

AN ACT

ENTITLED, An Act to revise certain provisions regarding capital outlay certificates and lease purchase agreements of school districts and the pledge of state aid to education funds to secure such obligations.

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

Section 1. That § 13-19-27 be amended to read as follows:

13-19-27. Any school district may enter into lease-purchase agreements or other financing arrangement with or issue capital outlay certificates that are secured by a pledge of state aid to education funds in connection with a program sponsored by the Health and Educational Facilities Authority for capital improvements, the acquisition of equipment, or improvement of school facilities or other lawful purpose that the school board considers necessary or appropriate or as a result of a consolidation or proposed consolidation of one school district with another school district.

Section 2. That § 13-19-29 be amended to read as follows:

13-19-29. If capital outlay certificates are issued pursuant to the program authorized by § 13-19-27 or section 4 of this Act, or a lease-purchase agreement, or other financing arrangement is entered into with the Health and Educational Facilities Authority as authorized by § 13-13-39, 13-16-6.4, 13-16-7, 13-16-29, 13-19-27, or 13-19-28, and a school district has pledged state aid to education funds provided under Title 13 to secure its obligations under or pursuant to a lease, resolution, certificate, or other arrangement and the authority determines that a school district is delinquent in making any payments pursuant to a lease, resolution, certificate or other arrangement, then no cash receipts from the collection of any taxes, from state aid under chapter 13-13 or from the collection of tuition charges may be expended for any purpose except paying the amounts due pursuant to the lease, resolution, certificate, or other arrangement as specified by written notice by or on behalf of the authority pursuant to § 13-13-39. In such event, moneys from state aid under Title 13 shall be

applied to pay the amounts as shall be specified by the authority to the authority or any financial institution acting as any paying agent or trustee on behalf of any holders of bonds, notes, lease purchase, capital outlay certificates, or other obligations in connection with any such arrangement and any such holders.

Section 3. That § 13-13-39 be amended to read as follows:

13-13-39. The Department of Education shall apportion the state aid to education funds to each eligible school district and shall prepare a list of apportionments to be posted publicly in electronic format.

The state auditor shall issue the warrant to each school district when the apportionment voucher is presented for the total amount of the state aid to education funds each school district is to receive, subject to any reduction necessitated by the issuance of a notice from the Health and Educational Facilities Authority as provided in this section.

Notwithstanding the provisions of § 13-13-74 or any other law, if the department receives written notice from the authority that a school district is delinquent in making any payment for any certificate, lease, or other obligation required by agreement with the authority in which the school district has pledged state aid to education funds or other amounts under Title 13 pursuant to a lease, resolution, certificate, or other arrangement with the authority, the department shall deduct from amounts otherwise due to a school district for the apportionment of state aid to education funds or other amounts under Title 13 the amount required to pay rentals, bonds, notes, certificates, or other amounts then due but unpaid. The state auditor shall issue a warrant for the full amount of the delinquency specified in the notice of the authority or a lesser amount as has been appropriated for the current fiscal year and not yet distributed pursuant to § 13-13-74. The amount deducted shall be paid to the authority or any financial institution designated by the authority acting as paying agent or trustee on behalf of any holders of bonds, notes, lease, certificates, or other obligations in

connection therewith, all as specified by the authority. A record of the amount deducted and a copy of the notice from the authority shall be filed with the state auditor and department.

Any amount paid to the authority or a financial institution designated pursuant to the procedures described in this section shall be deducted from the remaining amount of state aid to education funds otherwise payable to the school district under Title 13, thereby reducing the amount payable pursuant to § 13-13-74. The amount payable to the authority and any financial institution pursuant to this section in any fiscal year may not exceed the amount of state aid to education funds appropriated and not yet paid to or for the benefit of a school district for the current fiscal year. No pledge by a school district of state aid to education funds or other amounts under Title 13 for any other purpose may be permitted and if made is voidable at the election of the authority.

Section 4. That § 13-13-74 be amended to read as follows:

13-13-74. Except as provided in §§ 13-19-29 and 13-13-39, payment from funds provided in aid of the public schools in any school fiscal year shall be made in twelve monthly installments on or about the thirtieth of each month. For the period July first to December thirty-first, inclusive, the total of the six payments shall be one-half of local need of current school fiscal year less local effort for the period July first to December thirty-first, inclusive. For the period January first to June thirtieth, inclusive, the total of the six payments shall be one-half of local need of current school fiscal year less local effort for the period January first to June thirtieth, inclusive. Any amounts paid to the Health and Educational Facilities Authority or a financial institution designated pursuant to § 13-13-39 shall be deducted from the amounts otherwise payable in a fiscal year to a school district under this section and the department shall adjust the monthly installments to be paid to the school district for the remainder of the fiscal year.

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

The authority is authorized to establish policies and procedures, in coordination with the Bureau of Finance and Management, which shall facilitate the issuance by school districts of capital outlay certificates, and the establishment of terms for lease purchase agreements that are secured by a pledge of state aid to education funds as provided in §§ 13-19-27 and 13-19-29. The authority may enter into agreements with school districts, paying agents, trustees, and the state to implement the provisions of the program. The authority may provide other arrangements and procedures for determining the minimum requirements and related terms and conditions applicable to the pledge of state aid to education funds and the applicable contractual provisions for providing notice and implementing the pledge and payments consistent with §§ 13-19-27, 13-19-29, and 13-13-39.

Section 6. That § 1-16A-76 be amended to read as follows:

1-16A-76. The authority, all school districts and other public bodies, and all officers or departments of the state dealing with the state or the authority pursuant to §§ 1-16A-19, 1-16A-74 to 1-16A-76, inclusive, and 13-19-1.2 are not subject to the jurisdiction of the federal bankruptcy courts or any successor thereof under the United States Constitution. Any contract, agreement, or other arrangement entered into by any or all of the school districts or other public bodies, the authority and any officers or departments of the state or the authority pursuant to this Act or § 1-16A-74.1, 1-16A-19, 1-16A-74 to 1-16A-76, inclusive, or 13-19-1.2, or in anticipation of or for the securing of the issuance of tax anticipation notes by any or all of the school districts, the issuance or agreement to issue warrants or general obligation refunding bonds by any or all of the school districts, the agreement by the authority and the school district or any officers or department of the state to purchase any or all of such notes, warrants, or general obligation refunding bonds or any related or similar agreement for the benefit of investors or any other third party or parties shall be valid, binding and enforceable when made in writing duly signed by the appropriate officers. All such agreements and other arrangements are not subject to disavowal, disaffirmance, cancellation,

or avoidance by reason of insolvency of any party, lack of consideration or any other fact, occurrence or rule of law.

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

No capital outlay certificate issued or lease purchase agreement entered into as part of a program sponsored by the authority or secured by a pledge of state aid to education funds may be or become a lien, charge, or liability against the state or the authority, nor against the property or funds of the state or the authority within the meaning of the Constitution or laws of South Dakota.

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

The state pledges to and agrees with the holders of capital outlay certificates issued or any lease purchase agreement as part of a program sponsored by the Health and Educational Facilities Authority or secured by a pledge of state aid to education funds that the state will not limit or alter the pledge of state aid to education funds or the provision of this section governing the pledge or the terms provided in §§ 13-19-27, 13-19-29, and 13-13-39, inclusive, so as to impair the terms of any contract made by the school district, the state, or the authority. The school district, state, or authority may not impair the rights and remedies of the holders until the capital outlay certificates or lease purchase obligation, together with interest on the certificates and obligations and all costs and expenses in connection with any action or proceedings by or on behalf of the holders are fully met or discharged. In addition, the state pledges to and agrees with the holders that the state may not limit or alter the basis on which state aid to education funds pledged under the authority of any provision of this Act are to be paid to the authority or any financial institution designated by the authority so as to impair the terms of the contract. The school district and authority may include the pledges and agreements of the state in any contract with the holders of capital outlay certificates issued or any

lease purchase obligation secured pursuant to §§ 13-19-27, 13-19-29, and 13-13-39, inclusive, or otherwise secured by a pledge of state aid to education funds.

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I certify that the attached Act
originated in the
SENATE as Bill No. 191

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 191
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,
20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State