § 46A-7-22, the director of equalization ~~must~~ shall, between the first day in September and the first day of November, in each year, make the examination and determine the benefits and fix the annual assessments to be levied against the tracts in ~~said~~ the

district, as provided for and in §§ 46A-7-4 to 46A-7-7, inclusive. The director of equalization ~~must~~ shall, on or before the fifteenth day of November in each year, complete ~~his~~ the assessment roll and deliver it to the secretary of the board of directors, who ~~must then proceed to~~ shall give notice ~~thereof~~ of the assessment as provided in § 46A-7-8.

Section 428. That § 46A-7-27 be amended to read as follows:

46A-7-27. ~~When~~ If the written certificate of ~~said~~ the board of directors is filed as provided in § 46A-7-23, ~~then and thereafter the secretary of the board of directors of said~~ the irrigation district ~~will not be~~ is not required to certify to the county auditor the amount of ~~such~~ the assessments, including sums due the United States, that have been levied against the acreage of ~~said~~ the district~~, by said board of directors, as otherwise provided by the laws of this state, and said auditor will not be~~. The auditor is not required to enter the amount of each of ~~said~~ the sums in separate columns of the tax lists of the county; and the tax lists, when delivered by the auditor to the county treasurer, need not contain the assessments levied on the tracts of land within ~~said~~ the irrigation district ~~by the board of directors of said irrigation district as otherwise provided by the laws of this state, but said~~. The secretary of the board of directors of ~~said~~ the irrigation district shall certify to the treasurer of ~~said~~ the irrigation district the amount of ~~such~~ the assessments, including sums due the United States, who shall act in lieu ~~and in place~~ of the county auditor in entering the amount of assessments in each fund levied upon each tract of land by ~~said~~ the board of directors, including sums due the United States, in separate columns of a book to be known as "irrigation district assessment collection book~~," which~~." The book shall be kept by the treasurer of ~~said~~ the district as a public record of ~~said~~ the irrigation district, and ~~said~~ the treasurer shall thereafter act in lieu of ~~and in place of~~ the county treasurer in sending notices, collecting, and receipting for such assessments.

Section 429. That § 46A-7-29 be amended to read as follows:

46A-7-29. Any irrigation district, organized within a United States reclamation project, ~~which may or shall choose to make collection of~~ that chooses to collect its assessments as provided in §§ 46A-7-22 to 46A-7-28, inclusive, may revert back to the prior method of making collection through the county treasurer's office by filing with the county auditor of the county or counties stated in § 46A-7-23, within which ~~said~~ the irrigation district is located, a certificate signed by a majority of the board of directors of ~~said~~ the irrigation district stating that a majority of the board of directors of ~~said~~ the irrigation district desires to make such a change. ~~Thereupon, and after the filing of said certificate~~ After the certificate is filed, beginning with the first day of May of the year in which ~~such~~ the change is desired to be made, all requirements of the laws of this state for the collection of taxes and assessments through the county treasurer's office shall be complied with ~~to the extent and purpose~~ as though §§ 46A-7-22 to 46A-7-28, inclusive, had not been enacted.

Section 430. That § 46A-7-31 be amended to read as follows:

46A-7-31. No taxes or assessments ~~shall~~ may be ordered refunded unless the person complaining ~~shall file~~ files in the office of the secretary of ~~such~~ the district a copy of ~~his~~ the person's tax receipt, showing the same paid under protest, together with a sworn affidavit in writing showing one of the following reasons why such tax or assessment should be refunded:

(1) That the land upon which ~~such~~ the assessment was levied is not within the boundaries of the district;

(2) That the land is exempt by law, setting forth the reason ~~therefor~~ for the exemption; or

(3) That by reason of injury through seepage or subirrigation the land could not now be benefited by irrigation, or that the land is not susceptible of irrigation from the canal of the district.

Section 431. That § 46A-7-32 be amended to read as follows:

46A-7-32. ~~Whenever~~ If any special tax or assessment levied upon any property located within the irrigation district is found to be invalid and uncollectible, or ~~shall be~~ is adjudged to be void by a court of competent jurisdiction, or paid under protest and recovered by suit, because of any defect, irregularity, or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites, and requirements of any statute or resolution, the board of directors ~~shall have the power to~~ may relevy the ~~same upon said~~ special tax or assessment on the property in the same manner as other special taxes and assessments are levied, without regard to whether the formalities, prerequisites, or conditions ~~prior to~~ before equalization have been ~~had~~ met. If ~~in any case there shall be~~ there is an erroneous extension of the water charge assessment ~~or assessments~~, either ~~as~~ against the wrong tract of land or against the wrong person, the assessment ~~shall~~ may not, for that reason, be invalidated~~, but the~~. The district board upon the discovery of ~~such error shall have full power to~~ the error may release, abate, refund, or otherwise correct ~~such assessment or assessments~~ the assessment by directing the county auditor to release, abate, refund, or otherwise correct ~~such~~ the assessment and to spread the assessment against the proper person or against the correct tract, or to abate the ~~same~~ assessment, or to refund the water charge assessment ~~or assessments~~ erroneously collected, as the case may require.

Section 432. That § 46A-7-33 be amended to read as follows:

46A-7-33. All assessments on real property and to the extent provided by the act of Congress of August 11, 1916, as amended to January 1, 2011, on entered and unentered public lands, are a lien against the property assessed from and after the day the real estate taxes become a lien~~, and~~. The assessments shall draw interest at the same rate and from the same date as unpaid real estate taxes, and such lien is not removed until the assessments are paid or the property sold for the payment ~~thereof, and it shall be the duty of the~~ of the assessments. The county treasurer ~~to~~ shall collect ~~such~~ the assessments in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection of taxes and sale of land for such taxes ~~are hereby made applicable~~ apply to the collection of assessments under this chapter.

Section 433. That § 46A-7-36 be amended to read as follows:

46A-7-36. ~~In any case where~~ If the board of directors determines that assessments levied before February 25, 1933 against the lands of the district for either its general fund or bond and United States contract fund are delinquent to such an extent that the enforcement of the payments thereof through tax title proceedings is impracticable, and further determines that it is to the benefit of the irrigation district to compromise, abate, or reallocate any part or all of such assessments, the board ~~is hereby authorized and empowered to~~ may compromise, abate, or reallocate any ~~or all of said~~ of the delinquent assessments, subject to the following conditions:

(1) All claims or obligations against the district's general fund for all years in which ~~such~~ the assessments were levied ~~must have been paid in full prior to such~~ have been paid in full before the compromise, abatement, or reallocation, or if not paid in full, the owners of ~~such obligations must~~ the obligations have consented in writing to the proposed compromise, abatement, or reallocation;

(2) ~~Where~~ If the district's bond and United States contract fund would be affected by ~~such~~ the compromise, abatement, or reallocation, the written consent of the United States, if the assessments were levied to meet contract obligations to the United States, or of all bondholders, if the assessments were levied to meet bonded indebtedness or interest ~~thereon~~ on the bonds, shall be obtained to each such proposed compromise, abatement, or reallocation, before it becomes effective~~, or such~~. The compromises, abatements, or reallocations may be made, without the individual consent of the United States or bondholders, ~~where~~ if made ~~in pursuance of~~ pursuant to the terms of

a contract between the district and the United States or ~~such~~ the bondholders. The board is hereby vested with authority to execute ~~such~~ the contract with the United States or the district bondholders. This section ~~shall~~ does not limit the rights ~~which~~ of any irrigation district ~~has~~ under the existing laws to compromise, abate, or refund district assessments but ~~shall be cumulative thereto~~ is cumulative to those rights.

Section 434. That § 46A-7-38 be amended to read as follows:

46A-7-38. For the purpose of paying ~~such~~ the taxes, assessments, interest, and penalties, the directors ~~shall have the power and authority to~~ may create by resolution a fund to be known ~~and designated~~ as the "special revenue fund for the purchase of tax certificates and titles~~," and to~~." The directors may provide funds for ~~such~~ the special revenue fund by levy, bond issue, or otherwise, and the district may pay ~~such~~ the taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against ~~such~~ the fund, if there ~~shall be~~ is sufficient money in ~~such~~ the fund to pay the ~~same~~ taxes, assessments, interest, and penalties in full upon demand.

Section 435. That § 46A-7-39 be amended to read as follows:

46A-7-39. ~~When~~ If taxes are paid by the district as provided in this chapter ~~provided~~, the county treasurer shall distribute that portion of ~~said~~ the tax belonging to the irrigation district~~,~~ to the several funds as designated in the tax levy and assessment. At the time of redemption, or of the sale by the district of the tax sale certificate, or of the property obtained through ~~such~~ the certificate, such funds as are realized ~~must~~ shall be deposited with the county treasurer, ~~and he~~ who shall credit the proceeds of ~~such~~ sale to the special revenue fund specified in § 46A-7-38.

Section 436. That § 46A-7-40 be amended to read as follows:

46A-7-40. No expenditures ~~shall~~ may be made from the special revenue fund except for the purposes as specified in §§ 46A-7-38 and 46A-7-39~~, and when~~. If, by resolution of the board of directors, ~~such fund shall be~~ the fund is deemed inactive, the balance remaining in ~~said~~ the fund shall be transferred to a debt service fund to be applied upon any indebtedness ~~which~~ that may have been incurred by the district by reason of the creation of ~~such~~ the special revenue fund, if any ~~there may be,~~ exists; otherwise, the balance shall be transferred to the general fund of the district.

Section 437. That § 46A-7-43 be amended to read as follows:

46A-7-43. After the issuance of any such tax deed to an irrigation district, the directors ~~shall have power to~~ may sell and convey the land so purchased, or any part ~~thereof~~ of the land, at either public or private sale, whether or not the price received ~~therefor~~ for the land equals the amount of delinquent taxes, assessments, penalties, interest, and costs against ~~said lands or not; but if such lands be~~ the lands. However, if the lands are offered for sale at public sale, ~~such~~ the directors may reject any ~~and all bids thereon, and no such lands shall be sold by such~~ bids on the lands, and no such lands may be sold by the directors at private sale until the ~~same shall~~ lands have been offered for sale at public sale, nor at a price less than the highest price bid ~~therefor~~ for the lands at the public sale at which ~~such~~ the lands were offered~~, and if~~. If no bid is received for ~~such~~ the lands when the ~~same~~ lands are offered for public sale, the ~~said~~ directors may then sell the ~~same~~ lands in such manner and for such price as ~~in their judgment they shall~~ they deem to be ~~for~~ in the best interests of ~~said~~ the district.

Section 438. That § 46A-7-44 be amended to read as follows:

46A-7-44. ~~Sections~~ The provisions of §§ 46A-7-37 to 46A-7-43, inclusive, ~~shall~~ apply only ~~when or after such~~ if the irrigation district ~~shall have~~ has commenced delivery of water to any lands within ~~such~~ the irrigation district.

Section 439. That § 46A-7-45 be amended to read as follows:

46A-7-45. No irrigation district ~~shall~~ may in any year issue warrants in excess of ninety percent of the levy for ~~such~~ the year~~, except that~~. However, in case of due and outstanding obligations against the district on account of operation, maintenance, and current expenses contracted ~~prior to~~ before the year in which any levy is made, the district board ~~shall have power to~~ may make an additional levy, not to exceed one dollar per acre upon all irrigable lands within the district, to create a special fund for the payment of past due obligations.

Section 440. That § 46A-7-46 be amended to read as follows:

46A-7-46. ~~Whenever~~ If the claims or obligations against any fund for any year are fully paid, the board of directors ~~shall have power to~~ may transfer any unused balance to any other fund for the preceding or succeeding year.

Section 441. That § 46A-7A-3 be amended to read as follows:

46A-7A-3. Lands initially within the district ~~shall be~~ are those lands on a list provided by local project sponsors to be filed with the state board. The list shall contain the name and address of each landowner whose lands are to be included in the district. Before it fixes the date for the validation election required by § 46A-7A-11, the state board shall notify each such landowner, by first class mail, that:

(1) ~~His~~ The landowner's land is to be included in the district;

(2) An election is to be held on the question of whether the district should be formed;

(3) Information concerning the district and the election may be obtained from the address of the state board; and

(4) Each landowner has the right to have ~~his~~ the landowner's land excluded from the district within one hundred eighty days following the validation election without obligation.

The lands included in the district, which need not be contiguous, may be changed from time to time by action of the board by exclusions or inclusions as provided in §§ 46A-7A-12 to 46A-7A-18, inclusive.

Section 442. That § 46A-7A-10 be amended to read as follows:

46A-7A-10. In the validation election required by § 46A-7A-11, each elector may cast one vote in the division in which the majority of ~~his~~ the elector's land is located. In any election for directors or election for dissolution of the district, as provided in this chapter, each elector may vote in each division in which any of the district land owned by ~~him~~ the elector is situated and may cast one vote for each full acre of such land to which ~~he~~ the elector holds title in the division. In any other district election, each elector may cast one vote for each one hundred dollars, but not fraction thereof, of district assessed valuation of district land to which ~~he~~ the elector holds title. The district assessed valuation ~~shall be~~ is the valuation assessed by the district.

Section 443. That § 46A-7A-12 be amended to read as follows:

46A-7A-12. Any holder of title to land included in the original district or any land subsequently annexed to the district may elect to exclude all or any part of his or her lands without any obligation whatsoever by notice to the board within one hundred eighty days following the validation election.

Section 444. That § 46A-7A-20 be amended to read as follows:

46A-7A-20. Any director shall either be an elector, or the designated representative of an elector, holding title to a minimum of one hundred acres of district land within the division ~~he~~ the director represents and shall reside within the general boundaries of ~~his~~ the division as set forth in the notice provided in § 46A-7A-21 or as later modified by the board.

Section 445. That § 46A-7A-27 be amended to read as follows:

46A-7A-27. In the calendar year following the validation election and each year thereafter, the district shall call a regular election, at which there shall be elected for a term of three years, two or more members of the board, as the case may be. Any nominee from each division shall be nominated as provided and shall be elected by receiving the highest number of votes cast by the electors of ~~his~~ the nominee's division. Any regular election of the district shall be held on the last Tuesday in October of each year.

Section 446. That § 46A-7A-28 be amended to read as follows:

46A-7A-28. After the initial election of directors, the directors shall be nominated by filing with the board, not less than thirty days before the regular election, nominating petitions for the vacancies to be filled. The petitions shall be in the form prescribed by the State Board of Elections and shall be signed by at least ten qualified electors of the division in which a vacancy will occur. No petition may contain the name of more than one candidate for any vacancy to be filled. Each elector may sign petitions for vacancies in each division in which ~~he~~ the elector is a holder of title, but no elector may sign more than one petition for any particular vacancy.

Section 447. That § 46A-7A-36 be amended to read as follows:

46A-7A-36. In case of a vacancy in the office of a member of the board, the vacancy shall be filled by appointment by a majority of the remaining members of the board. Any director so appointed shall hold ~~his~~ office until the next election of ~~such~~ the division and until ~~his~~ the director's successor is elected and qualified.

Section 448. That § 46A-7A-37 be amended to read as follows:

46A-7A-37. Any director elected in compliance with § 46A-7A-24 shall enter immediately into the duties of ~~his~~ the office upon qualifying as provided in § 46A-7A-38 and shall hold ~~his~~ office until the next regular election of the district, when ~~his~~ a successor is elected and qualified. Any director elected thereafter shall assume the duties of ~~his~~ the office on the last Tuesday in November after ~~his~~ the election and shall hold ~~his~~ office until ~~his~~ a successor is elected and qualified.

Section 449. That § 46A-7A-38 be amended to read as follows:

46A-7A-38. Before assuming the duties of ~~his~~ the office, any director or officer shall take and subscribe an official oath. The district treasurer shall execute an official bond, approved by the board of directors, in the sum of not less than one thousand dollars, plus such additional amounts as determined by the board. Any official bond shall be in the form prescribed by law for official bonds of county officers~~, except~~. However, the obligee named in ~~such~~ the bond shall be the district, and if approved surety company bonds are furnished, the cost of ~~such~~ the bonds shall be paid by the district.

Section 450. That § 46A-7A-44 be amended to read as follows:

46A-7A-44. For time actually employed in the duties of ~~his~~ the office and in attending and returning from sessions of the board and other meetings approved by the board, any director shall

receive compensation, per diem, and mileage allowances in an amount not to exceed state rates. Any exception may be granted by an affirmative vote of the board. The board shall fix the compensation to be paid to district officers and employees. Such compensation shall be paid from the district general fund.

Section 451. That § 46A-7A-47 be amended to read as follows:

46A-7A-47. No director or officer of the district may be interested in any manner, directly or indirectly, in any contract awarded by the district or in the profits to be derived ~~therefrom~~ from the contract, nor may ~~he~~ the director or officer receive any gratuity or bribe. Any director or officer who is interested in any manner, directly or indirectly, in any contract awarded by the board or in the profits derived ~~therefrom~~ from the contract, or who receives any gratuity or bribe, is guilty of a Class 5 felony.

Section 452. That § 46A-7A-54 be amended to read as follows:

46A-7A-54. The board may enter into any obligation or contract with the United States for construction, operation, and maintenance of all or any part of necessary works for delivery and distribution of water ~~therefrom~~ from the works under the provisions of federal reclamation acts ~~and all acts, amendatory thereof or supplementary thereto~~, as amended to January 1, 2011, any acts supplementary to the reclamation acts, and any rules and regulations established ~~thereunder~~ under the reclamation acts or supplementary acts. The board may contract with the United States for water and power supplies under any act of Congress providing for or permitting such contracts. Any contract with the United States shall be approved by district electors in the same manner as approval of a bond issue.

Section 453. That § 46A-7A-56 be amended to read as follows:

46A-7A-56. The board, ~~whenever~~ if it deems it in the best interests of the district, ~~has the power and authority to~~ may enter into any contract with the United States supplementing or amending any original contract with the United States, ~~provided that such~~ if the supplementary or amendatory contract does not increase the amount of principal indebtedness of the district to the United States as it exists at that date.

Section 454. That § 46A-7A-58 be amended to read as follows:

46A-7A-58. To estimate the cost of any construction work, the board shall have surveys, examinations, and plans made to demonstrate the practicability of ~~such~~ the plan and to furnish the proper basis for an estimate of the cost of construction. Any surveys, examinations, maps, plans, and estimates shall be made under the direction of, and certified by, a registered professional engineer ~~and shall be certified by him~~. The board of directors shall file a copy of ~~them~~ the surveys, examinations, maps, plans, and estimates with the state board.

Section 455. That § 46A-7A-60 be amended to read as follows:

46A-7A-60. If any contract for construction is made with the United States as provided in § 46A-7A-54 and bonds are required to raise funds in addition to the amount of the contract, they ~~shall~~ may be issued only in the amount needed.

Section 456. That § 46A-7A-63 be amended to read as follows:

46A-7A-63. The board may make all necessary acquisitions of right-of-way to provide service to each tract of land subject to assessment and may exercise its right of eminent domain to procure right-of-way for conveyance facilities. This section does not deprive any person ~~entitled thereto~~ from exercising ~~his~~ the person's right of eminent domain.

Section 457. That § 46A-7A-126 be amended to read as follows:

46A-7A-126. Each county auditor, treasurer, and director of equalization shall file annually with the county commissioners of ~~his~~ the county an itemized statement showing additional expenses to his or her office caused by performance of the duties imposed upon ~~him~~ the office by this chapter. Upon filing of ~~such~~ the statement, the county commissioners, by order in its minutes, shall deduct such expenses from the assessment money of the district and transfer it into the county general fund.

Section 458. That § 46A-7A-131 be amended to read as follows:

46A-7A-131. ~~When~~ If the district has levied an assessment and the board determines that the assessment, together with interest ~~thereon~~ on the assessment, will provide an amount greater than is required to meet all obligations incurred for the purposes for which the assessment was levied, the board, ~~provided that~~ if no bonds are outstanding, by resolution may declare its intention to cancel all or any portion of the assessment balance. For purposes of this section, the term ~~"~~, assessment balance", means the assessment and the interest ~~thereon~~ on the assessment. The board, subject to limitations provided in this chapter, may cancel ~~such~~ the assessment balance, including the interest thereon, a part of the assessment and the interest thereon, all of the interest on the assessment or a part of the interest on the assessment.

Section 459. That § 46A-7A-146 be amended to read as follows:

46A-7A-146. All funds belonging to the district, other than funds deposited with trustees or fiscal agents for payment of the principal of and interest on bonds of the district, shall be deposited by the treasurer in any bank within the state~~, which~~. The bank shall be designated by the board. If no depository is designated, the treasurer shall select a bank as a depository for ~~such~~ the funds. Deposit of ~~such funds shall relieve~~ the funds relieves the district treasurer from personal liability for loss of deposited funds through the insolvency or failure of the depository while funds are deposited ~~therein~~ pursuant to this section.

Section 460. That § 46A-7A-147 be amended to read as follows:

46A-7A-147. The board may draw from any district fund to deposit in the state treasury any sum in excess of twenty-five thousand dollars. The state treasurer shall receive and receipt the deposit and place it to the credit of the district or to any designated fund of the district. ~~He~~ The state treasurer is responsible upon ~~his~~ the state treasurer's official bond for investment, safekeeping, and disbursement of the funds as provided in this chapter. ~~He~~ The state treasurer shall pay out funds only to the treasurer of the district upon an order of the board, signed by the president and attested by the secretary. The state treasurer shall report in writing each month on the amount of money in the state treasury credited to the district, the amount of receipts for the month preceding and the amount of money paid out. The report shall be verified and filed with the secretary of the board.

Section 461. That § 46A-7A-182 be amended to read as follows:

46A-7A-182. After all property of the district is disposed of and all obligations of the district have been paid, the directors shall file, in the office of the auditor of each county in which the district is located and in the office of the state board, a report attested by the secretary and under the seal of the board. The report shall state that the district has disposed of its property and franchises and become disorganized and dissolved. The report shall be recorded in the miscellaneous record of the counties. If any person having any claim against the district not settled or disposed of at the time of the filing of the report fails to bring action upon ~~his~~ the claim within five years from the time of filing of the report, the claim ~~shall be~~ is forever barred against the district and against all persons and property ~~therein~~ in the district.

Section 462. That § 46A-8-4 be amended to read as follows:

46A-8-4. The board of county commissioners of any county in which there has been a water users' association organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, as amended to January 1, 2011, and which, under its articles of incorporation, is authorized to furnish water only to its stockholders, ~~is hereby authorized to~~ may accept ~~such~~ the water users' association books for public record, containing printed copies of their articles of incorporation and forms of subscription to stock and to use ~~such~~ the books for recording the stock subscriptions of ~~such~~ the association. The charges for the recording of ~~such~~ the stock subscriptions shall be made on the basis of the number of words actually written therein.

Section 463. That § 46A-8-6 be amended to read as follows:

46A-8-6. Any water users' association organized under the laws of this state and in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, as amended to January 1, 2011, and which, under its articles of incorporation, ~~is authorized to~~ may furnish water only to its shareholders, ~~is authorized~~ may, for the purpose of raising revenue necessary for the accomplishment of the purposes of ~~such~~ the association, ~~to~~ levy assessments from time to time, as required, against its shareholders~~; and the shareholders shall have authority to~~. The shareholders may make and enforce the necessary bylaws for the making, levying, collecting, and enforcing of ~~such~~ the assessments. The nonpayment of any ~~one or more of such~~ of the assessments ~~shall not be~~ is not a bar to the levying and collecting of other assessments against the same shareholders.

Section 464. That § 46A-8-7 be amended to read as follows:

46A-8-7. Such associations ~~shall~~ have the first and prior lien for all unpaid assessments on the lands of the shareholder against which ~~such~~ the assessments are levied, and for all deferred payments on the water right appurtenant to ~~such lands; such lien to be~~ the lands. The lien is in all respects prior to any ~~and all~~ other liens created or attempted to be created by the owner and possessor of ~~such lands; such lien to~~ the lands. The lien shall remain in ~~full force and~~ effect until the last deferred payment for the water right and any unpaid assessments levied by ~~such~~ the association against ~~such~~ the land are fully paid and satisfied, according to the terms of the contract under which ~~such~~ the water right was acquired, the provisions of this chapter, and the bylaws of ~~such~~ the association relating to assessments. ~~Such~~ The lien shall be enforced by the association by the foreclosure and sale of ~~such~~ the lands, or so much thereof as may be necessary, in the manner provided by law for the foreclosure of mortgages on real property.

Section 465. That § 46A-9-4 be amended to read as follows:

46A-9-4. A water user district may be organized under the provisions of this chapter by filing in the Department of ~~Water~~ Environment and Natural Resources a petition in compliance with the requirements ~~hereinafter~~ set forth in this section, and the approval of ~~said~~ the petition by the Board of Water and Natural Resources as ~~hereinafter provided. Said~~ provided in this chapter. The petition shall be addressed to the Board of Water and Natural Resources and shall state in substance that it is the intent and purpose of the petitioners ~~thereby~~ to create a district under the provisions of this chapter, subject to approval by the board. ~~Such petition must~~ The petition shall contain:

(1) The name of the proposed district;

(2) The object and purpose of the system proposed to be constructed or acquired, together with a general description of the nature, location, and method of operation of the proposed works;

(3) A description of the lands constituting the proposed district and of the boundaries ~~thereof~~ of the proposed district, and the names of any municipalities included partly or wholly within the boundaries of the proposed district;

(4) The location of the principal place of business of the proposed district;

(5) A statement that the proposed district ~~shall~~ does not have the power to levy taxes or assessments;

(6) The number of members of the board of directors of the proposed district, which ~~number shall be not~~ may not be less than five nor more than thirteen, a statement as to whether the directors shall be elected at large or shall be apportioned to election divisions and elected by the voters ~~thereof~~ of the election divisions, the names and addresses of the members who shall serve until their successors are elected and qualified as provided in this chapter, and if election divisions are provided for, the respective divisions which the directors are to represent. The persons named in the petition as directors shall be owners of land or entrymen within the district, and, if election divisions are provided for, they shall be owners of land or entrymen within the respective divisions they are to represent.

Section 466. That § 46A-9-6 be amended to read as follows:

46A-9-6. Nothing in this chapter ~~shall be construed to prevent~~ prevents the organization of a water user district ~~hereunder~~ under this chapter within, or partly within, the territorial boundaries of another district organized ~~hereunder~~ under this chapter, or of an irrigation district organized under the provisions of chapter 46A-4, ~~so long as~~ if the works or systems, the operations of the ~~same~~ works or systems, the exercise of powers and the assumptions of duties and responsibilities ~~hereunder~~ under this chapter, of ~~or on the part of~~ one ~~such~~ district, do not nullify, conflict with, or materially affect those of ~~or on the part of~~ another such district.

Section 467. That § 46A-9-7 be amended to read as follows:

46A-9-7. Directors may be elected either at large, or from election divisions, without regard to whether municipality areas are included within the water user district. If the petition states that the directors shall be elected from election divisions, the petition shall describe the boundaries of ~~such divisions, which~~ the divisions. The boundaries may be drawn either with or without regard to the corporate limits of any municipality included partly or wholly within the district boundaries.

Section 468. That § 46A-9-9 be amended to read as follows:

46A-9-9. ~~Said~~ The petition ~~must~~ shall be signed by twenty-five percent of the landowners or entrymen within the area constituting the proposed water user district, or by their duly authorized representatives~~; provided, that~~. However, if the proposed district includes any portion of the area within a municipality, the petition ~~must~~ shall be signed by twenty-five percent of the landowners or entrymen in the portion of the proposed district area within each such municipality, or by their duly authorized representatives, and ~~must~~ shall also be signed by twenty-five percent of the landowners or entrymen in the area lying outside the limits of ~~such~~ the municipalities or by their duly authorized representatives. On each petition, set opposite the signature of each petitioner, shall be stated ~~his~~ the petitioner's name and post office address and the location of land of which ~~he~~ the petitioner is the owner or entryman.

Section 469. That § 46A-9-15 be amended to read as follows:

46A-9-15. If the Board of Water and Natural Resources ~~shall determine~~ determines that the petitioners have complied with the requirements ~~hereinbefore set forth, it~~ of this chapter, the

board shall make an immediate investigation of the proposed water user district and of its proposed works, systems, or plans and of the engineering and economic feasibility of the project~~; provided, that the~~. The board~~, in its discretion,~~ may make an estimate of the cost of ~~such~~ the investigation and may require the petitioners to defray part or all of the estimated cost before proceeding with the investigation.

Section 470. That § 46A-9-16 be amended to read as follows:

46A-9-16. The Board of Water and Natural Resources, within ninety days from the receipt of the petition, or within ninety days from the time funds ~~shall~~ become available to defray the cost of the investigation, shall declare that the proposed project is or is not feasible and conforming to public convenience and welfare. If the project is deemed not feasible, the board shall dismiss the petition~~; but~~. However, if the board deems the project feasible and conforming to public convenience and welfare, ~~it~~ the board shall immediately execute a certificate, in duplicate, setting forth a true copy of the petition and declaring that ~~said~~ the petition is approved~~; and shall cause said certificate to be forwarded to and filed~~. The board shall file the certificate in the Office of the Secretary of State and a copy ~~thereof, certified by him~~ of the certificate, certified by the secretary of state, in the office of the county auditor of each county in which any of the lands in ~~such~~ the water user district ~~shall be~~ are located. Thereupon, ~~said~~ the district, under its designated name, ~~shall be and constitute~~ is a body politic and corporate under the provisions of this chapter and ~~shall be~~ is a public corporation of the State of South Dakota.

Section 471. That § 46A-9-17 be amended to read as follows:

46A-9-17. All water user districts, created under the provisions of this chapter, and additions ~~thereto, and deletions therefrom~~ to and deletions from the districts, established or purporting to be established or adjusted ~~prior to~~ before July 1, 1978, pursuant to the provisions of this chapter and having a de facto existence of at least one year, are hereby declared to be valid and legally created political subdivisions of the state. The regularity and validity of the creation of such water user districts in existence for one year or any boundary adjustments ~~thereof shall~~ of the districts is not ~~be~~ open to question in any court in the state. All acts and proceedings of any water user district or of its board of directors, or both, leading up to the authorization and execution of an existing contract between any water user district and the United States of America, and all acts and proceedings of any water user district or of its board of directors, or both, leading up to the issuance and deliverance of bonds of any water user district are hereby legalized, ratified, confirmed, and declared valid to all intents and purposes. All existing contracts and outstanding bonds are hereby legalized and declared to be valid and legal obligations of and against the water user district executing or causing the execution of the ~~same~~ contracts or bonds. This section ~~shall~~ does not apply to any suit or proceeding legally initiated ~~prior to~~ before July 1, 1978.

Section 472. That § 46A-9-20 be amended to read as follows:

46A-9-20. A water user district may be extended by including additional territory by filing in the Department of ~~Water~~ Environment and Natural Resources a petition in writing, verified by the circulator ~~thereof~~ of the petition, addressed to the department, signed by at least twenty-five percent of the landowners or entrymen in any area to be included, and bearing the approval by resolution, of a majority of the board of directors of ~~such~~ the water user district, upon compliance with the requirements ~~hereinafter~~ set forth in this chapter. ~~Such~~ The petition shall contain a description of the lands to be included.

Section 473. That § 46A-9-23 be amended to read as follows:

46A-9-23. Upon receipt of ~~such~~ the petition ~~it shall be the duty of~~ the Board of Water and Natural Resources ~~to~~ shall act upon the petition in the same manner as required upon an original petition to create a water user district, as set forth in §§ 46A-9-12 to 46A-9-16, inclusive, and § 46A-9-18.

Upon the approval of the petition and project by the Board of Water and Natural Resources, and the issuance and filing of its certificate of approval in the Office of the Secretary of State and filing a copy ~~thereof~~ of the certificate, certified by the secretary of state, in the office of the county auditor of each county in which any lands in which such water user district is located, ~~such~~ the included areas ~~shall be and~~ constitute a part of ~~such~~ the water user district.

Section 474. That § 46A-9-25 be amended to read as follows:

46A-9-25. The board of directors of the water user district shall fix the hour and place, within the boundaries of the district, of each election and shall preside at the ~~same; provided, that if~~ election. If the district is divided into election divisions, the board of directors in its discretion may fix a place of election within each election division, in which ~~event~~ case the directors who represent that division shall preside at the election.

Section 475. That § 46A-9-27 be amended to read as follows:

46A-9-27. ~~It shall be the duty of the~~ The board of directors, at least twenty days ~~prior to~~ before the date of election, ~~to~~ shall mail to each person or corporation entitled to vote ~~thereat, at his or its~~ at the election, at the person's or corporation's last known place of residence or business, a notice stating the time, place, and purpose of ~~such~~ the election ~~or, in the alternative, to~~. Alternatively, the board may publish in each county in which lands within the district lie, in some newspaper of general circulation printed and published in ~~such~~ the county, once each week for at least two successive weeks before the time of election, a notice that ~~such~~ the election will be held and giving the purpose, time, and place.

Section 476. That § 46A-9-30 be amended to read as follows:

46A-9-30. No person ~~shall be~~ is qualified to hold office as a member of the board of directors of any water user district unless ~~he or she shall be~~ the person is a landowner or entryman of ~~such~~ the district.

Section 477. That § 46A-9-39 be amended to read as follows:

46A-9-39. A water user district organized under the provisions of this chapter ~~shall have~~ has the powers provided by §§ 46A-9-40, 46A-9-41, and §§ 46A-9-43 to 46A-9-45, inclusive, and ~~shall be entitled to~~ may own, have, or exercise the rights, privileges, and franchises provided by ~~said~~ those sections.

Section 478. That § 46A-9-40 be amended to read as follows:

46A-9-40. ~~Such~~ The water user district ~~shall have~~ has all the usual powers of a corporation for public purposes~~, and~~. The district may acquire by purchase, gift, condemnation, or other lawful means and may hold any real or personal property reasonably necessary for the conduct of its business, or may lease such property for its proper purposes~~, and~~. The district may sell, lease, or otherwise dispose of such property ~~when~~ if not needed by the district.

Section 479. That § 46A-9-41 be amended to read as follows:

46A-9-41. ~~Such~~ The water user district ~~shall have the right and power to~~ may own, construct, reconstruct, improve, purchase, condemn, lease, receive by gift, or otherwise acquire, hold, extend, manage, use, or operate any ~~"works," as defined in this chapter, and any and every~~ works and any kind of property, personal or real, necessary, useful, or incident to such acquisition, extension, management, use, and operation~~, and~~. The district may sell, mortgage, alienate, or otherwise dispose of ~~such~~ the works or any part ~~thereof~~ of the works only under the terms and subject to the conditions provided in §§ 46A-9-69 to 46A-9-72, inclusive.

Section 480. That § 46A-9-44 be amended to read as follows:

46A-9-44. ~~Such~~ The district ~~shall have the right, power, and authority to~~ may exercise any of the powers enumerated in §§ 46A-9-41 and 46A-9-43 either within or beyond or partly within and partly beyond the boundaries of the district and of the State of South Dakota, unless prohibited by the law of the area or state concerned or of the United States of America.

Section 481. That § 46A-9-46 be amended to read as follows:

46A-9-46. In addition to any other rights and powers ~~hereinabove~~ conferred upon any water user district organized under the provisions of this chapter, ~~such~~ the district ~~shall have and~~ may exercise the power of eminent domain for the purposes and after the manner provided for in chapter 21-35, after declaring by resolution the necessity for and purpose of the taking of property and the extent of ~~such~~ the taking. If any such district ~~shall condemn~~ condemns private property or interests ~~therein~~ in the private property, the appraisement shall include ~~such~~ the amount of damage ~~as~~ that will accrue to the owner of the condemned property through severance ~~thereof~~ of the condemned property from other property of ~~said~~ the owner, previously operated with ~~that so condemned~~ the condemned property, as a unit.

Section 482. That § 46A-9-47 be amended to read as follows:

46A-9-47. The district ~~shall have~~ has no power of taxation, or of levying assessments for special benefits~~; and no~~. No governmental authority ~~shall have power to~~ may levy or collect taxes or assessments for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district as such or upon which the district may be or become in any manner liable. ~~Nor shall any~~ No privately owned property within or outside ~~such~~ the district, ~~or~~ nor the owner ~~thereof, nor any~~ of the property, and no municipality, county, irrigation district, or other political subdivision or public or private corporation or association or its property, ~~be~~ is directly or indirectly liable for any such district indebtedness or obligation beyond the liability to perform any express contract, if any, between ~~such~~ the owner or public or private organization and ~~said~~ the district.

Section 483. That § 46A-9-49 be amended to read as follows:

46A-9-49. Any water user district organized ~~hereunder shall have and~~ under this chapter may exercise any power conferred by this chapter for the purpose of obtaining grants or loans or both from any federal agency pursuant to or by virtue of any ~~and all~~ acts of Congress independently or in conjunction with any other power or powers conferred by this chapter, or heretofore or hereafter conferred by any other law~~, and shall have power to~~. The district may accept from private owners or other sources, gifts, deeds, or instruments of trust or title relating to land, water rights, and any other form of property.

Section 484. That § 46A-9-50 be amended to read as follows:

46A-9-50. ~~Such~~ The water user district ~~shall have power to~~ may purchase and acquire lands, water rights, rights-of-way, and real and personal properties of every nature in cooperation with the United States under such conditions as ~~may to the board seem~~ the board deems advisable~~, and to~~. The district may convey ~~the same~~ such rights and property under ~~such~~ conditions, terms, and restrictions ~~as may be~~ approved by the board of directors and the federal government or any of its agencies ~~and to~~. The district may pay the purchase price and any ~~and all~~ construction costs or other necessary expenses and costs in connection with any works contemplated by this chapter either from its own funds or cooperatively with the federal government.

Section 485. That § 46A-9-61 be amended to read as follows:

46A-9-61. The board of directors ~~is hereby authorized and empowered~~, subject to the provisions of this chapter, ~~to~~ may fix and establish the prices, rates, and charges at which any ~~and all the~~ resources and facilities made available under the provisions of this chapter shall be sold and disposed of~~; to enter into any and all~~. The board may enter into any contracts and agreements, and ~~to do any and all things which~~ do anything that in its judgment ~~are~~ is necessary, convenient, or expedient for the accomplishment of any ~~and all~~ of the purposes and objects of this chapter, under such general regulations and upon such terms, limitations, and conditions as it shall prescribe~~; and it is and shall be the duty of the board to~~. The board shall enter into ~~such~~ contracts and fix and establish ~~such~~ prices, rates, and charges ~~so as~~ to provide at all times funds ~~which will be~~ sufficient to pay all costs of operation and maintenance of any ~~and all~~ of the works authorized by this chapter, together with necessary repairs ~~thereto~~ to such works, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds, warrants, notes, debentures, and other evidences of indebtedness as they severally become due and payable~~; provided, that~~. However, nothing contained in this chapter ~~shall authorize~~ authorizes any change, alteration, or revision of any such rates, prices, or charges as established by any contract entered into under authority of this chapter except as provided by ~~any such~~ the contract.

Section 486. That § 46A-9-70 be amended to read as follows:

46A-9-70. If, in the judgment of the board of directors, it is ~~for~~ in the best interest of the water user district to sell any portion of the district works not needed for the performance of any outstanding contract, and not mortgaged or hypothecated as provided for in § 46A-9-71, the board of directors shall pass a resolution to that effect and shall submit the question to the Board of Water and Natural Resources for approval. If the Board of Water and Natural Resources approves, the board of directors shall call a special election at which the question of selling ~~such~~ the portion of the works shall be submitted to the voters of the district qualified to vote for district directors. The board of directors shall mail to each qualified voter, at ~~his~~ the voter's last known place of residence or place of business, a notice stating the time, place, and purpose of the election, and so far as practicable shall conduct the election in all other respects as provided in §§ 46A-9-25 to 46A-9-28, inclusive. If a majority of all qualified voters of the district vote "yes" at ~~such~~ the election, the board of directors s~~hall be authorized to sell such~~ may sell the portion of the works.

Section 487. That § 46A-9-71 be amended to read as follows:

46A-9-71. If, in order to borrow money from the federal government or from any of its agencies, or from the State of South Dakota, it ~~shall become~~ becomes necessary that the water user district mortgage or otherwise hypothecate any ~~or all~~ of its ~~said~~ property or assets to secure the payment of a loan ~~or loans~~ made to it by or from such ~~source or sources~~ a source, the district ~~is hereby authorized and empowered to~~ may mortgage or hypothecate ~~such~~ the property and assets for such purposes. Nothing in this section ~~contained shall prevent~~ prevents the district from assigning, pledging, or otherwise hypothecating its revenues, incomes, receipts, or profits to secure the payment of indebtedness to the federal government or any federal agency ~~thereof~~, or the State of South Dakota. ~~Provided, however, that~~ However, the State of South Dakota ~~shall~~ may never pledge its credit or funds, or any part ~~thereof~~ of its credit or funds, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under the provisions of this chapter~~; nor shall anything~~. Nothing in this chapter ~~be construed as authorizing~~ authorizes any agency of the State of South Dakota to make loans to any such district, unless ~~such~~ the agency is otherwise authorized by law to make such loans.

Section 488. That § 46A-9-73 be amended to read as follows:

46A-9-73. Any water user district organized under this chapter may be dissolved by authorization of a majority vote of the voters, qualified to vote for district directors, ~~voting thereon~~ at a special election called by the board of directors for that purpose~~, notice of which~~.

Notice of the election shall be mailed to each qualified voter at least twenty days ~~prior to~~ before the date of the election ~~and the procedure for which~~. The procedure for the election shall conform as nearly as may be to the procedure provided in §§ 46A-9-25 to 46A-9-28, inclusive, for the election of directors~~; provided, such district shall~~. However, the district may not at the time of ~~such~~ dissolution own property or rights or have outstanding any contract or contracts or obligations of any kind.

Section 489. That § 46A-9-74 be amended to read as follows:

46A-9-74. Dissolution of ~~such~~ the water user district shall be completed upon resolution of the board of directors canvassing the vote and declaring that a majority of the qualified voters voting ~~thereon~~ on the question have voted in favor of dissolution. A verified copy of ~~such~~ the resolution shall be filed in the office of the Department of ~~Water~~ Environment and Natural Resources and in the office of the county auditor of each county in which any portion of the district ~~shall lie~~ lies.

Section 490. That § 46A-9-75 be amended to read as follows:

46A-9-75. In case of such dissolution, the Department of Environment and Natural Resources shall cancel all applications for appropriation of water ~~shall be, by the Department of Water and Natural Resources of South Dakota, canceled~~, and all rights of the water user district therein and thereunder shall thereupon cease and determine.

Section 491. That § 46A-9-77 be amended to read as follows:

46A-9-77. ~~This chapter shall not be construed as repealing, limiting~~ Nothing in this chapter repeals, limits, or in any way ~~affecting~~ affects the provisions of chapters 46A-4 to 46A-7, inclusive, relating to the organization and operation of irrigation districts~~, or as limiting~~. Nothing in this chapter limits in any way the powers and functions of irrigation districts organized under ~~such law, or as repealing, limiting, or affecting~~ chapters 46A-4 to 46A-7, inclusive, and nothing in this chapter repeals, limits, or affects the provisions of any other laws of the State of South Dakota ~~otherwise~~ other than as specifically provided ~~herein, but shall be in addition to all other laws heretofore enacted~~ in this chapter.

Section 492. That § 46A-10A-2 be amended to read as follows:

46A-10A-2. The board of county commissioners of each county may appoint a commission of three or more members, the total membership of which shall always be an uneven number and at least one member of which shall be a member of the board, to be known as the county drainage commission. If a commission member resigns his or her position, is unable to fulfill the duties of ~~his~~ the position, or is removed for cause under the provisions of § 46A-10A-3, the board shall appoint a new member to the commission within thirty days. A commission may not conduct official business unless all memberships on the commission are filled and unless a majority of the members are present at a meeting of the commission. Administrative officials of the county may be appointed as ex officio members of the commission, but ~~shall~~ have no vote in commission matters.

Section 493. That § 46A-10A-30 be amended to read as follows:

46A-10A-30. Any board or commission under the provisions of this chapter and chapter 46A-11 may adopt a permit system for drainage. ~~Such~~ The permit system shall be prospective in nature. Permits shall be granted consistent with the principles outlined in § 46A-10A-20. The fee for a permit shall be established by the permitting authority, based on the administrative costs of regulating drainage activities, may not exceed one hundred dollars, and shall be paid only once. However, permitted drainage ~~which~~ that is enlarged, rerouted, or otherwise modified ~~shall require~~ requires a new permit. Any vested drainage right not recorded under the provisions of

§ 46A-10A-31 ~~shall require~~ requires a permit for its use if a permit system has been established in the county where it exists. Any person or ~~his~~ the person's contractor draining water without a permit, if a permit is required under the provisions of this section, is guilty of a Class 1 misdemeanor. In addition to or in lieu of any criminal penalty, a court may assess against any person violating the provisions of this section a civil penalty not to exceed one thousand dollars per each day of violation. A permit system is an official control.

Section 494. That § 46A-10A-32 be amended to read as follows:

46A-10A-32. After a vested drainage right is recorded with a county register of deeds under the provisions of § 46A-10A-31, the register of deeds shall transmit a copy of the registration to the Department of ~~Water~~ Environment and Natural Resources.

Section 495. That § 46A-10A-38 be amended to read as follows:

46A-10A-38. An individual landowner may petition a board or commission to change the drainage restrictions on ~~all or~~ any part of ~~his~~ the landowner's property. ~~Such~~ The petitioning landowner shall notify all directly affected adjoining landowners and all directly affected third parties holding drainage interests by registered or certified mail of the petitioned change at least one week ~~prior to~~ before any public hearing held ~~thereon~~ on the petition by the board or commission. Property shall be considered as adjoining even if it is separated from the property of the petitioner by a public road or highway.

Section 496. That § 46A-10A-56 be amended to read as follows:

46A-10A-56. All state public or school lands are subject to drainage laws. In any drainage proceeding affecting such lands, notices required by law to be given by publication and posting shall be served upon the commissioner of school and public lands at least thirty days ~~prior to~~ before the time of the hearing. Such service may be made upon the commissioner in person, by service at ~~his~~ the commissioner's office with the person in charge, or by registered or certified mail. If the land affected by the drainage proposal is not under ~~his control, he~~ the commissioner's control, the commissioner shall transmit a copy of the notice to the board or officer in charge of the land. The board or officer in charge of the land ~~or his authorized agent~~ may appear at any such hearing or proceeding on behalf of the state.

Section 497. That § 46A-10A-60 be amended to read as follows:

46A-10A-60. A petition may be presented at any regular or special meeting of the board, and, if proper in form, shall be ordered filed with the county auditor. ~~It is the duty of the board to~~ The board shall act within thirty days on all drainage project petitions. Upon receiving a petition, the county auditor shall transmit a copy to the Department of ~~Water~~ Environment and Natural Resources.

Section 498. That § 46A-10A-61 be amended to read as follows:

46A-10A-61. If the board determines it is necessary, it shall contract for a survey of the proposed drainage to be made by an engineer selected by the board. The survey and subsequent report shall show the starting point, the route, the terminus of any proposed ditch or drain or other improvement, and the course and length of any drain through each tract of land, together with the number of acres from each tract required for construction of improvements. The survey and report shall show the elevation of all lakes, ponds, and sloughs or depressions in the project and the boundary of the proposed project, to include all land that will be benefited by the proposed improvements. The survey and report shall include the approximate location of watersheds within the district, a description of each tract of land ~~therein~~ within the district, and the names of the owners and shall identify that tract of land most likely to receive average benefit from the project. The survey and report shall estimate the probable cost and shall include other

facts and recommendations the engineer deems material so the board may determine the feasibility of the project. The survey may extend to lands other than those affected by the proposed project to determine the best practical method of draining the entire area under study. For the purpose of inspection or surveys, board members, engineers, or their employees may enter upon any land traversed by the proposed project that, in their judgment, is likely to be affected. The county auditor shall furnish the Department of ~~Water~~ Environment and Natural Resources a copy of the engineer's report and all maps and plans prepared by the engineer.

Section 499. That § 46A-10A-64 be amended to read as follows:

46A-10A-64. If so requested, the Department of ~~Water~~ Environment and Natural Resources may render such assistance and advice to the board in regard to the project as the assigned duties of the ~~Department of Water and Natural Resources~~ department will permit. The ~~Department of Water and Natural Resources~~ department shall be reimbursed by the board for any expenses incident ~~thereto~~ to the advice and assistance.

Section 500. That § 46A-10A-70 be amended to read as follows:

46A-10A-70. Subject to any official controls pursuant to this chapter and chapter 46A-11, owners of land may drain the land in the general course of natural drainage by constructing open or covered drains and discharging the water into any natural watercourse, into any established watercourse, or into any natural depression whereby the water will be carried into a natural watercourse, into an established watercourse, or into a drain on a public highway, conditioned on consent of the board having supervision of the highway. If such drainage is wholly upon an owner's land, ~~he~~ the owner is not liable in damages to any person. Nothing in this section affects the rights or liabilities of landowners in respect to running waters or streams.

Section 501. That § 46A-10A-97 be amended to read as follows:

46A-10A-97. If, on appeal, the court rules in favor of a board decision regarding a conflict between the appellant landowner and the board, the appellant landowner is liable for all costs associated with the appeal. If the contention of an appellant landowner is substantially sustained, costs associated with the appeal shall be included in the total costs of the project, but the appellant's costs ~~prior to~~ before appeal shall be borne by ~~him~~ the appellant.

Section 502. That § 46A-10B-37 be amended to read as follows:

46A-10B-37. Each person who signs the petition for dissolution shall add to ~~his~~ the person's signature, in ~~his~~ the person's own handwriting, ~~his~~ the person's place of residence, a legal description of ~~his~~ the person's real property within the district, and the date of signing. The petition may contain more than one page, each page shall have identical headings, and any number of identical petition forms may be circulated and each be a part of the petition. Every page of the petition containing signatures shall have upon it and below the signatures an affidavit by the circulator in substantially the following form:

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF _____)

I, the undersigned _____, being first duly sworn, depose and say, that I am the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on ~~said~~ the petition sheet personally signed ~~said~~ the petition in my presence; that I believe that each of ~~said~~ the signers is a resident at the address written opposite ~~his~~ the signer's

name; and that I stated to every petitioner before ~~he affixed his~~ the person affixed his or her signature the legal effect and nature of ~~said~~ the petition.

_____

Circulator

Subscribed and sworn to before me this _____ day of _____, ~~19~~20____.

_____

Notary Public

Section 503. That § 46A-11-16 be amended to read as follows:

46A-11-16. Any assessment against lands described in § 46A-10A-56 for construction of a drainage project shall be certified by the county auditor of the county in which the project is located to the board or officer having charge of the lands. If sufficient funds are under control of the officer or board from which payment of the assessment can be made, it shall be made. If sufficient funds are not available, the officer or board shall approve the assessment and certify it to the state auditor, who shall pay the assessment from money available for that purpose. If no money is available, ~~he~~ the state auditor shall request the Legislature to provide an appropriation for payment of the assessment. The payment shall be made to the treasurer of the county in which the lands are located. No penalty other than interest may attach to any such land after an assessment becomes delinquent and ~~such~~ the land may not be sold to enforce delinquent assessments.

Section 504. That § 46A-11-20 be amended to read as follows:

46A-11-20. Any assessment made by a board upon land in another county shall be paid to the county treasurer of the county having charge of the project. If ~~such~~ the assessment becomes delinquent, the treasurer of the county having charge of the project shall certify the amount delinquent on any separate tract of land outside of ~~his~~ the county to the treasurer of the county in which the land is situated. That treasurer shall collect the assessment as provided by this chapter and shall remit ~~such~~ the collections to the treasurer of the county having charge of the project within thirty days.

Section 505. That § 46A-13-1 be amended to read as follows:

46A-13-1. ~~Upon filing with the clerk of the circuit court for any county in this state, bordering upon any body of water or stream forming the boundary line between this state and any other state or states, or having territory included in a natural drainage basin along or extending across the boundary line of the state, a petition signed by not less than fifty South Dakota resident owners of at least ten acres of land each, as shown by the records in the offices of the register of deeds and clerk of courts of the county wherein such land is situated; and if such land is sold under a contract for deed, which is of record in the office of the register of deeds of such county, both the landowner and his individual purchaser of such land, as named in such contract for deed, shall be treated as such owners of the territory described in such petition, or by the county commissioners of any county within or partly within such territory, petitioning for the formation of a drainage district of the territory adjoining such boundary water, or included in a natural drainage basin along or extending across the boundary line of the state, the court shall, within ten days thereafter, by order, fix a time and place within the territory named therein for a hearing upon such petition, notice of which shall be given by publication in at least one legal weekly newspaper published in each county affected by such petition, for two successive weeks, the last publication of which shall be at least ten days prior to the day set for hearing.~~ At least fifty affected South Dakota resident landowners, or the county commissioners of any affected

county, may file a petition with the clerk of the circuit court for the affected county requesting the formation of a drainage district as provided in this chapter. The provisions of this section apply to any land bordering upon any body of water or stream forming the boundary line between this state and any other state, or any land included in a natural drainage basin along or extending across the boundary line of the state. For purposes of this section, an affected county is a county that lies within or partly within such territory, and an affected landowner is a South Dakota resident landowner who owns at least ten acres of such land as shown by the records of the register of deeds and clerk of courts of the county in which the land is situated. If the land is sold under a contract for deed, which is of record in the office of the register of deeds, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as owners of the territory described in the petition.

Within ten days after the petition is filed, the court shall, by order, fix a time and place within the territory named in the petition for a hearing upon the petition. Notice of the hearing shall be published in at least one legal weekly newspaper published in each affected county, for two successive weeks, the last publication to be at least ten days before the day set for hearing.

Section 506. That § 46A-13-4 be amended to read as follows:

46A-13-4. After the formation of the drainage district as prescribed in §§ 46A-13-1 to 46A-13-3, inclusive, a governing commission of three members shall be chosen ~~in the following manner:~~ as provided in this section. If the territory ~~comprised within such district shall be~~ included within the district is within a single county, ~~such~~ the governing board shall be chosen by the county commissioners of ~~such~~ the county~~; if~~. If the territory included within ~~such district shall lie~~ the district lies within two counties, ~~such~~ the governing board shall be chosen by the joint meeting and action of the boards of county commissioners of ~~such counties; if~~ the counties. If the territory included within ~~such district shall lie~~ the district lies within three or more counties, ~~such~~ the governing board shall be chosen by the ~~chairmen~~ chairs of the boards of county commissioners of ~~such~~ the counties meeting and acting jointly. ~~It shall be the duty of the board or~~ The boards of county commissioners, or the ~~chairmen of such~~ chair of the boards, as the case may be, shall promptly ~~to~~ meet and appoint the governing board of ~~such~~ the district.

Section 507. That § 46A-13-7 be amended to read as follows:

46A-13-7. ~~Such~~ The commissioners shall, within ten days after their appointment, meet at some convenient place within the drainage district and elect one of their members as ~~chairman~~ chair. They shall appoint the county auditor of one of the counties having territory included within ~~such~~ the district clerk of ~~such~~ the commission, whose duties ~~as such clerk shall be~~ are to keep and preserve the records of ~~such~~ the commission in his or her office and to act generally as the clerical officer of ~~such~~ the commission~~, and thereafter~~. Thereafter, the office of ~~such~~ the county auditor ~~shall be~~ is the office of ~~such~~ the drainage commission. The board of county commissioners of ~~such~~ the county shall provide ~~such~~ additional help and facilities ~~as may be~~ necessary for the auditor to act as clerk of ~~such~~ the commission~~, and the cost thereof~~. The cost of the additional help and facilities shall be ascertained by the commission, and included as part of the cost of the drainage proceeding conducted by ~~such~~ the commission, and shall be collected by the commission and repaid to ~~such~~ the county~~; and the~~. The filing of any petition, report, or document with ~~such~~ the county auditor for all purposes of this chapter ~~shall be~~ is deemed a filing with ~~such~~ the commission.

Section 508. That § 46A-13-9 be amended to read as follows:

46A-13-9. ~~Whenever it shall become necessary or expedient in order to facilitate drainage into or from any lake, pond, or other body of water, or any river, stream, or watercourse, which forms to any extent a boundary line between this state and any other state, or when it shall become necessary in order to control to any extent flood waters into, through, or from any such lake, pond, body of water, river, stream, or watercourse, or in the interests of flood control to~~

~~raise, lower, or otherwise affect the stage or depth of water therein, or whenever it shall be necessary or expedient to drain land included within a natural drainage basin lying along or extending across the boundary line of the state, by joint action with the authorities of any adjoining state, which drainage or flood control shall cause benefits or damages to, or otherwise affect property in this state and such other state, the commissioners of the drainage district, including the territory abutting upon such boundary waters, shall have authority to join with and enter into all necessary contracts or arrangements with the court, board, or tribunal of such adjoining state, having power or authority relative to drainage matters in such state, including the right to raise, lower, or fix the stage of water in such boundary waters, and also with the United States government by its authorized authority for the joint establishment and construction of all necessary ditches, drains, canals, dikes, levees, dams, locks, spillways, or other structures necessary to provide a proper watercourse, and provide for the raising or lowering and establishment of the stage of water in any of such lakes, ponds, bodies of water, rivers, streams, or watercourses, and the deepening, widening, and straightening of the channels of any river, stream, or watercourse connected therewith, or for otherwise controlling by dikes or levees the flow of water in such watercourse in such manner as may be found necessary to effectuate the provisions of this chapter and for securing and providing the necessary drainage facilities and control of flood waters into, through, and from such boundary waters and the rivers, streams, or ditches connected therewith, and for properly draining any natural drainage basin lying along or extending across the boundary line of the state. In order to carry out such contracts and arrangements such commissioners shall have the authority to determine the damages and benefits which may result to property located within their drainage district, to provide funds for the carrying out of such contracts and arrangements by special assessment upon the property benefited according to the benefits received, as such authority is more specifically provided for in this chapter.~~ The commissioners of a drainage district formed pursuant to this chapter may, if necessary or expedient to carry out the purposes of this chapter, enter into a contract or agreement with the court, board, or tribunal of an adjoining state having authority relative to drainage matters in that state, including the right to raise, lower, or fix the stage of water in boundary waters, or with the United States government under its authorized authority. The contract or agreement shall be for joint action with the adjoining state for drainage or flood control measures that cause benefits or damages to, or otherwise affect, property in this state and the adjoining state. The provisions of this section apply to any lake, pond, or other body of water, or any river, stream, or watercourse that forms to any extent a boundary line between this state and any other state, and to any land included within a natural drainage basin lying along or extending across the boundary line of the state. The contract or agreement may be for the following purposes:

(1) To facilitate drainage into or from, or to control to any extent flood waters into, through, or from any such lake, pond, body of water, river, stream, or watercourse, or into or from any such land;

(2) For purposes of flood control, to raise, lower, or otherwise affect the stage or depth of water;

(3) For the joint establishment and construction of all necessary ditches, drains, canals, dikes, levees, dams, locks, spillways, or other structures necessary to provide a proper watercourse;

(4) For deepening, widening, and straightening of the channels of any river, stream, or watercourse;

(5) For controlling by dikes or levees the flow of water in a manner necessary to effectuate the provisions of this chapter; and

(6) For securing and providing the necessary drainage facilities and control of flood waters into, through, and from the boundary waters and the rivers, streams, or ditches

connected with the boundary waters and for properly draining any natural drainage basin.

In order to implement the contract or agreement the commissioners may determine the damages and benefits that may result to property located within the drainage district, and may provide funds to implement the contract or agreement by special assessment upon the property benefited according to the benefits received, as provided in this chapter.

Section 509. That § 46A-13-10 be amended to read as follows:

46A-13-10. ~~Upon the filing with such interstate drainage district commission of a petition signed and verified by not less than twenty-five South Dakota resident owners of not less than ten acres of land each within such district, as shown by the records in the offices of the register of deeds and the clerk of courts of the county wherein such land is situated; and if such land is sold under contract for deed, which is of record in the office of the register of deeds of such county, both the landowner and his individual purchaser of such land, as named in such contract for deed, shall be treated as such owners, or by the governing authorities of any county or municipality likely to be affected by a proposed improvement, setting forth the necessity for such improvement to be constructed by joint arrangement and cooperation with the authorities of another state or other states, giving a general description thereof, and if a ditch or watercourse is involved, describing the starting point, the general route, and terminus together with a description of the territory likely to be affected; and if such improvement involves the raising, or lowering, or impounding, of water in any body of water or stream, there shall be included in such petition a description of such body of water or watercourse and the proposed changes to be made, setting forth the object of such changes and giving a description of the land likely to be affected thereby, and asking therein for the construction of any of the drainage or flood control improvements named and referred to in this chapter, such commissions shall have jurisdiction of all matters referred to in such petition in the several counties named within the limits of such district and shall have full authority to make such joint contracts or arrangements as may be deemed necessary or proper with the court, tribunal, or other body in such adjoining state or states, having authority therein relative to drainage and control of flood waters, for the appointment of one or more engineers to secure a joint survey of the territory affected by the proposed improvement, with a view to the adoption of a joint plan for cooperation in supplying the necessary and proper drainage of lands affected by such improvement, and impounding and controlling flood waters therein and the outlet therefrom. In the selection of such engineers preference shall be given to state engineers or engineers in charge of state drainage in the respective states.~~ At least twenty-five South Dakota resident owners of not less than ten acres of land each within an interstate drainage district formed pursuant to this chapter, or the governing body of any county or municipality located within the district that is likely to be affected by a proposed improvement, may file a petition with the district commission setting forth the necessity for an improvement to be constructed by joint arrangement and cooperation with the authorities of another state. The petition shall include a general description of the proposed improvement. If the proposed improvement involves a ditch or watercourse, the petition shall describe the starting point, the general route, and terminus, together with a description of the territory likely to be affected. If the improvement involves the raising, lowering, or impounding of water in any body of water or stream, the petition shall include a description of the body of water or watercourse and the proposed changes to be made, and shall state the purpose for the changes and a description of the land likely to be affected by the changes. The petition shall request the construction of any of the drainage or flood control improvements referred to in this chapter.

The district commission has jurisdiction over all matters referred to in the petition in the counties named within the limits of the district. In addition, the commission may make joint contracts or agreements with the court, tribunal, or other body in the adjoining state, having authority relative to drainage and control of flood waters, for the appointment of one or more engineers to secure a joint survey of the territory affected by the proposed improvement. The

joint survey shall be for purposes of considering the adoption of a joint plan for cooperation in supplying the necessary drainage of lands affected by the improvement, and impounding and controlling flood waters in and the outlet from the affected lands. In selecting the engineers, preference shall be given to state engineers or engineers in charge of state drainage in the respective states.

For purposes of this section, status as a resident owner of land within an interstate drainage district is as shown by the records in the offices of the register of deeds and the clerk of courts of the county in which the land is situated. If the land is sold under contract for deed, which is of record in the office of the register of deeds of the county, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as owners.

Section 510. That § 46A-13-12 be amended to read as follows:

46A-13-12. ~~Such~~ The interstate drainage district commission and the authorities representing drainage in ~~such~~ the adjoining state ~~shall have authority to and~~ may make all necessary orders and regulations relative to the making of ~~such~~ the survey and report of the engineers appointed under § 46A-13-10 and may specify all information required in such report and the time within which the ~~same~~ report shall be completed and filed with ~~such~~ the commission and with the authorities in ~~such~~ the adjoining state.

Section 511. That § 46A-13-14 be amended to read as follows:

46A-13-14. Upon the filing of the report of the engineers appointed to make ~~such~~ the joint survey, which in all instances shall be ~~required to be~~ made at the earliest possible date, ~~such~~ the interstate drainage district commission, together with the representatives of the adjoining state or states, shall ~~proceed to~~ consider ~~such~~ the report with the view of providing a joint plan for the construction of the proposed improvement. After full consideration of ~~such~~ the report and all information obtainable about the matters included ~~therein~~ in the report and the proposed improvement, ~~such commission shall have authority to~~ the commission may arrange for a joint plan with the authorities or representatives of the other state or states, and adopt ~~such~~ the joint plan for the construction of ~~such~~ the proposed improvement, ~~provided such commission shall determine that such~~ if the commission determines that the plan is practicable and for the best interests of the district. The order of ~~such~~ the commission determining ~~such~~ the joint plan, together with a copy of ~~such~~ the plan, shall be made a record of ~~such~~ the commission.

Section 512. That § 46A-13-15 be amended to read as follows:

46A-13-15. Upon the adoption of ~~such~~ the joint plan, ~~such~~ the interstate drainage district commission, together with the representatives of ~~such~~ any adjoining state ~~or states, shall have full authority to~~, may appoint a commission of viewers consisting of three disinterested persons, at least one of whom shall be a citizen of this state, who ~~shall be authorized in connection with such engineers to~~ may examine in detail the full improvement proposed and all property affected ~~thereby, and who shall make such~~ by the proposed improvement. The commission of viewers shall report of ~~their~~ its findings, as the commission of ~~such~~ the drainage district and the representatives of ~~such~~ any adjoining state ~~or states shall~~ require, relative to all benefits and damages that will result from ~~such~~ the improvement~~, including~~. The report shall address benefits and damages from the improvement affecting highways, railway companies, and municipal corporations, and shall include a description of each piece of property and the name of each company or corporation affected ~~thereby, and which~~ by the improvement. The report shall give the amounts of benefits and damages that may result to ~~such~~ the property or corporations from the construction of ~~such~~ the improvement, together with the estimated cost of ~~such~~ the improvement including all damages and expenses connected ~~therewith~~ with the improvement, and the aggregate amount of benefits that will result ~~therefrom~~ from the improvement.

Section 513. That § 46A-13-17 be amended to read as follows:

46A-13-17. Upon the filing of a copy of the viewers' report with the commission of ~~such~~ the drainage district, ~~such~~ the commission and the proper representatives of ~~such~~ any adjoining state ~~or states~~ shall agree upon the proportionate amount of the cost of ~~such~~ the improvement that shall be borne by the property located within the respective states, which shall be according to the benefits received. For the purpose of arriving at ~~such determination such~~ the determination of costs and benefits, the commission, with or without the representatives of ~~the~~ any adjoining state ~~or states~~, may hold ~~such~~ hearings ~~as it deems best, and from~~. From all the information obtained from the report of the viewers and from ~~such~~ the hearings, the commission shall arrive at and agree with the representatives of ~~such~~ any adjoining state ~~or states~~ upon the proportionate amount of the cost of the improvement ~~which shall~~ to be borne by the property located within ~~such~~ the drainage district, and shall enter ~~such~~ the determination of record.

Section 514. That § 46A-13-23 be amended to read as follows:

46A-13-23. ~~When~~ If the drainage commission ~~shall have~~ has fully heard and considered ~~such~~ the petition and the joint plan as adopted or modified ~~and~~, the report of the engineers and viewers, and the determination as to the proportion of cost to be borne by this state, and if ~~it~~ the commission finds the proposed drainage improvement not conducive to the public health, convenience, or welfare, or not needed or practicable for the purpose of draining agricultural lands, or that the proportion of the cost ~~thereof~~ of the proposed improvement to be borne by this state will be greater than the benefits conferred, ~~it~~ the commission shall deny the petition for ~~such~~ the drainage improvement~~, and the~~. The petitioners ~~shall be~~ are jointly and severally liable for the cost and expenses of the proceeding thus far made and incurred by the drainage commission, and the ~~same to~~ costs and expenses may be recovered in a civil action.

Section 515. That § 46A-13-32 be amended to read as follows:

46A-13-32. ~~Upon~~ If the funds necessary to complete ~~such~~ the improvement ~~being~~ are provided by the proper authorities of each affected state ~~affected~~, the commission in this state ~~shall have authority to~~ may join with the court or tribunal of ~~such other state or states affected~~ any other affected state and, by acting jointly or by a commission appointed by ~~them~~ the affected states for that purpose, ~~to~~ construct ~~such~~ the drainage improvement~~, and to~~. The affected states or the commission may make all necessary arrangements for the letting of a contract ~~or contracts~~ for the construction of the ~~same, and to~~ drainage improvement and may advertise for bids for ~~such~~ the construction in accordance with the plans and specifications which shall be reported and provided by the engineers appointed to make ~~such joint survey, such bids to~~ the joint survey. The bids shall be received and opened at ~~such~~ a time and place ~~as shall be~~ designated in ~~such~~ the notice, and the contracts ~~to~~ shall be let in ~~such~~ a manner ~~as shall be~~ designated in ~~such~~ the notice. All or any portion of ~~such~~ the improvement may be contracted for separately, and the contract shall contain such conditions and provisions as the respective authorities acting jointly may require~~, and all~~. All provisions for the completion ~~thereof~~ of the improvement, the supervision of the work, and the payment ~~therefor~~ for the work may be provided for by joint arrangement between the representatives of the several states. The authorities of each state, however, ~~shall be~~ are responsible only for the sums arranged to be furnished by assessment or otherwise within the limits of ~~such~~ the state.

Section 516. That § 46A-13-33 be amended to read as follows:

46A-13-33. The maintenance and repair of any drainage improvement constructed by joint arrangement with the authorities of any other state ~~or states~~, under the provisions of this chapter, may be provided for by joint arrangement with ~~such other state or states~~ the other state in the same manner as ~~such~~ the drainage improvement was originally established and constructed~~, and all the provisions~~. Any provision of this chapter relating to the construction of a drainage improvement by joint action ~~shall apply~~ applies to the maintenance and repair of ~~such~~ the drainage improvement ~~in case~~ if action is taken ~~therefor~~ for maintenance and repair under the provisions of this chapter. The drainage commission ~~shall have authority to~~ may make

assessments upon the property benefited, according to the benefit received, for the proportionate share of the maintenance and repair of any drainage improvement ~~when the same~~ the maintenance and repair is arranged for under the provisions of this chapter.

Section 517. That § 46A-13-34 be amended to read as follows:

46A-13-34. In the absence of such an arrangement for joint action, the repair and improvement of any such drainage shall be treated as a drainage improvement within the state, and its repair and maintenance within the limits of this state shall be provided for ~~under and~~ in accordance with the drainage laws of this state~~, but such~~. The repair and maintenance shall be made by the drainage commission of ~~such~~ the drainage district, and ~~such~~ the commission for the purpose of making ~~such~~ the repair and maintenance shall exercise all the powers conferred upon it by this chapter in drainage matters and ~~shall have the authority to~~ may make assessments for the repair and maintenance of ~~such~~ the improvement within this state on the property benefited ~~thereby as provided herein~~ by the improvement as provided in this chapter to raise money for the construction of ~~such~~ the improvement.

Section 518. That § 46A-13-35 be amended to read as follows:

46A-13-35. Any defect or irregularity not affecting the substantial rights of the parties interested, occurring in any proceeding under this chapter, shall be disregarded in any action or proceeding seeking to avoid any assessment or to cancel, annul, or declare void any proceeding ~~had hereunder. In case~~ held under this chapter. If the defect is substantial, the court shall of its own motion determine the rights of the parties, validate the proceeding, and assess the costs as justice may require, if ~~such court shall find~~ the court finds cause for ~~such~~ the validation or ~~such~~ that the action should have been taken in the first instance and all parties interested are before the court~~; and if~~. If for any reason an assessment is held void or set aside, the court shall immediately make an order directing the reassessment of a proper sum, with interest, against all property on which ~~such~~ the assessment is held invalid ~~and upon filing such~~. Upon filing the order with the drainage commission, reassessment shall be made and enforced in accordance with ~~such~~ the order.

Section 519. That § 46A-13-36 be amended to read as follows:

46A-13-36. An appeal shall lie from any final order or determination of the drainage commission fixing damages occasioned by the making of ~~such~~ the drainage improvement, or fixing the proportion of assessments of benefits, to the circuit court for the county in which the property affected is located, by anyone ~~deeming himself~~ aggrieved by any such order or determination. ~~Such~~ The appeal may be taken in the manner and within the time provided by law for appeals from the action of boards of county commissioners in drainage matters~~; the~~. The taking of such an appeal ~~shall have~~ has the same effect and ~~be~~ is determined by the court in like manner as appeals from boards of county commissioners in drainage matters~~;~~, but ~~shall~~ does not stay the drainage proceedings~~, and no appeal shall~~. No appeal may be allowed from any action of the drainage commission except as ~~herein~~ provided in this section.

Section 520. That § 46A-14-3 be amended to read as follows:

46A-14-3. Conservation districts ~~are hereby vested with jurisdiction, power, and authority~~, upon filing of an initiating petition ~~to~~, may hold hearings and put to a vote the creation of a district and, if favorable, ~~to~~ establish a watershed district and define and fix the boundaries ~~thereof, which~~ of the watershed district. The boundaries may be entirely within or partly within a county or conservation district~~;~~ and may include the whole or any part of one or more counties or conservation districts~~, and to~~. The conservation district may appoint the first board of managers ~~thereof~~ of the watershed district, as provided in this chapter. If the proposed district embraces land in more than one conservation district, the supervisors of all such conservation districts shall act jointly as a board of supervisors with respect to all matters concerning

watershed districts which are ~~herein~~ specified in this chapter for a single conservation district. If no conservation district exists ~~which~~ that embraces lands proposed for inclusion in a proposed watershed district, the Board of Water and Natural Resources shall function in lieu ~~thereof~~ of a conservation district.

Section 521. That § 46A-14-6 be amended to read as follows:

46A-14-6. The land ownerships embraced within a watershed district shall be contiguous ~~and when feasible it~~. If feasible, the district shall include all territory within the affected watershed or drainage basin, or all territory from which the water from natural or artificial channels finds its outlet through a main stream or channel~~, provided, that~~. However, lands, the ownership of which is not a matter of record in the office of the register of deeds of the county in which ~~such~~ the lands are situated, ~~or lands, which~~ and lands that are not subject to payment of taxes or special assessments, may be excluded from a proposed or existing watershed district.

Section 522. That § 46A-14-30 be amended to read as follows:

46A-14-30. After creation of a watershed district, minor adjustments to the boundaries of the district may be made by the managers, without referendum, ~~provided, that such~~ if the adjustments do not delete lands from the district that have been subject to a special assessment during the budget year or the current year~~, and provided further, that such~~ and if the adjustments do not include additional land in the district without the written approval of the landowner of ~~such~~ the land.

Section 523. That § 46A-14-31 be amended to read as follows:

46A-14-31. A watershed district may annex additional areas, ~~provided that such~~ if the additional areas constitute a watershed as specified for a watershed district in § 46A-14-6. ~~Such~~ The annexation shall be accomplished by either:

(1) An initiating petition ~~therefor~~ for the annexation by the landowners in the new area and in the existing watershed district, similar to the initiating petition specified in §§ 46A-14-5 and 46A-14-8; or

(2) An initiating petition by the landowners in the new area and a resolution by the managers of the watershed district.

Upon receipt of the ~~initiating petitions or~~ initiating petition and the resolution by the managers, the appropriate conservation district supervisors shall proceed with the annexation in the same manner as prescribed for creation of a new watershed district.

Section 524. That § 46A-14-39 be amended to read as follows:

46A-14-39. Any vacancy in an unexpired term shall be filled by appointment within thirty days of the vacancy by the remaining managers. Any vacancy in an expired term for which no candidate's application has been filed pursuant to § 46A-14-38 shall be filled by appointment within thirty days of the election by the remaining managers. An appointed manager shall hold office for the remainder of the term for which he or she has been appointed.

Section 525. That § 46A-14-45 be amended to read as follows:

46A-14-45. Vested water rights, as defined by §§ 46-1-9 and 46-1-10, ~~shall be~~ are excluded from the operation of this chapter~~, no watershed district or the members thereof shall~~. No watershed district and no members of the watershed district have any jurisdictional authority or control over waters subject to such vested rights.

Section 526. That § 46A-14-49 be amended to read as follows:

46A-14-49. The Board of Water and Natural Resources is hereby designated the state agency to act on behalf of the State of South Dakota with respect to watershed projects in order to fulfill the provisions of the Federal Watershed and Flood Prevention Act (P. L. 566, 83rd Congress), as amended to January 1, 2011.

Section 527. That § 46A-14-55 be amended to read as follows:

46A-14-55. No construction or related commitments requiring district payments ~~shall~~ may be entered into, no taxes or assessments levied, no bonds issued, or other financing arrangement made except as provided in § 46A-14-34, unless ~~and until~~ the managers ~~shall~~ have initiated adequate hearings to clearly demonstrate the works proposed for construction and the benefits to accrue ~~therefrom, shall~~ from the proposed works and have conducted a referendum in accordance with this chapter ~~and a favorable vote, consisting of~~ in which at least sixty percent of the landowners voting ~~shall have specified approval of such~~ in the referendum vote in favor of the tax levy, bond issue, or other permissible financing arrangement.

Section 528. That § 46A-14-60 be amended to read as follows:

46A-14-60. When adopting a financing plan or levying taxes to cover the estimated costs of district business, as provided in §§ 46A-14-51 and 46A-14-54 to 46A-14-59, inclusive, no annual general tax levy against ~~landowner's~~ taxable land and buildings within the district ~~shall~~ may exceed the amount that can be collected by a one-mill levy. This limitation ~~shall~~ does not apply to special assessments nor to assessments required to meet payments, including interest, on district bonds.

Section 529. That § 46A-14-63 be amended to read as follows:

46A-14-63. Following a favorable vote by the voters as provided in § 46A-14-55 and in anticipation of tax or special assessment collections, the managers may issue no-fund warrants to pay district obligations~~, provided, that~~. However, the outstanding amounts of ~~such~~ the no-fund warrants ~~shall~~ may not exceed the product of two mills times the assessed valuation of the landowner's taxable land and buildings within the district.

Section 530. That § 46A-14-64 be amended to read as follows:

46A-14-64. If a bond issue or other authorized long-term financing arrangement is authorized by the voters of the district, the managers shall immediately cause a written notice to be mailed to the owner or owners of each tract of land assessed of the amount of ~~said assessment, which~~ the assessment. The notice shall state that if ~~said~~ the amount is not paid in full within thirty days after the date of the notice, bonds will be issued or payment contracts negotiated and that an assessment will be levied annually against the tract of ground for a period of not to exceed fifty years in an amount sufficient to pay ~~said~~ the total assessment plus the interest due on ~~said~~ the bonds. No suit to set aside ~~said~~ the assessment ~~shall~~ may be brought after the expiration of thirty days from the date of ~~said~~ the notice. The amount levied against each tract of land to pay for the bonds, or contract commitments, falling due each year and the interest ~~thereon~~ on the bonds or contract commitments, shall be levied, certified to the proper county auditor, and collected the same as other taxes.

Section 531. That § 46A-14-69 be amended to read as follows:

46A-14-69. Tax or special assessment levies in amount sufficient to cover the budgeted operation and maintenance expense shall be included by the managers in their tax assessment list as provided in § 46A-14-58, ~~provided that such~~ if the levies do not exceed the limitations

specified in this chapter or do not exceed the amounts of taxes or special assessments voted favorably by the voters of the district.

Section 532. That § 46A-14-70 be amended to read as follows:

46A-14-70. On or before the first day of August in each year, the managers shall certify to the county auditor of the county in which the land is located, all taxes and assessments against the landowners' lands and buildings in the district. Extension of the ~~same~~ taxes and assessments upon the tax and assessment lists shall be made as specified in § 46A-14-58 ~~and the same~~. The taxes and assessments shall be collected in the same manner as other county taxes and assessments, ~~these funds to~~ and shall be deposited with the secretary-treasurer of the watershed district, who shall place them in the depository designated by the managers ~~and~~. The taxes and assessments shall be disbursed according to § 46A-14-75.

Section 533. That § 46A-14-73 be amended to read as follows:

46A-14-73. The managers ~~shall have the right and authority to~~ may enter into contracts or other arrangements with any agency of the United States government ~~or any department thereof,~~; with persons, railroads, or other ~~corporation,~~ corporations; with public and municipal corporations and the state government of this state~~,~~; or with drainage, soil and water conservation, conservancy, sewer, park, sanitary, reclamation, public power, public power and irrigation, watershed, or other improvement districts, in this or other states, for cooperation, or assistance in constructing, maintaining, using, and operating the works of the districts, the waters ~~thereof~~ of the districts, or in minimizing or preventing damage to the properties, works, and improvements of the districts from soil erosion; or for making surveys and investigations or reports ~~thereon, provided that~~ on the surveys and investigations. However no contract or agreement ~~which~~ that will require the levy of increased taxes or assessments ~~shall~~ may be signed by the managers without submitting the increased taxes or assessments to the voters of the watershed district for approval.

Section 534. That § 46A-14-75 be amended to read as follows:

46A-14-75. All claims against watershed districts shall be paid by warrants or orders drawn on the district secretary-treasurer, signed by the ~~chairman~~ chair of the district and countersigned by its secretary-treasurer. When warrants or orders have been issued and delivered, they may be presented to the treasurer of the watershed district. If necessary, ~~he~~ the treasurer shall endorse them "not paid for want of funds." These orders or warrants shall be registered by the secretary-treasurer in order of presentation~~,~~ and shall draw interest per year at a rate negotiated by the parties from the date of registration. They shall be registered by the district secretary-treasurer in anticipated receipt of watershed district taxes or assessments due the district.

Section 535. That § 46A-15-2 be amended to read as follows:

46A-15-2. The Governor ~~is authorized to~~ may use ~~such funds as have heretofore or may hereafter be~~ funds appropriated by the Legislature or which may be received from any other source for such specific purpose in carrying out the provisions and intent of § 46A-15-1. ~~Such~~ The funds shall be disbursed by warrant of the state auditor upon the state treasurer upon vouchers approved by the Governor.

Section 536. That § 46A-15-4 be amended to read as follows:

46A-15-4. The county commissioners of ~~the several counties of the State of South Dakota~~ any county bordering the Missouri River may, upon an affirmative vote of the qualified voters of ~~said~~ the county, expend money for the purpose of improving navigation on the ~~said~~ river where ~~said~~ the river borders ~~on any of said counties, the funds to~~ the county. The funds shall be

expended in conjunction with appropriations made by the United States government in proportionate amounts as may be agreed upon by the county ~~boards~~ board of commissioners and the chief of engineers of the United States Army for the purpose of aiding in the securing of a permanent navigable channel in ~~said~~ the river~~; the said funds to be expended by the chief of engineers of the United States Army~~. The funds shall be expended in accordance with plans conforming to the character and approved methods of improvement of ~~said~~ the river as ~~now or may hereafter be~~ determined ~~upon~~ by the chief of engineers of the United States Army.

The county commissioners ~~as above designated of the several counties hereinabove referred to are hereby granted the power to~~ may appropriate moneys out of the general funds of the county available for county purposes to meet the expense of any such improvements.

Section 537. That § 46A-16-4 be amended to read as follows:

46A-16-4. ~~Said~~ The South Dakota-Minnesota Boundary Waters Commission ~~shall have power and authority to~~ may investigate and determine the most desirable and beneficial levels of boundary waters artificially controlled and ~~to~~ may prescribe a plan for controlling and regulating ~~said~~ the water levels.

Section 538. That § 46A-16-5 be amended to read as follows:

46A-16-5. ~~Said~~ The South Dakota-Minnesota Boundary Waters Commission s~~hall have power and authority to~~ may hold hearings and take ~~such~~ evidence ~~as may be~~ that is presented, either after complaint or upon its own initiative, as to the desirability of any water level and plan of regulation and ~~to~~ may make ~~such~~ orders concerning the ~~same~~ water level and plan of regulation as in the opinion of the commission are for the best interests of the public.

Section 539. That § 46A-16-7 be amended to read as follows:

46A-16-7. The South Dakota-Minnesota Boundary Waters Commission ~~shall have power and authority to make such orders as may be~~ may make orders necessary to further the purposes of this chapter.

Section 540. That § 46A-16-11 be amended to read as follows:

46A-16-11. The South Dakota-Minnesota Boundary Waters Commission ~~shall~~ may not incur any obligation for expenses except after an adequate legislative appropriation.

Section 541. That § 46A-16-12 be amended to read as follows:

46A-16-12. The ~~State~~ Game, Fish and Parks Commission ~~of the State of South Dakota is hereby authorized and empowered to~~ may participate with the ~~Department of Conservation of the~~ state of Minnesota in the construction of ~~such~~ artificial controls ~~as may be~~ deemed necessary to maintain the most desirable and beneficial levels of boundary waters as determined by the South Dakota-Minnesota Boundary Waters Commission~~, and upon such determination, said~~. The Game, Fish and Parks Commission may expend funds for ~~such~~ that purpose.

Section 542. That § 46A-18-68 be amended to read as follows:

46A-18-68. All claims against water project districts shall be paid by warrants or orders drawn on the district secretary-treasurer, signed by the ~~chairman~~ chair of the district, and countersigned by its secretary-treasurer. ~~When~~ If warrants or orders have been issued and delivered, they may be presented to the secretary-treasurer of the district. If necessary, ~~he~~ the secretary-treasurer shall endorse them "not paid for want of funds." These orders or warrants shall be registered by the secretary-treasurer in order of presentation and shall draw interest annually at a rate negotiated by the parties from the date of registration. They shall be registered

by the district secretary-treasurer in anticipated receipt of water project district taxes or assessments due the district.

Signed March 3, 2011

CHAPTER 166

(HB 1009)

Board of Water Management administrative rule authority revised.

ENTITLED, An Act to repeal the authority of the Department of Environment and Natural Resources to regulate public swimming places and bulk water haulers.

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

Section 1. That § 34A-2-12 be amended to read as follows:

34A-2-12. The Board of Water Management shall promulgate rules pursuant to chapter 1-26 regulating public water supplies~~, public swimming places and bulk water haulers~~. A violation of rules promulgated pursuant to this section is subject to § 34A-2-75.

Signed February 17, 2011

CHAPTER 167

(SB 158)

Revise rule-making requirements related to in situ uranium and other mining operations.

ENTITLED, An Act to toll the Department of Environment and Natural Resources administrative rules on underground injection control Class III wells and in situ leach mining until the department obtains primary enforcement authority of the comparable federal programs.

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

Section 1. That chapter 34A-2 be amended by adding thereto a NEW SECTION to read as follows:

The legal force and effect of the underground injection control Class III rules promulgated under subdivision 34A-2-93(15) are tolled until the department obtains primary enforcement authority for underground injection control Class III wells from the United States Environmental Protection Agency. The in situ leach mining rules promulgated under subdivision 45-6B-81(10) as they relate to uranium are tolled until the department obtains agreement state status from the United States Nuclear Regulatory Commission.

Signed March 15, 2011

CHAPTER 168

(SB 62)

Compensation and expenses for sanitary district board members.

ENTITLED, An Act to revise procedures and amounts relating to compensation and expense reimbursement for sanitary district board members.

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

Section 1. That § 34A-5-23 be amended to read as follows:

34A-5-23. ~~Any member of the board of trustees may receive travel and subsistence expense in accordance with the rules promulgated by the State Board of Finance. In addition, per diem, not to exceed one hundred twenty dollars per day, may be paid each member for each day of actual service for attending meetings, hearings, or investigations of the sanitary district board. Travel, subsistence, and per diem shall be paid on vouchers duly verified and approved according to the rules promulgated by the Board of Finance.~~ Each sanitary district board of trustees shall establish amounts to reimburse board members for expenses for lodging, meals, and mileage and to provide compensation for each day of actual service for traveling to, attending, and returning from meetings, hearings, or investigations of the sanitary district board. Such reimbursement and compensation shall be paid on vouchers duly verified and approved according to the rules promulgated by the Board of Finance.

Signed March 7, 2011

CHAPTER 169

(SB 61)

Allow limited contracting between sanitary district board members and the district.

ENTITLED, An Act to authorize board members of sanitary districts to contract with the districts in limited cases.

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

Section 1. That chapter 34A-5 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provisions of law, a member of the board of trustees of a sanitary district may contract with the district for which the member serves, if the consideration consists of three thousand dollars or less per year and if the consideration for such supplies or services is reasonable and just.

Signed March 7, 2011

ALCOHOLIC BEVERAGES

CHAPTER 170

(SB 48)

Consumption of alcoholic beverages in public, regulation revised.

ENTITLED, An Act to revise certain provisions regarding the consumption of distilled spirits in public and to provide certain penalties for consumption of alcoholic beverages.

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

Section 1. That § 35-1-5.3 be amended to read as follows:

35-1-5.3. It is a Class 2 misdemeanor for any person to consume ~~any~~ distilled spirits in any public place, other than upon the premises of ~~a licensed~~ an on-sale dealer that is licensed to sell distilled spirits or upon the location set forth in a permit granted by section 2 of this Act. For purposes of this section, the term, public place, means any place, whether in or out of a building, commonly and customarily open to or used by the general public, and any street or highway.

~~The board of county commissioners may permit the consumption, but not the sale, of any alcoholic beverage on property owned by the public or by a nonprofit corporation within the county, but outside the limits of any municipality. The governing body of a municipality may permit the consumption, but not the sale, of any alcoholic beverage on the property owned by the public or by a nonprofit corporation within the municipality. The permit period may not exceed twenty-four hours, and hours of authorized consumption may not exceed those permitted for on-sale licensees.~~

~~It is a Class 2 misdemeanor for any person to consume any alcoholic beverage upon the premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-sale dealer.~~

Section 2. That chapter 35-1 be amended by adding thereto a NEW SECTION to read as follows:

The board of county commissioners or the governing body of a municipality may permit the consumption, but not the sale, of any alcoholic beverage on property owned by the public or by a nonprofit corporation within its jurisdiction. The permit period may not exceed twenty-four hours and the hours of authorized consumption may not exceed those permitted for on-sale licensees. However, a municipality or county may permit the sale of alcoholic beverages on publicly owned property or property owned by a nonprofit corporation if it is during a special event for which a temporary license has been issued pursuant to § 35-4-124.

Section 3. That chapter 35-1 be amended by adding thereto a NEW SECTION to read as follows:

It is a Class 2 misdemeanor for any person to consume any alcoholic beverage upon the premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-sale dealer.

Signed March 14, 2011

CHAPTER 171

(HB 1119)

Procedure retooled for reissuing certain alcoholic beverage licenses.

ENTITLED, An Act to revise the procedure for reissuing certain alcoholic beverage licenses.

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

Section 1. That § 35-2-1.2 be amended to read as follows:

35-2-1.2. Any application for a <u>new</u> retail license, except as set forth in § 35-2-1.1, <u>or the transfer of an existing license</u> shall be submitted to the governing board of the municipality within which the applicant intends to operate, or if outside the corporate limits of a municipality, to the board of county commissioners of the county in which the applicant seeks to operate. The application shall be accompanied by the required fee. The governing board may approve or disapprove the application <u>for a new retail license or the transfer of an existing license</u> depending on whether the governing board deems the applicant a suitable person to hold the license and whether the governing board considers the proposed location suitable.

<u>Any application for the reissuance of a retail license may be approved by the municipal or county governing board without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation of the alcoholic beverage control law or the license has been suspended.</u>

Signed March 7, 2011

CHAPTER 172

(SB 121)

Allow combination on and off-sale malt beverage and on and off-sale wine license.

ENTITLED, An Act to authorize an alcoholic beverage retail license for certain malt beverage and wine dealers.

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

Section 1. That § 35-4-2 be amended by adding thereto a NEW SUBDIVISION to read as follows:

Malt beverage retailers, being both package dealers and on-sale dealers, and retailers of wine produced pursuant to chapter 35-12, being both package dealers and on-sale dealers–three hundred twenty-five dollars;

Section 2. That § 35-2-25 be amended to read as follows:

35-2-25. No license granted pursuant to subdivisions 35-4-2(3), (4), (6), (12), (13), (16), (17), and (17A) and section 1 of this Act and §§ 35-12-2 and 35-13-2 may be issued unless the applicant has first obtained a sales tax license pursuant to chapter 10-45, or, if applicable, a use tax license pursuant to chapter 10-46.

Section 3. That § 35-4-2.11 be amended to read as follows:

35-4-2.11. Fifty percent of all license and transfer fees received under the provisions of subdivisions 35-4-2(16), (17), and (17A) and section 1 of this Act shall remain in the municipality in which the licensee paying the fee is located, or if outside the corporate limits of a municipality, then in the county in which the licensee is located. In addition, fifty percent of wholesaler license fees received under subdivision 35-4-2(15) shall revert to the municipality in which the licensee is located, or if outside the corporate limits of a municipality, then to the county in which the licensee is located. The remainder of all license and transfer fees and penalties received shall be credited to the state general fund.

Section 4. That § 35-4-79 be amended to read as follows:

35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11), (12), (13), or (16) or section 1 of this Act may permit persons eighteen years old or older to sell and serve or dispense alcoholic beverages if less than fifty percent of the gross business transacted by that establishment is from the sale of alcoholic beverages and the licensee or an employee that is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or dispensed. For the purposes of this section, the term, to sell and serve alcoholic beverages, means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages.

A violation of this section is a Class 2 misdemeanor.

Section 5. That § 35-4-81.2 be amended to read as follows:

35-4-81.2. No licensee licensed under subdivisions 35-4-2(12), (16), (17), (17A), and (19) and section 1 of this Act may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverages between the hours of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor.

Signed March 15, 2011

CHAPTER 173

(SB 193)

Counties may issue additional on-sale alcoholic beverage licenses.

ENTITLED, An Act to authorize counties to issue additional on-sale licenses for certain facilities located on hunting preserves.

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

Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the provisions of § 35-4-11.1, each county may issue a hunting preserve facility on-sale license to any facility that has a shooting preserve operating permit issued pursuant to chapter 41-10 and a license issued by the Department of Health pursuant to chapter 34-18. The licensee may only sell alcoholic beverages during the shooting preserve season for consumption on the licensed premises to a guest as part of a hunting or shooting rental package for use of the shooting preserve's facilities and services. The licensee may not offer any alcoholic beverages for retail sale to other members of the general public. The facility shall have rooms that are suitable for lodging to host guests and equipment and seating for the preparation and serving of food for consumption on the premises. For the purposes of this section, the term, premises, means the same facility which is also licensed by the Department of Health pursuant to chapter 34-18. The license fee shall be five hundred dollars per season. The renewal fee shall be five hundred dollars per season. Any license issued pursuant to this section may not be transferred to a different location.

Signed March 15, 2011

CHAPTER 174

(HB 1174)

County may issue alcoholic beverage license for the county fairgrounds.

ENTITLED, An Act to revise certain provisions concerning alcoholic beverage licenses issued at the county fairgrounds.

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

Section 1. That 35-4-123 be amended to read as follows:

35-4-123. Any county operating a county fairgrounds may, by resolution, without an election, but subject to referendum, ~~make application for the issuance of an~~ issue one on-sale license, including a malt beverage retailer's license, at the county fairgrounds to an applicant who is authorized by the county to operate as the leaseholder at the county fairgrounds. The selling, serving, or dispensing of any alcoholic beverage at the county fairgrounds may not occur more than one hour before the commencement of any event at the county fairgrounds or at any time after the event is concluded. A license issued pursuant to this section may not be transferred. The license shall be issued without regard to the population limitations established pursuant to §§ 35-4-11 and 35-4-11.1.

Signed March 10, 2011

CHAPTER 175

(SB 103)

Special alcoholic beverage licenses issued in conjunction with special events.

ENTITLED, An Act to revise certain provisions concerning special alcoholic beverage licenses issued in conjunction with special events.

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

Section 1. That § 35-4-124 be amended to read as follows:

35-4-124. Any municipality or county may issue:

(1) A special malt beverage retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant;

(2) A special on-sale wine retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(4), (6), or (12) or chapter 35-12 in addition to any other licenses held by the special events license applicant;

(3) A special on-sale license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(4)~~, (6), or (16)~~ or (6) in addition to any other licenses held by the special events license applicant; or

(4) A special off-sale package wine dealers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(3), (5), (12), (17A), or (19) or chapter 35-12 in addition to any other licenses held by the special events license applicant. A special off-sale package wine dealers licensee may only sell wine manufactured by a farm winery that is licensed pursuant to chapter 35-12.

Any license issued pursuant to this section may be issued for a period of time established by the municipality or county. However, no period of time may exceed fifteen consecutive days. No public hearing is required for the issuance of a license pursuant to this section if the person applying for the license holds an on-sale alcoholic beverage license or a retail malt beverage license in the municipality or county or holds an operating agreement for a municipal on-sale alcoholic beverage license, and the license is to be used in a publicly-owned facility. The local governing body ~~may~~ shall establish rules to regulate and restrict the operation of the special license, including rules limiting the number of licenses that may be issued to any person within any calendar year.

Section 2. That § 35-4-125 be amended to read as follows:

35-4-125. Notwithstanding § 35-1-5.3, a municipality or county may allow the sale of alcoholic beverages on public property or property owned by a nonprofit corporation during a special event. Any license issued pursuant to § 35-4-124 shall be issued to the person and the location specified on the application. Notwithstanding § 35-4-2, the governing body of the municipality or the board of county commissioners, as appropriate, shall determine the fee for this license. Each application shall be accompanied by the fee ~~prior to consideration by~~ at the time of submission to the governing body of the municipality or the board of county commissioners. The fee provided for in this section shall be retained by the governing body of the municipality or the board of county commissioners issuing the license.

Signed March 14, 2011

CHAPTER 176

(SB 46)

State treasurer to receive cost penalties in certain alcoholic beverage cases.

ENTITLED, An Act to provide that the state treasurer shall receive certain cost penalties in certain alcoholic beverage cases.

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

Section 1. That § 35-10-8 be amended to read as follows:

35-10-8. Any cost penalty provided for by this title shall be included in the judgment of conviction and has all the force and effect of a judgment in a civil action. If the person against whom the cost penalty is assessed has furnished a bond as a licensee under this title, the surety is liable for the cost penalty. The cost penalty may be paid by the defendant to the clerk of the court that rendered the judgment in which the cost penalty was assessed. The payment shall operate as a satisfaction of the portion of the judgment relating to the cost penalty and shall be entered upon the judgment record accordingly. If not paid to the clerk, the judgment for the cost penalty shall be enforced by execution or other process, the same as any civil judgment. The clerk or any officer collecting the cost penalty shall, without delay, transmit the cost penalty to the ~~secretary~~ state treasurer with a statement giving full information as to the source of the cost penalty. The ~~secretary~~ state treasurer shall issue a receipt for the cost penalty to the person transmitting the cost penalty.

Signed March 14, 2011

PROFESSIONS AND OCCUPATIONS

CHAPTER 177

(SB 50)

Emergency medical technician certification revised.

ENTITLED, An Act to revise certain certification levels of emergency medical technicians.

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

Section 1. That § 36-4B-1 be amended to read as follows:

36-4B-1. Terms used in this chapter mean:

(1) "Advanced life support," a level of prehospital and interhospital emergency care consisting of basic life support procedures and definitive therapy including the use of invasive procedures and may include the use of drugs and manual defibrillation;

(2) "Advanced life support personnel," any person other than a physician who has completed a department and board approved program and is licensed as an emergency medical technician-intermediate/85; emergency medical technician-intermediate/99; emergency medical technician-advanced; or emergency medical technician-paramedic as set forth in this chapter, or its equivalent;

(3) "Board," the South Dakota Board of Medical and Osteopathic Examiners;

(4) "Department," the South Dakota State Department of Public Safety;

(5) "Direct medical control," communications between field personnel and a physician during an emergency run;

(6) "Emergency medical services," health care provided to the patient at the scene, during transportation to a medical facility, between medical facilities and upon entry at the medical facility;

~~(6A) "Emergency medical technician," any class of emergency medical technician as defined in this section;~~

(7) "Emergency medical technician-advanced," any person who has successfully completed a program of study approved by the department and the board in all areas of training and skills set forth in the advanced emergency medical technician instructional guidelines and standards, including placement of esophageal and supraglottic airways, intravenous cannulation, shock management, administration of specific medications, and other advanced skills approved by the board, and who is licensed by the board to perform such advanced skills;

(8) "Emergency medical technician ~~basic~~/EMT," any person trained in emergency medical care in accordance with standards prescribed by rules and regulations promulgated pursuant to § 34-11-6, who provides emergency medical services, including automated external defibrillation under indirect medical control, in accordance with the person's level of training;

~~(8)~~(9) "Emergency medical technician-intermediate/85," any person who has successfully completed a department and board approved program of instruction in basic life support and advanced life support skills in shock and fluid therapy, placement of esophageal airways, and other advanced life support skills approved by board action, and who is licensed by the board to perform such skills, including automated external defibrillation;

~~(9)~~(10) "Emergency medical technician-paramedic," any person who has successfully completed a program of study approved by the department and the board and is licensed as an emergency medical technician- paramedic, which includes all training and skills set forth herein for emergency medical technician-intermediate ~~ac.~~/85 and emergency medical technician-intermediate/99, and other advanced skills programs approved by board action, and who is licensed by the board to perform such intermediate, special, and advanced skills;

~~(10)~~(11) "Emergency medical technician-intermediate/99," any person who has successfully completed a department and board approved program of instruction in all areas of emergency medical technician-intermediate/85 curriculum plus other specific areas of emergency medical care in the following areas: manual and automated external defibrillation, telemetered electrocardiography, administration of cardiac drugs, administration of specific medications and solutions, use of adjunctive breathing devices, advanced

trauma care, tracheotomy suction, esophageal airways and endotracheal intubation, intraosseous infusion, or other special skills programs approved by board action, and who is licensed by the board to perform intermediate skills plus such special skills;

~~(11)~~(12) "Emergency medical technician-student status," any person who has received authorization for student status by the board and who has been accepted into an advanced life support training program to perform, under direct supervision, those activities and services currently being studied;

~~(11A)~~(13) "Epinephrine auto-injector," a spring-loaded needle and syringe with a single dose of epinephrine that will automatically release and inject the medicine, any similar automatic pre-filled cartridge injector, or any similar automatic injectable equipment;

~~(12)~~(14) "Good faith," honesty, in fact, in the conduct, or transaction concerned;

~~(13)~~(15) "Gross negligence," the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or health of another;

~~(14)~~(16) "Hour of advanced life support studies," fifty minutes of training;

~~(15)~~(17) "Indirect medical control," the establishment and implementation of system policies and procedures, such as medical treatment protocols, quality assurance programs and case reviews by a physician licensed in South Dakota;

~~(16)~~(18) "Local government," any county, municipality, township, or village in this state;

~~(17)~~(19) "Medical community," the physicians and medical resources located and available within a geographic area;

~~(18)~~(20) "Medical emergency," an event affecting an individual in such a manner that a need for immediate medical care is created;

~~(19)~~(21) "Patient," an individual who, as a result of illness or injury needs immediate medical attention, whose physical or mental condition is such that the individual is in imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition; and

~~(20)~~(22) "Prehospital care," those emergency medical services rendered to emergency patients in an out-of-hospital setting, administered for analytic, stabilizing, or preventive purposes, precedent to and during transportation of such patients to emergency treatment facilities.

Section 2. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as follows:

An emergency medical technician-advanced may perform placement of esophageal and supraglottic airways, intravenous cannulations, shock management, administration of specific medications, and other advanced skills approved by the board.

Signed February 10, 2011

CHAPTER 178

(HB 1045)

Dental hygienists may provide preventive and therapeutic services.

ENTITLED, An Act to authorize dental hygienists to provide preventive and therapeutic services to more persons under certain circumstances.

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

Section 1. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

A dental hygienist may provide preventive and therapeutic services under collaborative supervision of a dentist if the dental hygienist has met the following requirements:

(1) Possesses a license to practice in the state and has been actively engaged in the practice of clinical dental hygiene in two of the previous three years;

(2) Has a written collaborative agreement with a licensed dentist; and

(3) Has satisfactorily demonstrated knowledge of medical and dental emergencies and their management; infection control; pharmacology; disease transmission; management of early childhood caries; and management of special needs populations.

Section 2. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

A dental hygienist seeking to provide preventive and therapeutic services under collaborative supervision shall submit evidence, as prescribed by the board, of meeting the requirements of section 1 of this Act and a fee not to exceed thirty dollars. The board shall, by rules promulgated pursuant to chapter 1-26, establish the required fee, the minimum requirements for a collaborative agreement, the preventive and therapeutic services that may be performed, the location or facilities where services may be performed, and the evidence required to demonstrate the active practice and knowledge required pursuant to section 1 of this Act.

. Section 3. That § 36-6A-40 be amended to read as follows:

36-6A-40. Any licensed dentist, public institution, or school authority may use the services of a licensed dental hygienist. Such licensed dental hygienist may perform those services which are educational, diagnostic, therapeutic, or preventive in nature and are authorized by the Board of Dentistry, including those additional procedures authorized by subdivision 36-6A-14(10). Such services may not include the establishment of a final diagnosis or treatment plan for a dental patient. Such services shall be performed under supervision of a licensed dentist.

As an employee of a public institution or school authority, functioning without the supervision of a licensed dentist, a licensed dental hygienist may only provide educational services.

~~All~~ A dental hygienist may perform preventive and therapeutic services ~~may be performed~~ under general supervision ~~provided~~ if all individuals treated are patients of record of a licensed dentist and ~~that~~ all care rendered by the hygienist is completed under the definition of patient of record. A dental hygienist may perform preventive and therapeutic services under collaborative supervision if the requirements of section 1 of this Act are met. However, no dental hygienist

may perform preventive and therapeutic services under collaborative supervision for more than thirteen months for any person who has not had a complete evaluation by the supervising dentist.

Section 4. That § 36-6A-26 be amended by adding thereto NEW SUBDIVISIONS to read as follows:

"Collaborative agreement," a written agreement between a supervising dentist and a dental hygienist authorizing the preventive and therapeutic services that may be performed by the dental hygienist under collaborative supervision;

"Collaborative supervision," the supervision of a dental hygienist requiring a collaborative agreement between a supervising dentist and dental hygienist;

Signed March 3, 2011

CHAPTER 179

(SB 27)

Electrical Commission, certain procedures revised.

ENTITLED, An Act to revise certain provisions relating to the State Electrical Commission.

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

Section 1. That § 36-16-4 be amended to read as follows:

36-16-4. The Governor shall appoint one member of the State Electrical Commission who shall be involved in the education of electrical engineers or electricians. This member shall serve without compensation.

Section 2. That § 36-16-9 be amended to read as follows:

36-16-9. ~~Money collected for the State Electrical Commission under the provisions of this chapter shall be kept by the secretary/treasurer and disbursed only on warrants signed by the president, secretary/treasurer, and executive director. At the end of the secretary/treasurer's term, the secretary/treasurer shall account to the secretary/treasurer's successor for any moneys remaining in the secretary/treasurer's possession.~~ All money coming into the custody of the commission shall be paid by the commission to the state treasurer on or before the tenth day after receipt of the money. The state treasurer shall credit the money to the South Dakota electrical commission fund. The money in the South Dakota electrical commission fund is continuously appropriated to the commission for the purpose of paying the expense of administering and enforcing the provisions of this chapter. However, the total expense incurred may not exceed the total money collected by the commission under the provisions of this chapter.

Section 3. That § 36-16-13 be amended to read as follows:

36-16-13. ~~Every~~ Any person, partnership, company, corporation or association that for a fixed sum, price, fee, percentage or other consideration, undertakes or offers to undertake with another to plan, lay out, supervise, install, make additions, make alterations, or make repairs, in the installation of wiring, apparatus or equipment for electric lights, heat or power, shall apply to the State Electrical Commission for a license. A license shall be issued in the class specified in § 36-16-2 for which application has been made upon qualifying under this chapter and the rules of the commission and satisfactorily passing such examinations as shall be required by the commission.

The commission shall promulgate rules, pursuant to chapter 1-26, establishing fees for the examination and the application. The commission may charge, or may authorize a third party that administers the examination, to charge each participant an examination ~~fees~~ fee not to exceed one hundred fifty dollars per occurrence of examination or reexamination. The application fee may not exceed fifty dollars per occurrence.

Each holder of or applicant for a license under this chapter shall notify the commission in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license, or permit by another state, change of address or employment, or any conviction of a felony.

Section 4. That § 36-16-16 be amended to read as follows:

36-16-16. The following persons are not required to hold an electrician's license:

(1) Employees of utilities engaged in the manufacture and distribution of electrical energy, when engaged in work directly pertaining to the manufacture and distribution of electrical energy or persons or companies when engaged in work pertaining directly to such services, if the work is designed, supervised, or installed by a person qualified in the work being done. This exemption shall terminate at the first point of service attachment, except for the installing or testing of electric meters and measuring devices and the maintenance of their service;

(2) Employees of telephone, telegraph, radio and television communication services and pipelines or persons or companies when engaged in work pertaining directly to such services, ~~provided such~~ if the work is designed, supervised or installed by a person qualified in the work being done;

(3) Electrical work and equipment in mines, ships, railways, rolling stock or automotive equipment, and in packing plants supervised and regulated by the Department of Agriculture;

(4) Replacement of lamps and connection of portable electrical devices to suitable receptacles which have been permanently installed;

(5) Radio and appliance service repair departments;

(6) Maintenance on oil burners and space heaters where installation of same has been effected by a Class B or journeyman electrician in accordance with this chapter;

(7) Architects, designers, and engineers engaged in the planning and laying out of electrical work;

(8) Employees of electrical utilities engaged in the installation and maintenance of utility street lighting, traffic signal devices or electric utility-owned security lights or persons or companies when engaged in work pertaining directly to such services, if the work is designed, supervised, or installed by a person qualified in the work being done; or

(9) Employees of alarm and communications companies or services when wiring an alarm or communications system when the system is classified as power limited class 2 or class 3 signaling circuits, power limited fire protective signaling circuits, class 2 or class 3 alarm circuits, or communications circuits or systems, as covered by articles 725, 760, 770, 800, 810, 820 of the National Electrical Code as it was approved by the American National Standards Institute and in effect on January 1, 1989, or persons or companies when engaged in work pertaining directly to such services, if the work is designed, supervised, or installed by a person qualified in the work being done.

Section 5. That § 36-16-30 be amended to read as follows:

36-16-30. The State Electrical Commission may promulgate rules, pursuant to chapter 1-26, to establish and collect installation inspection fees for: new residential installations, based on ampere capacity not to exceed three hundred dollars plus circuits; service connections on other installations, based on ampere capacity not to exceed three hundred seventy-five dollars plus circuits; circuit installations or alterations, based on ampere capacity not to exceed fifty dollars; remodeling work for each opening or connection not to exceed three dollars each and one dollar and fifty cents for each additional opening or connection, lighting fixture not to exceed three dollars for the first forty fixtures and not to exceed one dollar and fifty cents for each additional lighting fixture, motor or special equipment not to exceed eighteen dollars; apartment buildings per unit not to exceed fifty dollars; outdoor or area lighting per lighting standard not to exceed sixty dollars; field irrigation systems not to exceed one hundred dollars plus three dollars per motor; mobile home service and feeders not to exceed eighty dollars per unit; recreational vehicle service not to exceed twenty dollars per unit; swimming pools not to exceed two hundred dollars; each late correction order or wiring permit procedure not to exceed one hundred fifty dollars; carnivals and seasonal dwellings for each generator or transformer and reinspection of each unit not to exceed thirty dollars; wiring permits not to exceed fifteen dollars; modular homes and structures manufactured out-of-state not to exceed one hundred fifty dollars per day plus travel and living expenses.

Signed March 3, 2011

CHAPTER 180

(SB 47)

Real estate licensing revised.

ENTITLED, An Act to revise certain firm ownership provisions regarding real estate license holders and to make form and style revisions to certain provisions related to the Real Estate Commission.

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

Section 1. That § 36-21A-1 be amended to read as follows:

36-21A-1. Terms used in this chapter mean:

(1) "Agency," any relationship by which one person acts for or on behalf of a client subject to the client's reasonable direction and control;

(2) "Agency agreement," a written agreement between a broker and a client which creates a fiduciary relationship between the broker and client. The payment or promise of payment of compensation to a responsible broker does not determine whether an agency relationship has been created between any responsible broker or licensees associated with the responsible broker and a client;

(3) "Auction," any public sale of real estate as defined in § 36-21A-11 or business property as defined in subdivision 36-21A-6 (3) at public ~~outcry~~ offering to the highest bidder;

(4) "Auctioneer," any person licensed under this chapter who auctions, offers, attempts or agrees to auction real estate or business opportunities;

(5) "Broker associate," any broker acting in association with or under the auspices of a responsible broker;

(6) "Client," any person, including a seller/landlord or a buyer/tenant, who has entered into an agency relationship with a real estate licensee;

(7) "Commission," the South Dakota Real Estate Commission;

(8) "Consumer," any person seeking or receiving services from a real estate broker;

(9) "Customer," any party to a real estate transaction who does not have an agency relationship with a licensee;

(10) "Designated broker," any broker licensee designated by a responsible broker to act for the company in the conduct of real estate brokerage;

(11) "In-company transaction," any transaction in which both the seller/landlord and the buyer/tenant receive real estate services from the same broker or from licensees associated with the same broker;

(12) "Licensee," any person holding a license issued pursuant to this chapter;

(13) "Limited agent," any licensee who has a written agency relationship with both the seller and the buyer in the same in-company transaction;

(14) "Person," any individual, corporation, limited liability company, partnership, limited partnership, association, joint venture or any other entity, foreign or domestic;

(15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an interest in real property;

(16) "Responsible broker," any person holding a broker's license issued pursuant to this chapter who is responsible for the real estate activities conducted by those licensees acting in association with or under the auspices of the responsible broker;

(17) "Served actively," if referring to a real estate salesman or broker associate, having the license on an active status with the commission;

(18) "Single agent," any licensee who represents only one party to a transaction;

(19) ~~"Substantial interest," and "substantial amount," in the case of a corporation, limited liability company, partnership or association, is at least as large an interest in the corporation, limited liability company partnership or association as that of any other shareholder, partner or principal.~~

~~(20)~~ "Transaction broker," a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction. The term includes the licensees associated with the broker;

~~(21)~~(20) "Transaction broker agreement," a written agreement in which the broker does not represent either the seller or the buyer in a fiduciary capacity. No brokerage relationship can be created or implied by word or action alone, but only by written agreement clarifying the brokerage relationship.

Section 2. That § 36-21A-33 be amended to read as follows:

36-21A-33. An application may be denied for any one of the following reasons:

(1) The applicant has written insufficient funds checks within the calendar year before application or has written an insufficient funds check for ~~his~~ the application;

(2) The applicant has been convicted of a felony or of a misdemeanor involving moral turpitude. If the applicant is a firm, a license may be denied if any partner, associate, director, stockholder, officer or ~~qualifying~~ responsible broker has been convicted of a felony or of a misdemeanor involving moral turpitude;

(3) The applicant has been disciplined by a regulatory agency in relation to ~~his~~ activities as a real estate ~~salesman~~ salesperson or broker, broker associate, firm, appraiser, mortgage broker, auctioneer or any other regulated licensee, including insurance, securities, law and commodities trading;

(4) The applicant has failed to satisfy the requirements as provided by this chapter;

(5) The applicant has failed the prelicense school examination;

(6) The applicant has not met education requirements;

(7) The applicant made deliberate misstatements, deliberate omissions, misrepresentations or untruths in ~~his~~ the application; or

(8) The applicant has a current and unpaid judgment filed against ~~him~~ the applicant.

Section 3. That § 36-21A-38 be amended to read as follows:

36-21A-38. No license may be granted to a corporation, limited liability company, partnership or association, unless the corporation, limited liability company, partnership, or association designates ~~one or more qualifying brokers~~ a responsible broker who ~~own a substantial interest in and~~ will represent the corporation, limited liability company, partnership, or association. A nonlicensed individual may have an ownership interest in any corporation, limited liability company, partnership, or association through which a responsible broker engages in professional real estate activity. However, no nonlicensed individual may control or supervise the professional real estate activity of any real estate licensee associated with the firm. No nonlicensed individual may have any ownership interest in a sole proprietorship that engages in professional real estate activity. The ~~qualifying~~ responsible broker shall sign the application for the license. Upon the termination of a ~~qualifying~~ responsible broker's affiliation with the firm, the firm shall name ~~one or more~~ a new ~~qualifying brokers~~ responsible broker and notify the commission in writing. The application fee for a firm license shall be set out by rule, promulgated by the commission pursuant to chapter 1-26, and may not exceed one hundred dollars.

Section 4. That § 36-21A-39 be amended to read as follows:

36-21A-39. Upon dissolution of a corporation, partnership, limited liability company, or association, the ~~qualifying~~ responsible broker shall immediately return the firm license to the commission.

Section 5. That § 36-21A-40 be repealed.

Section 6. That § 36-21A-46 be repealed.

Section 7. That § 36-21A-58 be amended to read as follows:

36-21A-58. A salesperson or broker associate who is ~~without an employing~~ not associated with a responsible broker may renew the license by submitting the renewal fee, together with the completed renewal application on which the licensee has noted inactive status. An inactive salesperson or broker associate whose license has been renewed may not engage in the real estate business until the licensee secures a new ~~employing~~ responsible broker.

Section 8. That § 36-21A-70 be amended to read as follows:

36-21A-70. If the commission suspends, revokes, or takes any other action against a ~~qualifying~~ responsible broker, the action may apply to ~~his~~ the responsible broker's firm and the firm license may be revoked, suspended, or otherwise disciplined. Each licensee shall terminate ~~his~~ the licensee's relationship with the disciplined firm if the firm's license has been revoked or suspended.

Signed February 24, 2011

CHAPTER 181

(SB 49)

Sale of real estate without a license may be enjoined.

ENTITLED, An Act to authorize the Real Estate Commission to commence actions for injunctions against certain individuals and entities that engage in the practice of real estate without a license issued and to provide for recovery of costs of the injunction proceedings by the commission.

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

Section 1. That § 36-21A-91 be amended to read as follows:

36-21A-91. The commission may commence actions for injunction for unprofessional conduct or, as an alternate to criminal proceedings, for violation of this chapter, chapters 43-15A and 43-15B or rules promulgated pursuant thereto. The commencement of one proceeding by the commission constitutes an election. The commission may also commence actions for injunctions against any person or entity that engages in the practice of real estate pursuant to this chapter without a license issued by the commission. In any action where an injunction is granted, the court shall award the commission attorney fees and costs of the investigation and proceedings.

Signed February 24, 2011

CHAPTER 182

(HB 1032)

Permanent injunction may be imposed upon any person engaged in unlicensed appraisal practice.

ENTITLED, An Act to authorize imposition of a permanent injunction upon any person engaged in an unlicensed real estate appraisal practice.

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

Section 1. That § 36-21B-1 be amended to read as follows:

36-21B-1. Any person who performs a real estate appraisal or advertises or holds himself or herself out to the general public as a real estate appraiser in this state shall be certified, licensed, or registered by the Department of Revenue and Regulation unless exempt under another provision of this chapter or another provision of statute. Any person who violates this section may be restrained by permanent injunction in any court of competent jurisdiction, at the suit of the attorney general or any citizen of the state.

Signed February 17, 2011

CHAPTER 183

(HB 1031)

National registry fee for real estate appraisers increased.

ENTITLED, An Act to increase the national registry fee for real estate appraisers.

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

Section 1. That § 36-21B-4 be amended to read as follows:

36-21B-4. The secretary of the Department of Revenue and Regulation may promulgate rules pursuant to chapter 1-26 to establish fees for the certification, licensing, and registration of real estate appraisers as follows:

(1) Application fees not to exceed five hundred dollars;

(2) Renewal fees not to exceed five hundred dollars;

(3) Examination fee not to exceed three hundred dollars;

(4) Late renewal fee not to exceed two hundred dollars;

(5) Upgrade fee not to exceed five hundred dollars;

(6) Reciprocity fee not to exceed five hundred dollars;

(7) National registry fee not to exceed ~~seventy-five~~ eighty dollars;

(8) Education course approval fee not to exceed fifty dollars;

(9) Temporary permit fee not to exceed five hundred dollars.

The Department of Revenue and Regulation may recover the costs of photocopying and postage when providing appraiser rosters and the uniform standards of professional practice.

Signed February 17, 2011

CHAPTER 184

(HB 1033)

Appraisal management companies regulated.

ENTITLED, An Act to provide for the registration and regulation of appraisal management companies.

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

Section 1. Any person or entity acting as an appraisal management company or performing appraisal management services in this state, except an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency, shall register with the Department of Revenue and Regulation. Any person or entity who violates this section may be restrained by permanent injunction in any court of competent jurisdiction, at the suit of the attorney general or any citizen of the state.

Section 2. For the purposes of this Act, the term, appraisal management company, means, in connection with valuing properties and collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than fifteen certified or licensed appraisers in a state or twenty-five or more nationally within a given year to:

(1) Recruit, select, and retain appraisers;

(2) Contract with licensed or certified appraisers to perform appraisal assignments;

(3) Manage the process of having an appraisal performed, including providing administrative duties including:

(a) Receiving appraisal orders and appraisal reports;

(b) Submitting completed appraisal reports to creditors and underwriters;

(c) Collecting fees from creditors and underwriters for services provided; or

(d) Reimbursing appraisers for services performed; or

(4) Review and verify the work of appraisers for compliance with the Uniform Standards of Professional Appraisal Practice.

Section 3. For the purposes of this chapter, an appraisal is the act or process of estimating value of real estate for another and for compensation.

Section 4. The secretary of the Department of Revenue and Regulation may promulgate rules pursuant to chapter 1-26 relating to appraisal management companies and appraisal management services as follows:

(1) Registration of appraisal management companies;

(2) Definition of terms;

(3) Responsibilities and duties;

(4) Application for and issuance of certificate of registration;

(5) Renewal and late renewal procedures;

(6) Investigation and contracting for investigations;

(7) Complaints and grounds for disciplinary actions, including denial, revocation, suspension, censure, and reprimand;

(8) Retention and inspection of records;

(9) Roster;

(10) Review of appraisal related records;

(11) Inspection, examination, and photocopy of records; and

(12) National registry fee collection and remittance.

Section 5. The secretary of the Department of Revenue and Regulation may promulgate rules pursuant to chapter 1-26 to establish fees for registration of appraisal management companies as follows:

(1) Application fees not to exceed one thousand dollars;

(2) Renewal fees not to exceed one thousand dollars; and

(3) An additional late renewal fee not to exceed six hundred dollars.

Section 6. All moneys received by the Department of Revenue and Regulation pursuant to this Act shall be deposited by the department with the state treasurer. The state treasurer shall credit the moneys to the South Dakota appraisal management companies fund. Expenditure from this fund shall only be paid on warrants drawn by the state auditor and approved by the department.

Section 7. Any expenditure of money from the South Dakota appraisal management companies fund shall be made only upon appropriation by the Legislature through either the general appropriations act or a special appropriations bill.

Section 8. The secretary of the Department of Revenue and Regulation may impose a monetary penalty not to exceed two thousand dollars on an appraisal management company registered pursuant to this Act or on an unregistered appraisal management company performing appraisal management services in this state, upon proof of a violation of the rules relating to appraisal management companies as adopted by the department pursuant to chapter 1-26 or a violation of this Act.

Section 9. The secretary of the Department of Revenue and Regulation may assess to a registered appraisal management company, an applicant for registration as an appraisal management company, or an unregistered appraisal management company performing appraisal management services in this state, all or part of the actual expenses of a contested case proceeding resulting in the discipline or censure of the registrant, suspension or revocation of the registrant's certificate of registration, the denial of a certificate of registration to the applicant, or the discipline or censure of an unregistered appraisal management company performing appraisal management services in this state.

Section 10. No employee, director, officer, agent, independent contractor or other third party acting on behalf of an appraisal management company may:

(1) Improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal;

(2) Intimidate, coerce, extort, bribe, blackmail, withhold payment for appraisal services, or threaten to exclude the real estate appraiser from future work in order to improperly obtain a desired result;

(3) Condition payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached;

(4) Request a real estate appraiser to report a predetermined opinion, conclusion, or valuation or the desired valuation of any person or entity;

(5) Engage in any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, and impartiality;

(6) Require a real estate appraiser to provide the appraisal management company with the appraiser's digital signature or seal;

(7) Alter, amend, or change an appraisal report submitted by a real estate appraiser;

(8) Remove an appraiser from a real estate appraiser panel without prior written notice to the appraiser, with the prior written notice including evidence of the following:

(a) The appraiser's illegal conduct;

(b) A violation of the appraisal standards adopted by the Department of Revenue and Regulation pursuant to this Act; or

(c) Improper or unprofessional conduct; or

(9) Require an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents or employees for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the appraiser.

A violation of this section may constitute grounds for discipline against an appraisal management company who is registered pursuant to the laws of the State of South Dakota.

Section 11. No appraisal management company violates section 10 of this Act solely by asking a real estate appraiser to:

(1) Consider additional, appropriate property information;

(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(3) Correct errors in the appraisal report.

An appraisal management company may retain a real estate appraiser from panels or lists on a rotating basis; supply an appraiser with information the appraiser is required to analyze under the appraisal standards adopted by the department, such as agreements of sale, options, and

listings of the property to be valued; and withhold payment of an appraisal fee based on a bona fide dispute regarding the appraiser's compliance with the appraisal standards adopted by the Department of Revenue and Regulation pursuant to this Act.

Signed March 17, 2011

CHAPTER 185

(SB 16)

Social work licensee standards changed.

ENTITLED, An Act to authorize licensure of persons graduating from social work programs that are in candidacy status.

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

Section 1. That chapter 36-26 be amended by adding thereto a NEW SECTION to read as follows:

The board shall issue a license as a certified social worker or social worker to any applicant who:

(1) Meets the requirements for a certified social worker or social worker except whose baccalaureate or master of social work degree is from a program in candidacy status with the Council on Social Work Education; and

(2) Has passed an examination prepared by the board for this purpose.

Any license granted under this section shall automatically expire if the social work baccalaureate or masters of social work program fails to maintain candidacy status or is denied accreditation. The social worker shall inform the board of any change in the social work program candidacy status.

Signed February 10, 2011

CHAPTER 186

(HB 1013)

Board of Examiners of Counselors and Marriage and Family Therapists membership revised.

ENTITLED, An Act to revise the membership of the Board of Examiners for Counselors and Marriage and Family Therapists.

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

Section 1. That § 36-32-2 be amended to read as follows:

36-32-2. The Board of Examiners for Counselors and Marriage and Family Therapists, consists of nine members, three of whom shall be lay members, one of whom shall be a counselor educator, and ~~six~~ five of whom shall be professionals actively engaged in professional

counseling or marriage and family therapy and broadly representing a cross section of the licensed disciplines governed by this board. The Governor shall appoint all of the members.

Signed February 17, 2011

CHAPTER 187

(SB 151)

Massage therapist regulation revisited.

ENTITLED, An Act to revise the grandfathering provisions and renewal requirements of massage therapy licensure.

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

Section 1. That § 36-35-14 be amended to read as follows:

36-35-14. Until July 1, 2008, the board may issue a license to a person who demonstrates completion of a minimum of one hundred hours of training or study in the practice of massage with a facility or instructor recognized by the board or adequate experience derived from the active practice of massage for at least the three years immediately preceding the date of the application. Any person applying for a license under this section is not required to comply with the examination and training or study requirements of § 36-35-12 but shall meet the other criteria set forth in § 36-35-12. Any person applying for a license under this section shall submit an application as required by § 36-35-12 along with proof of active practice for at least three years prior to the date of application. Any person who qualified for licensure pursuant to this section and allowed the license to lapse may be issued a license, notwithstanding the initial time period provided in this section, by complying with this section before June 30, 2012.

Section 2. That § 36-35-16 be amended to read as follows:

36-35-16. Any person holding a valid license under this chapter may renew that license by paying the required renewal fee and providing proof of compliance with the continuing education requirements set by the board at least thirty days prior to the expiration of the current license. Any person who submits a license renewal ~~late~~ less than thirty days prior to the expiration of the license but no later than the expiration date shall submit a seventy-five dollar late fee. If the board has not received a license renewal by the expiration date, the board shall notify the licensee within five days that the renewal has not been received and that the licensee may not practice until the license is renewed. Any person who submits a license renewal within thirty days after the expiration date shall submit a one hundred fifty dollar late fee. Any person whose license has lapsed shall reapply for a license.

Signed March 15, 2011

TRADE REGULATION

CHAPTER 188

(HB 1216)

Franchise agreements for motor fuel dealers cannot prohibit use of blender pumps.

ENTITLED, An Act to prohibit certain contract restrictions on the use of ethanol blender pumps by retailers.

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

Section 1. That § 37-2-34 be amended to read as follows:

37-2-34. Terms used in §§ 37-2-35 to 37-2-38, inclusive, mean:

(1) "Franchise-related document," a franchise agreement, branded jobber contract, branded marketer agreement, and any other contract or directive of a franchisor relating to terms or conditions of the sale of fuel by a franchisee or customer;

(2) "Renewable fuel," biodiesel, biodiesel blend, ethyl alcohol, and ethanol blend, ~~and E-85,~~ all as defined in § 10-47B-3, and any motor fuel made from a blend, in any ratio, of gasoline and the product commonly or commercially known as E-85 or an ethanol blend and the product commonly or commercially known as E-85.

Section 2. That § 37-2-35 be amended to read as follows:

37-2-35. No franchise-related document entered into or renewed on or after July 1, 2008 may contain any provision allowing a franchisor to restrict the franchisee or any affiliate of the franchisee from:

(1) Installing on the marketing premises of the franchisee a renewable fuel pump or tank, except that the franchisee's franchisor may restrict the installation of a tank on leased marketing premises of the franchisor;

(2) Converting an existing tank or pump on the marketing premises of the franchisee for renewable fuel use;

(3) Advertising the sale of any renewable fuel, including through the use of signage;

(4) Selling renewable fuel in any specified area on the marketing premises of the franchisee, including any area in which a name or logo of a franchisor or any other entity appears;

(5) Purchasing renewable fuel from sources other than the franchisor if the franchisor does not offer its own renewable fuel for sale by the franchisee;

(6) Listing renewable fuel availability or prices, including on service station signs, fuel dispensers, or light poles; ~~or~~

(7) Allowing for payment of renewable fuel with any form of payment available for any other type of fuel;

(8) Installing on the marketing premises of the franchisee an ethanol blender pump as defined in section 2, chapter 15 of the 2010 Session Laws; or

(9) Using any pump to dispense a specified ethanol blend or range of blends, if the pump is approved by the authority having jurisdiction, as defined in § 34-38-23, for dispensing the specified ethanol blend or range of blends.

Nothing in this section authorizes any activity that constitutes mislabeling, misbranding, willful adulteration, or other trademark violations by the franchisee.

Section 3. That § 37-2-37 be amended to read as follows:

37-2-37. No franchise-related document that requires that three grades of gasoline be sold by the applicable franchisee may prevent the franchisee from selling ~~a renewable fuel~~ one or more renewable fuels in lieu of one, and only one, grade of gasoline.

Signed March 8, 2011

AGRICULTURE AND HORTICULTURE

CHAPTER 189

(HB 1010)

Bulk pesticide definition changed.

ENTITLED, An Act to revise the definition of bulk pesticide.

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

Section 1. That subdivision (2) of § 38-21-14 be amended to read as follows:

(2) "Bulk pesticide," any volume of a pesticide which is transported or held in an immediate reusable container ~~in undivided quantities greater than one hundred pounds net dry weight or fifty-five U.S. gallons liquid measure~~. This does not include pesticides which are in the custody of the ultimate user and are fully prepared for use by ~~him~~ the user;

Signed February 17, 2011

ANIMALS AND LIVESTOCK

CHAPTER 190

(SB 187)

The dairy inspection fund revised.

ENTITLED, An Act to revise certain provisions regarding the dairy inspection fund.

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

Section 1. That § 40-32-29 be amended to read as follows:

40-32-29. Funds collected pursuant to this chapter shall be deposited with the state treasurer in a special fund known as the dairy inspection fund. Expenditures of these funds shall be made pursuant to provisions of chapter 4-7, not to exceed ~~fifty~~ sixty percent of the total dairy program budget. The department shall provide the dairy industry and the Legislature an annual report of the previous year's activities.

Signed March 15, 2011

GAME, FISH, PARKS, AND FORESTRY

CHAPTER 191

(SB 106)

Reciprocal trapping licenses authorized.

ENTITLED, An Act to provide for reciprocal nonresident trapping licenses.

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

Section 1. That chapter 41-6 be amended by adding thereto a NEW SECTION to read as follows:

No license to take fur-bearing animals may be issued to any nonresident unless the nonresident resides in a state that allows nonresidents of that state, including South Dakota residents, to take fur-bearing animals within that state.

Section 2. That § 41-6-10 be amended to read as follows:

41-6-10. Licenses, permits, and stamps issued under this title are classified as follows:

(1) Disabled hunter permit;

(2) Export bait dealer license;

(2A) Fall three-day temporary nonresident waterfowl license;

(3) Fur dealer's license;

(4) Hoop net, trap, or setline license;

(5) License for breeding and domesticating animals and birds;

(6) ~~License~~ Resident license to take fur-bearing animals;

(6A) Reciprocal nonresident license to take fur-bearing animals;

(7) Nonresident big game license;

(8) Nonresident fishing license;

(9) Nonresident predator/varmint license;

(10) Repealed by SL 1999, ch 213, § 3.

(11) Nonresident retail bait dealer license;

(12) Nonresident shooting preserve license;

(13) Nonresident small game license;

(14) Nonresident and resident migratory bird certification permit;

(15) Nonresident wholesale bait dealer license;

(16) Nonresident wild turkey license;

(17) Nursing facility group fishing license;

(18) Park user's license;

(19) Permit for transportation of big game animal;

(20) Private fish hatchery license;

(21) Resident big game license;

(22) Resident elk license;

(23) Resident fishing license and resident senior fishing license;

(24) Repealed by SL 1999, ch 213, § 3.

(25) Resident retail bait dealer license;

(26) Resident small game license and resident youth small game license;

(27) Resident predator/varmint license;

(28) Resident wholesale bait dealer license;

(29) Resident wild turkey license;

(30) Scientific collector's license;

(31) Special nonresident waterfowl license;

(32) Repealed by SL 1999, ch 213, § 3.

(33) Taxidermist's license;

(33A) Spring snow goose temporary nonresident license;

(33B) Early fall Canada goose temporary nonresident license;

(34) Temporary fishing and hunting licenses.

The rights and privileges of such licensees are set forth in §§ 41-6-12 to 41-6-45.1, inclusive, and in § 41-17-13. The Game, Fish and Parks Commission shall promulgate rules pursuant to chapter 1-26 to set the fees, eligibility, and duration for such licenses.

Signed March 7, 2011

CHAPTER 192

(HB 1006)

Air guns may be used for hunting.

ENTITLED, An Act to authorize certain air guns for use in hunting certain animals.

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

Section 1. That § 41-8-31 be amended to read as follows:

41-8-31. No person may at any time hunt, catch, take, attempt to take, or kill any small game or game animal in any other manner than by shooting the same with a firearm, except:

(1) Game birds and animals may be taken with birds trained in falconry or with bow and arrow;

(1A) Cottontail rabbit, red squirrel, fox squirrel, grey squirrel, and any species defined as a predator/varmint in § 41-1-1 may be taken with an air gun that complies with specifications established by rules promulgated by the Game, Fish and Parks Commission pursuant to chapter 1-26;

(2) A person with a permanent or temporary disability who is missing an upper limb, physically incapable of using an upper limb, or confined to a wheelchair may obtain a disabled hunter permit to use a crossbow or other legal bow equipped with a draw-lock device to take game birds and animals;

(3) A person who is legally blind, is legally licensed, possesses a disabled hunter permit, and is physically present and participates in the hunt but cannot safely discharge a

firearm or bow and arrow, may claim game birds and animals taken by a designated hunter in accordance with the license possessed by the hunter who is legally blind;

(3A) A person who is quadriplegic, is legally licensed, possesses a disabled hunter permit, and is physically present and participates in the hunt but cannot safely discharge a firearm or bow and arrow, may claim game birds and animals taken by a designated hunter in accordance with the license possessed by the hunter who is quadriplegic; and

(4) A person with a permanent or temporary disability as defined in subdivision (2) of this section who is legally licensed for a youth big game hunting season, possesses a disabled hunter permit, and is physically present and participates in the hunt but is unable to safely discharge a firearm or bow and arrow, may claim any big game animal taken by a designated hunter in accordance with the youth big game license possessed by the person with a permanent or temporary disability.

A violation of this section is a Class 2 misdemeanor.

Signed February 22, 2011

CHAPTER 193

(HB 1047)

Revise prairie dog season.

ENTITLED, An Act to revise certain prairie dog shooting season provisions.

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

Section 1. That chapter 41-8 be amended by adding thereto a NEW SECTION to read as follows:

A prairie dog shooting season is open statewide year-round, with no limitation on shooting hours and no prairie dog daily or possession limits.

Section 2. That ARSD 41:06:57:01 be repealed.

Section 3. That ARSD 41:06:57:02 be repealed.

Section 4. That ARSD 41:06:57:03 be repealed.

Signed March 8, 2011

CHAPTER 194

(HB 1037)

Revise notice provisions for hunting in Black Hills Fire Protection District.

ENTITLED, An Act to revise certain posting requirements relating to hunting in the Black Hills Fire Protection District.

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

Section 1. That § 41-9-2 be amended to read as follows:

41-9-2. In that part of the Black Hills Fire Protection District lying south of Interstate Highway 90, no person may enter upon any private land with intent to take or kill any bird or animal, after being notified by the owner or lessee not to do so. Such notice may be given orally or by posting written or printed notices to that effect at the residence or where the buildings are located ~~thereon, and~~ on the private land, at the gates or entering places ~~therein~~ to the private land, and in conspicuous places around the land posted. ~~All such notices shall contain the name and address of the owner or lessee posting the lands.~~

A violation of this section is a Class 2 misdemeanor and is subject to § 41-9-8.

Signed February 17, 2011

CHAPTER 195

(HB 1005)

Private shooting preserves, requirements changed.

ENTITLED, An Act to revise certain provisions pertaining to private shooting preserves.

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

Section 1. That § 41-10-1 be amended to read as follows:

41-10-1. Terms used in this chapter mean:

(1) "Commission," the Game, Fish and Parks Commission, acting directly or through its duly authorized officers or agents;

(2) "Department," the Department of Game, Fish and Parks, acting directly or through its duly authorized officers or agents;

(3) "Person," includes individuals, ~~copartnerships~~ partnerships, associations, ~~and~~ corporations, and limited liability companies;

(4) "Shooting preserve," any acreage either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Section 2. That § 41-10-7 be amended to read as follows:

41-10-7. If the department is satisfied that all of the following criteria have been established by the applicant:

(1) The applicant for a shooting preserve operating permit proposes to comply with all of the provisions of this chapter and the commission rules promulgated pursuant to this chapter;

(2) The applicant is financially able to provide the necessary facilities and services to operate a shooting preserve;

(3) The preserve shall be open to the general public without restrictions as to race, color, or creed;

(4) The operation will not work a fraud upon persons who are permitted to hunt thereon;

(5) The operation is not designed to circumvent game laws and regulations;

(6) The issuance of the permit will be in the public interest;

(7) The applicant is a resident of the state or, if a business entity, is organized or operating under the laws of the State of South Dakota pursuant to a certificate issued by the Office of the Secretary of State;

(8) The applicant does not operate or own any interest in more than one shooting preserve comprised of a contiguous tract of land of more than one thousand two hundred eighty acres nor more than two shooting preserves each of which are comprised of a contiguous tract of land of one thousand two hundred eighty acres or less; and

(9) The preserve for which an operating permit is requested is at least one mile from any game production area or other publicly owned shooting area, or if located within one mile of such areas, the preserve would not take unfair advantage of wildlife habitat developments or wildlife population existing on those areas, or would not otherwise be detrimental to the public interest;

the department shall approve the application and issue a shooting preserve operating permit for the operation of a shooting preserve on the property described in the application with the rights and subject to the limitations prescribed in this chapter and the commission rules promulgated pursuant to this chapter. However, the provisions of subdivisions (7) and (9) of this section do not apply to any shooting preserve licensed pursuant to this chapter, prior to July 1, 1986.

Section 3. That § 41-10-8 be amended to read as follows:

41-10-8. ~~All~~ Each shooting preserve operating ~~permits~~ permit shall be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the Department of Game, Fish and Parks may enter and ~~search~~ inspect the premises on which preserve operations are conducted, and any part thereof, during normal hours of preserve operation without a search warrant to ensure compliance with the laws of this state and rules and regulations of the commission. Failure to comply with this section is a Class 1 misdemeanor.

Section 4. That § 41-10-13 be amended to read as follows:

41-10-13. The guest of a shooting preserve ~~operator~~ permittee, after securing any necessary hunting licenses as required by this chapter, may harvest any game released in the shooting preserve, and as provided for in § 41-10-16, all of the wild game in the area of the same species as those released.

Section 5. That § 41-10-14 be amended to read as follows:

41-10-14. Within the limits set by the commission, in rules promulgated pursuant to chapter 1-26, the shooting preserve ~~operator~~ permittee may establish shooting hours and limitations and restrictions on the age, sex, number, and type of each game species that may be taken by each person. The ~~operator~~ permittee may establish the fees to be charged to the ~~operator's~~ permittee's guests.

Section 6. That § 41-10-16 be amended to read as follows:

41-10-16. Any person licensed to hunt a species as required by this chapter may harvest and legally possess pen raised or wild game shot on a shooting preserve if the game is tagged as directed by the commission in rules promulgated pursuant to chapter 1-26. The provisions of this section relating to issuance of tags and remittance of tag fees, shall be administered by the department pursuant to commission rules adopted pursuant to § 41-2-18. The cost of each tag to the shooting preserve ~~operator~~ permittee shall be established by the commission in rules promulgated pursuant to chapter 1-26.

Section 7. That § 41-10-17 be amended to read as follows:

41-10-17. Each shooting preserve ~~operator~~ permittee shall maintain a guest register in which is listed the name, address, and South Dakota general license number or nonresident shooting preserve license of each shooter, the date on which he hunted, and the amount of game and species taken. Likewise, a record shall be maintained to show the source of the game released and of the date and the number of each game species released. These records shall be open to inspection by the Department of Game, Fish and Parks ~~at any reasonable time~~ during normal hours of preserve operation. A violation of this section is a Class 1 misdemeanor.

Section 8. That § 41-10-19 be amended to read as follows:

41-10-19. The Game, Fish and Parks Commission may pursuant to chapter 1-26 revoke or suspend the permit of a permittee for any violation of this chapter or any of the rules of the commission committed by the permittee or any person involved in the operation of the permittee's preserve.

Signed February 22, 2011

PROPERTY

CHAPTER 196

(SB 70)

Private transfer fee obligations regulated.

ENTITLED, An Act to prohibit the creation of private transfer fee obligations and to require certain procedures for notice and disclosure for existing private transfer fee obligations.

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

Section 1. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, transfer, means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

Section 2. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, private transfer fee, means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in real property, or

payable for the right to make or accept such transfer, regardless of whether the fee is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The term, private transfer fee, does not include the following:

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property if such additional consideration is payable on a onetime basis only and the obligation to make such payment does not bind successors in title to the property. For the purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights;

(2) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration and payable to the lender in connection with the loan;

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease;

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person;

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(7) Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent;

(8) Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.

Section 3. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, private transfer fee obligation, means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to

require the payment of a private transfer fee to the declarant or other person specified in the declaration, covenant, or agreement, or to any successor or assign, upon a subsequent transfer of an interest in the real property.

Section 4. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

Any private transfer fee obligation recorded or entered into in this state after June 30, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state after June 30, 2011, is void and unenforceable. No private transfer fee obligation recorded or entered into in this state before June 30, 2011, is presumed valid and enforceable.

Section 5. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

Any person who records or enters into an agreement imposing a private transfer fee obligation in the person's favor after June 30, 2011, is liable for any damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and any attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal, rather than the agent.

Section 6. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

Private transfer fee obligations shall be disclosed as follows:

(1) For transfers of real property subject to the disclosure requirements contained in §§ 43-4-38 to 43-4-44, inclusive, disclosure of any private transfer fee obligations shall be made using the property condition disclosure statement set forth in § 43-4-44;

(2) For transfers of real property not subject to the disclosure requirements contained in §§ 43-4-38 to 43-4-44, inclusive, each seller of real property shall furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation. This written statement shall include a description of the private transfer fee obligation and include a statement that private transfer fee obligations are subject to certain prohibitions pursuant to this Act. The written document must contain a statement with the following language:

A private transfer fee obligation has been imposed with respect to this property. A private transfer obligation may lower the value of this property. State law prohibits the creation of private transfer fee obligations pursuant to section 4 of this Act and requires certain notice procedures to be followed with respect to private transfer fee obligations pursuant to sections 7 to 12, inclusive, of this Act.

Section 7. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

For any private transfer fee obligation imposed prior to July 1, 2011, the receiver of the fee shall, prior to December 31, 2011, record in the office of the register of deeds in the county in which the real property subject to the private transfer fee is located, a separate document that meets all of the following requirements:

(1) The title of the document shall be “Notice of Private Transfer Fee Obligation” in at least fourteen point boldface type;

(2) The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the transfer fee, or such other basis by which the transfer fee is to be calculated;

(3) If the real property is residential property, actual dollar-cost examples of the transfer fee for a home priced at one hundred thousand dollars, two hundred fifty thousand dollars, and five hundred thousand dollars;

(4) The date or circumstances under which the private transfer fee obligation expires, if any;

(5) The purpose for which the funds from the private transfer fee obligation will be used;

(6) The name of the person to which funds are to be paid and specific contact information regarding where the funds are to be sent;

(7) The acknowledged signature of the payee; and

(8) The legal description of the real property burdened by the private transfer fee obligation.

Section 8. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

The person to whom the transfer fee is to be paid may file an amendment to the notice of transfer fee containing new contact information, but such amendment shall contain the recording information of the notice of transfer fee which it amends and the legal description of the property burdened by the private transfer fee obligation.

Section 9. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

If the payee fails to comply fully with section 7 of this Act, the grantor of any real property burdened by the private transfer fee obligation may proceed with the conveyance of any interest in the real property to any grantee and in so doing is deemed to have acted in good faith and is not subject to any obligations under the private transfer fee obligation. In such event, the real property thereafter shall be conveyed free and clear of such transfer fee and private transfer fee obligation.

Section 10. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

If the payee fails to provide a written statement of the transfer fee payable within thirty days of the date of a written request for such statement sent to the address shown in the notice of transfer fee, the grantor, on recording of the affidavit required under section 11 of this Act, may convey any interest in the real property to any grantee without payment of the transfer fee and is not subject to any further obligation under the private transfer fee obligation. In such event the real property shall be conveyed free and clear of the transfer fee and private transfer fee obligation.

Section 11. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

An affidavit stating the facts enumerated under section 12 of this Act shall be recorded in the office of the register of deeds in the county in which the real property is situated prior to or simultaneously with a conveyance pursuant to section 10 of this Act of real property unburdened by a private transfer fee obligation. An affidavit filed under this section shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the person appearing by the record to be the owner of such real property at the time of the signing of such affidavit, a reference to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

Section 12. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as follows:

If recorded, an affidavit as described in section 11 of this Act constitutes prima facie evidence that:

(1) A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(2) The person listed on the notice of transfer fee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notification.

Section 13. That § 43-4-44 be amended to read as follows:

43-4-44. The following form shall be used for the property condition disclosure statement:

SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

(This disclosure shall be completed by the seller. This is a disclosure required by law. If you do not understand this form, seek legal advice.)

Seller _____

Property Address _____

_____

This Disclosure Statement concerns the real property identified above situated in the City of _____ County of _____, State of South Dakota.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent representing any party in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

IF ANY MATERIAL FACT CHANGES BEFORE CONVEYANCE OF TITLE TO THIS PROPERTY, THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A WRITTEN AMENDMENT TO THIS DISCLOSURE STATEMENT.

I. LOT OR TITLE INFORMATION

1. When did you purchase or build the home? _____

If the answer is yes to any of the following, please explain under additional comments or on an attached separate sheet.

_____

2. Were there any title problems when you purchased the property?

Yes ____ No ____

3. Are there any recorded liens or financial instruments against the property, other than a first mortgage?

Yes ____ No ____

4. Are there any unrecorded liens or financial instruments against the property, other than a first mortgage; or have any materials or services been provided in the past one hundred twenty days that would create a lien against the property under chapter 44-9?

Yes ____ No ____ Unknown ____

5. Are there any easements which have been granted in connection with the property (other than normal utility easements for public water and sewer, gas and electric service, telephone service, cable television service, drainage, and sidewalks)?

Yes ____ No ____ Unknown ____

6. Are there any problems related to establishing the lot lines/boundaries?

Yes ____ No ____ Unknown ____

7. Do you have a location survey in your possession or a copy of the recorded plat? If yes, attach a copy.

Yes ____ No ____ Unknown ____

8. Are you aware of any encroachments or shared features, from or on adjoining property (i.e. fences, driveway, sheds, outbuildings, or other improvements)?

Yes ____ No ____

9. Are you aware of any covenants or restrictions affecting the use of the property in accordance with local law? If yes, attach a copy of the covenants and restrictions.

Yes ____ No ____

10. Are you aware of any current or pending litigation, foreclosure, zoning, building code or restrictive covenant violation notices, mechanic's liens, judgments, special assessments, zoning changes, or changes that could affect your property?

Yes ____ No ____

11. Is the property currently occupied by the owner?

Yes ____ No ____

12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 10-13-39?

Yes ____ No ____

13. Is the property currently part of a property tax freeze for any reason?

Yes ____ No ____ Unknown ____

14. Is the property leased?

Yes ____ No ____

15. If leased, does the property use comply with local zoning laws?

Yes ____ No ____

16. Does this property or any portion of this property receive rent? If yes, how much $____ and how often ____?

Yes ____ No ____

17. Do you pay any mandatory fees or special assessments to a homeowners' or condominium association?

Yes ____ No ____

If yes, what are the fees or assessments? $ ____ per ____ (i.e. annually, semi-annually, monthly)

Payable to whom: _____

For what purpose? _____

18. Are you aware if the property has ever had standing water in either the front, rear, or side yard more than forty-eight hours after heavy rain?

Yes ____ No ____

19. Is the property located in or near a flood plain?

Yes ____ No ____ Unknown ____

20. Are wetlands located upon any part of the property?

Yes ____ No ____ Unknown ____

21. Are you aware of any private transfer fee obligations, as defined pursuant to section 3 of this Act, that would require a buyer or seller of the property to pay a fee or charge upon the transfer of the property, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property?

Yes ____ No ____ Unknown ____

If yes, what are the fees or charges? $ _____ per _____ (i.e. annually, semi-annually, monthly)

II. STRUCTURAL INFORMATION

If the answer is yes to any of the following, please explain under additional comments or on an attached separate sheet.

1. Are you aware of any water penetration problems in the walls, windows, doors, basement, or crawl space?

Yes ____ No ____

2. What water damage related repairs, if any, have been made?

If any, when? _____

3. Are you aware if drain tile is installed on the property?

Yes ____ No ____

4. Are you aware of any interior cracked walls or floors, or cracks or defects in exterior driveways, sidewalks, patios, or other hard surface areas?

Yes ____ No ____

What related repairs, if any, have been made?

_____

5. Are you aware of any roof leakage, past or present?

Yes ____ No ____

Type of roof covering: _____

Age: _____

What roof repairs, if any, have been made, when and by whom? _____

Describe any existing unrepaired damage to the roof: _____

6. Are you aware of insulation in:

the ceiling/attic? Yes ____ No ____

the walls? Yes ____ No ____

the floors? Yes ____ No ____

7. Are you aware of any pest infestation or damage, either past or present?

Yes ____ No ____

8. Are you aware of the property having been treated for any pest infestation or damage?

Yes ____ No ____

If yes, who treated it and when? _____

9. Are you aware of any work upon the property which required a building, plumbing, electrical, or any other permit?

Yes ____ No ____

If yes, describe the work: _____

Was a permit obtained? Yes _____

Was the work approved by an inspector? Yes ____ No ____

10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods, hail, or snow)?

Yes ____ No ____

If yes, describe _____

Have any insurance claims been made?

Yes ____ No ____ Unknown ____

Was an insurance payment received?

Yes ____ No ____ Unknown ____

Has the damage been repaired?

Yes ____ No ____

If yes, describe in detail: _____

_____

11. Are you aware of any problems with sewer blockage or backup, past or present?

Yes ____ No ____

12. Are you aware of any drainage, leakage, or runoff from any sewer, septic tank, storage tank, or drain on the property into any adjoining lake, stream, or waterway?

Yes ____ No ____

If yes, describe in detail: _____

_____

III. SYSTEMS/UTILITIES INFORMATION

	NONE/NOT INCLUDED	WORKING	NOT WORKING
1. 220 Volt Service	_____	_____	_____
2. Air Exchanger	_____	_____	_____

3. Air Purifier	_____	_____	_____
4. Attic Fan	_____	_____	_____
5. Burglar Alarm and Security System	_____	_____	_____
6. Ceiling Fan	_____	_____	_____
7. Central Air - Electric	_____	_____	_____
8. Central Air - Water Cooled	_____	_____	_____
9. Cistern	_____	_____	_____
10. Dishwasher	_____	_____	_____
11. Disposal	_____	_____	_____
12. Doorbell	_____	_____	_____
13. Fireplace	_____	_____	_____
14. Fireplace Insert	_____	_____	_____
15. Garage Door/Opener Control(s)	_____	_____	_____
16. Garage Wiring	_____	_____	_____
17. Heating System	_____	_____	_____
18. Hot Tub, Whirlpool, and Controls	_____	_____	_____
19. Humidifier	_____	_____	_____
20. Intercom	_____	_____	_____
21. Light Fixtures	_____	_____	_____
22. Microwave/Hood	_____	_____	_____
23. Plumbing and Fixtures	_____	_____	_____
24. Pool and Equipment	_____	_____	_____
25. Propane Tank	_____	_____	_____
26. Radon System	_____	_____	_____
27. Sauna	_____	_____	_____
28. Septic/Leaching Field	_____	_____	_____
29. Sewer Systems/Drains	_____	_____	_____
30. Smoke/Fire Alarm	_____	_____	_____
31. Solar House - Heating	_____	_____	_____
32. Sump Pump(s)	_____	_____	_____
33. Switches and Outlets	_____	_____	_____
34. Underground Sprinkler and Heads	_____	_____	_____
35. Vent Fan	_____	_____	_____
36. Water Heater - Electric or Gas	_____	_____	_____

37. Water Purifier	_____	_____	_____
38. Water Softener - Leased or Owned	_____	_____	_____
39. Well and Pump	_____	_____	_____
40. Wood Burning Stove	_____	_____	_____

IV. HAZARDOUS CONDITIONS

Are you aware of any existing hazardous conditions of the property and are you aware of any tests having been performed?

	EXISTING CONDITIONS		TESTS PERFORMED	
	YES	NO	YES	NO
1. Methane Gas	_____	_____	_____	_____
2. Lead Paint	_____	_____	_____	_____
3. Radon Gas (House)	_____	_____	_____	_____
4. Radon Gas (Well)	_____	_____	_____	_____
5. Radioactive Materials	_____	_____	_____	_____
6. Landfill, Mineshaft	_____	_____	_____	_____
7. Expansive Soil	_____	_____	_____	_____
8. Mold	_____	_____	_____	_____
9. Toxic Materials	_____	_____	_____	_____
10. Urea Formaldehyde Foam Insulations	_____	_____	_____	_____
11. Asbestos Insulation	_____	_____	_____	_____
12. Buried Fuel Tanks	_____	_____	_____	_____
13. Chemical Storage Tanks	_____	_____	_____	_____
14. Fire Retardant Treated Plywood	_____	_____	_____	_____
15. Production of Methamphetamines	_____	_____	_____	_____

If the answer is yes to any of the questions above, please explain in additional comments or on an attached separate sheet.

V. MISCELLANEOUS INFORMATION

1. Is the street or road located at the end of the driveway to the property public or private?

Public _____ Private _____

2. Is there a written road maintenance agreement?

If yes, attach a copy of the maintenance agreement.

Yes _____ No _____

3. When was the fireplace/wood stove/chimney flue last cleaned?

_____

4. Within the previous twelve months prior to signing this document, are you aware of any of the following occurring on the subject property ?

a. A human death by homicide or suicide? If yes, explain:

_____

Yes _____ No _____

b. Other felony committed against the property or a person on the property? If yes, explain:

_____

Yes _____ No _____

5. Is the water source public or private (select one) ?

6. If private, what is the date and result of the last water test?

_____

7. Is the sewer system public _____ or private _____ (select one)?

8. If private, what is the date of the last time the septic tank was pumped? _____

9. Are there broken window panes or seals?

Yes _____ No _____

If yes, specify: _____

10. Are there any items attached to the property that will not be left, such as: towel bars, mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines, swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc.

Yes _____ No _____

If yes, please list _____

11. Are you aware of any other material facts or problems that have not been disclosed on this form?

Yes _____ No _____

If yes, explain: _____

VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

_____

_____

CLOSING SECTION

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge, and belief as of the date of the Seller's signature below. If any of these conditions change before conveyance of title to this property, the change will be disclosed in a written amendment to this disclosure statement.

SELLER _____ DATE _____

SELLER _____ DATE _____

THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our signature(s) below. Any agent representing any party to this transaction makes no representations and is not responsible for any conditions existing in the property.

BUYER _____ DATE _____

BUYER _____ DATE _____

Signed March 3, 2011

CHAPTER 197

(HB 1219)

Eviction notice requirements revised.

ENTITLED, An Act to extend certain protections against precipitous eviction to certain long-term tenants at will.

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

Section 1. That § 43-8-8 be amended to read as follows:

43-8-8. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant in the manner prescribed by § 43-8-9 to remove from the premises within a period, specified in the notice, of not less than one month. However, if the tenancy at will is the residence of a tenant who is on active military service or if a person on active military service is an immediate family member of the tenant, the tenant is entitled to two months' notice in the manner prescribed by § 43-8-9 unless:

(1) The tenant has engaged in sustained conduct that is either disruptive to other residents or neighbors, illegal, destructive, or negligent toward the maintenance of the property, or constitutes a material breech in the implied lease conditions; or

(2) The landlord has sold the property or the property has passed to the landlord's estate.

For the purposes of this section, an immediate family member is a spouse or minor child.

Signed March 11, 2011

CHAPTER 198

(SB 76)

Gift certificates and closed-loop prepaid cards exempt from the unclaimed property provisions.

ENTITLED, An Act to exempt certain gift certificates and closed-loop prepaid cards from the unclaimed property provisions.

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

Section 1. That chapter 43-41B be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this chapter do not apply to any gift certificate or closed-loop prepaid card that has no expiration date and that is not subject to a dormancy, inactivity, or service fee. For purposes of this chapter, a closed-loop prepaid card is an electronic payment device that meets the following conditions:

(1) Is purchased or loaded, or both, on a prepaid basis in exchange for payment for the future purchase or delivery of goods or services; and

(2) Is redeemable upon presentation to a single merchant or an affiliated group of merchants for goods and services.

Section 2. That § 43-41B-42 be amended to read as follows:

43-41B-42. Any unredeemed gift certificate or closed-loop card that meets the requirements of section 1 of this Act or any open-loop prepaid card or rewards card is subject only to any rights of a purchaser or owner of ~~such~~ the gift certificate or card and is not subject to any claim made by any state acting on behalf of a purchaser or owner.

Signed March 14, 2011

LIENS

CHAPTER 199

(SB 110)

Collateral real estate mortgages revised.

ENTITLED, An Act to revise certain provisions relating to collateral real estate mortgages.

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

Section 1. That § 44-8-26 be amended to read as follows:

44-8-26. A mortgage which contains the following statement in printed or typed capital letters: THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO SDCL 44-8-26, is subject to the provisions of this section. A mortgage executed pursuant to this section shall be entitled in printed or typed capital letters: MORTGAGE--COLLATERAL REAL ESTATE MORTGAGE. A mortgage made pursuant to this section shall, notwithstanding the fact that from time to time during the term thereof no indebtedness is due from the mortgagor to the mortgagee, constitute a continuing lien against the real property covered thereby for the amount stated in the mortgage. Any sums not exceeding the face amount of the mortgage, together with interest thereon as provided in the instrument secured by the mortgage, advanced by the mortgagee prior to or during the term of the mortgage have a lien priority as of the date the mortgage was filed. At any time the indebtedness due the mortgagee is zero, the mortgagor may demand in writing that the mortgage be satisfied, and the mortgagee shall within ten days thereafter execute and record a satisfaction thereof. Collateral real estate mortgages may be used to secure commercial, agricultural or consumer loans or lines of credit including, but not limited to, revolving notes and credits and over-draft checking plans.

A filed collateral real estate mortgage is effective for a period of five years from the date of filing and thereafter for a period of sixty days. No sums advanced subsequent to the end of the sixty-day period, save and except sums advanced for protection of the real estate collateral and for real property taxes or insurance, are secured by the collateral real estate mortgage unless an addendum to the collateral real estate mortgage extending its effective date is filed prior to the end of the sixty-day period. An addendum continuing the effectiveness of the collateral real estate mortgage may be filed by the mortgagee within six months before and sixty days after the expiration of the five-year effective date.

An addendum to a collateral real estate mortgage for the sole purpose of continuing the effectiveness of its lien need be signed only by the mortgagee. Upon the timely filing of such an addendum to a collateral real estate mortgage, the effectiveness of the collateral real estate mortgage will be continued for five years ~~after the stated maturity date in those instances where the original collateral real estate mortgage provided a maturity date or for five years after the expiration of the five-year period whereupon it shall lapse in the same manner~~ and sixty days after the addendum filing date. Thereafter, the addendum shall lose effectiveness to secure sums advanced after the sixty day period to the extent as provided above, unless another addendum to the collateral real estate mortgage continuing the effectiveness of its lien is filed prior to ~~such lapse~~ the end of the sixty day period. Succeeding addendums to collateral real estate mortgages may be filed in the same manner to continue the effectiveness of the lien of the collateral real estate mortgage.

Signed March 3, 2011

WATER MANAGEMENT

CHAPTER 200

(SB 184)

Appropriations for various water and environmental purposes.

ENTITLED, An Act to make appropriations from the water and environment fund, the water pollution control revolving fund subfund, and the drinking water revolving fund subfund for various water and environmental purposes, to revise the state water plan, and to declare an emergency.

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

Section 1. There is hereby appropriated from the South Dakota water and environment fund established pursuant to § 46A-1-60, the sum of three million three hundred ten thousand dollars ($3,310,000), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the purpose of providing a grant to the project sponsors to be used for the engineering design, right-of-way acquisition, preconstruction activities, and construction of the Sioux Falls flood control project as authorized in section 17 of chapter 254 of the 1992 Session Laws. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 2. There is hereby appropriated from the South Dakota water and environment fund established pursuant to § 46A-1-60, the sum of two million dollars ($2,000,000), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the purpose of providing grants to local project sponsors for the engineering design, preconstruction activities, and construction of the facilities included in the Southern Black Hills Water System as authorized in § 46A-1-13.11. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 3. There is hereby appropriated from the South Dakota water and environment fund established pursuant to § 46A-1-60, the sum of fifty-five thousand five hundred dollars ($55,500), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the purpose of providing a loan to the project sponsors to be used to implement the Lake Andes-Wagner/Marty II research demonstration program as authorized by § 46A-1-13.6. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 4. There is hereby appropriated from the South Dakota water and environment fund established pursuant to § 46A-1-60, the sum of five million one hundred fifty thousand dollars ($5,150,000), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the purpose of providing grants and loans to project sponsors under the consolidated water facilities construction program established pursuant to § 46A-1-63.1. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 5. There is hereby appropriated from the South Dakota water and environment fund established pursuant to § 46A-1-60, the sum of one million dollars ($1,000,000), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the

purpose of providing grants and loans to project sponsors under the solid waste management program established pursuant to § 46A-1-83. Funds shall be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 6. Notwithstanding § 34A-6-85, there is hereby appropriated from the South Dakota water and environment fund established pursuant to § 46A-1-60, from the fees received pursuant to §§ 34A-6-81 to 34A-6-84, inclusive, the sum of one million seven hundred fifty thousand dollars ($1,750,000), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the purpose of providing grants and loans to project sponsors for the construction, remediation, enlargement, closure, or upgrade of regional landfills. Funds shall be provided according to the terms and conditions established by the Board of Water and Natural Resources. Notwithstanding § 46A-1-67, the term of years for loans under this section may be extended to the useful life of the facilities being financed.

The department may use up to seven hundred fifty thousand dollars of the funds appropriated by this section, to contract for the statewide cleanup of waste tires and solid waste. Notwithstanding, § 46A-1-61, the department may fund up to one hundred percent of the nonfederal share of statewide waste tires and solid waste cleanup projects.

Section 7. There is hereby appropriated from administrative expense surcharge fees deposited in the South Dakota state water pollution control revolving fund program subfund established pursuant to § 46A-1-60.1, the sum of one million two hundred thousand dollars ($1,200,000), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the purpose of providing water quality grants under the state water pollution control revolving fund program established pursuant to § 46A-1-60.1. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 8. There is hereby appropriated from administrative expense surcharge fees deposited in the South Dakota state water pollution control revolving fund program subfund established pursuant to § 46A-1-60.1, the sum of two hundred thousand dollars ($200,000), or so much thereof as may be necessary to the South Dakota Board of Water and Natural Resources for the purpose of contracting for the preparation of applications and administration of clean water state revolving fund loans under the state water pollution control revolving fund program established pursuant to § 46A-1-60.1. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 9. There is hereby appropriated from administrative expense surcharge fees deposited in the South Dakota state drinking water revolving fund program subfund established pursuant to § 46A-1-60.1, the sum two hundred thousand dollars ($200,000), or so much thereof as may be necessary to the South Dakota Board of Water and Natural Resources for the purpose of contracting for the preparation of applications and administration of drinking water state revolving fund loans under the state drinking water revolving fund program established pursuant to § 46A-1-60.1. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 10. There is hereby appropriated from federal funds deposited in the South Dakota state drinking water revolving fund program subfund established pursuant to § 46A-1-60.1, the sum of two hundred fifty-five thousand dollars ($255,000), or so much thereof as may be necessary, to the South Dakota Board of Water and Natural Resources for the purpose of providing small system technical assistance set-aside grants to project sponsors under the state drinking water revolving fund program established pursuant to § 46A-1-60.1. Funds shall be provided according to terms and conditions established by the Board of Water and Natural Resources.

Section 11. That § 46A-1-2.1 be amended to read as follows:

46A-1-2.1. The Legislature finds that the following water resources projects are necessary for the general welfare of the people of the State of South Dakota and authorizes the projects pursuant to § 46A-1-2 to be included in the state water resources management system to serve as the preferred, priority objectives of the state: Big Sioux flood control study, Black Hills hydrology and water management study, Cendak irrigation project, Gregory County pumped storage site, Lake Andes-Wagner/Marty II irrigation unit, Lewis and Clark rural water system, Mni Wiconi rural water system, Perkins County rural water system, Sioux Falls flood control project, ~~Slip-Up Creek,~~ Southern Black Hills Water System, and Vermillion basin flood control project.

Section 12. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 15, 2011

CHAPTER 201

(SB 119)

Revise provisions for water user district surety bonds.

ENTITLED, An Act to revise certain provisions relating to sureties for water user district treasurers.

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

Section 1. That § 46A-9-35 be amended to read as follows:

46A-9-35. The treasurer shall furnish and maintain a corporate surety bond in ~~an amount sufficient to cover all moneys coming into his possession or control, which bond shall be satisfactory in form and with sureties approved by the board~~ such amounts and with such sureties as the directors may specify and conditioned on faithful performance of the treasurer's duties. ~~Said~~ The bond, as thus approved, shall be filed with the secretary of state, and the premium upon ~~such~~ the bond shall be paid by the district.

Signed March 14, 2011

CHAPTER 202

(SB 120)

Revise amount of compensation for water user district directors.

ENTITLED, An Act to revise the amount of compensation that water user district directors may receive.

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

Section 1. That § 46A-9-33 be amended to read as follows:

46A-9-33. ~~Members of the board of directors shall be paid their actual expenses while engaged in performing the duties of their office or otherwise engaged upon the business of the water user district. In addition, they each shall receive as compensation for such services a sum to be determined by the board of directors not to exceed one hundred twenty dollars per day~~ Each water user district

board of directors shall establish amounts to reimburse board members for expenses for lodging, meals, and mileage and to provide compensation for each day of actual service for traveling to, attending, and returning from meetings, hearings, or investigations of the water use district board. Such reimbursement and compensation shall be paid on vouchers duly verified and approved accordingly to procedures determined by the board.

Signed March 14, 2011

CHAPTER 203

(SB 122)

Revise procedures for expenditure of water user district funds.

ENTITLED, An Act to revise certain provisions relating to the expenditure of water user district funds.

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

Section 1. That § 46A-9-67 be amended to read as follows:

46A-9-67. ~~Money of the district shall be paid out or expended only upon approval of the board of directors and by warrant or other instrument in writing signed by the president and by the treasurer of the district. In case of the death, absence, or other disqualification of the president, the vice-president shall sign warrants or other instruments.~~ All moneys collected pursuant to this chapter shall be deposited with the water user district treasurer in any depository designated and approved by the board of directors of the water user district at a regular meeting and from which all valid claims against the district shall be paid or by order duly drawn by the district treasurer pursuant to procedures adopted by the board of directors.

Signed March 15, 2011

PUBLIC UTILITIES AND CARRIERS

CHAPTER 204

(SB 24)

Rate case filing fees increased.

ENTITLED, An Act to increase the filing fee for a rate case filed by a gas or electric public utility.

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

Section 1. That § 49-1A-8 be amended to read as follows:

49-1A-8. There is created a special fund within the state treasury to be known as the South Dakota Public Utilities Commission Regulatory Assessment Fee fund. The Public Utilities Commission may require a public utility as defined in subdivision 49-34A-1(12) to make a deposit

of up to ~~one~~ two hundred fifty thousand dollars when it files for approval of a general rate case, regardless of the number of issues involved~~, or files an integrated resource plan. The commission may require a deposit of up to one hundred twenty-five thousand dollars for a filing which combines a general rate case and an integrated resource plan~~. The commission may require a deposit of up to fifty thousand dollars for the filing of a tariff for approval under the provisions of § 49-34A-4 and §§ 49-34A-25.1 to 49-34A-25.4, inclusive, or makes a filing pursuant to §§ 49-34A-97 to 49-34A-100. The deposits shall be made to the South Dakota Public Utilities Commission Regulatory Assessment Fee fund, the amount to be designated by commission order. The fund shall be invested as provided by law, and the interest earned shall be credited to the fund.

Signed March 7, 2011

CHAPTER 205

(SB 19)

Motor carrier safety requirements updated.

ENTITLED, An Act to update certain provisions pertaining to motor carrier safety and the transportation of hazardous materials.

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

Section 1. That § 49-28A-3 be amended to read as follows:

49-28A-3. The state hereby adopts Title 49 of the Code of Federal Regulations, subtitle B, chapter I, subchapter A, part 107 (subparts F and G only) and subchapter C, parts 171 to 180, inclusive, as amended through January 1, ~~2010~~ 2011, and Title 49 of the Code of Federal Regulations, subtitle B, chapter III, subchapter B, part 387 and parts 390 to 397, inclusive, as amended through January 1, ~~2010~~ 2011, with the following modifications:

(1) All references to interstate operations shall also include intrastate operations except that drivers and motor carriers operating intrastate vehicles and combinations of vehicles with three axles or less or with a gross vehicle weight rating of not more than twenty-six thousand pounds which are not used to transport hazardous materials requiring placarding under part 177, or designed to transport more than fifteen passengers, including the driver, are not subject to parts 390-397;

(2) For the purposes of part 391.11(b)(1), a driver shall be at least twenty-one years old if engaged in interstate commerce, or transporting hazardous material of a type or quantity requiring placarding under part 177, or operating a vehicle designed to transport more than fifteen passengers, including the driver. All other drivers shall be at least sixteen years of age;

(3) Intrastate drivers are exempt from the physical requirements of part 391.41.

Any violation of part 387 and parts 390 to 396, inclusive, the motor carrier safety requirements governing the qualifications of drivers, driving of motor vehicles, parts and accessories necessary for safe operation, notification and reporting of accidents, assistance with investigations and special studies, hours of service of drivers, inspection, repair, and maintenance is a Class 2 misdemeanor. Any violation of the hazardous materials regulations pertaining to registration of cargo tank motor vehicles, registration of persons who offer or transport hazardous materials, general information, regulations and definitions, hazardous materials tables, hazardous materials communication regulations, and test and inspection marking requirements found in parts 107 (subparts F and G only),

171, 172, and 178 to 180, inclusive, is a Class 2 misdemeanor. Any violation of the hazardous materials regulations pertaining to packaging, prohibited shipments, loading and unloading, segregation and separation, retesting and inspection of cargo tanks, and other carriage by regulations found in parts 173 to 180, inclusive, or violation of the driving and parking rules in part 397, is a Class 1 misdemeanor.

Signed February 24, 2011

CHAPTER 206

(HB 1069)

Electronic communication devices defined for certain crimes involving threatening or harassing calls.

ENTITLED, An Act to define electronic communication devices for certain crimes involving threatening or harassing calls.

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

Section 1. That § 49-31-31 be amended to read as follows:

49-31-31. It is a Class 1 misdemeanor for a person to use a telephone or other electronic communication device for any of the following purposes:

(1) To contact another person with intent to terrorize, intimidate, threaten, harass, or annoy such person by using obscene or lewd language or by suggesting a lewd or lascivious act;

(2) To contact another person with intent to threaten to inflict physical harm or injury to any person or property;

(3) To contact another person with intent to extort money or other things of value;

(4) To contact another person with intent to disturb that person by repeated anonymous telephone calls or intentionally failing to replace the receiver or disengage the telephone connection.

It is a Class 1 misdemeanor for a person to knowingly permit a telephone or other electronic communication device under his or her control to be used for a purpose prohibited by this section.

Section 2. That § 49-31-33 be amended to read as follows:

49-31-33. Any offense committed by use of a telephone or other electronic communication device as set forth in § 49-31-31 is considered to have been committed at either the place where the telecommunications message or electronic communication originated or at the place where the telecommunications message or electronic communication was received.

Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of §§ 49-31-31 and 49-31-33, an electronic communication device is any electronic device capable of transmitting signs, signals, writing, images, sounds, messages, data, or

other information by wire, radio, light waves, electromagnetic means, or other similar means, including telephones, cellular phones, and computers.

Signed March 10, 2011

CHAPTER 207

(SB 25)

Telephone solicitation account funds, use revised.

ENTITLED, An Act to revise certain provisions regarding the use of funds in the telephone solicitation account.

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

Section 1. That § 49-31-104 be amended to read as follows:

49-31-104. There is hereby established in the state treasury, the telephone solicitation account. Unless otherwise provided by law, this fund ~~shall consist~~ consists of all fees and fines imposed pursuant to §§ 49-31-99 to 49-31-108, inclusive, designated for deposit in the fund. The fund shall be maintained separately and administered by the commission to implement and administer provisions of ~~§§ 49-31-99 to 49-31-108, inclusive~~ this chapter. Any interest earned on money in the fund shall be deposited in the fund. Expenditures from the fund shall be budgeted through the normal budget process. Unexpended funds and interest shall remain in the fund until appropriated by the Legislature. Any expenditure from the fund shall be disbursed on warrants drawn by the state auditor and shall be supported by vouchers approved by the commission.

Signed March 3, 2011

CHAPTER 208

(SB 132)

Incumbent electric utilities have the right of first refusal to construct and own electric transmission lines.

ENTITLED, An Act to provide the right of first refusal to construct and own electric transmission lines to incumbent electric utilities.

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

Section 1. For the purposes of this Act, the term, electric transmission line, means any line connecting to existing electric transmission network facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase, other than a line solely for connecting an electric generation facility to facilities owned by an electric utility.

Section 2. For the purposes of this Act, the term, incumbent electric transmission owner, means an electric utility or public utility furnishing electric service in this state or wholesale rural electric cooperative whose owners furnish electric service in this state or a municipal power agency or a consumers power district organized pursuant to chapter 49-35.

Section 3. Any incumbent electric transmission owner may construct, own, and maintain an electric transmission line that connects to facilities owned by the incumbent electric transmission owner. The right to construct, own, and maintain an electric transmission line that connects to facilities owned by two or more incumbent electric transmission owners belongs individually and proportionally to each incumbent electric transmission owner, unless otherwise agreed in writing. If an electric transmission line has been approved for construction in a federally registered planning authority transmission plan, the incumbent electric transmission owner may give notice to the commission, in writing, within ninety days of approval, of its intent to construct, own, and maintain the electric transmission line. If no notice is provided, the incumbent electric transmission owner shall surrender its first right to construct, own, and maintain the electric transmission line. Within eighteen months after the notice, the incumbent electric transmission owner shall file an application for a permit in accordance with chapter 49-41B.

Signed March 10, 2011

CHAPTER 209

(SB 26)

Gas or electric public utility implementation of a proposed rate or practice procedure revised.

ENTITLED, An Act to revise certain provisions regarding the implementation of a proposed rate or practice by a gas or electric public utility.

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

Section 1. That § 49-34A-17 be amended to read as follows:

49-34A-17. The public utility may implement the proposed ~~rate or~~ practice, the proposed rate, or a rate lower than the proposed rate if:

(1) The proposed rate or practice has not been suspended or is no longer subject to suspension;

(2) The commission has not issued a final decision; and

(3) Thirty days has passed from the date of filing.

If the public utility implements the proposed rate or a rate lower than the proposed rate, the public utility shall use the same rate design that is currently in effect or the rate design that the public utility proposed when the public utility filed for the increased rate. If the public utility uses a rate design different than the rate design currently in effect or the rate design the public utility proposed when the public utility filed for the increased rate, commission approval is needed prior to implementation.

In the case of a proposed increased rate, the commission may, by order, require the public utility to keep an accurate account in detail of all amounts received by reason of the increase, specifying by whom and in whose behalf the amounts are paid. Upon completion of the hearings and decision, the commission may by further order require the public utility to refund, with interest, to customers, the portion of the increased rates found to be unjust, unreasonable, or discriminatory. The refund shall be carried out as provided in §§ 49-34A-22 and 49-34A-23. If the commission does not issue a final

decision within twelve months from the date the proposed rate or practice was filed, the commission may not require a refund of increased rates charged after the twelve months.

Signed March 3, 2011

CHAPTER 210

(SB 23)

Pipeline safety regulation, federal citations updated.

ENTITLED, An Act to update certain citations to federal regulations regarding pipeline safety inspection.

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

Section 1. That § 49-34B-1 be amended to read as follows:

49-34B-1. Terms used in this chapter mean:

(1) "Commission," the Public Utilities Commission;

(2) "Emergency release," a release of a quantity of gas that is great enough to pose a clear and immediate danger to life, health, environment, or that threatens a significant loss of property;

(3) "Gas," natural gas, liquefied natural gas, flammable gas, gas which is toxic or corrosive, or liquefied petroleum gas in distribution systems;

(4) "Gas pipeline," all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies;

(5) "Gas pipeline facilities," new and existing pipelines, rights-of-way, master meter systems, pipeline facilities within this state which transport gas from an interstate gas pipeline to a direct sales customer within this state purchasing gas for its own consumption, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation;

(6) "Inspection fee," any fee assessed to pipeline operators based on the expenses and obligations incurred by the commission in implementing and administering this chapter;

(7) "Intrastate pipeline," any pipeline or that part of a pipeline to which this part applies that is not an interstate pipeline;

(8) "Interstate pipeline," pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, United States Code, Title 15, sections 717 to 717z, inclusive, as amended to ~~February 22, 2010~~ January 1, 2011, except that it does not include any pipeline facilities within this state which transport gas from an interstate gas pipeline to a direct sales customer within this state purchasing gas for its own consumption;

(9) "Liquefied natural gas," natural gas or synthetic gas having methane (CH4) as its major constituent that has been changed to a liquid or semisolid;

(10) "Master meter system," any pipeline system for distributing gas within a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system and the gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents;

(11) "Pipeline operator," any person who owns or operates a pipeline;

(12) "Release," a spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, disposing, flowing, or any uncontrolled escape of a gas from a pipeline; and

(13) "Transportation of gas," the gathering, transmission, or distribution of gas by pipeline or the storage of gas.

Section 2. That § 49-34B-2 be amended to read as follows:

49-34B-2. Any rural gathering facility as defined in 49 C.F.R. 192.8 as of ~~February 22, 2010~~ January 1, 2011, is exempt from this chapter.

Section 3. That § 49-34B-3 be amended to read as follows:

49-34B-3. There is created a pipeline safety inspection program. The federal safety standards adopted as Code of Federal Regulations, title 49 appendix, parts 191, 192, 193, and 199 as amended to ~~February 22, 2010~~ January 1, 2011, are adopted as minimum safety standards for this chapter. The commission shall establish and implement a compliance program to enforce these safety standards. The program shall be established and implemented in a manner that fully complies with requirements for state certification under the United States Code, title 49, section 60105, as amended to ~~February 22, 2010~~ January 1, 2011.

Section 4. That § 49-34B-4 be amended to read as follows:

49-34B-4. The commission may, by rules promulgated pursuant to chapter 1-26, 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 standard 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 ~~February 22, 2010~~ January 1, 2011.

Section 5. That § 49-34B-13 be amended to read as follows:

49-34B-13. No person is subject to civil penalties under this chapter if prior civil penalties have been imposed under the United States Code, title 49, section 60101 et seq. as amended to ~~February 22, 2010~~ January 1, 2011, for conduct that may give rise to a violation of both acts. Nothing in this chapter limits the powers of the commission, or precludes the pursuit of any other administrative, civil, injunctive, or criminal remedies by the commission or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

Section 6. That § 49-34B-14 be amended to read as follows:

49-34B-14. The commission may, to the extent authorized by agreement with the secretary of the United States Department of Transportation, act as agent for the secretary of transportation to implement the United States Code, title 49, section 60101 et seq. as amended to ~~February 22, 2010~~ January 1, 2011, and any federal pipeline safety regulations promulgated thereto with respect to interstate gas pipelines located within this state, as necessary to obtain annual federal certification. The commission shall, to the extent authorized by federal law, inspect pipelines in the state as authorized by the provisions of this chapter.

Section 7. That § 49-34B-15 be amended to read as follows:

49-34B-15. The commission may seek and accept federal designation of the commission's pipeline inspectors as federal agents for the purposes of inspection pursuant to the United States Code, title 49, section 60101 et seq. as amended to ~~February 22, 2010~~ January 1, 2011, and federal rules adopted to implement those acts. If the Department of Transportation delegates inspection authority to the state as provided in this section, the commission shall do what is necessary to carry out its delegated federal authority.

Section 8. That § 49-34B-19 be amended to read as follows:

49-34B-19. The commission may promulgate pipeline inspection and safety rules pursuant to chapter 1-26 to the extent necessary to enable the state to qualify for annual federal certification to operate the federal pipeline inspection program of intrastate and interstate gas pipelines as authorized by the United States Code, title 49, section 60101 et seq. as amended to ~~February 22, 2010~~ January 1, 2011.

Section 9. That § 49-34B-22 be amended to read as follows:

49-34B-22. All information reported to or obtained by the commission under this chapter that contains or relates to a trade secret referred to in United States Code, title 18, section 1905, as amended to ~~February 22, 2010~~ January 1, 2011, or that is granted by chapter 37-29 is confidential for the purpose of that section, except that the information may be disclosed to the commission or commission employee or agent concerned with enforcing this chapter. Nothing in this section authorizes the withholding of information by the commission from a committee of the Legislature.

Signed March 3, 2011

CHAPTER 211

(HB 1016)

Grain buyers, warehouses and weighmasters regulation revised.

ENTITLED, An Act to revise certain provisions regarding the licensing and regulation of grain buyers, grain warehouses, and weighmasters.

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

Section 1. That § 49-43-1.1 be amended to read as follows:

49-43-1.1. Terms used in this chapter mean:

(1) "Commission," the Public Utilities Commission of this state;

(1A) "Grain bank," grain which is received by a public grain warehouse from depositors for storage and is to be withdrawn and processed into feed as needed;

(1B) "Open storage grain," grain received by a public grain warehouse from a depositor for which a warehouse receipt has not been issued or a purchase made and is not grain bank;

(2) "Public grain warehouse," any public warehouse where grain, as defined in subdivision 49-45-1.1(2), is received for storage for hire. A public grain warehouse may also purchase, receive or handle grain in accordance with the provisions of chapter 49-45 relating to grain buyers;

(3) "Receipt," a warehouse receipt which complies with the requirements of this chapter and the rules of the commission promulgated pursuant thereto. A warehouse receipt may be in an electronic form;

(4) "Scale ticket," a memorandum issued by a public grain warehouse or grain buyer to a depositor at the time grain is initially delivered, showing the weight of the load, kind of grain, date of delivery, and indicates whether the grain is to be sold or stored under a warehouse receipt, in open storage, or in a grain bank account.

Section 2. That § 49-43-5.2 be amended to read as follows:

49-43-5.2. The application for a license to operate as a public grain warehouse shall be accompanied by a fee of two hundred fifty dollars for each municipality or location at which the warehouse operator receives or stores grain for hire.

Section 3. That § 49-43-5.7 be amended to read as follows:

49-43-5.7. Any person injured by the breach of any obligation of a warehouseman, for the performance of which a bond has been given under any of the provisions of this chapter, may sue on ~~such~~ the bond in ~~his~~ the person's own name in any court of competent jurisdiction to recover any damages ~~he~~ the person may have sustained by reason of ~~such~~ the breach. However, a person may sue on the bond only if the person has notified the commission of the person's intent to sue on the bond and if the commission has stated in writing that it does not intend to institute any proceedings regarding the bond.

Section 4. That § 49-43-40 be amended to read as follows:

49-43-40. The commission shall cause every public grain warehouse, whether licensed or unlicensed, to be inspected at such times as the commission considers necessary. The inspector shall report in writing to the commission the result of the inspection. The inspector may, at any time during ~~ordinary~~ business hours, enter any public grain warehouse or any ~~office~~ structure, vehicle, or enclosure in which the books and accounts of any public grain warehouse are kept, and may examine all the books, accounts, and electronic records relating to the transaction of business in such public grain warehouse either within or without the state. The commission may in all matters arising under ~~chapters 49-43 to 49-44, inclusive,~~ this chapter exercise the power of subpoena and examine witnesses in accordance with chapter 1-26.

Section 5. That § 49-44-19 be repealed.

Section 6. That § 49-45-6 be amended to read as follows:

49-45-6. The commission shall supervise the business of grain buyers in this state and administer the laws relating thereto. The commission may promulgate rules, pursuant to chapter 1-26, concerning:

(1) The form of a grain buyer's bond and application and the information required to be included for licensing;

(2) Requirements for posting grain buyer's licenses;

(3) Requirements and procedures for obtaining, placing, and returning grain buyer decals and replacement decals;

(4) Notice requirements to sellers who enter into voluntary credit sale agreements;

(5) Requirements for filing financial statements with the commission and the financial standards by which the statements are approved when considering whether to license a grain buyer; ~~and~~

(6) Requirements for grain buyers to provide information to sellers regarding the statutes and rules relating to grain buyers;

(7) Requirements and procedures for releasing bonds; and

(8) Procedures and requirements for license suspension, revocation, transfer of ownership, or insolvency by a grain buyer.

Section 7. That § 49-45-8 be amended to read as follows:

49-45-8. The application for a grain buyer license shall be accompanied by a fee of two hundred fifty dollars for each municipality or location at which the grain buyer receives grain. If the grain buyer making application for a license also holds a license to operate a public grain warehouse or is, at the same time, making application to operate a public grain warehouse under chapter 49-43, the fee imposed by this section is waived.

Section 8. That § 49-45-12 be amended to read as follows:

49-45-12. A grain buyer shall procure a decal from the commission to be permanently attached and displayed on each ~~tractor,~~ truck tractor~~,~~ or straight truck ~~operated~~ licensed to operate on public roads within this state. The fee for each decal is fifteen dollars, which shall be purchased annually and which expires on June thirtieth. A violation of this section is a Class 2 misdemeanor.

Section 9. That § 49-45-13 be amended to read as follows:

49-45-13. The commission shall cause the business facilities of every grain buyer, whether licensed or unlicensed, to be inspected at such times as the commission considers necessary. The inspector shall report in writing to the commission the result of the examination. The inspector may at any time during business hours enter any structure, vehicle, or enclosure in which the books or accounts of any grain buyer are kept, and may examine all the books ~~or,~~ accounts, and electronic records relating to the transactions of the grain buyer either within or without the state. The commission may, in all matters arising under this chapter, exercise the power of subpoena and examine witnesses in accordance with chapter 1-26.

Section 10. That § 49-45-16 be amended to read as follows:

49-45-16. The commission may immediately suspend the license of a grain buyer and the grain buyer shall surrender the license to the commission if:

(1) The grain buyer~~, whether licensed or unlicensed,~~ refuses, neglects, or is unable, upon proper demand, to redeem any scale ticket issued by the grain buyer, through redelivery or cash payment;

(2) The grain buyer refuses, neglects, or is unable to provide a bond in an amount required by the commission; or

(3) The commission has knowledge of any act of insolvency, including the filing of a petition in bankruptcy naming the grain buyer as debtor.

Within fifteen days the grain buyer may request a hearing pursuant to chapter 1-26 to determine if the license should be revoked. If no request is made within fifteen days, the commission shall revoke the license. ~~If the commission determines it is necessary, the commission may apply to the circuit court in the county in which the grain buyer operates for that court to appoint a receiver. The receiver has such powers and duties as the court may direct.~~

Section 11. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as follows:

If the commission determines that it is necessary, the commission may apply to the circuit court in the county in which the grain buyer operates or operated for that court to appoint a receiver. The receiver shall have such powers and duties as the court may direct.

Section 12. That § 49-45-17 be amended to read as follows:

49-45-17. Any person injured by the breach of any obligation of a grain buyer, for the performance of which a bond has been given under any of the provisions of this chapter, may sue on ~~such~~ the bond in the person's own name in any court of competent jurisdiction to recover any damages the person may have sustained by reason of ~~such~~ the breach. However, a person may sue on the bond only if the person has notified the commission of the person's intent to sue on the bond and if the commission has stated in writing that it does not intend to institute any proceedings regarding the bond.

Signed February 17, 2011

FIDUCIARIES AND TRUSTS

CHAPTER 212

(HB 1155)

Trust provisions revised.

ENTITLED, An Act to revise various trust provisions.

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

Section 1. That § 55-1B-2 be amended to read as follows:

55-1B-2. An excluded fiduciary is not liable, either individually or as a fiduciary, for any of the following:

(1) Any loss that results from compliance with a direction of the trust advisor, custodial account owner, or authorized designee of a custodial account owner;

(2) Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor if that excluded fiduciary timely sought but failed to obtain that authorization;

(3) Any loss that results from any action or inaction, except for gross negligence or willful misconduct, when an excluded fiduciary is required, pursuant to the trust agreement or any other reason, to assume the role of trust advisor, trust protector, investment trust advisor, or distribution trust advisor.

Any excluded fiduciary is also relieved from any obligation to perform investment or suitability reviews, inquiries, or investigations or to make recommendations or evaluations with respect to any investments to the extent the trust advisor, custodial account owner, or authorized designee of a custodial account owner had authority to direct the acquisition, disposition, or retention of any such investment. If the excluded fiduciary offers such communication to the trust advisor, trust protector, investment trust advisor, or distribution trust advisor or any investment person selected by the investment trust advisor, such action may not be deemed to constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of the advisor's authority or to constitute any duty to do so.

Any excluded fiduciary is also relieved of any duty to communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trust advisor, trust protector, investment trust advisor, or distribution trust advisor.

Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of authority of the trust advisor, trust protector, investment trust advisor, or distribution trust advisor (such as confirming that the advisor's directions have been carried out and recording and reporting actions taken at the advisor's direction) shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument, and such administrative actions may not be deemed to constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of authority of the trust advisor, trust protector, investment trust advisor, or distribution trust advisor.

Nothing in subdivision (2) imposes an obligation or liability with respect to a custodian of a custodial account.

Section 2. That § 55-5-16 be amended to read as follows:

55-5-16. A trustee has a duty to personally perform the responsibilities of the trusteeship except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom, and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in monitoring agents, the trustee may seek the prior approval for the delegation from all known beneficiaries of the trust or from the court. If such approval is given in writing by all known beneficiaries or by the court, the trustee is not liable for the acts of the person to whom the authority is delegated except in the cases of ~~gross~~ willful misconduct or gross negligence by the delegating trustee in the selection or monitoring of the agent.

Section 3. That § 55-1B-1 be amended to read as follows:

55-1B-1. Terms used in this chapter mean:

(1) "Instrument," any revocable or irrevocable trust document created inter vivos or testamentary or any custodial account agreement;

(2) "Trust protector," any person whose appointment as protector is provided for in the instrument. Such person may not be considered to be acting in a fiduciary capacity except to the extent the governing instrument provides otherwise. However, a protector shall be considered acting in a fiduciary capacity to the extent that the person exercises the authority of an investment trust advisor or a distribution trust advisor;

(3) ~~Repealed by SL 2005, ch 260, § 2.~~ "Trust advisor," either an investment trust advisor or a distribution trust advisor;

(4) "Fiduciary," a trustee or custodian under any instrument, an executor, administrator, or personal representative of a decedent's estate, or any other party, including a trust advisor, a trust protector, or a trust committee, who is acting in a fiduciary capacity for any person, trust, or estate;

(5) "Excluded fiduciary," any fiduciary excluded from exercising certain powers under the instrument which powers may be exercised by the grantor, custodial account owner, trust advisor, trust protector, trust committee, or other persons designated in the instrument;

(6) "Investment trust advisor," a fiduciary, given authority by the instrument to exercise all or any portions of the powers and discretions set forth in § 55-1B-10;

(7) "Distribution trust advisor," a fiduciary, given authority by the instrument to exercise all or any portions of the powers and discretions set forth in § 55-1B-11;

(8) "Custodial account," an account, established by a party with a bank as defined in 26 U.S.C. 408(n), as of January 1, 2006, or with another person approved by the Internal Revenue Service as satisfying the requirements to be a nonbank trustee or a nonbank passive trustee set forth in U.S. Treasury Regulations promulgated under 26 U.S.C. 408, that is governed by an instrument concerning the establishment or maintenance, or both, of an individual retirement account, qualified retirement plan, Archer medical savings account, health savings account, Coverdell education savings account, or any similar retirement or savings vehicle permitted under the Internal Revenue Code of 1986, as of January 1, 2006;

(9) "Custodial account owner," any party who establishes a custodial account; or has the power to designate the beneficiaries or appoint the custodian of the custodial account; or otherwise is the party who possesses the power to direct the investment, disposition, or retention of any assets in the custodial account or name an authorized designee to effect the same.

Section 4. That chapter 55-1B be amended by adding thereto a NEW SECTION to read as follows:

Any governing instrument providing for a trust advisor or trust protector may also provide such trust advisor or trust protector with some, none, or all of the rights, powers, privileges, benefits, immunities, or authorities available to a trustee under South Dakota law or under the governing instrument. Unless the governing instrument provides otherwise, a trust advisor or trust protector has no greater liability to any person than would a trustee holding or benefiting from the rights, powers,

privileges, benefits, immunities, or authority provided or allowed by the governing instrument to such trust advisor or trust protector.

Section 5. That § 55-1B-11 be amended to read as follows:

55-1B-11. The powers and discretions of a distribution trust advisor shall be provided in the trust instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the distribution trust advisor and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the document provide otherwise, the distribution trust advisor shall direct the trustee with regard to all discretionary distributions to beneficiaries and may direct appointments pursuant to § 55-2-15. The distribution trust advisor may also provide direction regarding notification of qualified beneficiaries pursuant to § 55-2-13.

Section 6. That § 55-16-4 be amended to read as follows:

55-16-4. Neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in § 55-16-3 may be considered a qualified person. However, nothing in this chapter precludes a transferor from appointing, removing, or replacing one or more co-trustees, trust advisors, or trust protectors, ~~or other fiduciaries as defined in subdivision 55-1B-1(4), including:~~

~~(1) A fiduciary who has authority under the terms of the trust instrument to remove and appoint qualified persons or trust advisors;~~

~~(2) A fiduciary who has authority under the terms of the trust instrument to direct, consent to, or disapprove distribution from the trust; and~~

~~(3) A fiduciary whether or not such fiduciary would meet the requirements imposed by § 55-16-3~~ regardless of whether or not such trust advisor or trust protector is a fiduciary.

Section 7. That chapter 51A-6A be amended by adding thereto a NEW SECTION to read as follows:

An entity may be excluded from the provisions of chapters 51A-5, 51A-6, and 51A-6A if:

(1) The entity is established for the exclusive purpose of acting as a trust protector, investment trust advisor, or distribution trust advisor, as defined by § 55-1B-1;

(2) The entity is acting in such capacity under a trust instrument which names a South Dakota trust company, a South Dakota bank with trust powers, or a national bank with trust powers as trustee;

(3) The entity is not engaged in trust company business with the general public as a public trust company or with any family as a private trust company;

(4) The entity does not hold itself out as being in the business of acting as a fiduciary for hire as either a public or private trust company;

(5) The entity files an annual report with the South Dakota secretary of state and provides a copy to the Division of Banking; and

(6) The entity agrees to be subject to examination by the Division of Banking at the discretion of the director.

The governing documents of any such excluded entity shall limit its authorized activities to the functions permitted to a trust protector, investment trust advisor, or distribution trust advisor pursuant to chapter 55-1B and limit the performance of those functions with respect to a specifically named trust or family of trusts.

An entity complying with this section shall notify the director of its existence, capacity to act, and the name of the trustee for the trust or family of trusts.

Section 8. That § 55-2-13 be amended to read as follows:

55-2-13. For purposes of this section, the term, qualified beneficiary, means a beneficiary that is an entity then in existence or an individual who is twenty-one years of age or older and who, on the date the beneficiary's qualification is determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees terminated on that date; or

(3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. However, if the distributee is then unknown because a person holds a power to change the distributee, the trustee shall give notice only to the holder of the power.

Except as otherwise provided by the terms of a revocable trust, a trustee has no duty to notify the qualified beneficiaries of the trust's existence.

Except as otherwise provided by the terms of an irrevocable trust or otherwise directed in writing by the settlor, ~~distribution~~ trust advisor, or trust protector, the trustee shall, within sixty days after the trustee has accepted trusteeship of the trust, or within sixty days after the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, notify the qualified beneficiaries of the trust's existence and of the right of the beneficiary to request a copy of the trust instrument pertaining to the beneficiary's interest in the trust.

~~Subject to the previous provision~~ Except as otherwise provided by the terms of an irrevocable trust or otherwise directed in writing by the settlor, trust advisor, or trust protector, a trustee of an irrevocable trust:

(1) Upon request of a qualified beneficiary, shall promptly furnish to the qualified beneficiary a copy of the trust instrument;

(2) If notification of the trust has not been accomplished pursuant to this section within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) Shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust, unless the request is unreasonable under the circumstances.

The settlor, trust advisor, or trust protector, may, by the terms of the governing instrument, or in writing delivered to the trustee, expand, restrict, eliminate, or otherwise modify the rights of beneficiaries to information relating to a trust.

A beneficiary may waive the right to the notice or information otherwise required to be furnished under this section and, with respect to future reports and other information, may withdraw a waiver previously given.

The change in the identity of a trustee, occurring as the result of a mere name change or a merger, consolidation, combination, or reorganization of a trustee, does not require notice.

If a fiduciary is bound by a duty of confidentiality with respect to a trust or its assets, a fiduciary may require that any beneficiary who is eligible to receive information pursuant to this section be bound by the duty of confidentiality that binds the trustee before receiving such information from the trustee.

A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the qualified beneficiaries under this section regardless of whether the terms of the trust relieve the excluded fiduciary from providing such information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subdivision shall affect the limitation on the liability of the excluded fiduciary.

The provisions of this section are effective for trusts created after June 30, 2002, except as otherwise directed by the settlor, trust protector, ~~or distribution~~ trust advisor, or other fiduciary designated by the terms of the trust. For trusts created before July 1, 2002, a trustee has no duty at common law or otherwise to notify a qualified beneficiary of the trust's existence unless otherwise directed by the settlor.

Section 9. That § 55-2-20 be amended to read as follows:

55-2-20. The power under § 55-2-15 may not be exercised to suspend the power to alienate trust property or extend the first trust beyond ~~any applicable termination date under the terms of the instrument of the first trust or~~ the permissible period of any rule against perpetuities applicable to the first trust.

Section 10. That § 55-2-15 be amended to read as follows:

55-2-15. Unless the terms of the governing instrument expressly provide otherwise, if a trustee ~~who~~ has ~~discretionary authority,~~ discretion under the terms of a ~~testamentary~~ governing instrument ~~or irrevocable inter vivos trust agreement,~~ to make a distribution of income or principal to~~,~~ or for the benefit of~~,~~ one or more beneficiaries of a trust (the "first trust"), whether or not restricted by any standard, then the trustee may instead exercise such ~~authority~~ discretion by appointing ~~all or~~ part or all of the income or principal subject to the ~~power~~ discretion in favor of a trustee of a second trust (the "second trust") under ~~an~~ a governing instrument ~~other than that under which the power to distribute is created or under the same instrument, in the event that~~ separate from the governing instrument of the first trust. Before exercising its discretion to appoint and distribute assets to a second trust, the trustee of the first trust ~~decides that~~ shall determine whether the appointment is necessary or desirable after taking into account the purposes of the first trust, the terms and conditions of the second trust, and the consequences of the distribution. ~~However~~ For the purposes of this Act, a trustee of the first trust is a restricted trustee if either the trustee is a beneficiary of the first trust or if a beneficiary of the first trust has a power to change the trustees within the meaning of § 55-2-17. In addition, the following apply to all appointments made under this section:

(1) The second trust may only have as beneficiaries ~~only~~ one or more of ~~those~~ the beneficiaries of the first trust ~~to~~:

(a) To or for whom a discretionary distribution of income or principal may be made from the first trust ~~and who are proper objects of the exercise of the power, or one or more of those other beneficiaries of the first trust to~~; or

(b) To or for whom a distribution of income or principal may ~~have been~~ be made in the future from the first trust at a time or upon the happening of an event specified under the first trust;

(2) No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so could have the effect of:

(a) ~~Exercise such authority to make a distribution from the first trust if the trustee is a beneficiary of the first trust, or if any beneficiary may change the trustees~~ Benefiting the restricted trustee as a beneficiary of the first trust, unless the exercise of such authority is ~~for~~ limited by an ascertainable standard based on or related to health, education, maintenance, or support; or

(b) ~~Exercise such authority to the extent that doing so would have the effect either of (i) increasing the distributions that can be made in the future from the second trust to the trustee of the first trust or to a beneficiary who may change the trustees of the first trust, or (ii) removing restrictions on discretionary distributions imposed by the agreement under which the first trust was created, except that in either case participating in a change that is needed for~~ Removing restrictions on discretionary distributions to a beneficiary imposed by the governing instrument under which the first trust was created, except that a provision in the second trust which limits distributions by an ascertainable standard based on or related to the health, education, maintenance, or support of any such beneficiary is permitted;

~~However, the~~(3) No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so would have the effect of increasing the distributions that can be made from the second trust to the restricted trustees of the first trust or to a beneficiary who may change the trustees of the first trust within the meaning of § 55-2-17 compared to the distributions that can be made to such trustee or beneficiary, as the case may be, under the first trust, unless the exercise of such authority is limited by an ascertainable standard based on or related to health, education, maintenance, or support;

(4) The provisions of ~~subdivision~~ subdivisions (2) and (3) only apply to restrict the authority of a trustee if either a trustee, or a beneficiary who may change the trustee, is a United States citizen or domiciliary under the Internal Revenue Code, or the trust owns property that would be subject to United States estate or gift taxes if owned directly by such a person~~.~~;

~~(3)~~(5) In the case of any trust contributions which have been treated as gifts qualifying for the exclusion from gift tax described in § 2503(b) of the Internal Revenue Code of 1986, by reason of the application of I.R.C. § 2503(c), the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest no later than the date upon which such interest would have vested under the terms of the governing instrument for the first trust;

~~(4)~~(6) The exercise of such authority may not reduce any income interest of any income beneficiary of any of the following trusts:

(a) A trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 or for state tax purposes under any comparable provision of applicable state law;

(b) A charitable remainder trust under I.R.C. § 664; or

(c) A grantor retained annuity trust under I.R.C. § 2702;

~~(5)~~(7) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions, unless after the exercise of such authority, such beneficiary's power ~~or~~ of withdrawal is unchanged with respect to the trust property;

~~(6)~~(8) The exercise of such authority is not prohibited by a spendthrift clause or by a provision in the ~~trust~~ governing instrument that prohibits amendment or revocation of the trust;

(9) Any appointment made by a trustee shall be considered a distribution by the trustee pursuant to the trustee's distribution powers and authority;

(10) If the trustee's distribution discretion is not subject to a standard, or if the trustee's distribution discretion is subject to a standard that does not create a support interest, then the court may review the trustee's determination or any related appointment only pursuant to § 55-1-43. Any other court review of the trustee's determination or any related appointment may be made only pursuant to § 55-1-42.

This section applies to any trust governed by the laws of this state, including a trust whose governing jurisdiction is transferred to this state.

Section 11. That § 51A-6A-13 be amended to read as follows:

51A-6A-13. The business of any trust company shall be managed and controlled by its governing board and includes the authority to provide for bonus payments, in addition to ordinary compensation, for any of its officers and employees. The governing board of a private trust company shall consist of not less than three nor more than twelve members, all of whom shall be elected by the owners of the trust company at any regular annual meeting, with terms not to exceed three years. The governing board of a public trust company shall consist of not less than five nor more than twelve members, all of whom shall be elected by the owners of the trust company at any regular meeting held during each calendar year. If the number of board members elected is less than twelve, the number of board members may be increased so long as the total number does not exceed twelve. If the number is increased, the first additional board members may be elected at a special meeting of the owners. The board members shall be elected and any vacancies filled in the manner as provided in the provisions regarding general corporations or limited liability companies, as applicable. At all times one of the directors shall be a resident of this state and at least ~~two-thirds~~ one-half of the directors shall be citizens of the United States. Any board member of any trust company who becomes indebted to the trust company on any judgment forfeits the position of board member, and the vacancy shall be filled as provided by law.

A public trust company chartered in South Dakota prior to July 1, 2011, if currently operating with less than five members of its governing board, shall supply evidence of compliance with this section at the same time the report of condition and fees are due as provided in § 51-6A-34 and ARSD 20:07:22:02 for calendar year 2011.

Section 12. That chapter 55-3 be amended by adding thereto a NEW SECTION to read as follows:

No beneficiary of a trust may assert a statute of limitations defense in any proceeding to modify, reform, or terminate a trust pursuant to §§ 55-3-23 to 55-3-29, inclusive.

Section 13. That chapter 55-1A be amended by adding thereto a NEW SECTION to read as follows:

A trustee may change the name of an irrevocable trust if the trustee deems such action to be in the best interests of the trust and its beneficiaries.

Section 14. That § 55-4-3 be amended to read as follows:

55-4-3. Unless it is otherwise provided by the trust instrument, or an amendment thereof, or by court order, any power vested in three or more trustees may be exercised by a majority of such trustees and any power vested in two trustees shall be exercised by both of such trustees.

Section 15. That § 55-4-51 be amended to read as follows:

55-4-51. Instead of furnishing a copy of the trust instrument or a copy of a will that creates a testamentary trust to a person other than a beneficiary, one or more trustees may furnish to the person a certificate of trust signed by a trustee, settlor, grantor, or trustor~~, or trust protector,~~ containing the following:

(1) A statement that the trust exists, the current name of the trust if one has been given, any previous name of the trust if the name of the trust was changed, and the date the trust instrument or will was executed;

(2) The name of the settlor, grantor, trustor, testator, or testatrix;

(3) The name of each original trustee and the name and address of each trustee ~~and each trust protector~~ currently empowered to act under the trust instrument or will on the date of the execution of the certificate of trust;

(4) The applicable powers of the trustee ~~and the trust protector~~ and other provisions set forth in the trust instrument or will as are selected by the person signing the certificate of trust, including those powers authorizing the trustee to sell, convey, pledge, mortgage, lease, or transfer title to any interest in property held in the trust, together with a statement setting forth the number of trustees required by the provisions of the trust instrument or will to act;

(5) A statement that the trust is irrevocable or, if the trust is revocable, a statement to that effect ~~and the identity of any person holding a power to revoke the trust, and, if applicable, a statement that the trust has been terminated or revoked~~ and that the trust has not been revoked;

(6) A statement that the trust is not supervised by a court, or, if applicable, a statement that the trust is supervised by a court, and which statement also sets forth any restrictions imposed by the court on the trustee's ability to act as otherwise permitted by statute or the terms of the trust instrument or will;

(7) If applicable, a description of any property to be conveyed by the trustee;

(8) A statement that the trust has not been modified or amended in any manner that would cause the representations contained in the certificate of trust to be incorrect.

The person signing the certificate shall certify that the statements contained in the certificate are true and correct. The signature of the person signing the certificate shall be acknowledged or verified

under oath before a notary public or other official authorized to administer oaths. A certificate of trust need not contain the dispositive terms of a trust.

Section 16. That § 55-4-51.3 be amended to read as follows:

55-4-51.3. A certificate of a trustee or of trustees of a trust in support of a real property transaction may be substantially in the following form:

This instrument was prepared by:

_____

_____

_____

(insert name, address and phone number)

CERTIFICATE

OF TRUST

STATE OF SOUTH DAKOTA)

: SS

COUNTY OF)

_____, being duly sworn under oath, does hereby state as follows:

1. A trust instrument or Will executed on _____ established a trust which is still in existence on the date this Certificate is signed. The current name of the trust, if it has been named, is _____. (Insert n/a if the Trust does not have a name). The name of the trust was/was not changed. If the name of the trust was changed, it was previously known as

_____.

2. The name of the settlor, grantor, trustor, testator or testatrix, as the case may be, is

_____.

3. The name of each original trustee and the name and address of each trustee and each trust protector currently empowered to act under the trust instrument or Will on the date of the execution of this Certificate of Trust is as follows:

_____

_____.

4. The person who signs this certificate below certifies that the trust instrument or Will contains the following powers which are given to the trustee, which may or may not be inclusive of all of the powers given to the trustee:

_____,

~~the following powers are given to the trust protector:~~

_____,

and further contains the following provisions (optional):

_____.

The number of trustees required to join in an action by the provisions of the trust instrument or Will ~~to~~ is _____.

5. The trust is revocable/irrevocable. ~~/The following person(s) has/have the right to revoke the trust:~~ _____.

~~The~~ If revocable, the trust has not been revoked.

6. The trust is/is not supervised by a court. The following restrictions are currently imposed by the court on the trustee(s) ability to act even though actions so restricted may be permitted by statute or the terms of the trust instrument or Will:

_____.

7. The Trustee intends to convey the following property owned by the Trust:

_____.

8. The trust has not been modified or amended in any manner that would cause the representations contained in this Certificate of Trust to be incorrect. The statements contained in this Certificate of Trust are true and correct.

_____

STATE OF SOUTH DAKOTA)

: SS

COUNTY OF)

On this, the _____ day of _____, 20_____, before me, the undersigned officer, personally appeared , known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she/he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____

Notary Public, South Dakota

My Commission expires: _____

Section 17. That § 55-16-15 be amended to read as follows:

55-16-15. Notwithstanding the provisions of §§ 55-16-9 to 55-16-14, inclusive, this chapter does not apply in any respect~~:~~

~~(1)~~ ~~To~~ to any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of such transferor's spouse, former spouse, or children, or for a division or distribution of property in favor of such transferor's spouse or former spouse, to the extent of such debt~~; or~~

~~(2) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, which death, personal injury, or property damage is at any time determined to have been caused in whole or in part by the act or omission of either such transferor or by another person for whom such transferor is or was vicariously liable. Subdivision (1).~~ This exception does not apply to any claim for forced heirship or legitime.

Section 18. That § 55-1A-33 be amended to read as follows:

55-1A-33. A trustee may advance income ~~to or for the use of the beneficiaries, for which advance he~~ or make loans out of trust property to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, for which such advance or loan the trustee shall have a lien on the future benefits of such beneficiary.

Section 19. That § 51A-5-18 be repealed.

Section 20. That § 51A-5-1.1 be amended to read as follows:

51A-5-1.1. Banks engaging in the trust business pursuant to this chapter have all powers necessary and incidental to carrying on the trust business, including:

(1) Acting as agent, custodian, or attorney-in-fact for any person, and, in such capacity, taking and holding property on deposit for safekeeping and acting as general or special agent or attorney-in-fact in the acquisition, management, sale, assignment, transfer, encumbrance, conveyance, or other disposition of property, in the collection or disbursement of income from or principal of property and, generally in any matter incidental to any of the foregoing;

(2) Acting as registrar or transfer agent for any corporation, partnership, association, municipality, state, or public authority, and in such capacity, receiving and disbursing money, transferring, registering, and countersigning certificates of stock, bonds or other evidences of indebtedness or securities and performing any and all acts which may be incidental thereto;

(3) Acting as trustee or fiduciary under any mortgage or bond issued by a person;

(4) Acting as trustee or fiduciary under any trust established by a person;

(5) Acting as fiduciary, assignee for the benefit of creditors, receiver or trustee under or pursuant to the order or direction of any court or public official of competent jurisdiction;

(6) Acting as fiduciary, guardian, conservator, assignee, or receiver of the estate of any person and as executor of the last will and testament or administrator, fiduciary or personal representative of the estate of any deceased person when appointed by a court or public official of competent jurisdiction;

(7) Establishing and maintaining common trust funds or collective investment funds pursuant to the provisions of §§ 55-6-1 to 55-6-7, inclusive; or

(8) Acting in any fiduciary capacity and performing any act as a fiduciary which a trust company organized under chapter 51A-6 may perform.

Section 21. That § 51A-6A-29 be amended to read as follows:

51A-6A-29. A trust company may exercise the following powers necessary or incidental to carrying on a trust company business, including:

(1) Act as agent, custodian, or attorney-in-fact for any person, and, in such capacity, take and hold property on deposit for safekeeping and act as general or special agent or attorney-in-fact in the acquisition, management, sale, assignment, transfer, encumbrance, conveyance, or other disposition of property, in the collection or disbursement of income from or principal of property, and generally in any matter incidental to any of the foregoing;

(2) Act as registrar or transfer agent for any corporation, partnership, association, limited liability company, municipality, state, or public authority, and in such capacity, receive and disburse money, transfer, register, and countersign certificates of stock, bonds, or other evidences of indebtedness or securities, and perform any acts which may be incidental thereto;

(3) Act as trustee or fiduciary under any mortgage or bond issued by a person;

(4) Act as trustee or fiduciary under any trust established by a person;

(5) Act as fiduciary, assignee for the benefit of creditors, receiver, or trustee under or pursuant to the order or direction of any court or public official of competent jurisdiction;

(6) Act as fiduciary, guardian, conservator, assignee, or receiver of the estate of any person and as executor of the last will and testament or administrator, fiduciary, or personal representative of the estate of any deceased person when appointed by a court or public official of competent jurisdiction;

(7) Establish and maintain common trust funds or collective investment funds pursuant to the provisions of §§ 55-6-2 to 55-6-7, inclusive; or

(8) Act in any fiduciary capacity and perform any act as a fiduciary which a South Dakota bank with trust powers may perform in the exercise of those trust powers.

Section 22. That § 51A-6A-64 be amended to read as follows:

51A-6A-64. Any trust company qualified to act as a fiduciary in this state may establish common trust funds or collective investment funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as co-fiduciaries. Any trust company qualified to act as fiduciary in this state may, as such fiduciary or co-fiduciary, invest funds that it lawfully holds for investment in the common trust funds or collective investment funds, if the investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship. Any common trust fund or collective investment funds shall be established and maintained according to the provisions of §§ 55-6-2 to 55-6-7, inclusive.

Section 23. That § 55-6-1 be amended to read as follows:

55-6-1. Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds or collective investment funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries.

Any common trust fund or collective investment fund authorized by this chapter shall be established and maintained in accordance with 12 C.F.R. 9.18 as of January 1, 2011.

Section 24. That § 55-6-2 be amended to read as follows:

55-6-2. Any bank or trust company qualified to act as fiduciary in this state may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in common trust funds or collective investment funds established pursuant to § 55-6-1, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment.

Section 25. That § 55-6-2.1 be amended to read as follows:

55-6-2.1. A bank or trust company qualified to act as a fiduciary in this state may:

(1) Establish and maintain common trust funds or collective investment funds for the collective investment of funds held in any fiduciary capacity by it or by another bank or trust company which is owned or controlled by a corporation which owns or controls such bank or trust company;

(2) Invest funds which it holds in common trust funds or collective investment funds established and maintained pursuant to subdivision (1).

The provisions of §§ 55-6-1 to ~~55-6-6~~ 55-6-7, inclusive, relating to common trust funds or collective investment funds shall apply to the establishment and maintenance of common trust funds or collective investment funds under this section.

This section shall apply to all fiduciary relationships.

Section 26. That § 55-6-3 be amended to read as follows:

55-6-3. The bank or trust company operating such common trust funds or collective investment funds shall comply with the provisions of chapter 21-22 in the administration of the trust estate.

Section 27. That § 55-6-6 be repealed.

Section 28. That chapter 55-6 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, common trust fund, is a fund as defined in 12 C.F.R. 9.18(a)(1) as of January 1, 2011, and is provided exemption from taxation according to 26 U.S.C. 584 as of January 1, 2011.

Section 29. That chapter 55-6 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, collective investment fund, is a fund as defined in 12 C.F.R. 9.18(a)(2) as of January 1, 2011, and is provided exemption from taxation according to Internal Revenue Service, Revenue Ruling 81-100, published March 30, 1981.

Section 30. That § 55-1-24 be amended to read as follows:

55-1-24. Terms used in §§ 55-1-24 to ~~55-1-43~~ 55-1-45, inclusive, mean:

(1) "Beneficial interest," is limited to mean a distribution interest or a remainder interest. A beneficial interest specifically excludes a power of appointment or a power reserved by the settlor;

(2) "Beneficiary," a person that has a present or future beneficial interest in a trust, vested or contingent. The holder of a power of appointment is not a beneficiary;

(3) "Distribution beneficiary," a beneficiary who is an eligible distributee or permissible distributee of trust income or principal;

(4) "Distribution interest," a distribution interest held by a distribution beneficiary. A distribution interest may be a current distribution interest or a future distribution interest. A distribution interest may be classified as a mandatory interest, a support interest, or a discretionary interest;

(5) "Power of appointment," an inter-vivos or testamentary power to direct the disposition of trust property, other than a distribution decision by a trustee to a beneficiary. Powers of appointment are held by a person to whom a power has been given, not the settlor;

(6) "Reach," with respect to a distribution interest or power, to subject the distribution interest or power to a judgment, decree, garnishment, attachment, execution, levy, creditor's bill or other legal, equitable, or administrative process, relief, or control of any court, tribunal, agency, or other entity as provided by law;

(7) "Remainder interest," an interest where a trust beneficiary will receive the property outright at some time during the future;

(8) "Reserved power," a power held by the settlor.

Section 31. That § 55-1-24.1 be amended to read as follows:

55-1-24.1. For purposes of §§ 55-1-24 to ~~55-1-43~~ 55-1-45, inclusive, improper motive is demonstrated by action such as the following:

(1) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the trustee's self interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(2) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

Section 32. That chapter 55-1 be amended by adding thereto a NEW SECTION to read as follows:

A withdrawal power allows a beneficiary a right to withdraw some part of the trust income or principal. The holder of a power of withdrawal is not deemed to be the settlor of the trust by failing to exercise withdrawal power or letting a withdrawal power lapse.

Section 33. That § 55-1-31 be amended to read as follows:

55-1-31. Unless otherwise provided in the trust, if the settlor's spouse is named as beneficiary, the settlor's spouse is still living, and the trust is classified as a support trust, then the trustee shall consider the ~~beneficiary's~~ resources of the settlor's spouse, including the settlor's obligation of support, prior to making a distribution. In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

Section 34. That § 55-1-35 be amended to read as follows:

55-1-35. A declaration in a trust that the interest of a beneficiary shall be held subject to a spendthrift trust is sufficient to restrain voluntary or involuntary alienation of a beneficial interest by

a beneficiary to the maximum extent provided by law. Regardless of whether a beneficiary has any outstanding creditor, a trustee of a spendthrift trust may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary. No trustee is liable to any creditor for paying the expenses of a beneficiary of a spendthrift trust.

Section 35. That § 55-1-36 be amended to read as follows:

55-1-36. If a settlor is also a beneficiary of the trust, and the transfer is a qualified transfer under chapter 55-16, the provisions of §§ 55-1-24 to 55-1-43, inclusive, also apply. Conversely, if the settlor is a beneficiary of the trust and the transfer is not a qualified transfer under chapter 55-16, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate~~, unless the transfer specifically references and is qualified as a transfer under chapter 55-16~~. However, regardless of whether the transfer is a qualified transfer under chapter 55-16, a settlor's creditors may not satisfy claims from either assets of the trust because of the existence of a discretionary power granted to the trustee by the terms of the trust instrument creating the trust, or any other provisions of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax; or reimbursements made to the settlor or direct tax payments made to a taxing authority for the settlor's benefit for any tax or trust income or principal which is payable by the trustor under the law imposing such tax.

Section 36. That chapter 55-1 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgement entered by a court or other body having adjudicative authority, may be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a South Dakota trust or for avoidance of a transfer to a South Dakota trust unless the settlor's transfer of property was made with the intent to defraud that specific creditor.

Section 37. That chapter 55-1 be amended by adding thereto a NEW SECTION to read as follows:

A cause of action or claim for relief with respect to a fraudulent transfer of a settlor's assets pursuant to § 55-1-44 is extinguished unless the action under § 55-1-44 is brought by a creditor of the settlor who meets one of the following requirements:

(1) Is a creditor of the settlor before the settlor's assets are transferred to the trust, and the action under § 55-1-44 is brought within the later of:

(a) Three years after the transfer is made; or

(b) One year after the transfer is or reasonably could have been discovered by the creditor if the creditor:

(i) Can demonstrate that the creditor asserted a specific claim against the settlor before the transfer; or

(ii) Files another action, other than an action under §55-1-44, against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this subsection is filed within three years after the transfer; or

(2) Becomes a creditor subsequent to the transfer into trust, and the action under § 55-1-44 is brought within three years after the transfer is made.

Section 38. That § 51A-6A-7 be amended to read as follows:

51A-6A-7. Any three or more persons may organize a trust company and make and file articles as provided by the laws of this state. No trust company may be organized or incorporated to engage in business as such until the articles have been submitted and approved in accordance with § 51A-6A-4. The name selected for the trust company may not be the name of any other trust company doing business in the state, and the director shall accept or reject the name. However, the approval of a trust company name by the director may not supersede any person's rights pursuant to state or federal trademark law. The articles, in addition to any other information required by law, shall state:

(1) That the corporation or limited liability company is formed for the purpose of engaging in the trust company business; and

(2) The period for which such corporation or limited liability company is organized, ~~not exceeding twenty years~~ which may be perpetual.

The articles may contain any other provisions as are consistent with law. The articles shall be subscribed by one or more of the organizers of the proposed trust company and shall be acknowledged by them. The full amount of the capital required by § 51A-6A-19 shall be subscribed before the articles are filed.

Section 39. That § 51A-6A-8 be amended to read as follows:

51A-6A-8. ~~Within one year prior~~ Prior to the expiration of the period for which it was incorporated or organized a trust company may, with the approval of at least a majority of the capital stock or ownership units of such trust company, amend its articles to extend its existence for an additional period, ~~not to exceed twenty years~~ which may be perpetual.

Section 40. That § 55-1-20 be amended to read as follows:

55-1-20. Subject to the provisions of §§ 55-1-21 and 55-1-22, a trust may be performed if the trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee. Neither the common law rule against perpetuities nor any common law rule limiting the duration of noncharitable purpose trusts is in force in this state.

Section 41. That § 55-1-23 be repealed.

Section 42. That § 10-40A-11 be amended to read as follows:

10-40A-11. A will ~~or,~~ trust, or other instrument of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the Internal Revenue Code relating to the federal estate tax or generation-skipping transfer tax, or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying ~~on December 31, 2009~~ in 2010 regardless of whether the decedent's personal representative or other fiduciary elects not to have the estate tax apply with respect to the estate. This provision does not apply with respect to a will ~~or,~~ trust, or other instrument ~~that is executed or amended after December 31, 2009, or~~ that manifests an intent that a contrary rule applies ~~if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax. If the federal estate or generation-skipping transfer tax becomes effective before~~

~~that date, the reference to January 1, 2011, in this section refers instead to the first date on which such tax becomes legally effective~~.

Section 43. That chapter 10-40A be amended by adding thereto a NEW SECTION to read as follows:

The personal representative, trustee, other fiduciary, or any affected beneficiary under the will, trust, or other instrument may bring a proceeding to determine whether the decedent intended that the will, trust, or other instrument be construed in a manner other than as provided in § 10-40A-11. Any proceeding pursuant to § 10-40A-11 and sections 43 and 44 of this Act shall be commenced prior to January 1, 2012. In such a proceeding, the court may consider extrinsic evidence that contradicts the plain meaning of the will, trust, or other instrument. The court has the power to modify a provision of a will, trust, or other instrument that refers to the federal estate tax or generation skipping transfer tax laws as described in § 10-40A-11 to conform the terms to the decedent's intention or achieve the decedent's tax objectives in a manner that is not contrary to the decedent's probable intention. The court may provide that its decision, including any decision to modify a provision of a will, trust, or other instrument shall be effective as of the date of the decedent's death. Any person who commences a proceeding pursuant to § 10-40A-11 and section 43 and 44 of this Act has the burden of proof, by clear and convincing evidence, and persuasion in establishing the decedent's intention that the will, trust, or other instrument be construed in a manner other than as provided in § 10-40A-11.

Section 44. That chapter 10-40A be amended by adding thereto a NEW SECTION to read as follows:

For purposes of § 10-40A-11, any interested person may enter into a binding agreement to determine whether the decedent intended that the will, trust, or other instrument shall be construed in a manner other than as provided in § 10-40A-11, and to conform the terms of the will, trust, or other instrument to the decedent's intention without court approval as provided in section 43 of this Act. Any interested person may petition the court to approve the agreement or to determine whether all interested persons are parties to the agreement, either in person or by adequate representation where permitted by law, and whether the agreement contains terms the court could have properly approved. In the case of a trust, the agreement may be by nonjudicial settlement agreement. For the purposes of this section, an interested person means any person whose consent is required in order to achieve a binding settlement were the settlement to be approved by the court.

Section 45. That § 10-40A-13 be amended to read as follows:

10-40A-13. The provisions of §§ 10-40A-11 and 10-40A-12 <u>and sections 43 and 44 of this Act</u> apply to decedents dying after December 31, 2009, and before January 1, 2011.

Signed March 10, 2011

INSURANCE

CHAPTER 213

(HB 1035)

Collection process for the annual insurance company examination assessment fee revised.

ENTITLED, An Act to revise the process for the collection of the annual insurance company examination assessment fee.

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

Section 1. That § 58-3-3.1 be amended to read as follows:

58-3-3.1. Any insurer subject to chapter 58-3 shall pay to the Division of Insurance an annual examination assessment fee of three hundred dollars by March first~~, beginning in 1998~~ of each year. There ~~shall be~~ is established within the state treasury the insurance examination fund, into which shall be deposited the proceeds from the examination assessment fees. ~~The~~ If the director determines that additional fees are needed to meet the anticipated needs of the examination fund, the director may increase the annual examination assessment fee or levy ~~an~~ additional examination assessment ~~fee~~ fees of up to one hundred fifty dollars ~~if~~ per insurer whenever the insurance examination fund falls below fifty thousand dollars. However, the director may not increase the annual examination fee to an amount exceeding one thousand dollars.

Signed February 17, 2011

CHAPTER 214

(SB 44)

Representations and warranties regulated in insurance and annuity applications.

ENTITLED, An Act to revise certain provisions regarding representations and warranties in insurance and annuity applications.

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

Section 1. That § 58-11-44 be amended to read as follows:

58-11-44. All statements and descriptions in any application for an insurance policy, certificate, or annuity contract, by or ~~in~~ on behalf of the insured or annuitant, shall be deemed to be representations and not warranties. ~~Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent~~ No misrepresentation, omission, concealment of fact, or incorrect statement prevents a recovery under the policy or contract unless ~~either~~:

(1) Fraudulent or an intentional misrepresentation of a material fact; or

(2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(3) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

With respect to any health insurance policy or certificate, subdivisions (2) and (3) of this section only apply to excepted benefits.

No applicant, insured, or annuitant may be asked to warranty or certify whether or not the applicant, insured, or annuitant is insurable.

Section 2. That chapter 58-11 be amended by adding thereto a NEW SECTION to read as follows:

Nothing in § 58-11-44 prohibits an insurer or an insurer's representative from:

(1) Requesting information from an applicant for the purpose of determining that applicant's insurability; or

(2) Underwriting an application or declining coverage based upon that applicant's failure to meet the insurer's underwriting requirements.

Signed March 15, 2011

CHAPTER 215

(HB 1034)

Safety rating discounts for older drivers, requirement repealed.

ENTITLED, An Act to repeal the requirement for motor vehicle liability insurance safety rating discounts for certain older motor vehicle drivers.

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

Section 1. That § 58-11-58 be repealed.

Section 2. That § 58-11-59 be repealed.

Section 3. That § 58-11-60 be repealed.

Section 4. That § 58-11-61 be repealed.

Signed March 10, 2011

CHAPTER 216

(SB 43)

Health insurance standards revised for patient protection.

ENTITLED, An Act to revise certain health insurance standards for patient protection.

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

Section 1. That § 58-17-1.1 be amended to read as follows:

58-17-1.1. ~~Every~~ Each policy of health insurance that covers a female and that is delivered, issued for delivery, or renewed in this state, except for ~~policies~~ a policy that ~~provide~~ provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening by low-dose mammography for the presence of occult breast cancer that is subject to the same dollar limits, deductibles, and coinsurance factors as for other radiological examinations. Coverage for the screening shall be provided as follows: ages thirty-five to thirty-nine, one baseline mammography; ages forty to forty-nine, a mammography every other year; and age fifty and older, a mammography every year.

As used in this section, "low-dose mammography" means the X-ray examination of the breast using equipment dedicated specifically for mammography, including the X-ray tube, filter, compression device, screens, films and cassettes, with an average radiation exposure delivery of less than one rad midbreast, with two views for each breast and with interpretation by a qualified radiologist.

The provisions of this section apply only to grandfathered plans pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 2. That § 58-17-2.3 be amended to read as follows:

58-17-2.3. No insurer or health carrier issuing ~~a~~ health ~~benefit plan~~ insurance coverage, other than excepted benefits, that provides dependent coverage for any qualifying child, as defined by rules promulgated pursuant to § 58-17-87, may terminate coverage due to attainment of a limiting age below age ~~nineteen, or, if a full-time student in an accredited institution of higher learning as of the close of the calendar year, below age twenty-four~~ twenty-six. If the dependent remains a full-time student upon attaining the age of ~~twenty-four~~ twenty-six, but not exceeding the age of twenty-nine, the insurer shall provide for the continuation of coverage for that dependent at the insured's option. However, the provisions of this section do not apply to any qualifying relative, as defined by rules promulgated pursuant to § 58-17-87, whose gross income is less than the exemption amount as prescribed by the director by rules promulgated pursuant to chapter 1-26. Continuation of coverage for full-time students attaining the age of twenty-four is not required if the dependent has other creditable coverage in force nor required for any full-time students who attained the age of twenty-four prior to July 1, 2007.

Section 3. That § 58-17-4.1 be amended to read as follows:

58-17-4.1. Premium rates charged for any individual accident and health insurance policy issued pursuant to this chapter shall be filed with and are subject to the approval of the director ~~and are deemed approved at the expiration of thirty days after the filing thereof unless disapproved by the director within the thirty-day period. The director may disapprove individual accident and health insurance premium rates which are not in compliance with the requirements of this chapter. The director shall send written notice of such disapproval to the insurer. However, the director may approve the premium rates before the thirty-day period expires by giving written notice of approval.~~

~~Premium rates for health benefit plans that are being actively marketed and subject to the provisions of § 58-17-70 are not subject to the prior approval requirements of this section but shall be filed in accordance with §§ 58-24-10, 58-24-13 to 58-24-19, inclusive, and 58-24-21 to 58-24-25, inclusive.~~ The rates shall be filed for approval, administered, and reviewed subject to all of the applicable procedures in accordance with §§ 58-11-64 to 58-11-76, inclusive.

Section 4. That § 58-17-15 be amended to read as follows:

58-17-15. There shall be a provision as follows: "Time limit on certain defenses: (1) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability, as defined in the policy, commencing after the expiration of such two-year period."

The foregoing policy provision ~~shall~~ may not be ~~so~~ construed ~~as~~ to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of §§ 58-17-32 to 58-17-39, inclusive, in the event of misstatement with respect to age or occupation or other insurance. This section only applies to excepted benefits. This section does not apply to any long-term care insurance policy or certificate.

Section 5. That § 58-17-16 be repealed.

Section 6. That § 58-17-84 be amended to read as follows:

58-17-84. Any health ~~benefit plan covering individuals~~ carrier providing individual coverage, other than excepted benefits, shall comply with the following provisions:

(1) No ~~health benefit plan~~ individual coverage may deny, exclude, or limit benefits for a covered individual for claims incurred more than twelve months following the effective date of the person's coverage due to a preexisting condition. No ~~health benefit plan~~ policy may define a preexisting condition more restrictively than:

(a) A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment during the twelve months immediately preceding the effective date of coverage;

(b) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the twelve months immediately preceding the effective date of coverage; or

(c) A pregnancy existing on the effective date of coverage;

(2) ~~A health benefit plan~~ The health carrier shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the aggregate period of time a person was previously covered by creditable coverage, excluding limited benefit plans and dread disease plans that provided benefits with respect to such services, if the creditable coverage was continuous to a date not more than sixty-three days before the application for the new coverage. A period of time a person was previously covered may not be aggregated if there was a break in coverage of sixty-three days or more. The ~~plan~~ coverage shall count a period of creditable coverage without regard to the specific benefits covered under the ~~plan~~ policy, unless the ~~plan~~ health carrier elects to credit it based on coverage of benefits within several classes or categories of benefits specified in rules adopted pursuant to chapter 1-26, by the director;

(3) A health maintenance organization which does not utilize a preexisting waiting period may use an affiliation period in lieu of a preexisting waiting period. No affiliation period

may exceed two months in length. No premium may be charged for any portion of the affiliation period. If the health maintenance organization utilizes neither a preexisting waiting period nor an affiliation period, the health maintenance organization may use other criteria designed to avoid adverse selection provided that those criteria are approved by the director;

(4) Genetic information may not be treated as a condition for which a preexisting condition exclusion may be imposed in the absence of a diagnosis of the condition related to such information; and

(5) A condition may not be defined or considered as preexisting if the condition arose after a person began creditable coverage and if there was not a break in coverage which exceeded sixty-three days.

For purposes of this section, the effective date of coverage is the first day the person became covered for either accidents or sicknesses. Except for plans grandfathered pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147, no covered person under the age of nineteen is subject to a preexisting condition limitation or exclusion for any plan year beginning on or after September 23, 2010. Excepted benefits are subject to the provisions of § 58-17-97.

Section 7. That § 58-38-22 be amended to read as follows:

58-38-22. ~~Every~~ Each service or indemnity-type contract issued by a nonprofit medical and surgical service plan corporation that covers a female and that is delivered, issued for delivery, or renewed in this state, except for ~~contracts~~ a contract that ~~provide~~ provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening by low-dose mammography for the presence of occult breast cancer that is subject to the same dollar limits, deductibles and coinsurance factors as for other radiological examinations. Coverage for the screening shall be provided as follows: ages thirty-five to thirty-nine, one baseline mammography; ages forty to forty-nine, a mammography every other year; and age fifty and older, a mammography every year.

As used in this section, "low-dose mammography" means the X ray examination of the breast using equipment dedicated specifically for mammography, including the X ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad midbreast, with two views for each breast and with interpretation by a qualified radiologist.

The provisions of this section apply only to grandfathered plans pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 8. That § 58-18-31.1 be amended to read as follows:

58-18-31.1. No insurer or health carrier issuing ~~a health benefit plan~~ health insurance coverage, other than excepted benefits, that provides dependent coverage for any qualifying child, as defined by rules promulgated pursuant to § 58-18-79, may terminate coverage due to attainment of a limiting age below age ~~nineteen, or, if a full-time student in an accredited institution of higher learning as of the close of the calendar year, below age twenty-four~~ twenty-six. If the dependent remains a full-time student upon attaining the age of ~~twenty-four~~ twenty-six but not exceeding the age of twenty-nine, the insurer shall provide for the continuation of coverage for that dependent at the insured's option. Nothing in this section requires the employer to contribute any portion of the premium for dependents that are full-time students and have attained the age of ~~twenty-four~~ twenty-six. However, the provisions of this section do not apply to any qualifying relative, as defined by rules promulgated pursuant to § 58-18-79, whose gross income is less than the exemption amount as prescribed by the director by rules promulgated pursuant to chapter 1-26. Continuation of coverage for full-time students attaining the age of twenty-four is not required if the dependent has other creditable coverage

in force nor required for any full-time students who attained the age of twenty-four prior to July 1, 2007.

Section 9. That § 58-18-36 be amended to read as follows:

58-18-36. ~~Every~~ Each group health insurance policy that covers a female and that is delivered, issued for delivery, or renewed in this state, except for ~~policies~~ a policy that ~~provide~~ provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening by low-dose mammography for the presence of occult breast cancer that is subject to the same dollar limits, deductibles and coinsurance factors as for other radiological examinations. Coverage for the screening shall be provided as follows: ages thirty-five to thirty-nine, one baseline mammography; ages forty to forty-nine, a mammography every other year; and age fifty and older, a mammography every year.

As used in this section, "low-dose mammography" means the X ray examination of the breast using equipment dedicated specifically for mammography, including the X ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad midbreast, with two views for each breast and with interpretation by a qualified radiologist.

The provisions of this section apply only to grandfathered plans pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 10. That § 58-18-45 be amended to read as follows:

58-18-45. ~~Health benefit plans~~ Any health carrier providing group coverage, other than excepted benefits, shall comply with the following provisions:

(1) No ~~health benefit plan~~ policy may deny, exclude, or limit benefits for a covered individual for claims incurred more than twelve months following the effective date of the individual's coverage due to a preexisting condition. No ~~health benefit plan~~ policy may define a preexisting condition more restrictively than a condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately preceding the effective date of coverage;

(2) A ~~health benefit plan~~ policy shall waive any time period applicable to a preexisting condition exclusion or limitation period for the aggregate period of time an individual was previously covered by creditable coverage that provided benefits with respect to such services, if the creditable coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. The waiver for prior creditable coverage also applies to late enrollees. A period of time a person was previously covered may not be aggregated if there was a break in coverage of sixty-three days or more. The ~~plan~~ policy shall count a period of creditable coverage, without regard to the specific benefits covered under the ~~plan~~ policy, unless the ~~plan~~ policy elects to credit it based on coverage of benefits within several classes or categories of benefits specified in rules adopted by the director. A condition may not be defined or considered as preexisting if the condition arose after a person began creditable coverage and if there was not a break in coverage which exceeded sixty-three days;

(3) A ~~health benefit plan~~ policy may exclude coverage for late enrollees for the greater of eighteen months or for an eighteen-month preexisting condition exclusion. However, if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed eighteen months from the date the individual enrolls for coverage under the ~~health benefit plan~~ policy;

(4) Genetic information may not be treated as a condition for which a preexisting condition exclusion may be imposed in the absence of a diagnosis of the condition related to such information;

(5) A health maintenance organization which does not utilize a preexisting waiting period may use an affiliation period in lieu of a preexisting waiting period. No affiliation period may exceed two months in length. No premium may be charged for any portion of the affiliation period. If the health maintenance organization utilizes neither a preexisting waiting period nor an affiliation period, the health maintenance organization may use other criteria designed to avoid adverse selection provided that those criteria are approved by the director. In the case of a late enrollee who is subject to an affiliation period, the affiliation period may not exceed three months.

For purposes of this section, the effective date of coverage is the first day the person became covered for either accidents or sicknesses. No covered person under the age of nineteen is subject to a preexisting condition limitation or exclusion for any plan year beginning on or after September 23, 2010.

Section 11. That § 58-40-20 be amended to read as follows:

58-40-20. ~~Every~~ Each service or indemnity-type contract issued by a nonprofit hospital service plan corporation that covers a female and that is delivered, issued for delivery, or renewed in this state, except for ~~contracts~~ a contract that ~~provide~~ provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening by low-dose mammography for the presence of occult breast cancer that is subject to the same dollar limits, deductibles, and coinsurance factors as for other radiological examinations. Coverage for the screening shall be provided as follows: ages thirty-five to thirty-nine, one baseline mammography; ages forty to forty-nine, a mammography every other year; and age fifty and older, a mammography every year.

As used in this section, "low-dose mammography" means the X ray examination of the breast using equipment dedicated specifically for mammography, including the X ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad midbreast, with two views for each breast and with interpretation by a qualified radiologist.

The provisions of this section apply only to grandfathered plans pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 12. That § 58-41-35.5 be amended to read as follows:

58-41-35.5. ~~Every~~ Each health maintenance contract that covers a female and that is delivered, issued for delivery, or renewed in this state, except for ~~contracts~~ a contract that ~~provide~~ provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening by low-dose mammography for the presence of occult breast cancer that is subject to the same dollar limits, deductibles, and coinsurance factors as for other radiological examinations. Coverage for the screening shall be provided as follows: ages thirty-five to thirty-nine, one baseline mammography; ages forty to forty-nine, a mammography every other year; and age fifty and older, a mammography every year.

As used in this section, "low-dose mammography" means the X ray examination of the breast using equipment dedicated specifically for mammography, including the X ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad midbreast, with two views for each breast and with interpretation by a qualified radiologist.

The provisions of this section apply only to grandfathered plans pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 13. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

Each policy of health insurance that covers a female and that is delivered, issued for delivery, or renewed in this state, except for a policy that provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening for the presence of occult breast cancer.

The provisions of this section apply only to plans that are not grandfathered pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 14. That chapter 58-38 be amended by adding thereto a NEW SECTION to read as follows:

Each service or indemnity-type contract issued by a nonprofit medical and surgical service plan corporation that covers a female and that is delivered, issued for delivery, or renewed in this state, except for a contract that provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening for the presence of occult breast cancer.

The provisions of this section apply only to plans that are not grandfathered pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 15. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as follows:

Each group health insurance policy that covers a female and that is delivered, issued for delivery, or renewed in this state, except for a policy that provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening for the presence of occult breast cancer.

The provisions of this section apply only to plans that are not grandfathered pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 16. That chapter 58-40 be amended by adding thereto a NEW SECTION to read as follows:

Each service or indemnity-type contract issued by a nonprofit hospital service plan corporation that covers a female and that is delivered, issued for delivery, or renewed in this state, except for a contract that provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening for the presence of occult breast cancer.

The provisions of this section apply only to plans that are not grandfathered pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 17. That chapter 58-41 be amended by adding thereto a NEW SECTION to read as follows:

Each health maintenance contract that covers a female and that is delivered, issued for delivery, or renewed in this state, except for a contract that provides coverage for specified disease or other limited benefit coverage, shall provide coverage for screening for the presence of occult breast cancer.

The provisions of this section apply only to plans that are not grandfathered pursuant to 75 Fed. Reg. 116 (2010) to be codified at 26 C.F.R. §§ 54 and 602, 29 C.F.R. § 2590, and 45 C.F.R. § 147.

Section 18. That chapter 58-18B be amended by adding thereto a NEW SECTION to read as follows:

No small employer carrier may increase its small employer base rates unless the small employer carrier has filed the base rate increase with the director for review at least thirty days prior to the implementation of the rate increase. The base rates are deemed approved at the expiration of thirty days after the filing thereof unless disapproved by the director within thirty days after the date of filing. The filing of the base rate increase shall include documentation sufficient to actuarially justify the increase and a history of the earned premiums and incurred claims on the policy forms applicable to the rate increase. The base rates shall be reasonable in relation to the benefits.

Section 19. The provisions of this Act are repealed if the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) is found to be unconstitutional in its entirety by a final decision of a federal court of competent jurisdiction and all appeals exhausted or time for appeals elapsed.

Signed March 14, 2011

CHAPTER 217

(HB 1146)

Copayment or coinsurance limits for chiropractic services.

ENTITLED, An Act to limit copayment or coinsurance amounts for chiropractic services.

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

Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

No health insurer may impose any copayment or coinsurance amount on an insured for services rendered by a doctor of chiropractic licensed pursuant to chapter 36-5 that is greater than the copayment or coinsurance amount imposed on the insured for the services of a primary care physician or practitioner for the same or a similar diagnosed condition even if a different nomenclature is used to describe a condition.

Veto Overridden. Filed March 28, 2011.

CHAPTER 218

(SB 9)

State risk pool eligibility requirements modified.

ENTITLED, An Act to revise certain provisions regarding eligibility requirements for the state risk pool.

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

Section 1. That § 58-17-85 be amended to read as follows:

58-17-85. If a person has an aggregate of at least twelve months of creditable coverage, is a resident of this state, and applies within sixty-three days of the date of losing prior creditable coverage, the person is eligible for coverage as provided for in §§ 58-17-68, 58-17-70, 58-17-85, and 58-17-113 to 58-17-142, inclusive, if none of the following apply:

(1) The applicant is eligible for continuation of coverage under an employer plan;

(2) The person is eligible for an employer group plan, Part A or Part B of medicare, or medicaid;

(3) The person has other health insurance coverage;

(4) The person's most recent coverage was terminated because of the person's nonpayment of premium or fraud;

(5) The person loses coverage under a short term or limited duration plan; or

(6) The person's last coverage was creditable coverage as defined in subdivision 58-17-69(13) or a federal preexisting condition insurance plan.

Any person who has exhausted continuation rights and who is eligible for conversion or other individual or association coverage has the option of obtaining coverage pursuant to this section or the conversion plan or other coverage. If a person chooses conversion coverage, other than pursuant to § 58-17-74, in lieu of coverage pursuant to this section and the person later exhausts the lifetime maximum of the conversion coverage, the person may obtain coverage pursuant to this section as long as the person continues to satisfy the criteria of this section. A person who is otherwise eligible for the issuance of coverage pursuant to this section may not be required to show proof that coverage was denied by another carrier.

For purposes of this section, reasonable evidence that the prospective enrollee is a resident of this state shall be required. Factors that may be considered include a driver's license, voter registration, and where the prospective enrollee resides.

Any person who was eligible for the risk pool and opted for coverage pursuant to § 58-17-74 may, at any time while covered under that policy or within sixty-three days of terminating that coverage, elect to enroll in the risk pool.

Signed February 17, 2011

CHAPTER 219

(SB 38)

Health insurance reform.

ENTITLED, An Act to establish network adequacy standards, quality assessment and improvement requirements, utilization review and benefit determination requirements, and grievance procedures for managed health care plans, and to repeal certain standards for managed health care plans.

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

Section 1. That § 58-17C-1 to § 58-17C-103, inclusive, be repealed.

Section 2. Terms used in sections 2 to 21, inclusive, of this Act mean:

(1) "Closed plan," a managed care plan or health carrier that requires covered persons to use participating providers under the terms of the managed care plan or health carrier and does not provide any benefits for out-of-network services except for emergency services;

(2) "Covered benefits" or "benefits," those health care services to which a covered person is entitled under the terms of a health benefit plan;

(3) "Covered person," a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(4) "Director," the director of the Division of Insurance;

(5) "Emergency medical condition," a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;

(6) "Emergency services," with respect to an emergency medical condition:

(a) A medical screening examination that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency condition; and

(b) Such further medical examination and treatment, to the extent they are within the capability of the staff and facilities at a hospital to stabilize a patient;

(7) "Facility," an institution providing health care services or a health care setting, including hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation, and other therapeutic health settings;

(8) "Health care professional," a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law;

(9) "Health care provider" or "provider," a health care professional or a facility;

(10) "Health care services," services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(11) "Health carrier," an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services;

(12) "Health indemnity plan," a health benefit plan that is not a managed care plan;

(13) "Intermediary," a person authorized to negotiate and execute provider contracts with health carriers on behalf of health care providers or on behalf of a network;

(14) "Managed care contractor," a person who establishes, operates, or maintains a network of participating providers; or contracts with an insurance company, a hospital or medical

service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan or health carrier;

(15) "Managed care entity," a licensed insurance company, hospital or medical service plan, health maintenance organization, or an employer or employee organization, that operates a managed care plan or a managed care contractor. The term does not include a licensed insurance company unless it contracts with other entities to provide a network of participating providers;

(16) "Managed care plan," a plan operated by a managed care entity that provides for the financing or delivery of health care services, or both, to persons enrolled in the plan through any of the following:

(a) Arrangements with selected providers to furnish health care services;

(b) Explicit standards for the selection of participating providers; or

(c) Financial incentives for persons enrolled in the plan to use the participating providers and procedures provided for by the plan;

(17) "Network," the group of participating providers providing services to a health carrier;

(18) "Open plan," a managed care plan or health carrier other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan or health carrier;

(19) "Participating provider," a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly, from the health carrier;

(20) "Primary care professional," a participating health care professional designated by a health carrier to supervise, coordinate or provide initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person; and

(21) "Secretary," the secretary of the Department of Health.

Section 3. Any managed care plan shall provide for the appointment of a medical director who has an unrestricted license to practice medicine. However, a managed care plan that specializes in a specific healing art shall provide for the appointment of a director who has an unrestricted license to practice in that healing art. The director is responsible for oversight of treatment policies, protocols, quality assurance activities, and utilization management decisions of the managed care plan.

Section 4. Any health carrier shall provide to any prospective enrollee written information describing the terms and conditions of the plan. If the plan is described orally, easily understood, truthful, objective terms shall be used. The written information need not be provided to any prospective enrollee who makes inquiries of a general nature directly to a carrier. In the solicitation of group coverage to an employer, a carrier is not required to provide the written information required by this section to individual employees or their dependents and if no solicitation is made directly to the employees or dependents and if no request to provide the written information to the employees or dependents is made by the employer. All written plan descriptions shall be readable, easily understood, truthful, and in an objective format. The format shall be standardized among each plan that a health carrier offers so that comparison of the attributes of the plans is facilitated. The following specific information shall be communicated:

(1) Coverage provisions, benefits, and any exclusions by category of service, provider, and if applicable, by specific service;

(2) Any and all authorization or other review requirements, including preauthorization review, and any procedures that may lead the patient to be denied coverage for or not be provided a particular service;

(3) The existence of any financial arrangements or contractual provisions with review companies or providers of health care services that would directly or indirectly limit the services offered, restrict referral, or treatment options;

(4) Explanation of how plan limitations impact enrollees, including information on enrollee financial responsibility for payment of coinsurance or other non-covered or out-of-plan services;

(5) A description of the accessibility and availability of services, including a list of providers participating in the managed care network and of the providers in the network who are accepting new patients, the addresses of primary care physicians and participating hospitals, and the specialty of each provider in the network; and

(6) A description of any drug formulary provisions in the plan and the process for obtaining a copy of the current formulary upon request. There shall be a process for requesting an exception to the formulary and instructions as to how to request an exception to the formulary.

Section 5. A health carrier providing a managed care plan shall maintain a network that is sufficient in numbers and types of providers to assure that all services to covered persons will be accessible without unreasonable delay. In the case of emergency services, covered persons shall have access twenty-four hours a day, seven days a week. Sufficiency shall be determined in accordance with the requirements of this section, and may be established by reference to any reasonable criteria used by the carrier, including: provider-covered person ratios by specialty; primary care provider-covered person ratios; geographic accessibility; waiting times for appointments with participating providers; hours of operation; and the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care.

Section 6. In any case where the health carrier has an insufficient number or type of participating provider to provide a covered benefit, the health carrier shall ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the benefit were obtained from participating providers, or shall make other arrangements acceptable to the director.

Section 7. The health carrier shall establish and maintain adequate arrangements to ensure reasonable proximity of participating providers to the business or personal residence of covered persons.

Section 8. The health carrier shall monitor, on an ongoing basis, the ability, clinical capacity, and legal authority of its providers to furnish all contracted benefits to covered persons. In the case of capitated plans, the health carrier shall also monitor the financial capability of the provider.

Section 9. In determining whether a health carrier has complied with any network adequacy provision of sections 2 to 21, inclusive, of this Act, the director shall give due consideration to the relative availability of healthcare providers in the service area and to the willingness of providers to join a network.

Section 10. The health carrier shall file with the director, in a manner and form defined by rules promulgated pursuant to chapter 1-26 by the director, an access plan meeting the requirements of sections 2 to 21, inclusive, of this Act, for each of the managed care plans that the carrier offers in this

state. The carrier shall prepare an access plan prior to offering a new managed care plan, and shall annually update an existing access plan. The access plan shall describe or contain at least the following:

(1) The health carrier's network;

(2) The health carrier's procedures for making referrals within and outside its network;

(3) The health carrier's process for monitoring and assuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in managed care plans;

(4) The health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(5) The health carrier's method of informing covered persons of the plan's services and features, including the plan's grievance procedures and its procedures for providing and approving emergency and specialty care;

(6) The health carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians, for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(7) The health carrier's process for enabling covered persons to change primary care professionals;

(8) The health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and any of its participating providers, or in the event of the health carrier's insolvency or other inability to continue operations. The description shall explain how covered persons will be notified of the contract termination, or the health carrier's insolvency or other cessation of operations, and transferred to other providers in a timely manner; and

(9) Any other information required by the director to determine compliance with the provisions of sections 2 to 21, inclusive, of this Act.

The provisions of subdivisions (2), (4), (6), (7), and (8), of this section, and the provisions regarding primary care provider-covered person ratios and hours of operation in section 5 of this Act do not apply to discounted fee-for-service only networks.

Section 11. Any health carrier offering a managed care plan shall satisfy all the following requirements:

(1) The health carrier shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services;

(2) In no event may a participating provider collect or attempt to collect from a covered person any money owed to the provider by the health carrier nor may the provider have any recourse against covered persons for any covered charges in excess of the copayment, coinsurance, or deductible amounts specified in the coverage, including covered persons who have a health savings account;

(3) The provisions of sections 2 to 21, inclusive, of this Act, do not require the health carrier, its intermediaries or the provider networks with which they contract, to employ specific

providers or types of providers that may meet their selection criteria, or to contract with or retain more providers or types of providers than are necessary to maintain an adequate network;

(4) The health carrier shall notify participating providers of the providers' responsibilities with respect to the health carrier's applicable administrative policies and programs, including payment terms, utilization review, quality assessment, and improvement programs, grievance procedures, data reporting requirements, confidentiality requirements, and any applicable federal or state programs;

(5) The health carrier may not prohibit or penalize a participating provider from discussing treatment options with covered persons irrespective of the health carrier's position on the treatment options, from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier or from, in good faith, reporting to state or federal authorities any act or practice by the health carrier that jeopardizes patient health or welfare;

(6) The health carrier shall contractually require a provider to make health records available to the carrier upon request but only those health records necessary to process claims, perform necessary quality assurance or quality improvement programs, or to comply with any lawful request for information from appropriate state authorities. Any person that is provided records pursuant to this section shall maintain the confidentiality of such records and may not make such records available to any other person who is not legally entitled to the records;

(7) The health carrier and participating provider shall provide at least sixty days written notice to each other before terminating the contract without cause. If a provider is terminated without cause or chooses to leave the network, upon request by the provider or the covered person and upon agreement by the provider to follow all applicable network requirements, the carrier shall permit the covered person to continue an ongoing course of treatment for ninety days following the effective date of contract termination. If a covered person that has entered a second trimester of pregnancy at the time of contract termination as specified in this section, the continuation of network coverage through that provider shall extend to the provision of postpartum care directly related to the delivery;

(8) The health carrier shall notify the participating providers of their obligations, if any, to collect applicable coinsurance, copayments, or deductibles from covered persons pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify covered persons of their personal financial obligations for noncovered services; and

(9) The health carrier shall establish a mechanism by which the participating providers may determine in a timely manner whether or not a person is covered by the carrier.

Section 12. In any contractual arrangement between a health carrier and an intermediary, the following shall apply:

(1) The health carrier's ultimate statutory responsibility to monitor the offering of covered benefits to covered persons shall be maintained whether or not any functions or duties are contractually delegated or assigned to the intermediary;

(2) The health carrier may approve or disapprove participation status of a subcontracted provider in its own or a contracted network for the purpose of delivering covered benefits to the carrier's covered persons;

(3) The health carrier shall maintain copies of all intermediary health care subcontracts at its principal place of business in the state, or ensure that it has access to all intermediary

subcontracts, including the right to make copies to facilitate regulatory review, upon twenty days prior written notice from the health carrier;

(4) If applicable, an intermediary shall transmit utilization documentation and claims paid documentation to the health carrier. The carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons;

(5) An intermediary shall maintain the books, records, financial information, and documentation of services provided to covered persons and preserve them for examination pursuant to chapter 58-3;

(6) An intermediary shall allow the director access to the intermediary's books, records, financial information, and any documentation of services provided to covered persons, as necessary to determine compliance with sections 2 to 21, inclusive, of this Act; and

(7) The health carrier may, in the event of the intermediary's insolvency, require the assignment to the health carrier of the provisions of a provider's contract addressing the provider's obligation to furnish covered services.

Section 13. Any health carrier shall file with the director sample contract forms proposed for use with its participating providers and intermediaries. Any health carrier shall submit material changes to a sample contract that would affect a provision required by sections 2 to 21, inclusive, of this Act, or any rules promulgated pursuant to sections 2 to 21, inclusive, of this Act, to the director for approval thirty days prior to use. Changes in provider payment rates, coinsurance, copayments, or deductibles, or other plan benefit modifications are not considered material changes for the purpose of this section. If the director takes no action within sixty days after submission of a material change to a contract by a health carrier, the change is deemed approved. The health carrier shall maintain provider and intermediary contracts and provide copies to the division or department upon request.

Section 14. The execution of a contract by a health carrier does not relieve the health carrier of its liability to any person with whom it has contracted for the provision of services, nor of its responsibility for compliance with the law or applicable regulations. Any contract shall be in writing and subject to review by the director, if requested.

Section 15. In addition to any other remedies permitted by law, if the director determines that a health carrier has not contracted with enough participating providers to assure that covered persons have accessible health care services in a geographic area, that a health carrier's access plan does not assure reasonable access to covered benefits, that a health carrier has entered into a contract that does not comply with sections 2 to 21, inclusive, of this Act, or that a health carrier has not complied with a provision of sections 2 to 21, inclusive, of this Act, the director may institute a corrective action that shall be followed by the health carrier or may use any of the director's other enforcement powers to obtain the health carrier's compliance with sections 2 to 21, inclusive, of this Act.

A covered person shall have access to emergency services twenty-four hours a day, seven days a week to treat emergency medical conditions that require immediate medical attention.

Section 16. Each managed care contractor, as defined in section 2 of this Act, shall register with the director prior to engaging in any managed care business in this state. The registration shall be in a format prescribed by the director. In prescribing the form or in carrying out other functions required by sections 16 to 20, inclusive, of this Act, the director shall consult with the secretary if applicable. The director or the secretary may require that the following information be submitted:

(1) Information relating to its actual or anticipated activities in this state;

(2) The status of any accreditation designation it holds or has sought;

(3) Information pertaining to its place of business, officers, and directors;

(4) Qualifications of review staff; and

(5) Any other information reasonable and necessary to monitor its activities in this state.

Section 17. Any managed care contractor which has previously registered in this state shall, on or before July first of each year, file with the Division of Insurance any changes to the initial or subsequent annual registration for the managed care contractor.

Section 18. The director or the secretary may request information from any managed care contractor at any time pertaining to its activities in this state. The managed care contractor shall respond to all requests for information within twenty days.

Section 19. No managed care contractor may engage in managed care activities in this state unless the managed care contractor is properly registered. The director may issue a cease and desist order against any managed care contractor which fails to comply with the requirements of sections 16 to 20, inclusive, of this Act, prohibiting the managed care contractor from engaging in managed care activities in this state.

Section 20. The director may require the payment of a fee in conjunction with the initial or annual registration of a managed care contractor not to exceed two hundred fifty dollars per registration. The fee shall be established by rules promulgated pursuant to chapter 1-26.

Section 21. The director may, after consultation with the secretary, promulgate, pursuant to chapter 1-26, reasonable rules to protect the public in its purchase of network health insurance products and to achieve the goals of sections 2 to 20, inclusive, of this Act, by ensuring adequate networks and by assuring quality of health care to the public that purchases network products. The rules may include:

(1) Definition of terms;

(2) Provider/covered person ratios;

(3) Geographic access requirements;

(4) Accessibility of care;

(5) Contents of reports and filings;

(6) Notification requirements;

(7) Selection criteria; and

(8) Record keeping.

Section 22. Terms used in sections 22 to 27, inclusive, of this Act, mean:

(1) "Closed plan," a managed care plan or health carrier that requires covered persons to use participating providers under the terms of the managed care plan or health carrier and does not provide any benefits for out-of-network services except for emergency services;

(2) "Consumer," someone in the general public who may or may not be a covered person or a purchaser of health care, including employers;

(3) "Covered benefits" or "benefits," those health care services to which a covered person is entitled under the terms of a health benefit plan;

(4) "Covered person," a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(5) "Director," the director of the Division of Insurance;

(6) "Discounted fee for service," a contractual arrangement between a health carrier and a provider or network of providers under which the provider is compensated in a discounted fashion based upon each service performed and under which there is no contractual responsibility on the part of the provider to manage care, to serve as a gatekeeper or primary care provider, or to provide or assure quality of care. A contract between a provider or network of providers and a health maintenance organization is not a discounted fee for service arrangement;

(7) "Facility," an institution providing health care services or a health care setting, including hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation, and other therapeutic health settings;

(8) "Health care professional," a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law;

(9) "Health care provider" or "provider," a health care professional or a facility;

(10) "Health care services," services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(11) "Health carrier," an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services;

(12) "Health indemnity plan," a health benefit plan that is not a managed care plan;

(13) "Managed care contractor," a person who establishes, operates, or maintains a network of participating providers; or contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan or health carrier;

(14) "Managed care entity," a licensed insurance company, hospital or medical service plan, health maintenance organization, or an employer or employee organization, that operates a managed care plan or a managed care contractor. The term does not include a licensed insurance company unless it contracts with other entities to provide a network of participating providers;

(15) "Managed care plan," a plan operated by a managed care entity that provides for the financing or delivery of health care services, or both, to persons enrolled in the plan through any of the following:

(a) Arrangements with selected providers to furnish health care services;

(b) Explicit standards for the selection of participating providers; or

(c) Financial incentives for persons enrolled in the plan to use the participating providers and procedures provided for by the plan;

(16) "Open plan," a managed care plan or health carrier other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan or health carrier;

(17) "Participating provider," a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly, from the health carrier;

(18) "Quality assessment," the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations;

(19) "Quality improvement," the effort to improve the processes and outcomes related to the provision of care within the health plan; and

(20) "Secretary," the secretary of the Department of Health.

Section 23. Any health carrier that provides managed care plans shall develop and maintain the infrastructure and disclosure systems necessary to measure the quality of health care services provided to covered persons on a regular basis and appropriate to the types of plans offered by the health carrier. A health carrier shall:

(1) Utilize a system designed to assess the quality of health care provided to covered persons and appropriate to the types of plans offered by the health carrier. The system shall include systematic collection, analysis, and reporting of relevant data in accordance with statutory and regulatory requirements. The level of quality assessment activities undertaken by a health plan may vary based on the plan's structure with the least amount of quality assessment activities required being those plans which are open and the provider network is simply a discounted fee for service preferred provider organization; and

(2) File a written description of the quality assessment program with the director in the prescribed general format, which shall include a signed certification by a corporate officer of the health carrier that the filing meets the requirements of sections 22 to 27, inclusive, of this Act.

Section 24. Any health carrier that issues a closed plan, or a combination plan having a closed component, shall, in addition to complying with the requirements of section 23 of this Act, develop and maintain the internal structures and activities necessary to improve the quality of care being provided. Quality improvement activities for a health carrier subject to the requirements of this section shall involve:

(1) Developing a written quality improvement plan designed to analyze both the processes and outcomes of the health care delivered to covered persons;

(2) Establishing an internal system to implement the quality improvement plan and to specifically identify opportunities to improve care and using the findings of the system to improve the health care delivered to covered persons; and

(3) Assuring that participating providers have the opportunity to participate in developing, implementing, and evaluating the quality improvement system.

The health carrier shall provide a copy of the quality improvement plan to the director or secretary, if requested.

Section 25. If the director and secretary find that the requirements of any private accrediting body meet the requirements of network adequacy, quality assurance, or quality improvement as set forth in sections 22 to 27, inclusive, of this Act, the carrier may, at the discretion of the director and secretary, be deemed to have met the applicable requirements.

Section 26. The Division of Insurance shall separately monitor complaints regarding managed care policies.

Section 27. The director may, after consultation with the secretary, promulgate, pursuant to chapter 1-26, reasonable rules to protect the public in its purchase of network health insurance products and to achieve the goals of sections 22 to 26, inclusive, of this Act, by assuring quality of health care to the public that purchases network products. The rules may include:

(1) Definition of terms;

(2) Contents of reports and filings;

(3) Record keeping;

(4) Setting of quality criteria based upon type of network; and

(5) Quality assurance plans or quality improvement plans or both.

Section 28. Terms used in sections 28 to 74, inclusive, of this Act, mean:

(1) "Adverse determination," any of the following:

(a) A determination by a health carrier or the carrier's designee utilization review organization that, based upon the information provided, a request by a covered person for a benefit under the health carrier's health benefit plan upon application of any utilization review technique does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part, for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment in whole or in part, for a benefit based on a determination by a health carrier or the carrier's designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, terminates, or fails to provide or make payment, in whole or in part, for a benefit; or

(d) A rescission of coverage determination;

(2) "Ambulatory review," utilization review of health care services performed or provided in an outpatient setting;

(3) "Authorized representative," a person to whom a covered person has given express written consent to represent the covered person for purposes of sections 28 to 74, inclusive, of this Act, a person authorized by law to provide substituted consent for a covered person, a family member of the covered person or the covered person's treating health care professional if the covered person is unable to provide consent, or a health care professional if the covered person's health benefit plan requires that a request for a benefit

under the plan be initiated by the health care professional. For any urgent care request, the term includes a health care professional with knowledge of the covered person's medical condition;

(4) "Case management," a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions;

(5) "Certification," a determination by a health carrier or the carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan has been reviewed and, based on the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness;

(6) "Clinical peer," a physician or other health care professional who holds a nonrestricted license in a state of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under review;

(7) "Clinical review criteria," the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by the health carrier to determine the medical necessity and appropriateness of health care services;

(8) "Concurrent review," utilization review conducted during a patient's hospital stay or course of treatment in a facility or other inpatient or outpatient health care setting;

(9) "Covered benefits" or "benefits," those health care services to which a covered person is entitled under the terms of a health benefit plan;

(10) "Covered person," a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(11) "Director," the director of the Division of Insurance;

(12) "Discharge planning," the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility;

(13) "Emergency medical condition," a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention, would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;

(14) "Emergency services," with respect to an emergency medical condition:

(a) A medical screening examination that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency condition; and

(b) Such further medical examination and treatment, to the extent they are within the capability of the staff and facilities at a hospital to stabilize a patient;

(15) "Facility," an institution providing health care services or a health care setting, including hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers,

skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation, and other therapeutic health settings;

(16) "Health care professional," a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law;

(17) "Health care provider" or "provider," a health care professional or a facility;

(18) "Health care services," services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(19) "Health carrier," an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services;

(20) "Managed care contractor," a person who establishes, operates, or maintains a network of participating providers; or contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan or health carrier;

(21) "Managed care entity," a licensed insurance company, hospital or medical service plan, health maintenance organization, or an employer or employee organization, that operates a managed care plan or a managed care contractor. The term does not include a licensed insurance company unless it contracts with other entities to provide a network of participating providers;

(22) "Managed care plan," a plan operated by a managed care entity that provides for the financing or delivery of health care services, or both, to persons enrolled in the plan through any of the following:

(a) Arrangements with selected providers to furnish health care services;

(b) Explicit standards for the selection of participating providers; or

(c) Financial incentives for persons enrolled in the plan to use the participating providers and procedures provided for by the plan;

(23) "Network," the group of participating providers providing services to a health carrier;

(24) "Participating provider," a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly, from the health carrier;

(25) "Prospective review," utilization review conducted prior to an admission or the provision of a health care service or a course of treatment in accordance with a health carrier's requirement that the health care service or course of treatment, in whole or in part, be approved prior to its provision;

(26) "Rescission," a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect. The term does not include a cancellation or discontinuance of coverage under a health benefit plan if:

(a) The cancellation or discontinuance of coverage has only a prospective effect; or

(b) The cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage;

(27) "Retrospective review," any review of a request for a benefit that is not a prospective review request, which does not include the review of a claim that is limited to veracity of documentation, or accuracy of coding, or adjudication for payment;

(28) "Second opinion," an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the medical necessity and appropriateness of the initial proposed health care service;

(29) "Secretary," the secretary of the Department of Health;

(30) "Stabilized," with respect to an emergency medical condition, that no material deterioration of the condition is likely, with reasonable medical probability, to result from or occur during the transfer of the individual from a facility or, with respect to a pregnant woman, the woman has delivered, including the placenta;

(31) "Utilization review," a set of formal techniques used by a managed care plan or utilization review organization to monitor and evaluate the medical necessity, appropriateness, and efficiency of health care services and procedures including techniques such as ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, and retrospective review; and

(32) "Utilization review organization," an entity that conducts utilization review other than a health carrier performing utilization review for its own health benefit plans.

Section 29. The provisions of sections 28 to 74, inclusive, of this Act, apply to any health carrier that provides or performs utilization review services. The requirements of sections 28 to 74, inclusive, of this Act, also apply to any designee of the health carrier or utilization review organization that performs utilization review functions on the carrier's behalf.

Section 30. If conducting utilization review or making a benefit determination for emergency services, a health carrier that provides benefits for services in an emergency department of a hospital shall comply with the provisions of sections 30 to 38, inclusive, of this Act. A health carrier shall cover emergency services necessary to screen and stabilize a covered person and may not require prior authorization of such services if a prudent layperson would have reasonably believed that an emergency medical condition existed even if the emergency services are provided on an out–of-network basis. A health carrier shall cover emergency services whether the health care provider furnishing the services is a participating provider with respect to such services. If the emergency services are provided out-of-network, the services shall be covered without imposing any administrative requirement or limitation on coverage that is more restrictive than the requirements or limitations that apply to emergency services received from network providers. Emergency services are provided out-of-network by complying with the cost sharing requirements set forth in sections 32 to 35, inclusive, of this Act, and without regard to any other term or condition of coverage other than the exclusion of or coordination of benefits, an affiliation or waiting periods as permitted under section 2704 of the Public Health Service Act, as amended to January 1, 2011, or cost sharing requirements as set forth in sections 31 to 35, inclusive, of this Act.

Section 31. Coverage of in-network emergency services are subject to applicable copayments, coinsurance, and deductibles.

Section 32. Cost-sharing requirements for out-of-network emergency services expressed as a copayment amount or coinsurance rate imposed with respect to a covered person cannot exceed the cost-sharing requirement imposed with respect to a covered person if the services were provided in-network.

Section 33. Notwithstanding section 32 of this Act, a covered person may be required to pay, in addition to the in-network cost-sharing, the excess of the amount the out-of-network provider charges over the amount the health carrier is required to pay pursuant to this section.

A health carrier complies with the requirements of this section if it provides payment of emergency services provided by an out-of-network provider in an amount not less than the greatest of the following:

(1) The amount negotiated with in-network providers for emergency services, excluding any in-network copayment or coinsurance imposed with respect to the covered person;

(2) The amount of the emergency service calculated using the same method the plan uses to determine payments for out-of-network services, but using the in-network cost-sharing provisions instead of the out-of-network cost-sharing provisions; or

(3) The amount that would be paid under Medicare for the emergency services, excluding any in-network copayment or coinsurance requirements.

Section 34. For capitated or other health benefit plans that do not have a negotiated per-service amount for in-network providers, subdivision (1) of section 33 of this Act does not apply.

Section 35. If a heath benefit plan has more than one negotiated amount for in-network providers for a particular emergency service, the amount in subdivision (1) of section 33 of this Act is the median of these negotiated amounts.

Section 36. Any cost-sharing requirement other than a copayment or coinsurance requirement, such as a deductible or out-of-pocket maximum, may be imposed with respect to emergency services provided out-of-network if the cost-sharing requirement generally applies to out-of-network benefits. A deductible may be imposed with respect to out-of-network emergency services only as part of a deductible that generally applies to out-of-network benefits. If an out-of-pocket maximum generally applies to out-of-network benefits, that out-of-network maximum applies to out-of-network emergency services.

Section 37. For immediately required post-evaluation or post-stabilization services, a health carrier shall provide access to a designated representative twenty-four hours a day, seven days a week, to facilitate review, or otherwise provide coverage with no financial penalty to the covered person.

Section 38. If the director and the secretary find that the requirements of any private accrediting body meet the requirements of coverage of emergency medical services as set forth in sections 29 to 37, inclusive, of this Act, the health carrier may, at the discretion of the director and secretary, be deemed to have met the applicable requirements.

Section 39. A health carrier is responsible for monitoring all utilization review activities carried out by, or on behalf of, the health carrier and for ensuring that all requirements of sections 28 to 74, inclusive, of this Act, and applicable rules are met. The health carrier shall also ensure that appropriate personnel have operational responsibility for the conduct of the health carrier's utilization review program.

Section 40. If a health carrier contracts to have a utilization review organization or other entity perform the utilization review functions required by sections 28 to 74, inclusive, of this Act, or applicable rules, the director shall hold the health carrier responsible for monitoring the activities of

the utilization review organization or entity with which the health carrier contracts and for ensuring that the requirements of sections 28 to 74, inclusive, of this Act, and applicable rules, are met.

Section 41. A health carrier that requires a request for benefits under the covered person's health plan to be subjected to utilization review shall implement a written utilization review program that describes all review activities, both delegated and nondelegated for the filing of benefit requests, the notification of utilization review and benefit determinations, and the review of adverse determinations in accordance with sections 75 to 87, inclusive, of this Act.

The program document shall describe the following:

(1) Procedures to evaluate the medical necessity, appropriateness, efficacy, or efficiency of health care services;

(2) Data sources and clinical review criteria used in decision-making;

(3) Mechanisms to ensure consistent application of review criteria and compatible decisions;

(4) Data collection processes and analytical methods used in assessing utilization of health care services;

(5) Provisions for assuring confidentiality of clinical and proprietary information;

(6) The organizational structure that periodically assesses utilization review activities and reports to the health carrier's governing body; and

(7) The staff position functionally responsible for day-to-day program management.

A health carrier shall prepare an annual summary report in the format specified of its utilization review program activities and file the report, if requested, with the director and the secretary. A health carrier shall maintain records for a minimum of six years of all benefit requests and claims and notices associated with utilization review and benefit determinations made in accordance with sections 52 to 57, inclusive, and sections 65 to 73, inclusive, of this Act. The health carrier shall make the records available for examination by covered persons and the director upon request.

Section 42. A utilization review program shall use documented clinical review criteria that are based on sound clinical evidence and are evaluated periodically to assure ongoing efficacy. A health carrier may develop its own clinical review criteria, or it may purchase or license clinical review criteria from qualified vendors. A health carrier shall make available its clinical review criteria upon request to authorized government agencies including the Division of Insurance and the Department of Health.

Section 43. Qualified licensed health care professionals shall administer the utilization review program and oversee review decisions. Any adverse determination shall be evaluated by an appropriately licensed and clinically qualified health care provider.

Section 44. A health carrier shall issue utilization review and benefit determinations in a timely manner pursuant to the requirements of sections 52 to 57, inclusive, and sections 65 to 73, inclusive, of this Act. A health carrier shall have a process to ensure that utilization reviewers apply clinical review criteria in conducting utilization review consistently.

If a health carrier fails to strictly adhere to the requirements of sections 52 to 57, inclusive, and sections 65 to 73, inclusive, of this Act, with respect to making utilization review and benefit determinations of a benefit request or claim, the covered person shall be deemed to have exhausted the provisions of sections 22 to 74, inclusive, of this Act, and may take action regardless of whether the health carrier asserts that the carrier substantially complied with the requirements of sections 52

to 57, inclusive, and sections 65 to 73, inclusive, of this Act, as applicable, or that any error it committed was de minimus.

Any covered person may file a request for external review in accordance with rules promulgated by the director. In addition to the external review rights a covered person is entitled to pursue any available remedies under state or federal law on the basis that the health carrier failed to provide a reasonable internal claims and appeals process that would yield a decision on the merits of the claim.

Section 45. Any health carrier shall routinely assess the effectiveness and efficiency of its utilization review program.

Section 46. Any health carrier's data system shall be sufficient to support utilization review program activities and to generate management reports to enable the health carrier to monitor and manage health care services effectively.

Section 47. If a health carrier delegates any utilization review activities to a utilization review organization, the health carrier shall maintain adequate oversight, which shall include:

(1) A written description of the utilization review organization's activities and responsibilities, including reporting requirements;

(2) Evidence of formal approval of the utilization review organization program by the health carrier; and

(3) A process by which the health carrier evaluates the performance of the utilization review organization.

Section 48. Each health carrier shall coordinate the utilization review program with other medical management activity conducted by the carrier, such as quality assurance, credentialing, provider contracting data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

Section 49. Each health carrier shall provide covered persons and participating providers with access to its review staff by a toll-free number or collect call telephone line.

Section 50. If conducting a utilization review, the health carrier shall collect only the information necessary, including pertinent clinical information, to make the utilization review or benefit determination.

Section 51. In conducting utilization review, the health carrier shall ensure that the review is conducted in a manner to ensure the independence and impartiality of the individuals involved in making the utilization review or benefit determination.

In ensuring the independence and impartially of individuals involved in making the utilization review or benefit determination, no health carrier may make decisions regarding hiring, compensation, termination, promotion, or other similar matters based upon the likelihood that the individual will support the denial of benefits.

Section 52. A health carrier shall maintain written procedures pursuant to sections 28 to 74, inclusive, of this Act, for making standard utilization review and benefit determinations on requests submitted to the health carrier by covered persons or their authorized representatives for benefits and for notifying covered persons and their authorized representatives of its determinations with respect to these requests within the specified time frames required under sections 28 to 74, inclusive, of this Act. If a period of time is extended as permitted by sections 28 to 74, inclusive, of this Act, due to a claimant's failure to submit information necessary to decide a prospective, retrospective, or disability claim, the period for making the benefit determination shall be tolled from the date on

which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

Section 53. For any prospective review determination, other than allowed by this section, a health carrier shall make the determination and notify the covered person or, if applicable, the covered person's authorized representative of the determination, whether the carrier certifies the provision of the benefit or not, within a reasonable period of time appropriate to the covered person's medical condition, but in no event later than fifteen days after the date the health carrier receives the request. If the determination is an adverse determination, the health carrier shall make the notification of the adverse determination in accordance with section 57 of this Act.

The time period for making a determination and notifying the covered person or, if applicable, the covered person's authorized representative, of the determination pursuant to this section may be extended once by the health carrier for up to fifteen days, if the health carrier:

(1) Determines that an extension is necessary due to matters beyond the health carrier's control; and

(2) Notifies the covered person or, if applicable, the covered person's authorized representative, prior to the expiration of the initial fifteen-day time period, of the circumstances requiring the extension of time and the date by which the health carrier expects to make a determination.

If the extension is necessary due to the failure of the covered person or the covered person's authorized representative to submit information necessary to reach a determination on the request, the notice of extension shall specifically describe the required information necessary to complete the request and give the covered person or, if applicable, the covered person's authorized representative at least forty-five days from the date of receipt of the notice to provide the specified information.

If the health carrier receives a prospective review request from a covered person or the covered person's authorized representative that fails to meet the health carrier's filing procedures, the health carrier shall notify the covered person or, if applicable, the covered person's authorized representative of this failure and provide in the notice information on the proper procedures to be followed for filing a request. This notice shall be provided as soon as possible, but in no event later than five days following the date of the failure. The health carrier may provide the notice orally or, if requested by the covered person or the covered person's authorized representative, in writing. The provisions only apply in a case of failure that is a communication by a covered person or the covered person's authorized representative that is received by a person or organizational unit of the health carrier responsible for handling benefit matters and is a communication that refers to a specific covered person, a specific medical condition or symptom, and a specific health care service, treatment, or provider for which certification is being requested.

Section 54. For concurrent review determinations, if a health carrier has certified an ongoing course of treatment to be provided over a period of time or number of treatments:

(1) Any reduction or termination by the health carrier during the course of treatment before the end of the period or number treatments, other than by health benefit plan amendment or termination of the health benefit plan, shall constitute an adverse determination; and

(2) The health carrier shall notify the covered person of the adverse determination in accordance with section 57 of this Act at a time sufficiently in advance of the reduction or termination to allow the covered person or, if applicable, the covered person's authorized representative, to file a grievance to request a review of the adverse determination pursuant to sections 75 to 87, inclusive, of this Act, and obtain a determination with respect to that review of the adverse determination before the benefit is reduced or terminated.

The health care service or treatment that is the subject of the adverse determination shall be continued without liability to the covered person until the covered person has been notified of the determination by the health carrier with respect to the internal review request made pursuant to sections 75 to 87, inclusive, of this Act.

Section 55. For retrospective review determinations, the health carrier shall make the determination within a reasonable period of time, but in no event later than thirty days after the date of receiving the benefit request.

In the case of a certification, the health carrier may notify in writing the covered person and the provider rendering the service.

If the determination is an adverse determination, the health carrier shall provide notice of the adverse determination to the covered person or, if applicable, the covered person's authorized representative, in accordance with section 57 of this Act. The time period for making a determination and notifying the covered person or, if applicable, the covered person's authorized representative, of the determination pursuant to this section may be extended once by the health carrier for up to fifteen days, if the health carrier:

(1) Determines that an extension is necessary due to matters beyond the health carrier's control; and

(2) Notifies the covered person or, if applicable, the covered person's authorized representative, prior to the expiration of the initial thirty-day time period, of the circumstances requiring the extension of time and the date by which the health carrier expects to make a determination.

If the extension under this section is necessary due to the failure of the covered person or, if applicable, the covered person's authorized representative to submit information necessary to reach a determination on the request, the notice of extension shall specifically describe the required information necessary to complete the request and give the covered person or, if applicable, the covered person's authorized representative at least forty-five days from the date of receipt of the notice to provide the specified information.

Section 56. For purposes of calculating the time periods within which a determination is required to be made for prospective and retrospective reviews, the time period within which the determination is required to be made begins on the date the request is received by the health carrier in accordance with the health carrier's procedures established pursuant to section 41 of this Act. If the time period for making the determination for a prospective or retrospective review is extended due to the covered person or, if applicable, the covered person's authorized representative's failure to submit the information necessary to make the determination, the time period for making the determination shall be tolled from the date on which the health carrier sends the notification of the extension to the covered person or, if applicable, the covered person's authorized representative, until the earlier of: the date on which the covered person or, if applicable, the covered person's authorized representative, responds to the request for additional information or the date on which the specified information was to have been submitted. If the covered person or the covered person's authorized representative fails to submit the information before the end of the period of the extension, as specified in sections 53 and 55 of this Act, the health carrier may deny the certification of the requested benefit.

Section 57. Any notification of an adverse determination under this section shall, in a manner which is designed to be understood by the covered person, set forth:

(1) Information sufficient to identify the benefit request or claim involved, including the date of service, if applicable, the health care provider, the claim amount, if applicable, the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning;

(2) The specific reason or reasons for the adverse determination, including the denial code and its corresponding meaning, as well as a description of the health carrier's standard, if any, that was used in denying the benefit request or claim;

(3) A reference to the specific plan provision on which the determination is based;

(4) A description of additional material or information necessary for the covered person to complete the benefit request, including an explanation of why the material or information is necessary to complete the request;

(5) A description of the health carrier's grievance procedures established pursuant to sections 75 to 87, inclusive, of this Act, including time limits applicable to those procedures;

(6) If the health carrier relied upon an internal rule, guideline, protocol, or other similar criterion to make the adverse determination, either the specific rule, guideline, protocol, or other similar criterion or a statement that a specific rule, guideline, protocol, or other similar criterion was relied upon to make the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the covered person upon request;

(7) If the adverse determination is based on a medical necessity or experimental or investigational treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for making the determination, applying the terms of the health benefit plan to the covered person's medical circumstances or a statement that an explanation will be provided to the covered person free of charge upon request;

(8) If applicable, instructions for requesting:

(a) A copy of the rule, guideline, protocol, or other similar criterion relied upon in making the adverse determination, as provided in subdivision (6) of this section; or

(b) The written statement of the scientific or clinical rationale for the adverse determination, as provided in subdivision (7) of this section; and

(9) A statement explaining the availability of and the right of the covered person, as appropriate, to contact the Division of Insurance at any time for assistance or, upon completion of the health carrier's grievance procedure process as provided under sections 75 to 87, inclusive, of this Act, to file a civil suit in a court of competent jurisdiction.

If the adverse determination is a rescission, the health carrier shall provide, in addition to any applicable disclosures required under section 57 of this Act, clear identification of the alleged fraudulent practice or omission or the intentional misrepresentation of material fact, an explanation as to why the act, practice, or omission was fraudulent or was an intentional misrepresentation of a material fact, and the effective date of the rescission.

A health carrier may provide the notice required under this section in writing or electronically.

If the adverse determination is a rescission, the health carrier shall provide advance notice of the rescission determination required by rules promulgated by the director, in addition to any applicable disclosures required under this section.

The health carrier shall provide clear identification of the alleged fraudulent act, practice, or omission or the intentional misrepresentation of material fact.

The health carrier shall provide an explanation as to why the act, practice, or omission was fraudulent or was an intentional misrepresentation of a material fact.

The health carrier shall provide notice that the covered person or the covered person's authorized representative, prior to the date the advance notice of the proposed rescission ends, may immediately file a grievance to request a review of the adverse determination to rescind coverage pursuant to sections 75 to 88, inclusive of this Act.

The health carrier shall provide a description of the health carrier's grievance procedures established pursuant to Section 75 to 88, inclusive, of this Act, including any time limits applicable to those procedures.

The health carrier shall provide the date when the advance notice ends and the date back to which the coverage will be retroactively rescinded.

Section 58. In the certificate of coverage or member handbook provided to covered persons, a health carrier shall include a clear and comprehensive description of its utilization review procedures, including the procedures for obtaining review of adverse determinations, and a statement of rights and responsibilities of covered persons with respect to those procedures. A health carrier shall include a summary of its utilization review and benefit determination procedures in materials intended for prospective covered persons. A health carrier shall print on its membership cards a toll-free telephone number to call for utilization review and benefit decisions.

Section 59. If the director and the secretary find that the requirements of any private accrediting body meet the requirements of utilization review as set forth in sections 28 to 74, inclusive, of this Act, the health carrier may, at the discretion of the director and secretary, be deemed to have met the applicable requirements.

Section 60. Any utilization review organization which engages in utilization review activities in this state shall register with the Division of Insurance prior to conducting business in this state. The registration shall be in a format prescribed by the director. In prescribing the form or in carrying out other functions required sections 60 to 64, inclusive, of this Act, the director shall consult with the secretary if applicable. The director or the secretary may require that the following information be submitted:

(1) Information relating to its actual or anticipated activities in this state;

(2) The status of any accreditation designation it holds or has sought;

(3) Information pertaining to its place of business, officers, and directors;

(4) Qualifications of review staff; and

(5) Any other information reasonable and necessary to monitor its activities in this state.

Section 61. Any utilization review organization which has previously registered in this state shall, on or before July first of each year, file with the Division of Insurance any changes to the initial or subsequent annual registration for the utilization review organization.

Section 62. The director or the secretary may request information from any utilization review organization at any time pertaining to its activities in this state. The utilization review organization shall respond to all requests for information within twenty days.

Section 63. A utilization review organization may not engage in utilization review in this state unless the utilization review organization is properly registered. The director may issue a cease and desist order against any utilization review organization which fails to comply with the requirements

of sections 60 to 64, inclusive, of this Act, prohibiting the utilization review organization from engaging in utilization review activities in this state.

Section 64. The director may require the payment of a fee in conjunction with the initial or annual registration of a utilization review organization not to exceed two hundred fifty dollars per registration. The fee shall be established by rules promulgated pursuant to chapter 1-26.

Section 65. Each health carrier shall establish written procedures, in accordance with sections 65 to 73, inclusive, of this Act, for receiving benefit requests from covered persons or their authorized representatives and for making and notifying covered persons or their authorized representatives of expedited utilization review and benefit determinations with respect to urgent care requests and concurrent review urgent care requests.

Section 66. If the covered person or, if applicable, the covered person's authorized representative has failed to provide sufficient information for the health carrier to make a determination, the health carrier shall notify the covered person or, if applicable, the covered person's authorized representative, either orally or, if requested by the covered person or the covered person's authorized representative, in writing of this failure and state what specific information is needed as soon as possible, but in no event later than twenty-four hours after receipt of the request.

Section 67. If the benefit request involves a prospective review urgent care request, the provisions of section 66 of this Act apply only in the case of a failure that:

(1) Is a communication by a covered person or, if applicable, the covered person's authorized representative, that is received by a person or organizational unit of the health carrier responsible for handling benefit matters; and

(2) Is a communication that refers to a specific covered person, a specific medical condition or symptom, and a specific health care service, treatment, or provider for which approval is being requested.

Section 68. For an urgent care request, unless the covered person or the covered person's authorized representative has failed to provide sufficient information for the health carrier to determine whether, or to what extent, the benefits requested are covered benefits or payable under the health carrier's health benefit plan, the health carrier shall notify the covered person or, if applicable, the covered person's authorized representative of the health carrier's determination with respect to the request, whether or not the determination is an adverse determination, as soon as possible, taking into account the medical condition of the covered person, but in no event later than twenty-fours hours after the date of the receipt of the request by the health carrier. If the health carrier's determination is an adverse determination, the health carrier shall provide notice of the adverse determination in accordance with section 73 of this Act.

Section 69. The health carrier shall provide the covered person or, if applicable, the covered person's authorized representative, a reasonable period of time to submit the necessary information, taking into account the circumstances, but in no event less than forty-eight hours after the date of notifying the covered person or the covered person's authorized representative of the failure to submit sufficient information, as provided in sections 66 and 67 of this Act.

Section 70. The health carrier shall notify the covered person or, if applicable, the covered person's authorized representative, of its determination with respect to the urgent care request as soon as possible, but in no event more than forty-eight hours after the earlier of:

(1) The health carrier's receipt of the requested specified information; or

(2) The end of the period provided for the covered person or, if applicable, the covered person's authorized representative, to submit the requested specified information.

If the covered person or the covered person's authorized representative fails to submit the information before the end of the period of the extension, as specified in section 69 of this Act, the health carrier may deny the certification of the requested benefit. If the health carrier's determination is an adverse determination, the health carrier shall provide notice of the adverse determination in accordance with section 57 of this Act.

Section 71. For concurrent review urgent care requests involving a request by the covered person or the covered person's authorized representative to extend the course of treatment beyond the initial period of time or the number of treatments, if the request is made at least twenty-four hours prior to the expiration of the prescribed period of time or number of treatments, the health carrier shall make a determination with respect to the request and notify the covered person or, if applicable, the covered person's authorized representative, of the determination, whether it is an adverse determination or not, as soon as possible, taking into account the covered person's medical condition but in no event more than twenty-four hours after the date of the health carrier's receipt of the request. If the health carrier's determination is an adverse determination, the health carrier shall provide notice of the adverse determination in accordance with section 73 of this Act.

Section 72. For purposes of calculating the time periods within which a determination is required to be made under sections 68 to 70, inclusive, of this Act, the time period within which the determination is required to be made shall begin on the date the request is filed with the health carrier in accordance with the health carrier's procedures established pursuant to section 41of this Act for filing a request without regard to whether all of the information necessary to make the determination accompanies the filing.

Section 73. If a health carrier's determination with respect to sections 65 to 72, inclusive, of this Act, is an adverse determination, the health carrier shall provide notice of the adverse determination in accordance with this section. A notification of an adverse determination under this section shall, in a manner calculated to be understood by the covered person, set forth:

(1) Information sufficient to identify the benefit request or claim involved, including the date of service, if applicable, the health care provider, the claim amount, if applicable, the diagnosis code and its corresponding meaning and the treatment code and its corresponding meaning;

(2) The specific reason or reasons for the adverse determination, including the denial code and its corresponding meaning, as well as a description of the health carrier's standard, if any, that was used in denying the benefit request or claim;

(3) A reference to the specific plan provisions on which the determination is based;

(4) A description of any additional material or information necessary for the covered person to complete the request, including an explanation of why the material or information is necessary to complete the request;

(5) A description of the health carrier's internal review procedures established pursuant to sections 75 to 87, inclusive, of this Act, including any time limits applicable to those procedures;

(6) A description of the health carrier's expedited review procedures established pursuant to sections 84 to 88, inclusive, of this Act;

(7) If the health carrier relied upon an internal rule, guideline, protocol, or other similar criterion to make the adverse determination, either the specific rule, guideline, protocol, or other similar criterion or a statement that a specific rule, guideline, protocol, or other similar criterion was relied upon to make the adverse determination and that a copy of the

rule, guideline, protocol, or other similar criterion will be provided free of charge to the covered person upon request;

(8) If the adverse determination is based on a medical necessity or experimental or investigation treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for making the determination, applying the terms of the health benefit plan to the covered person's medical circumstances, or a statement that an explanation will be provided to the covered person free of charge upon request;

(9) If applicable, instructions for requesting:

(a) A copy of the rule, guideline, protocol, or other similar criterion relied upon in making the adverse determination in accordance with subdivision (7) of this section; or

(b) The written statement of the scientific or clinical rationale for the adverse determination in accordance with subdivision (8) of this section; and

(10) A statement explaining the availability of and the right of the covered person, as appropriate, to contact the Division of Insurance at any time for assistance or, upon completion of the health carrier's grievance procedure process as provided under sections 75 to 87, inclusive, of this Act, to file a civil suit in a court of competent jurisdiction.

A health carrier may provide the notice required under this section orally, in writing or electronically. If notice of the adverse determination is provided orally, the health carrier shall provide written or electronic notice of the adverse determination within three days following the oral notification.

Section 74. The director may, after consultation with the secretary, promulgate rules, pursuant to chapter 1-26, to carry out the provisions of sections 28 to 73, inclusive, of this Act. The rules shall provide for a timely administration of utilization review by the public and assure that utilization review decisions are made in a fair and clinically acceptable manner. The rules may include the following:

(1) Definition of terms;

(2) Timing, form, and content of reports;

(3) Application of clinical criteria as it relates to utilization review;

(4) Written determinations; and

(5) Utilization review procedures.

The director may promulgate rules, pursuant to chapter 1-26, pertaining to claims for group disability income plans. The rules shall be consistent with applicable federal requirements included in 29 CFR Part 2560 as amended to January 1, 2011.

Section 75. Terms used in sections 75 to 88, inclusive, of this Act, mean:

(1) "Adverse determination," any of the following:

(a) A determination by a health carrier or the carrier's designee utilization review organization that, based upon the information provided, a request by a covered person for a benefit under the health carrier's health benefit plan upon application of any utilization review technique does not meet the health carrier's requirements

for medical necessity, appropriateness, health care setting, level of care or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part, for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment in whole or in part, for a benefit based on a determination by a health carrier or the carrier's designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, terminates, or fails to provide or make payment, in whole or in part, for a benefit; or

(d) A rescission of coverage determination;

(2) "Ambulatory review," utilization review of health care services performed or provided in an outpatient setting;

(3) "Authorized representative," a person to whom a covered person has given express written consent to represent the covered person for purposes of sections 75 to 88, inclusive, of this Act, a person authorized by law to provide substituted consent for a covered person, a family member of the covered person or the covered person's treating health care professional if the covered person is unable to provide consent, or a health care professional if the covered person's health benefit plan requires that a request for a benefit under the plan be initiated by the health care professional. For any urgent care request, the term includes a health care professional with knowledge of the covered person's medical condition;

(4) "Case management," a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions;

(5) "Certification," a determination by a health carrier or the carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan has been reviewed and, based on the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness;

(6) "Clinical peer," a physician or other health care professional who holds a non-restricted license in a state of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under review;

(7) "Clinical review criteria," written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by the health carrier to determine the medical necessity and appropriateness of health care services;

(8) "Closed plan," a managed care plan or health carrier that requires covered persons to use participating providers under the terms of the managed care plan or health carrier and does not provide any benefits for out-of-network services except for emergency services;

(9) "Concurrent review," utilization review conducted during a patient's hospital stay or course of treatment in a facility or other inpatient or outpatient health care setting;

(10) "Covered benefits" or "benefits," those health care services to which a covered person is entitled under the terms of a health benefit plan;

(11) "Covered person," a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(12) "Director," the director of the Division of Insurance;

(13) "Discharge planning," the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility;

(14) "Discounted fee for service," a contractual arrangement between a health carrier and a provider or network of providers under which the provider is compensated in a discounted fashion based upon each service performed and under which there is no contractual responsibility on the part of the provider to manage care, to serve as a gatekeeper or primary care provider, or to provide or assure quality of care. A contract between a provider or network of providers and a health maintenance organization is not a discounted fee for service arrangement;

(15) "Emergency medical condition," a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;

(16) "Emergency services," with respect to an emergency medical condition:

(a) A medical screening examination that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency condition; and

(b) Such further medical examination and treatment, to the extent they are within the capability of the staff and facilities at a hospital to stabilize a patient;

(17) "Facility," an institution providing health care services or a health care setting, including hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation, and other therapeutic health settings;

(18) "Final adverse determination," an adverse determination that as been upheld by the health carrier at the completion of the internal appeals process applicable pursuant to sections 79 to 87, inclusive, of this Act, or an adverse determination that with respect to which the internal appeals process has been deemed exhausted in accordance with section 78 of this Act;

(19) "Grievance," a written complaint, or oral complaint if the complaint involves an urgent care request, submitted by or on behalf of a covered person regarding:

(a) Availability, delivery, or quality of health care services;

(b) Claims payment, handling, or reimbursement for health care services; or

(c) Any other matter pertaining to the contractual relationship between a covered person and the health carrier.

A request for an expedited review need not be in writing;

(20) "Health care professional," a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law;

(21) "Health care provider" or "provider," a health care professional or a facility;

(22) "Health care services," services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(23) "Health carrier," an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services;

(24) "Health indemnity plan," a health benefit plan that is not a managed care plan;

(25) "Managed care contractor," a person who establishes, operates, or maintains a network of participating providers; or contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan or health carrier;

(26) "Managed care entity," a licensed insurance company, hospital or medical service plan, health maintenance organization, or an employer or employee organization, that operates a managed care plan or a managed care contractor. The term does not include a licensed insurance company unless it contracts with other entities to provide a network of participating providers;

(27) "Managed care plan," a plan operated by a managed care entity that provides for the financing or delivery of health care services, or both, to persons enrolled in the plan through any of the following:

(a) Arrangements with selected providers to furnish health care services;

(b) Explicit standards for the selection of participating providers; or

(c) Financial incentives for persons enrolled in the plan to use the participating providers and procedures provided for by the plan;

(28) "Network," the group of participating providers providing services to a health carrier;

(29) "Open plan," a managed care plan or health carrier other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan or health carrier;

(30) "Participating provider," a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly, from the health carrier;

(31) "Prospective review," utilization review conducted prior to an admission or the provision of a health care service or a course of treatment in accordance with a health carrier's requirement that the health care service or course of treatment, in whole or in part, be approved prior to its provision;

(32) "Rescission," a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect. The term does not include a cancellation or discontinuance of coverage under a health benefit plan if:

(a) The cancellation or discontinuance of coverage has only a prospective effect; or

(b) The cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage;

(33) "Retrospective review," any review of a request for a benefit that is not a prospective review request, which does not include the review of a claim that is limited to veracity of documentation, or accuracy of coding, or adjudication for payment;

(34) "Second opinion," an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the medical necessity and appropriateness of the initial proposed health care service;

(35) "Secretary," the secretary of the Department of Health;

(36) "Stabilized," with respect to an emergency medical condition, that no material deterioration of the condition is likely, with reasonable medical probability, to result from or occur during the transfer of the individual from a facility or, with respect to a pregnant woman, the woman has delivered, including the placenta;

(37) "Utilization review," a set of formal techniques used by a managed care plan or utilization review organization to monitor and evaluate the medical necessity, appropriateness, and efficiency of health care services and procedures including techniques such as ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, and retrospective review; and

(38) "Utilization review organization," an entity that conducts utilization review other than a health carrier performing utilization review for its own health benefit plans.

Section 76. Each health carrier shall maintain in a register written records to document all grievances received including the notices and claims associated with the grievances during a calendar year. A request for a first level review of a grievance involving an adverse determination shall be processed in compliance with sections 79 to 83, inclusive, of this Act, and is required to be included in the register. For each grievance the register shall contain the following information:

(1) A general description of the reason for the grievance;

(2) The date received;

(3) The date of each review or, if applicable, review meeting;

(4) Resolution at each level of the grievance, if applicable;

(5) Date of resolution at each level, if applicable; and

(6) Name of the covered person for whom the grievance was filed.

The register shall be maintained in a manner that is reasonably clear and accessible to the director. A health carrier shall retain the register compiled for a calendar year for five years.

Section 77. Each health carrier shall submit to the director, at least annually, a report in the format specified by the director. The report shall include for each type of health benefit plan offered by the health carrier:

(1) The certificate of compliance required by section 78 of this Act;

(2) The number of covered lives;

(3) The total number of grievances;

(4) The number of grievances resolved at each level, if applicable, and their resolution;

(5) The number of grievances appealed to the director of which the health carrier has been informed;

(6) The number of grievances referred to alternative dispute resolution procedures or resulting in litigation; and

(7) A synopsis of actions being taken to correct problems identified.

Section 78. Except as specified in sections 75 to 88, inclusive, of this Act, each health carrier shall use written procedures for receiving and resolving grievances from covered persons, as provided in sections 79 to 83, inclusive, of this Act. If a health carrier fails to strictly adhere to the requirements of sections 79 to 82, inclusive, or sections 84 to 87, inclusive, of this Act, with respect to receiving and resolving grievances involving an adverse determination, the covered person shall be deemed to have exhausted the provisions of sections 75 to 88, inclusive, of this Act, and may take action regardless of whether the health carrier asserts that the carrier substantially complied with the requirements of sections 79 to 82, inclusive, or sections 84 to 87, inclusive, of this Act, or that any error the carrier committed was de minimus.

A covered person may file a request for external review in accordance with rules promulgated by the director. In addition a covered person is entitled to pursue any available remedies under state or federal law on the basis that the health carrier failed to provide a reasonable internal claims and appeals process that would yield a decision on the merits of the claim.

A health carrier shall file with the director a copy of the procedures required under this section, including all forms used to process requests made pursuant to sections 79 to 83, inclusive, of this Act. Any subsequent material modifications to the documents also shall be filed. The director may disapprove a filing received in accordance with this section that fails to comply with sections 75 to 88, inclusive, of this Act, or applicable rules. In addition, a health carrier shall file annually with the director, as part of its annual report required by sections 76 and 77 of this Act, a certificate of compliance stating that the health carrier has established and maintains, for each of its health benefit plans, grievance procedures that fully comply with the provisions of sections 75 to 88, inclusive, of this Act. A description of the grievance procedures required under this section shall be set forth in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage provided to covered persons. The grievance procedure documents shall include a statement of a covered person's right to contact the Division of Insurance for assistance at any time. The statement shall include the telephone number and address of the Division of Insurance.

Section 79. Within one hundred eighty days after the date of receipt of a notice of an adverse determination sent pursuant to sections 28 to 74, inclusive, of this Act, any covered person or the covered person's authorized representative may file a grievance with the health carrier requesting a first level review of the adverse determination. The health carrier shall provide the covered person with the name, address, and telephone number of a person or organizational unit designated to coordinate the first level review on behalf of the health carrier. In providing for a first level review under this section, the health carrier shall ensure that the review conducted in a manner under this

section to ensure the independence and impartiality of the individuals involved in making the first level review decision. In ensuring the independence and impartiality of individuals involved in making the first level review decision, no health carrier may make decisions related to such individuals regarding hiring, compensation, termination, promotion or other similar matters based upon the likelihood that the individual will support the denial of benefits.

The health carrier shall designate one or more health care providers who have appropriate training and experience in the field of medicine involved in the medical judgment to evaluate the adverse determination. No health care provider may have been involved in the initial adverse determination. In conducting the review, a reviewer shall take into consideration all comments, documents, records, and other information regarding the request for services submitted by the covered person or the covered person's authorized representative, without regard to whether the information was submitted or considered in making the initial adverse determination.

Section 80. No covered person has the right to attend, or to have a representative in attendance, at the first level review. However, the covered person or, if applicable, the covered person's authorized representative may:

(1) Submit written comments, documents, records, and other material relating to the request for benefits for the review or reviewers to consider when conducting the review; and

(2) Receive from the health carrier, upon request and free of charge, reasonable access to, and copies of all documents, records and other information relevant to the covered person's request for benefits. A document, record, or other information shall be considered relevant to a covered person's request for benefits if the document, record, or other information:

(a) Was relied upon in making the benefit determination;

(b) Was submitted, considered, or generated in the course of making the adverse determination, without regard to whether the document, record, or other information was relied upon in making the benefit determination;

(c) Demonstrates that, in making the benefit determination, the health carrier, or its designated representatives consistently applied required administrative procedures and safeguards with respect to the covered person as other similarly situated covered persons; or

(d) Constitutes a statement of policy or guidance with respect to the health benefit plan concerning the denied health care service or treatment for the covered person's diagnosis, without regard to whether the advice or statement was relied upon in making the benefit determination.

The health carrier shall make the provisions of this section known to the covered person or, if applicable, the covered person's authorized representative within three working days after the date of receipt of the grievance.

Section 81. A health carrier shall notify and issue a decision in writing or electronically to the covered person or, if applicable, the covered person's authorized representative, within the following time frames:

(1) With respect to a grievance requesting a first level review of an adverse determination involving a prospective review request, the health carrier shall notify and issue a decision within a reasonable period of time that is appropriate given the covered person's medical condition, but no later than thirty days after the date of the health carrier's receipt of the grievance requesting the first level review made pursuant to section 79 of this Act; or

(2) With respect to a grievance requesting a first level review of an adverse determination involving a retrospective review request, the health carrier shall notify and issue a decision within a reasonable period of time, but no later than sixty days after the date of the health carrier's receipt of the grievance requesting the first level review made pursuant to section 79 of this Act.

For purposes of calculating the time periods within which a determination is required to be made and notice provided under this section, the time period shall begin on the date the grievance requesting the review is filed with the health carrier in accordance with the health carrier's procedures established pursuant to section 78 of this Act for filing a request, without regard to whether all of the information necessary to make the determination accompanies the filing.

Section 82. Prior to issuing a decision in accordance with the timeframes provided in section 81 of this Act, the health carrier shall provide free of charge to covered person, or the covered person's authorized representative, any new or additional evidence, relied upon or generated by the health carrier, or at the direction of the health carrier, in connection with the grievance sufficiently in advance of the date the decision is required to be provided to permit the covered person, or the covered person's authorized representative, a reasonable opportunity to respond prior to that date.

Before the health carrier issues or provides notice of a final adverse determination in accordance with the timeframes provided in section 81 of this Act that is based on new or additional rationale, the health carrier shall provide the new or additional rationale to the covered person, or the covered person's authorized representative, free of charge as soon as possible and sufficiently in advance of the date the notice of final adverse determination is to be provided to permit the covered person, or the covered person's authorized representative a reasonable opportunity to respond prior to that date.

Section 83. The decision issued pursuant to section 81 of this Act shall set forth in a manner calculated to be understood by the covered person or, if applicable, the covered person's authorized representative and include the following:

(1) The titles and qualifying credentials of any person participating in the first level review process (the reviewer);

(2) Information sufficient to identify the claim involved with respect to the grievance, including the date of service, the health care provider, if applicable, the claim amount, the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning;

(3) A statement of the reviewer's understanding of the covered person's grievance;

(4) The reviewer's decision in clear terms and the contract basis or medical rationale in sufficient detail for the covered person to respond further to the health carrier's position;

(5) A reference to the evidence or documentation used as the basis for the decision;

(6) For a first level review decision issued pursuant to section 81 of this Act that upholds the grievance denial:

(a) The specific reason or reasons for the final internal adverse determination, including the denial code and its corresponding meaning, as well as a description of the health carrier's standard, if any, that was used in reaching the denial;

(b) The reference to the specific plan provisions on which the determination is based;

(c) A statement that the covered person is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other

information relevant, as the term relevant is defined in section 80 of this Act to the covered person's benefit request;

(d) If the health carrier relied upon an internal rule, guideline, protocol, or other similar criterion to make the final adverse determination, either the specific rule, guideline, protocol or other similar criterion or a statement that a specific rule, guideline, protocol, or other similar criterion was relied upon to make the final adverse determination and that a copy of the rule, guideline, protocol or other similar criterion will be provided free of charge to the covered person upon request;

(e) If the final adverse determination is based on a medical necessity or experimental or investigational treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for making the determination, applying the terms of the health benefit plan to the covered person's medical circumstances or a statement that an explanation will be provided to the covered person free of charge upon request; and

(f) If applicable, instructions for requesting:

(i) A copy of the rule, guideline, protocol, or other similar criterion relied upon in making the final adverse determination, as provided in subsection (d) of this section; or

(ii) The written statement of the scientific or clinical rationale for the determination, as provided in subsection (e) of this section;

(7) If applicable, a statement indicating:

(a) A description of the procedures for obtaining an independent external review of the final adverse determination pursuant to rules promulgated by the director; and

(b) The covered person's right to bring a civil action in a court of competent jurisdiction;

(8) If applicable, the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your state insurance director.";

(9) Notice of the covered person's right to contact the Division of Insurance for assistance at any time, including the telephone number and address of the Division of Insurance.

Section 84. Each health carrier shall establish written procedures for the expedited review of urgent care requests of grievances involving an adverse determination. In addition, a health carrier shall provide expedited review of a grievance involving an adverse determination with respect to concurrent review urgent care requests involving an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services, but has not been discharged from a facility. The procedures shall allow a covered person or the covered person's authorized representative to request an expedited review under this section orally or in writing.

Each health carrier shall appoint at least one appropriate clinical peer in the same or similar specialty as would typically manage the case being reviewed to review the adverse determination. The clinical peer may not have been involved in making the initial adverse determination.

Section 85. In an expedited review that is not an initial determination for benefits, all necessary information, including the health carrier's decision, shall be transmitted between the health carrier and

the covered person or, if applicable, the covered person's authorized representative, by telephone, facsimile, or the most expeditious method available.

Section 86. An expedited review decision, that is not an initial determination for benefits, shall be made and the covered person or, if applicable, the covered person's authorized representative, shall be notified of the decision in accordance with section 87 of this Act as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the date of receipt of the request for the expedited review. If the expedited review is of a grievance involving an adverse determination with respect to a concurrent review urgent care request, the service shall be continued without liability to the covered person until the covered person has been notified of the determination.

For purposes of calculating the time periods within which a decision is required to be made under this section, the time period within which the decision is required to be made shall begin on the date the request is filed with the health carrier in accordance with the health carrier's procedures established pursuant to section 78 of this Act for filing a request, without regard to whether all of the information necessary to make the determination accompanies the filing.

Section 87. A notification of a decision under sections 84 to 87, inclusive, of this Act, shall, in a manner calculated to be understood by the covered person or, if applicable, the covered person's authorized representative, set forth the following:

(1) The titles and qualifying credentials of any person participating in the expedited review process (the reviewer);

(2) Information sufficient to identify the claim involved with respect to the grievance, including the date of service, the health care provider, if applicable, the claim amount, the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning;

(3) A statement of the reviewer's understanding of the covered person's grievance;

(4) The reviewer's decision in clear terms and the contract basis or medical rationale in sufficient detail for the covered person to respond further to the health carrier's position;

(5) A reference to the evidence or documentation used as the basis for the decision;

(6) If the decision involves a final adverse determination, the notice shall provide:

(a) The specific reason or reasons for the final adverse determination, including the denial code and its corresponding meaning, as well as a description of the health carrier's standard, if any, that was used in reaching the denial;

(b) A reference to the specific plan provisions on which the determination is based;

(c) A description of any additional material or information necessary for the covered person to complete the request, including an explanation of why the material or information is necessary to complete the request;

(d) If the health carrier relied upon an internal rule, guideline, protocol, or other similar criterion to make the adverse determination, either the specific rule, guideline, protocol, or other similar criterion or a statement that a specific rule, guideline, protocol, or other similar criterion was relied upon to make the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the covered person upon request;

(e) If the final adverse determination is based on a medical necessity or experimental or investigational treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for making the determination, applying the terms of the health benefit plan to the covered person's medical circumstances or a statement that an explanation will be provided to the covered person free of charge upon request;

(f) If applicable, instructions for requesting:

(i) A copy of the rule, guideline, protocol, or other similar criterion relied upon in making the adverse determination as provided in subsection (d) of this section; or

(ii) The written statement of the scientific or clinical rationale for the adverse determination as provided in subsection (e) of this section;

(g) A statement describing the procedures for obtaining an independent external review of the adverse determination pursuant to rules promulgated by the director;

(h) A statement indicating the covered person's right to bring a civil action in a court of competent jurisdiction;

(i) The following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your state insurance director."; and

(j) A notice of the covered person's right to contact the Division of Insurance for assistance at any time, including the telephone number and address of the Division of Insurance.

A health carrier may provide the notice required under this section orally, in writing, or electronically. If notice of the adverse determination is provided orally, the health carrier shall provide written or electronic notice of the adverse determination within three days following the date of the oral notification.

Section 88. The director, in consultation with the secretary, shall promulgate rules, pursuant to chapter 1-26, to establish time frames relative to the filing of grievances, the disposition of grievances, and the response to the aggrieved person. Rules may also be promulgated covering definition of terms, grievance procedures, and content of reports.

Section 89. For the purposes of sections 2 to 21, inclusive, of this Act, the term, health benefit plan, means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

The term does not include coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011, under which benefits for medical care are secondary or incidental to other insurance benefits.

The term does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan: limited scope

dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or other similar, limited benefits specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011.

The term does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor: coverage only for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

The term does not include the following if offered as a separate policy, certificate, or contract of insurance: medicare supplemental health insurance as defined under Section 882(g)(1) of the Social Security Act, as amended to January 1, 2011; coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)), as amended to January 1, 2011; or similar supplemental coverage provided to coverage under a group health plan.

Section 90. For the purposes of sections 22 to 27, inclusive, of this Act, the term, health benefit plan, means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

The term does not include coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011, under which benefits for medical care are secondary or incidental to other insurance benefits.

The term does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or other similar, limited benefits specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011.

The term does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor: coverage only for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

The term does not include the following if offered as a separate policy, certificate, or contract of insurance: medicare supplemental health insurance as defined under Section 882(g)(1) of the Social Security Act, as amended to January 1, 2011; coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)), as amended to January 1, 2011; or similar supplemental coverage provided to coverage under a group health plan.

Section 91. For the purposes of sections 28 to 74, inclusive, of this Act, the term, health benefit plan, means a policy, contract, certificate, or agreement entered into, offered, or issued by a health

carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

The term does not include coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011, under which benefits for medical care are secondary or incidental to other insurance benefits.

The term does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or other similar, limited benefits specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011.

The term does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor: coverage only for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

The term does not include the following if offered as a separate policy, certificate, or contract of insurance: medicare supplemental health insurance as defined under Section 882(g)(1) of the Social Security Act, as amended to January 1, 2011; coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)), as amended to January 1, 2011; or similar supplemental coverage provided to coverage under a group health plan.

Section 92. For the purposes of sections 28 to 74, inclusive, of this Act, the term, urgent care request means a request for a health care service or course of treatment with respect to which the time periods for making a nonurgent care request determination:

(1) Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

(2) In the opinion of a physician with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

Except as provided in subdivision (1) of this section, in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the health carrier shall apply the judgment of a prudent layperson who possesses an average knowledge of health and medicine. Any request that a physician with knowledge of the covered person's medical condition determines is an urgent care request within the meaning of subdivisions (1) and (2) of this section shall be treated as an urgent care request.

Section 93. For the purposes of sections 75 to 88, inclusive, of this Act, the term, health benefit plan, means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

The term does not include coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011, under which benefits for medical care are secondary or incidental to other insurance benefits.

The term does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or other similar, limited benefits specified in federal regulations issued pursuant to Public Law No. 104-191, as amended to January 1, 2011.

The term does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor: coverage only for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

The term does not include the following if offered as a separate policy, certificate, or contract of insurance: medicare supplemental health insurance as defined under Section 882(g)(1) of the Social Security Act, as amended to January 1, 2011; coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)), as amended to January 1, 2011; or similar supplemental coverage provided to coverage under a group health plan.

Section 94. For the purposes of sections 75 to 88, inclusive, of this Act, the term, urgent care request means a request for a health care service or course of treatment with respect to which the time periods for making a nonurgent care request determination:

(1) Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

(2) In the opinion of a physician with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

Except as provided in subdivision (1) of this section, in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the health carrier shall apply the judgment of a prudent layperson who possesses an average knowledge of health and medicine. Any request that a physician with knowledge of the covered person's medical condition determines is an urgent care request within the meaning of subdivisions (1) and (2) of this section shall be treated as an urgent care request.

Section 95. That § 58-1-24 be amended to read as follows:

58-1-24. Terms used in §§ 58-1-25 and 58-18-87 mean:

(1) "Genetic information," information about genes, gene products, and inherited characteristics that may derive from the individual or a family member. ~~This~~ The term includes information regarding carrier status and information derived from laboratory tests that identify mutations in specific genes or chromosomes, physical medical examinations, family histories, and direct analysis of genes or chromosomes;

(2) "Genetic test," a test of human DNA, RNA, chromosomes, or genes performed in order to identify the presence or absence of an inherited variation, alteration, or mutation which is associated with predisposition to disease, illness, impairment, or other disorder. Genetic test does not mean a routine physical measurement; a chemical, blood, or urine analysis; a test for drugs or HIV infection; any test commonly accepted in clinical practice; or any test performed due to the presence of signs, symptoms, or other manifestations of a disease, illness, impairment, or other disorder;

(3) "Health carrier," any person who provides health insurance in this state. The term includes a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a multiple employer welfare arrangement, a fraternal benefit contract, or any person providing a plan of health insurance subject to state insurance regulation;

(4) "Health insurance," insurance provided pursuant to chapters 58-17 (except disability income insurance), ~~58-17C~~ sections 2 to 94, inclusive, of this Act, 58-18 (except disability income insurance), 58-18B, 58-38, 58-40, and 58-41; and

(5) "Individual," an applicant for coverage or a person already covered by a health carrier.

Section 96. That § 58-17-143 be amended to read as follows:

58-17-143. The board may, directly or indirectly, enter into preferred provider contracts to obtain discounts on goods or services from out-of-state providers. If health care goods or services are provided pursuant to a preferred provider contract and the goods or services are either not readily available in this state or are emergency services as defined by ~~§ 58-17C-27~~ section 28 of this Act, the provisions of that contract shall govern the reimbursement rate. The payment by the risk pool for any services received from out-of-network providers in other states, other than emergency treatment as defined in ~~§ 58-17C-27~~ section 28 of this Act, is limited to one hundred fifteen percent of South Dakota's medicaid reimbursement. Emergency treatment, as defined in ~~§ 58-17C-27~~ section 28 of this Act, that is from an out-of-state provider that is an out-of-network provider, to the extent that such services are payable under the plan, may be reimbursed by the risk pool at an amount that does not exceed the amount determined to be reasonable by the plan administrator.

Section 97. That § 58-17D-2 be amended to read as follows:

58-17D-2. A utilization review organization that conducts utilization reviews solely for property and casualty insurers in this state pursuant to policies issued in this state is not subject to ~~chapter 58-17C~~ this Act except that any such utilization review organization shall register in the same manner as prescribed for utilization review organizations pursuant to ~~chapter 58-17C~~ sections 60 to 64, inclusive, of this Act.

Section 98. That § 58-17E-9 be amended to read as follows:

58-17E-9. Any discount medical plan organization that is not offered directly by a health carrier as provided by this chapter, shall register in a format as prescribed by the director and shall file reports and conduct business under the same standards as required of utilization review organizations in accordance with provisions of ~~§§ 58-17C-65 to 58-17C-66, inclusive~~ sections 61 to 62, inclusive, of this Act. No health carrier may offer or provide coverage through a person not registered but required to be registered pursuant to §§ 58-17E-9, 58-17E-39, 58-17E-41, and 58-17E-45, inclusive. Any plan or program that is registered pursuant to ~~§ 58-17C-20~~ section 16 of this Act is not required to maintain a separate registration pursuant to §§ 58-17E-9, 58-17E-39, 58-17E-41, and 58-17E-45, inclusive. Any plan or program of discounted goods or services that is offered by a health carrier in conjunction with a health benefit plan, as defined in §§ 58-18-42 and 58-17-66(9), a medicare supplement policy as defined in § 58-17A-1, or other insurance product that is offered by an

authorized insurer and that is subject to the jurisdiction of the director is not required to be registered pursuant to §§ 58-17E-9, 58-17E-39, 58-17E-41, and 58-17E-45, inclusive.

Section 99. That § 58-33-93 be amended to read as follows:

58-33-93. Terms used in §§ 58-33-93 to 58-33-116, inclusive, mean:

(1) "Admitted insurer," an insurer licensed to do an insurance business in this state including an entity authorized pursuant to § 58-18-88, a health maintenance organization or nonprofit hospital, or medical service corporation under the laws of this state;

(2) "Arrangement," a fund, trust, plan, program, or other mechanism by which a person provides, or attempts to provide, health care benefits;

(3) "Employee leasing arrangement," a labor leasing, staff leasing, employee leasing, professional employer organization, contract labor, extended employee staffing or supply, or other arrangement, under contract or otherwise, whereby one business or entity represents that it leases or provides its workers to another business or entity;

(4) "Employee welfare benefit plan" or "health benefit plan," a plan, fund, or program which is or was established or maintained by an employer or by an employee organization, or by both, to the extent that the plan, fund, or program is or was established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment;

(5) "Fully insured," for the health care benefits or coverage provided or offered by or through a health benefit plan or arrangement:

(a) An admitted insurer is directly obligated by contract to each participant to provide all of the coverage under the plan or arrangement; and

(b) The liability and responsibility of the admitted insurer to provide covered services or for payment of benefits is not contingent, and is directly to the individual employee, member, or dependent;

(6) "Licensee," a person that is, or that is required to be, licensed or registered under the laws of this state as a producer, third party administrator, insurer, or preferred provider organization;

(7) "MEWA," multiple employer welfare arrangement;

(8) "MEWA contact," the individual or position designated by the division to be the MEWA contact as identified on the division web site;

(9) "Nonadmitted insurer," an insurer not licensed to do insurance business in this state;

(10) "Preferred provider organization," an entity that engages in the business of offering a network of health care providers, whether or not on a risk basis, to employers, insurers, or any other person who provides a health benefit plan including a managed care contractor registered or required to be registered pursuant to ~~chapter 58-17C~~ section 16 of this Act;

(11) "Producer," a person required to be licensed pursuant to chapter 58-30 of this state to sell, solicit, or negotiate insurance;

(12) "Professional employer organization," an arrangement, under contract or otherwise, whereby one business or entity represents that it co-employs or leases workers to another business or entity for an ongoing and extended, rather than a temporary or project-specific, relationship;

(13) "Third party administrator" or "administrator," has the meaning provided in chapter 58-29D.

Section 100. That § 58-37A-39 be amended to read as follows:

58-37A-39. In addition to the provisions contained in this chapter, the following chapters and provisions of the South Dakota Code also apply to fraternal benefit societies, to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of this chapter:

(1) Chapter 47-6;

(2) Chapter 58-1;

(3) Chapter 58-2, with the exception of § 58-2-29;

(4) Chapter 58-3;

(5) Chapter 58-4;

(6) Chapter 58-5;

(7) Sections 58-6-8, 58-6-46, and 58-6-47;

(8) Chapters 58-15, 58-17, 58-17A, 58-17B, and 58-18;

(9) Chapter 58-29B;

(10) Chapter 58-30;

(11) Chapter 58-33;

(12) ~~Chapters 58-17C~~ Sections 2 to 94, inclusive, of this Act, and chapter 58-33A.

Section 101. That § 58-41-12 be amended to read as follows:

58-41-12. Upon receipt of an application for issuance of a certificate of authority, the director shall forthwith transmit copies of such application and accompanying documents to the secretary. The secretary shall determine whether the applicant for a certificate of authority has:

(1) Demonstrated the willingness and potential ability to assure that health care services will be provided in a manner to assure both the availability and accessibility of adequate personnel and facilities consistent with the requirements of ~~§§ 58-17C-7 to 58-17C-15, inclusive~~ sections 2 to 21, inclusive, of this Act;

(2) Arrangements, established in accordance with regulations promulgated by the secretary for an ongoing quality of health care assurance program consistent with the requirements of ~~§§ 58-17C-7 to 58-17C-15, inclusive~~ sections 2 to 21, inclusive, of this Act, concerning health care processes and outcomes;

(3) A procedure, established in accordance with regulations promulgated by the secretary, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and such other matters as may be reasonably required by the secretary; and

(4) Reasonable provisions for emergency and out-of-area health care services.

Signed March 7, 2011

CHAPTER 220

(SB 45)

Reporting requirement repealed regarding medically uninsurable individuals.

ENTITLED, An Act to repeal the requirement to prepare a report on extending health insurance to medically uninsurable individuals who are not part of a small employer group.

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

Section 1. That § 58-18B-34 be repealed.

Signed March 3, 2011

CHAPTER 221

(HB 1058)

Motor vehicle defined for the purpose of supplemental automobile liability insurance.

ENTITLED, An Act to clarify the definition of motor vehicle for the purpose of supplemental automobile liability insurance.

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

Section 1. That chapter 58-23 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of § 58-23-8, the term, motor vehicle, means automobiles, motor trucks, motorcycles, and all vehicles propelled by power other than muscular power and designed primarily for travel on the public highway except traction engines, road rollers, farm wagons, freight trailers, house trailers, trailers, vehicles that run only on rails or tracks, and off-road vehicles as defined in § 32-3-1. However, a vehicle not designed for travel on the public highway that is licensed is a motor vehicle for purposes of § 58-23-8. Freight trailers, house trailers, and trailers which are attached to a motor vehicle are part of that motor vehicle.

Signed March 7, 2011

CHAPTER 222

(HB 1036)

Guaranty association date revised to submit reports to the director of insurance.

ENTITLED, An Act to revise the time when financial reports of the guaranty association are submitted to the director of insurance.

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

Section 1. That § 58-29A-100 be amended to read as follows:

58-29A-100. The association is subject to examination and regulation by the director. The board of directors shall submit, not later than ~~March~~ May thirtieth of each year, a financial report for the preceding calendar year in a form approved by the director.

Signed February 17, 2011

CHAPTER 223

(HB 1030)

Surplus lines insurance regulation changed.

ENTITLED, An Act to revise the provisions relating to placement of surplus lines insurance and tax allocation of surplus lines insurance.

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

Section 1. That § 58-32-7 be amended to read as follows:

58-32-7. Any individual who is licensed in this state as an insurance producer and who is determined by the director to be competent and trustworthy with respect to the handling of surplus lines may be licensed as a surplus line broker. No individual is required to be licensed pursuant to this chapter as a surplus lines broker if the selling, soliciting, or negotiating of surplus lines insurance takes place in an insured's home state and the home state of the insured is a state other than South Dakota.

Section 2. That § 58-32-16 be amended to read as follows:

58-32-16. If certain insurance coverages cannot be procured from authorized insurers, ~~such~~ the coverages, hereinafter designated ~~"~~, surplus lines,~~"~~ may be procured from unauthorized insurers, subject to the conditions set forth in §§ 58-32-17 to 58-32-19, inclusive. The provisions of §§ 58-32-16 to 58-32-18, inclusive, do not apply to exempt commercial lines policyholders as defined in §§ 58-24-68 and 58-24-69 if:

(1) The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) The exempt commercial purchaser has subsequently requested in writing the broker to procure or place the insurance from a nonadmitted insurer.

Section 3. That § 58-32-22 be amended to read as follows:

58-32-22. ~~The insurer with which surplus line insurance is placed:~~

~~(1) Shall be authorized to transact insurance of the kind involved in at least one state of the United States, and have either unimpaired capital or surplus, or both, that is equal or greater than the minimum capital and surplus requirements under § 58-6-23. In the case of a group of individual unincorporated insurers, the trust fund shall be in an amount of at least fifty million dollars; or~~

~~(2) If an alien insurer not authorized to transact insurance in at least one state of the United States, the alien insurer shall have an established and effective trust fund which has been filed with and approved by the nonadmitted insurers information office of the national association of insurance commissioners; or~~

~~(3) If not eligible under either subdivision (1) or (2) of this section, shall currently be eligible pursuant to order of the director made upon application therefor by the broker accompanied by the financial statement of the insurer as of the date most recently available and such additional information concerning the insurer as the director may require. The director may revoke any such order at any time, and shall notify the broker of such revocation.~~ Surplus lines insurance may be placed by a surplus lines licensee if the insurer is authorized to write the type of insurance in its domiciliary jurisdiction, and either meets the criteria established through a multi-state agreement pursuant to § 58-32-45 or meets one of the following criteria:

(1) The insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(a) The minimum capital and surplus requirements under § 58-6-23; or

(b) Fifteen million dollars; or

(2) The insurer is a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissions.

The requirements of subdivision (1) of this section may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the director. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The director may not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

Section 4. That § 58-32-44 be amended to read as follows:

58-32-44. Before the first day of April of each year, each broker shall remit to the state treasurer, through the director of the Division of Insurance, a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance transacted by ~~him~~ the broker at the rate and in the manner provided by ~~Title 10~~ § 10-44-2. If in any prior calendar year a broker collects and remits in excess of five thousand dollars of surplus lines premium tax, ~~he~~ the broker shall in the following year remit the tax on a quarterly basis. ~~Such~~ The tax ~~shall be~~ is in lieu of all other taxes upon such insurers with respect to the business so reported. When collected, the tax

shall be credited to the general fund. If the director has entered into an agreement as provided for by § 58-32-45, taxes may be required to be remitted as may be specified by such an agreement.

Section 5. That § 58-32-45 be amended to read as follows:

58-32-45. For a surplus lines policy issued to an insured whose home state is this state and where only a portion of the risk is located in this state, the entire premium tax shall be paid to the director in accordance with § 58-32-44. If the director finds it would increase the efficiency of the surplus lines insurance marketplace as well as the regulation of the surplus lines market, the director may enter into a multi-state surplus lines agreement for the eligibility for placement of surplus lines insurance and the payment, reporting, collection, and apportionment of surplus lines premium taxes. If a surplus line policy covers risks or exposures only partially in this state and the director has entered into agreement with other states for the apportionment of premium taxes for multi-state risks, the tax payable under § 58-32-44 shall be computed and paid upon the proportion of the premium which is properly allocable to the risks or exposures located in this state according to the terms of any such agreement. The multi-state agreement may also include the eligibility for placement of surplus lines insurance and the payment, reporting, collection, and apportionment of surplus lines premium taxes for risks that are not multi-state and for independently procured surplus lines pursuant to §§ 58-32-47 to 58-32-55, inclusive.

Section 6. That chapter 58-32 be amended by adding thereto a NEW SECTION to read as follows:

The term, home state, as used in this chapter, means, with respect to an insured:

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(2) If one hundred percent of the insured risk is located out of the state referred to in subdivision (1) of this section, the state to which the greatest percentage of the insured's taxable premium for the insurance contract is allocated.

If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term means the home state as determined under subdivision (1) of this section of the member of the affiliated group that has the largest percentage of premium attributable to it under the contract.

Signed February 17, 2011

LABOR AND EMPLOYMENT

CHAPTER 224

(HB 1148)

Minimum wage for seasonal employees revised.

ENTITLED, An Act to revise the minimum wage law for certain seasonal employees and to declare an emergency.

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

Section 1. That § 60-11-3 be amended to read as follows:

60-11-3. Every employer shall pay to each employee wages at a rate of not less than seven dollars and twenty-five cents an hour. Violation of this section is a Class 2 misdemeanor.

The provisions of this section do not apply to certain employees being paid an opportunity wage pursuant to § 60-11-4.1, babysitters, or outside ~~salesmen~~ salespersons. The provisions of this section also do not apply to employees employed by an amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center if one of the following apply:

(1) The establishment, camp, or center does not operate for more than seven months in any calendar year; or

(2) During the preceding calendar year, the average receipts of the establishment, camp, or center for any six months of the calendar year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year.

Section 2. That § 60-11-3.1 be amended to read as follows:

60-11-3.1. Any employer of a tipped employee shall pay a cash wage of not less than two dollars and thirteen cents an hour if the employer claims a tip credit against the employer's minimum wage obligation. If an employee's tips combined with the employer's cash wage of not less than two dollars and thirteen cents an hour do not equal the minimum hourly wage, the employer shall make up the difference as additional wages for each regular pay period of the employer.

A "tipped employee" is one engaged in an occupation in which the employee customarily and regularly receives more than thirty-five dollars a month in tips or other considerations.

This section does not apply to babysitters or outside ~~salesmen~~ salespersons. This section also does not apply to employees employed by an amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center if one of the following apply:

(1) The establishment, camp, or center does not operate for more than seven months in any calendar year; or

(2) During the preceding calendar year, the average receipts of the establishment, camp, or center for any six months of the calendar year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year.

Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 17, 2011

UNEMPLOYMENT COMPENSATION

CHAPTER 225

(SB 125)

Time period revised for computing unemployment insurance employer contribution rates.

ENTITLED, An Act to revise the time period for computing unemployment insurance employer contribution rates.

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

Section 1. That § 61-5-18 be amended to read as follows:

61-5-18. If ~~at the beginning of any calendar year~~ an employer has met the requirements of § 61-5-20.2 on the computation date for the year, then the employer's contribution rate shall be the rate appearing in Column "A" on the same line on which the employer's reserve ratio appears in Column "B" of the rate schedule applicable to such year. The computation date for calendar year 2012 and each year thereafter is June thirtieth of the preceding year.

Section 2. That § 61-5-18.17 be amended to read as follows:

61-5-18.17. The employer's reserve ratio for calendar year 2010 and ~~thereafter~~ 2011 shall be the result obtained by dividing the balance of credits existing in the employer's experience-rating account by the total taxable payroll of the employer for the preceding three calendar years. The employer's reserve ratio for calendar year 2012 and thereafter is the result obtained by dividing the balance of credits existing in the employer's experience-rating account as of June thirtieth preceding the year for which the rate is to be computed by the total taxable payroll of the employer for the preceding three fiscal years. The employer's experience-rating account balance for 2012 and thereafter for the purpose of this section is the balance on July thirty-first of the year preceding the year for which rates are computed and is the difference between the contributions paid through July thirty-first and the benefits paid through the preceding June thirtieth.

Column "A" Contribution Rate	Column "B" Reserve Ratio
9.50%	Less than -6.50%
9.00%	-6.50% and Less than -6.00%
8.50%	-6.00% and Less than -5.50%
8.00%	-5.50% and Less than -5.00%
7.50%	-5.00% and Less than -4.50%
7.00%	-4.50% and Less than -4.00%
6.50%	-4.00% and Less than -3.50%
6.00%	-3.50% and Less than -3.00%

5.50%	-3.00% and Less than -2.50%
5.00%	-2.50% and Less than -2.00%
4.50%	-2.00% and Less than -1.50%
4.00%	-1.50% and Less than -1.00%
3.50%	-1.00% and Less than -0.75%
3.00%	-0.75% and Less than -0.50%
2.50%	-0.50% and Less than -0.25%
2.00%	-0.25% and Less than 0.00%
1.50%	0.00% and Less than 0.50%
1.25%	0.50% and Less than 0.75%
1.00%	0.75% and Less than 1.00%
0.50%	1.00% and Less than 1.25%
0.35%	1.25% and Less than 1.50%
0.20%	1.50% and Less than 2.00%
0.10%	2.00% and Less than 2.50%
0.00%	2.50% and Over

The contribution rates provided in this section apply to and are retroactive to taxable wages paid on and after January 1, 2010.

Section 3. That § 61-5-24.1 be amended to read as follows:

61-5-24.1. Employers required by this title to pay contributions, except employers that pursuant to chapter 61-5A reimburse the unemployment compensation trust fund for benefits paid in lieu of contributions, shall also pay an employer's investment in South Dakota's future fee, hereinafter "investment fee," on wages as defined by this title. The fee rate for employers not eligible for experience rating, as defined in § 61-5-20.2, shall be seventy hundredths percent through calendar year 2006 and fifty-five hundredths percent on and after January 1, 2007. If an employer is eligible for experience rating, ~~his~~ the employer's reserve ratio shall be determined pursuant to ~~§ 61-5-18.14~~ § 61-5-18.17 and ~~his~~ the employer's investment fee rate shall be the rate appearing in column "A" on the same line on which ~~his~~ the employer's reserve ratio appears in column "B" of the following rate schedules.

From January 1, 1993, to December 31, 2006, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.70%	Less than 0.80%
0.60%	0.80% and Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%

0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2007, to December 31, 2007, inclusive:

Column "A" Investment Fee Rate	Column "B" Reserve Ratio
0.60%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2008, to December 31, 2008, inclusive:

Column "A" Investment Fee Rate	Column "B" Reserve Ratio
0.58%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2009, to December 31, 2009, inclusive:

Column "A" Investment Fee Rate	Column "B" Reserve Ratio
0.56%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%

0.00%	1.60% and Over

Beginning January 1, 2010:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.55%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

The terms and conditions of this title which apply to the payment and collection of contributions also apply to the payment and collection of the investment fee. Proceeds from the investment fee shall be deposited in the clearing account of the unemployment compensation fund for clearance only and may not become part of the fund. After clearance, the money derived from such payments, less refunds made pursuant to the provisions of this title, shall be deposited in the employer's investment in South Dakota's future special revenue fund as provided for in § 61-5-24.2. Investment fee payments may not be credited to the employer's experience rating account and may not be deducted in whole or in part by any employer from the wages of individuals in its employ.

The investment fee rate may not be increased over the applicable 1987 investment fee rate for any employer with a positive balance in ~~his~~ the employer's experience rating account on the computation date, as established in rules promulgated by the secretary of labor pursuant to chapter 1-26, for the current year and the year preceding the current year.

The investment rates provided in this section apply to and are retroactive to taxable wages paid on and after January 1, 1993.

Signed March 15, 2011

CHAPTER 226

(SB 64)

Interest payments on negative balance in employer's experience rating account credited to rating account of employer.

ENTITLED, An Act to provide that interest paid on negative balances in employers' experience rating accounts be credited to their experience rating accounts.

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

Section 1. That § 61-5-18.16 be amended to read as follows:

61-5-18.16. Any employer whose experience rating account, as determined pursuant to § 61-5-18, has a negative reserve shall, in addition to the contribution rate, pay interest on the negative balance in the employer's experience rating account, excluding any negative balance existing on December 31, 2006. Following December 31, 2008, and each year thereafter, the department shall determine the interest due and owing on each negative balance account. Interest shall be owed only if the employer had a negative account balance on the computation date used for the annual interest calculation and a negative account balance on the ending date of each of the seven preceding calendar quarters. The interest rate shall be the average of the quarterly interest rates paid by the United States Treasury on unemployment insurance trust fund reserves in the calendar year ending on the interest calculation date. The interest rate so determined will be applied to the amount by which the negative account increased from December 31, 2006, or from the date the employer became subject to this title if later, to the computation date used for the interest calculation date for the year. Interest due and owing shall be paid in equal quarterly payments during the year following the computation date, with each payment due on the last day of each quarter. The computation date and experience rating account balance used to determine contribution rates shall be used in the application of this section. ~~No~~ Any interest payments ~~may~~ shall be credited to the experience rating account of the employer. The terms and conditions of this title which apply to the payment and collection of contributions also apply to the payment and collection of the negative account interest assessments.

Signed March 14, 2011

CHAPTER 227

(SB 86)

Employer investment fee revised.

ENTITLED, An Act to revise the investment fee rate for certain employers and to declare an emergency.

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

Section 1. That § 61-5-24.1 be amended to read as follows:

61-5-24.1. Employers required by this title to pay contributions, except employers that pursuant to chapter 61-5A reimburse the unemployment compensation trust fund for benefits paid in lieu of contributions, shall also pay an employer's investment in South Dakota's future fee, hereinafter "investment fee," on wages as defined by this title. The fee rate for employers not eligible for experience rating, as defined in § 61-5-20.2, shall be seventy hundredths percent through calendar year 2006 and fifty-five hundredths percent on and after January 1, 2007. If an employer is eligible for experience rating, ~~his~~ the employer's reserve ratio shall be determined pursuant to § 61-5-18.14 and ~~his~~ the employer's investment fee rate shall be the rate appearing in column "A" on the same line on which ~~his~~ the employer's reserve ratio appears in column "B" of the following rate schedules.

From January 1, 1993, to December 31, 2006, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.70%	Less than 0.80%
0.60%	0.80% and Less than 1.00%
0.50%	1.00% and Less than 1.20%

0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2007, to December 31, 2007, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.60%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2008, to December 31, 2008, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.58%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2009, to December 31, 2009, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.56%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%

0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

~~Beginning~~ From January 1, 2010, to December 31, 2010, inclusive:

Column "A" Investment Fee Rate	Column "B" Reserve Ratio
0.55%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

Beginning January 1, 2011:

Column "A" Investment Fee Rate	Column "B" Reserve Ratio
0.53%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

The terms and conditions of this title which apply to the payment and collection of contributions also apply to the payment and collection of the investment fee. Proceeds from the investment fee shall be deposited in the clearing account of the unemployment compensation fund for clearance only and may not become part of the fund. After clearance, the money derived from such payments, less refunds made pursuant to the provisions of this title, shall be deposited in the employer's investment in South Dakota's future special revenue fund as provided for in § 61-5-24.2. Investment fee payments may not be credited to the employer's experience rating account and may not be deducted in whole or in part by any employer from the wages of individuals in its employ.

The investment fee rate may not be increased over the applicable 1987 investment fee rate for any employer with a positive balance in ~~his~~ the employer's experience rating account on the computation date, as established in rules promulgated by the secretary of labor pursuant to chapter 1-26, for the current year and the year preceding the current year.

The investment rates provided in this section apply to and are retroactive to taxable wages paid on and after January 1, 1993.

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

Signed March 17, 2011

SUPREME COURT RULES AND ORDERS

CHAPTER 228

SCR 10-04

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 15-15-9 RULE 10-04

- -

A hearing was held on August 26, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 15-15-9, and the Court having considered the proposed amendment and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-15-9 be and it is hereby amended to read in its entirety as follows:

15-15-9. Content of record.The record of any hearing, court trial or jury trial <u>conducted by or on behalf of the Unified Judicial System</u> shall consist of the transcript prepared by an official court reporter or court recorder or freelance reporter on contract with the Unified Judicial System, the exhibits offered in evidence and jury instructions. <u>This rule shall not apply to child support referee hearings.</u>

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 30th day of August, 2010.

CHAPTER 229

SCR 10-05

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 15-26A-69.1 RULE 10-05

A hearing was held on August 26, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 15-26A-69.1, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-26A-69.1 be and it is hereby amended to read in its entirety as follows:

15-26A-69.1. Citation of official opinions of the Supreme Court.(1) The initial citation of any published opinion of the Supreme Court released prior to January 1, 1996, in a brief, memorandum, or other document filed with the court and the citation in the table of cases in a brief shall include a reference to the volume and page number of the South Dakota Reports or North Western Reporter in which the opinion is published. Subsequent citations within the brief, document, or memorandum shall include the page number and sufficient references to identify the initial citation.

(2) The initial citation of any published opinion of the Supreme Court released on or after January 1, 1996, in a brief, memorandum, or other document filed with the court and the citation in the table of cases in a brief shall include a reference to the calendar year in which the decision was announced, the court designation of "S.D.", and a sequential number assigned by the clerk of the Supreme Court. Citation to specific portions of the opinion shall be made to the paragraph number assigned by the clerk of the Supreme Court. A paragraph citation should be placed immediately following the sequential number assigned to the case. Subsequent citations within the brief, document, or memorandum shall include the paragraph number and sufficient references to identify the initial citation.

When available, initial citations shall include the volume and initial page number of the North Western Reporter in which the opinion is published.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 30th day of August, 2010.

CHAPTER 230

SCR 10-06

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 15-26A-89 RULE 10-06

A hearing was held on August 26, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 15-26A-89, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-26A-89 be and it is hereby amended to read in its entirety as follows:

15-26A-89. When member of court absent.Whenever any member of the court is not present at the oral argument of a case, such case shall be deemed submitted to such member of the court on the record, briefs, and recorded arguments ~~and when~~. When during the consideration of a case there is a change in the personnel of the court, the case shall be deemed submitted to the ~~new member or~~ members ~~on the record, briefs, and recorded arguments of counsel~~ of the court sitting on the case when the case was placed on the court's calendar.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 30th day of August, 2010.

CHAPTER 231

SCR 10-07

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION
OF A NEW RULE RELATING TO
MEDICAL PRIVACY TO BE DESIGNATED
AT SDCL 19-2-13 RULE 10-07

A hearing was held on August 26, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to medical privacy to be designated at SDCL 19-2-13, and the Court having considered

the proposed adoption, the correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to medical privacy, SDCL 19-2-13 be and it is hereby adopted to read in its entirety as follows:

19-2-13. Medical privacy.The production of a record of a health care provider, whether in litigation or a claim, does not waive any privilege which exists with respect to the record, other than for use in the litigation or claim in which it is produced. Any person or entity receiving such a record may not reproduce, distribute, or use it for any purpose other than the litigation or claim for which it is produced.

IT IS FURTHER ORDERED that this rule shall become effective October 1, 2010.

DATED at Pierre, South Dakota, this 30th day of August, 2010.

CHAPTER 232

SCR 10-08

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF
CANON 3(B)(13) OF THE CODE OF JUDICIAL
CONDUCT, SDCL CH. 16-2, APPX., RELATING
TO MEDIA COVERAGE OF THE COURTROOM — RULE 10-08

A hearing was held on October 7, 2010, at Pierre, South Dakota, relating to the amendment of Canon 3(B)(13) of the Code of Judicial Conduct, SDCL Ch. 16-2, Appx., relating to media coverage of the courtroom, and the Court having considered the proposed amendment, correspondence and the oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that Canon 3(B)(13) of the Code of Judicial Conduct, SDCL Ch. 16-2, Appx., be and it is hereby adopted to read in its entirety as follows:

Canon 3(B)(13) of the Code of Judicial Conduct, SDCL Ch. 16-2, Appx., Relating to Media Coverage of the Courtroom.

CANON 3

B. Adjudicative Responsibilities.

(13) With the exception of the rules for expanded media coverage of appellate court proceedings and the rules for media coverage of trial court proceedings, a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recess between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 28th day of February, 2011.

CHAPTER 233

SCR 10-09

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION
OF A NEW RULE RELATING TO
EXPANDED MEDIA COVERAGE OF
TRIAL COURT PROCEEDINGS TO BE
DESIGNATED AT SDCL 16-20-1 to 16-20-7 RULE 10-09

A hearing was held on October 7, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to expanded media coverage of trial court proceedings, to be designated at SDCL 16-20-1 to 16-20-7, and the Court having considered the proposed adoption, correspondence and the oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to expanded media coverage of trial court proceedings, SDCL 16-20-1 to 16-20-7 be and it is hereby adopted to read in its entirety as follows:

CHAPTER 16-20

EXPANDED MEDIA COVERAGE OF TRIAL COURT PROCEEDINGS

16-20-1. Definitions

As used in these rules, the following terms mean:

(a) "Judicial proceeding" or "proceeding" includes all public arguments, hearings, trials, or other proceedings before a trial court, except those specifically excluded by these rules. These rules do not apply to coverage of ceremonial or nonjudicial proceedings.

(b) "Expanded media coverage" includes audio or video recording or broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news and educational or instructional information to the public. Any other use, absent express written permission of the court is prohibited.

(c) "Audio media coverage" includes audio recording or broadcasting or electronic recording of judicial proceedings for the purpose of gathering and disseminating news and educational or instructional information to the public. Any other use, absent express written permission of the court is prohibited.

(d) "Trial court" or the "court" means a South Dakota circuit or magistrate court in which a judicial proceeding is taking place.

(e) "Media coordinator" means the circuit court administrator for the circuit in which judicial proceedings are taking place.

16-20-2. General

(a) Expanded media coverage or audio media coverage must be conducted in conformity with applicable statutes, rules, and caselaw.

(b) Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Rules of Professional Conduct governing trial publicity.

(c) Except as otherwise provided by these rules, electronic recording by moving camera, still camera, and audio device, and broadcasting is prohibited as to all judicial proceedings in a courtroom during sessions of a trial court. This prohibition does not apply to the use of cameras in a courtroom for courtroom security purposes, the videotaped or audio recording of proceedings to create the official record of a case, or to interactive video hearings.

(d) If the court and all parties consent in writing or on the record at least one week prior to the commencement of a judicial proceeding, the court may authorize expanded media coverage of the proceeding under the conditions and standards set forth in these rules.

(e) If the court consents in writing or on the record at least one week prior to the commencement of a judicial proceeding, it may authorize audio media coverage of the proceeding, or a portion thereof, under the conditions and standards set forth in these rules that are applicable to audio coverage.

16-20-3. Conditions

(a) There shall be no audio or video recording or broadcast in cases or proceedings not accessible to the public.

(b) Audio or video recording or broadcast of judicial proceedings shall be limited to proceedings conducted within the courtroom and shall not extend to activities or events substantially related to the judicial proceedings that occur in other areas of the courthouse.

(c) There shall be no audio or video recording or broadcast of jurors at any time during any judicial proceeding, including voir dire.

(d) During or preceding a jury trial, there shall be no audio or video recording or broadcast of hearings that take place outside the presence of the jury unless the court and parties consent to coverage of such hearings. Such hearings include, but are not limited to, hearings to determine the admissibility of evidence and hearings to determine various motions such as motions to suppress evidence, for judgment of acquittal, in limine, and to dismiss.

(e) There shall be no audio or video recording or broadcast of in-chambers conferences.

(f) There shall be no audio or video recording or broadcast of conferences between the attorneys and their clients or co-counsel, or of sidebar conferences between the attorneys and the court.

(g) There shall be no audio or video recording or broadcast within or from the courtroom during recesses or any other time the trial judge is not present and presiding.

(h) There shall be no focusing on and photographing of materials on counsel or clerk tables or the judicial bench.

(i) The courtroom shall not be used to conduct interviews before or after the judicial proceedings.

(j) No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in any subsequent or collateral proceeding, including any retrial or appeal thereof, except by order of the court.

(k) The quantity and type of equipment permitted in the courtroom shall be subject to the discretion of the court within the guidelines set out in these rules.

(l) Notwithstanding the provisions of these rules, the court, upon written application, may permit the use of equipment or techniques at variance with these rules, provided the application for variance is made at least three days prior to the scheduled judicial proceeding. Variances may be allowed by the court without advance application or notice if all counsel and parties consent.

(m) It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures that meet the approval of the court prior to any coverage and without disruption to the court. The media coordinator will coordinate media coverage and act as liaison between the media and the court.

(n) The court reserves the right to obtain, for historical purposes, a copy of any audio recordings, visual tape or film recordings or published photographs made of its proceedings. The media coordinator will be responsible for providing the court with this duplicate copy.

(o) All expenses incurred in expanded media coverage of the judicial proceedings, including duplication of materials to provide to the court, shall be the responsibility of the news media.

(p) Expanded media coverage or audio media coverage may be provided only by persons or organizations that are part of the news media.

(q) Under all circumstances, the court retains the discretion to exclude or terminate electronic coverage or broadcast of its proceedings. This discretion is not to be exercised in an effort to edit the proceedings, but where deemed necessary in the interests of justice or where these rules have been violated. This rule does not otherwise limit or restrict the first amendment rights of the news media to cover and report judicial proceedings.

(r) The court shall retain ultimate control of the application of these rules over the broadcasting, recording or photographing of its proceedings. Any decision made by the court under these rules is final and not subject to appeal, except as provided in § 16-20-7.

(s) These rules are designed primarily to provide guidance to media and courtroom participants and are subject to modification by the court at any time.

(t) Failure to comply with the court's rules or orders regarding coverage and broadcast is punishable by sanction or contempt proceedings pursuant to South Dakota law.

16-20-4. Media Coordinator

The court and all interested members of the media shall work, whenever possible, with and through the media coordinator regarding all arrangements for expanded media coverage or audio media coverage.

16-20-5. Standards

Media representatives providing expanded media coverage or audio media coverage of a judicial proceeding shall comply with the standards for conduct and attire, technical standards and standards for equipment and pooling set forth in §§ 15-24-9, 15-24-11 and 15-24-12 with the following modifications:

(a) Where those rules require approval of a matter by "the court" or the "Chief Justice," approval shall be obtained from the circuit or magistrate judge presiding over the judicial proceeding.

(b) Video cameras, still cameras, and other equipment to be used by the media in the courtroom during judicial proceedings must not produce distracting light or noise. No artificial lighting device of any kind shall be employed with a video camera or still camera.

(c) Notwithstanding § 15-24-12(a), the number of video cameras in the courtroom shall be limited to one operated by not more than one cameraperson.

(d) Notwithstanding § 15-24-12(b), the number of still camera photographers in the courtroom shall be limited to one who is allowed two camera bodies.

(e) In addition to the pooling provisions in § 15-24-12(e), if there is no advance media agreement as to pooling arrangements, the court shall prohibit the media from the audio or video recording or broadcast of the judicial proceeding.

16-20-6. Hearing

Before limiting, suspending, or terminating expanded media coverage as previously consented to by all the parties or audio media coverage as previously consented to by the judge, the judge presiding in the case may hold an on-the-record hearing, if such hearing will not delay or disrupt the

judicial proceeding. In the event that a hearing is not possible, affidavits may be used. Following a hearing or ruling based on affidavits, a written order must be issued.

16-20-7. Appellate Review

Appellate review of a judge's order to deny, terminate, suspend, limit, or exclude expanded media coverage or audio media coverage must be in accordance with the South Dakota Rules of Appellate Procedure.

There will be no stay of a judicial proceeding pending an appeal or other request for relief from a judge's order denying, limiting, suspending, or terminating media coverage. If a judicial proceeding has ended before completion of an appeal or other request for relief, the Supreme Court may nonetheless issue a ruling for future guidance on similar issues.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 28th day of February, 2011.

CHAPTER 234

SCR 10-10

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 19-15-1 RULE 10-10

- -

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 19-15-1, and the Court having considered the proposed amendment and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 19-15-1 be and it is hereby amended to read in its entirety as follows:

19-15-1. (Rule 701) ~~Opinions and inferences of~~ Opinion testimony by lay witnesses.If the witness is not testifying as an expert, ~~his~~ the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

(1) Rationally based on the perception of the witness; ~~and~~

(2) Helpful to a clear understanding of ~~his~~ the witness' testimony or the determination of a fact in issue; and

(3) Not based on scientific, technical or other specialized knowledge within the scope of § 19-15-2.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 235

SCR 10-11

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 19-15-2 RULE 10-11

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 19-15-2, and the Court having considered the proposed amendment and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 19-15-2 be and it is hereby amended to read in its entirety as follows:

19-15-2. (Rule 702) ~~Opinions of~~ Testimony by experts ~~admissible.~~ If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 236

SCR 10-12

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 19-15-3 RULE 10-12

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 19-15-3, and the Court having considered the proposed amendment and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 19-15-3 be and it is hereby amended to read in its entirety as follows:

19-15-3. (Rule 703) ~~Factual basis for expert opinions~~ Bases of opinion testimony by experts.The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to ~~him~~ the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 237

SCR 10-13

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION
OF A NEW RULE RELATING TO
FEDERAL RULES OF EVIDENCE 412
TO BE DESIGNATED AT SDCL 19-12-15 RULE 10-13

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to the adoption of Federal Rules of Evidence 412 concerning the relevance of past sexual behavior of an alleged victim in sex offense cases (Federal Rape Shield Law), to be designated at SDCL 19-12-15, and the Court having considered the proposed adoption and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to the adoption of Federal Rules of Evidence 412 concerning the relevance of past sexual behavior of an alleged victim in sex offense cases (Federal Rape Shield Law), SDCL 19-12-15 be and it is hereby adopted to read in its entirety as follows:

19-12-15. (Rule 412) Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition.(a) Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(b) Exceptions.

(1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:

(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence;

(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) evidence the exclusion of which would violate the constitutional rights of the defendant.

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(c) Procedure to determine admissibility.

(1) A party intending to offer evidence under subdivision (b) must:

(A) file a written motion at least fourteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

Section 2. The adoption of this rule shall only become effective upon the legislative repeal of §§ 23A-22-15 and 23A-22-15.1.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2012, upon the legislative repeal of §§ 23A-22-15 and 23A-22-15.1.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 238

SCR 10-14

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION
OF A NEW RULE RELATING TO
FEDERAL RULES OF EVIDENCE 705
TO BE DESIGNATED AT SDCL 19-15-5
AND THE REPEAL OF SDCL 19-15-5.1;
SDCL 19-15-5.2; SDCL 19-15-6;
SDCL 19-15-7; SDCL 19-15-8 RULE 10-14

- -

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to the adoption of Federal Rules of Evidence 705, Disclosure of Facts or Data Underlying Expert Opinion, to be designated at SDCL 19-15-5, and the repeal of SDCL 19-15-5.1; SDCL 19-15-5.2; SDCL 19-15-6; SDCL 19-15-7; and SDCL 19-15-8, and the Court having considered the proposed adoption and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to the adoption of Federal Rules of Evidence 705, Disclosure of Facts or Data Underlying Expert Opinion, to be designated at SDCL 19-15-5 be and it is hereby adopted to read in its entirety as follows:

19-15-5. (Rule 705) Disclosure of facts or data underlying expert opinion.The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

ORDERED that SDCL 19-15-5.1 be and it is hereby repealed.

ORDERED that SDCL 19-15-5.2 be and it is hereby repealed.

ORDERED that SDCL 19-15-6 be and it is hereby repealed.

ORDERED that SDCL 19-15-7 be and it is hereby repealed.

ORDERED that SDCL 19-15-8 be and it is hereby repealed.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 239

SCR 10-15

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION
OF A NEW RULE RELATING TO
FEDERAL RULES OF EVIDENCE 807
TO BE DESIGNATED AT SDCL 19-16-40
AND THE REPEAL OF SDCL 19-16-28
AND SDCL 19-16-35 RULE 10-15

- -

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to the adoption of Federal Rules of Evidence 807, regarding the Residual Exception, to be designated at SDCL 19-16-40, and the repeal of SDCL 19-16-28 and SDCL 19-16-35, and the Court having considered the proposed adoption and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to the adoption of Federal Rules of Evidence 807, regarding the Residual Exception, to be designated at SDCL 19-16-40 be and it is hereby adopted to read in its entirety as follows:

19-16-40. (Rule 807) Residual Exception.A statement not specifically covered by §§ 19-16-5 to 19-16-8, inclusive, or §§ 19-16-9 to 19-16-34, inclusive, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by § 19-16-4, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of chapters 19-9 to 19-18, inclusive, and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

ORDERED that SDCL 19-16-28 be and it is hereby repealed.

ORDERED that SDCL 19-16-35 be and it is hereby repealed.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 240

SCR 10-16

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.2 RULE 10-16

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.2, and the Court having considered the proposed amendment, correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.2 be and it is hereby amended to read in its entirety as follows:

16-18-2.2. Requirements for participation by law student.In order to make an appearance and to participate pursuant to §§ 16-18-2.1 to 16-18-2.10, inclusive, the law student must:

(1) Be duly enrolled in or a graduate of the school of law of the University of South Dakota or a law school approved by the American Bar Association.

(2) Have completed legal studies amounting to at least four semesters or the equivalent if the school is on some basis other than a semester basis.

(3) Be certified by the dean of such law school as being of good moral character and competent legal ability, and as being adequately trained to perform as a legal intern. As a part of the certificate the dean shall set forth the termination date of the certificate. No certificate shall remain in effect in excess of eighteen months after it is filed.

(4) Be introduced to the court <u>or administrative agency</u> in which he or she is appearing as a legal intern by a lawyer authorized to practice law in this state.

(5) Neither ask nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf he or she renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the legal intern, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(6) Certify in writing that he or she has read and is familiar with the rules of professional conduct of the Supreme Court of South Dakota, this title and the provisions of §§ 19-13-2 to 19-13-5, inclusive, and agree to govern his or her conduct accordingly. Such certification shall either be made part of or shall be annexed to the certification of the dean of the law school as required by subdivision (3) of this section.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 241

SCR 10-17

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.3 RULE 10-17

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.3, and the Court having considered the proposed amendment, correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.3 be and it is hereby amended to read in its entirety as follows:

16-18-2.3. Certification of legal intern by law school dean--Filing--Effective period--Withdrawal by dean or termination by Supreme Court.The certification pursuant to § 16-18-2.2 by the law school dean of a law student to become and perform as a legal intern:

(1) Shall be filed with the clerk of the Supreme Court and the secretary of the Board of Bar Examiners and, unless it is sooner withdrawn, it shall remain in effect until the expiration of the term fixed by the certificate of the dean, or until the announcement by the Board of Bar Examiners of this state of the results of the first bar examination following the student's graduation, whichever is earlier. Provided, that as to any student who passes such examination, ~~or for whom such examination is waived pursuant to the former § 16-16-6.1,~~ the certification shall continue in effect until the date he or she is admitted to practice law pursuant to § 16-16-17; but such continuation shall not exceed three months. However, any student who fails such examination on the first occasion may apply to the dean of such law school and obtain, upon a showing of good cause in good faith, an extension certificate until the results of the next bar examination are announced. The Board of Bar Examiners announces the results of the bar examination by letter to the student informing him or her that he or she passed or failed the examination.

(2) May be withdrawn by the dean at any time by mailing a notice to that effect to the secretary of the Board of Bar Examiners and the clerk of the Supreme Court, which shall be filed by the clerk. Such withdrawal may be without notice or hearing and without any showing of cause.

(3) May be terminated by the Supreme Court at any time without notice or hearing and without any showing of cause. Notice of termination shall be filed with the clerk of the court and the secretary of the Board of Bar Examiners.

(4) May be terminated by the Board of Bar Examiners at any time without notice of hearing and without any showing of cause. Notice of termination shall be filed with the clerk of the Supreme Court.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 242

SCR 10-18

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.4 RULE 10-18

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.4, and the Court having considered the proposed amendment, correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.4 be and it is hereby amended to read in its entirety as follows:

16-18-2.4. Consent and approval for appearance by legal intern--Authority for appearance in civil and criminal matters.A legal intern may appear and participate in any proceeding in any court or before any administrative agency in this state on behalf of any person in the following matters and under the following circumstances:

(1) In any civil matter. In such matters ~~the~~ a supervising lawyer shall certify to the court or the administrative agency, orally or in writing, that the client has consented to the appearance of the legal intern. ~~The~~ A supervising lawyer is ~~not~~ required to be personally present in court or before the administrative agency ~~if the supervising lawyer certifies to the court or the administrative agency, orally or in writing, that the client consents to his or her absence~~ at each appearance by a legal intern.

(2) In any criminal or quasi-criminal matter, and whether the defendant does or does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of the Supreme Court of this state or of the United States. In such matters the client shall consent in writing and ~~the~~ a supervising lawyer shall approve in writing the appearance by the legal intern and the supervising lawyer shall be personally present throughout the proceedings~~; provided, however, in matters where the proceedings do not involve a critical stage, the legal intern may appear in the absence of the supervising lawyer and without such written consent and approval if the supervising lawyer certifies to the court, orally or in writing, that the client has consented to such appearance by the legal intern~~.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 243

SCR 10-19

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.7 RULE 10-19

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.7, and the Court having considered the proposed amendment, correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.7 be and it is hereby amended to read in its entirety as follows:

16-18-2.7. Oral argument by legal intern before Supreme Court.A legal intern may participate in oral argument before the Supreme Court but only in the presence of ~~the~~ a supervising lawyer who shall certify to the court in his or her introduction of the legal intern to the court that the client has approved the participation by the legal intern.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

CHAPTER 244

SCR 11-01

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 15-6-26(b)(4) RULE 11-01

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-26(b)(4), and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-26(b)(4) be and it is hereby amended to read in its entirety as follows:

15-6-26(b). Scope of discovery.Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in § 15-6-26(a) shall be limited by the court if it determines that:

(A) (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
(iii) discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy limitations on the party's resources, and the importance of the issues at stake in the litigation.

The court may act upon its own initiative after reasonable notice or pursuant to a motion under § 15-6-26(c).

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: materials. Subject to the provisions of subdivision (4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) of this section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including such other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of subdivision 15-6-37(a)(4) apply to award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof,

which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (4)(C) of this section, concerning fees and expenses as the court may deem appropriate.

(B) Trial-preparation for draft reports or disclosures. Section 15-6-26(b)(3) protects drafts of any report prepared by any witness who is retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involves giving expert testimony, regardless of the form in which the draft is recorded.

(C) Trial preparation protection for communication between a party's attorney and expert witnesses. Section 15-6-26(b)(3) protects communications between the party's attorney and any witness who is retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinion to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in § 15-6-35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

~~(C)~~(E) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (4)(A)(ii) and (4)(B) of this section; and (ii) with respect to discovery obtained under subdivision (4)(A)(ii) of this section the court may require, and with respect to discovery obtained under subdivision (4)(B) of this section the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 245

SCR 11-02

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 15-26A-13 RULE 11-02

- -

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 15-26A-13, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-26A-13 be and it is hereby amended to read in its entirety as follows:

15-26A-13. Petition for permission to take discretionary appeal.An appeal from an intermediate order made before trial as prescribed by subdivision 15-26A-3(6) may be sought by filing a petition for permission to appeal, together with proof of service thereof upon all other parties to the action in circuit court, with the clerk of the Supreme Court within ten days after notice of entry of such order. <u>When a petition is forwarded to the clerk for filing by mail it shall be accompanied by an affidavit of mailing or certificate of service of mailing and shall be deemed to be filed as of the date of mailing.</u>

The original and five copies of the petition shall be filed with the clerk of the Supreme Court, together with the required statutory filing fees unless exempt by law.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 246

SCR 11-03

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 15-26A-16 RULE 11-03

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 15-26A-16, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-26A-16 be and it is hereby amended to read in its entirety as follows:

15-26A-16. Response to petition.Within seven days after the service of the petition, any party to the action may serve and file a response thereto. The original and five copies of the answer shall be filed with the clerk of the Supreme Court. When a response to a petition is forwarded to the clerk for filing by mail it shall be accompanied by an affidavit of mailing or certificate of service of mailing and shall be deemed to be filed as of the date of mailing.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 247

SCR 11-04

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-12B-1.3 RULE 11-04

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-12B-1.3, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-12B-1.3 be and it is hereby amended to read in its entirety as follows:

16-12B-1.3. Term of magistrate judges--Removal.Persons appointed as full-time magistrate judges shall be appointed for a ~~full~~ term of four years from and after the date of the approval of the appointment by the Supreme Court ~~and shall be~~ subject to any conditions imposed by the Supreme Court. Full-time magistrate judges may be subject to removal ~~only~~ upon recommendation of the Judicial Qualifications Commission and the action of the Supreme Court thereon. The Supreme Court may also, in its discretion, refer any matter to the Judicial Qualifications Commission to conduct an investigation and file a report with the court concerning the conduct of any full-time magistrate judge. Persons appointed as part-time magistrate judges shall be appointed by the presiding judge of the circuit court, subject to the approval of the Supreme Court, and shall serve at the pleasure of the presiding judge. Upon termination of any appointment the presiding judge shall forthwith notify the state court administrator thereof. Nothing in this section shall be construed to limit the Supreme Court's inherent authority to regulate magistrate judges.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 248

SCR 11-05

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF CANON 3(B)(7) OF THE CODE OF JUDICIAL CONDUCT, SDCL CH. 16-2, APPX., RELATING TO EX PARTE COMMUNICATIONS AND PROBLEM-SOLVING COURTS

RULE 11-05

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A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of Canon 3(B)(7) of the Code of Judicial Conduct, SDCL Ch. 16-2, Appx., relating to ex part communications and problem-solving courts, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that Canon 3(B)(7) of the Code of Judicial Conduct, SDCL Ch. 16-2, Appx., be and it is hereby adopted to read in its entirety as follows:

Canon 3(B)(7) of the Code of Judicial Conduct, SDCL Ch. 16-2, Appx., Concerning Ex Parte Communications and Problem-Solving Courts..

CANON 3

B. Adjudicative Responsibilities.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to Law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending ~~in any circuit court in the state~~ before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so or when serving on problem-solving courts, treatment courts or drug courts.

B(7) COMMENTARY

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

Canon 3B(7)(e) recognizes a judge may initiate, permit, or consider ex parte communications in certain circumstances; such as when serving on problem-solving courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers and others as part of the problem-solving court team.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

IT IS FURTHER ORDERED that this rule shall become effective July 1 , 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 249

SCR 11-06

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.1 RULE 11-06

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A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.1, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.1 be and it is hereby amended to read in its entirety as follows:

16-18-2.1. Legal assistance by law students--Purpose of provisions.The bench and the bar are primarily responsible for providing competent legal services for all persons including those unable to pay for these services. As one means of providing assistance to lawyers and to encourage law schools to provide ~~clinical~~ field placement instruction in legal work of varying kinds, §§ 16-18-2.2 to 16-18-2.10, inclusive, are adopted. For the purposes of §§ 16-18-2.1 to 16-18-2.10, "extern" means a student in a field placement program for academic credit offered by a school of law in accordance with the American Bar Association Standards for Approval of Law Schools, and "intern" means any other student providing legal assistance under the supervising lawyer.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 250

SCR 11-07

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.2 RULE 11-07

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.2, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.2 be and it is hereby amended to read in its entirety as follows:

16-18-2.2. Requirements for participation by law student.In order to make an appearance and to participate pursuant to §§ 16-18-2.1 to 16-18-2.10, inclusive, the law student must:

(1) Be duly enrolled in or a graduate of the school of law of the University of South Dakota or a law school approved by the American Bar Association.

(2) Have completed legal studies amounting to at least four semesters or the equivalent if the school is on some basis other than a semester basis.

(3) Be certified by the dean of such law school as being of good moral character and competent legal ability, and as being adequately trained to perform as a legal intern or extern. As a part of the certificate the dean shall set forth the termination date of the certificate. No certificate shall remain in effect in excess of eighteen months after it is filed.

(4) Be introduced to the court in which he or she is appearing as a legal intern or extern by a lawyer authorized to practice law in this state.

(5) Neither ask nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf he or she renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the legal intern, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require, or prevent any agency or lawyer from reimbursing a legal intern or extern for reasonable, out-of-pocket expenses related to the field placement.

(6) Certify in writing that he or she has read and is familiar with the rules of professional conduct of the Supreme Court of South Dakota, this title and the provisions of §§ 19-13-2

to 19-13-5, inclusive, and agree to govern his or her conduct accordingly. Such certification shall either be made part of or shall be annexed to the certification of the dean of the law school as required by subdivision (3) of this section.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 251

SCR 11-08

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.3 RULE 11-08

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.3, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.3 be and it is hereby amended to read in its entirety as follows:

16-18-2.3. Certification of legal intern or extern by law school dean--Filing--Effective period--Withdrawal by dean or termination by Supreme Court.The certification pursuant to § 16-18-2.2 by the law school dean of a law student to become and perform as a legal intern or extern:

(1) Shall be filed with the clerk of the Supreme Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of the term fixed by the certificate of the dean, or until the announcement by the Board of Bar Examiners of this state of the results of the first bar examination following the student's graduation, whichever is earlier. Provided, that as to any student who passes such examination, or for whom such examination is waived pursuant to the former § 16-16-6.1, the certification shall continue in effect until the date he or she is admitted to practice law pursuant to § 16-16-17; but such continuation shall not exceed three months. However, any student who fails such examination on the first occasion may apply to the dean of such law school and obtain, upon a showing of good cause in good faith, an extension certificate until the results of the next bar examination are announced.

(2) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of the Supreme Court, which shall be filed by the clerk. Such withdrawal may be without notice or hearing and without any showing of cause.

(3) May be terminated by the Supreme Court at any time without notice or hearing and without any showing of cause. Notice of termination shall be filed with the clerk of the court.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 252

SCR 11-09

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.4 RULE 11-09

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.4, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.4 be and it is hereby amended to read in its entirety as follows:

16-18-2.4. Consent and approval for appearance by legal intern or extern--Authority for appearance in civil and criminal matters.A legal intern or extern may appear and participate in any proceeding in any court or before any administrative agency in this state on behalf of any person in the following matters and under the following circumstances:

(1) In any civil matter. In such matters the supervising lawyer shall certify to the court or the administrative agency, orally or in writing, that the client has consented to the appearance of the legal intern or extern. The supervising lawyer is not required to be personally present in court or before the administrative agency if the supervising lawyer certifies to the court or the administrative agency, orally or in writing, that the client consents to his or her absence.

(2) In any criminal or quasi-criminal matter, and whether the defendant does or does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of the Supreme Court of this state or of the United States. In such matters the client shall consent in writing and the supervising lawyer shall approve in writing the appearance by the legal intern or extern and the supervising lawyer shall be personally present throughout the proceedings; provided, however, in matters where the proceedings do not involve a critical stage, the legal intern or extern may appear in the absence of the supervising lawyer and without such written consent and approval if the supervising lawyer certifies to the court, orally or in writing, that the client has consented to such appearance by the legal intern or extern.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 253

SCR 11-10

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.5 RULE 11-10

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.5, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.5 be and it is hereby amended to read in its entirety as follows:

16-18-2.5. Appearance by legal intern or extern for state, county, or first or second class municipality.A legal intern or extern may appear in any civil, criminal, or quasi-criminal matter on behalf of the state, a county, or a first or second class municipality with the written approval of the attorney general, state's attorney, or city attorney, as the case may be. The legal intern or extern shall be under the supervision of the approving attorney, or of a deputy or assistant thereof, who has the responsibility as supervising lawyer. The approval may be for a specific case or matter or may be general for a series or type of cases or matters as appears in order to the approving attorney. The approval may be withdrawn at any time by the approving attorney without notice, hearing, or cause stated; and the withdrawal shall be filed pursuant to § 16-18-2.8. Unless the court orders otherwise, the appearance by the legal intern or extern may be in the absence of the supervising lawyer.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 254

SCR 11-11

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.6 RULE 11-11

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.6, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.6 be and it is hereby amended to read in its entirety as follows:

16-18-2.6. Preparation of pleadings, briefs and other documents by legal intern or extern.In addition to the activities authorized under §§ 16-18-2.4 and 16-18-2.5, except as may be limited by the certificate of the dean, a legal intern or extern may engage in other activities, under the general supervision of a supervising lawyer, but outside the personal presence of that lawyer, including but not limited to preparation of pleadings, abstracts, and other documents in any matter; but any item requiring signature under rule or statute must be signed by a lawyer authorized to practice law in this state.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 255

SCR 11-12

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.7 RULE 11-12

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A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.7, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.7 be and it is hereby amended to read in its entirety as follows:

16-18-2.7. Oral argument by legal intern or extern before Supreme Court.A legal intern or extern may participate in oral argument before the Supreme Court but only in the presence of the supervising lawyer who shall certify to the court in his or her introduction of the legal intern or extern to the court that the client has approved the participation by the legal intern or extern.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 256

SCR 11-13

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.8 RULE 11-13

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.8, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.8 be and it is hereby amended to read in its entirety as follows:

16-18-2.8. Notation of oral consent and approval of appearance by legal intern or extern--Filing of written consent.In each case where the consent and/or approval referred to in §§ 16-18-2.4, 16-18-2.5, and 16-18-2.7 is required, any oral certification of a supervising lawyer shall be noted by the court or presiding officer of the administrative agency on its records of the case and any written consent and/or approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative agency. Provided, however, a general approval by the attorney general, state's attorney, or city attorney pursuant to § 16-18-2.5 shall be filed with the clerk of the applicable court and brought to the attention of the judge thereof.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 257

SCR 11-14

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.9 RULE 11-14

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.9, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.9 be and it is hereby amended to read in its entirety as follows:

16-18-2.9. Qualifications of supervising lawyer--Professional responsibility.A supervising lawyer under whose supervision a legal intern or extern does any of the things permitted by §§ 16-18-2.4 to 16-18-2.7, inclusive, shall be a lawyer authorized to practice law in this state, and:

(1) Shall be approved by the dean of the school of law of the University of South Dakota or by the director of the ~~clinical law~~ externship program of the school of law; and such approval by the dean or the director may be general, may have time, scope, or case limitations, or may be on an ad hoc case by case basis; all such as the dean or the director shall from time to time determine. The approval may be modified or withdrawn by the dean or the director at any time without notice or hearing and without any showing of cause. Such approval shall be in writing except that at the option of the dean or the director the approval may be oral for all matters relating to the ~~clinical law~~ externship program.

(2) Shall assume personal professional responsibility for the conduct of the legal intern or extern.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 258

SCR 11-15

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-18-2.10 RULE 11-15

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A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-2.10, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-2.10 be and it is hereby amended to read in its entirety as follows:

16-18-2.10. Other rights not affected by provisions for legal assistance by legal interns or externs.Nothing contained in §§ 16-18-2.1 to 16-18-2.9, inclusive, shall affect the right of any person who is not admitted to practice law to do anything that he or she might lawfully do prior to the adoption of §§ 16-18-2.1 to 16-18-2.9, inclusive.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.

CHAPTER 259

SCR 11-16

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 19-2-13 RULE 11-16

A hearing was held on February 16, 2011, at Pierre, South Dakota, relating to the amendment of SDCL 19-2-13, and the Court having considered the proposed amendment, correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 19-2-13 be and it is hereby amended to read in its entirety as follows:

19-2-13. Medical privacy.The production of a record of a health care provider, whether in litigation or ~~a claim~~ in contemplation of litigation, does not waive any privilege which exists with respect to the record, other than for the use ~~in the litigation or claim~~ in which it is produced. Any person or entity receiving such a record may not reproduce, distribute, or use it for any purpose other than ~~the litigation or claim~~ for which it is produced.

This rule does not bar any person or entity from complying with any court order, or state or federal law or regulation authorizing disclosure of information that otherwise would be protected by this rule.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 2nd day of March, 2011.
