



2020 South Dakota Legislature

Senate Bill 45

Introduced by: The Committee on State Affairs at the request of the Governor's Office of Economic Development

1 **An Act to transfer the functions of the South Dakota Value Added Finance Authority**
 2 **to the South Dakota Economic Development Finance Authority and the South**
 3 **Dakota Board of Economic Development and to abolish the South Dakota**
 4 **Value Added Finance Authority.**

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

6 **Section 1.** That chapter 1-16E be REPEALED.

7 **Section 2.** That a NEW SECTION be added:

8 **1-16B-56. Value Added Finance Authority Abolished--Duties and**
 9 **responsibilities Transferred--Economic Development Finance Authority.**

10 The Value Added Finance Authority created by chapter 1-16E is hereby abolished.
 11 The rights, privileges, and duties of the Value Added Finance Authority, the holders of
 12 bonds and other obligations issued, and of the parties to contracts, leases, indentures,
 13 and other documents or transactions entered into, before the effective date of this Act, by
 14 the Value Added Finance Authority or any officer or employee thereof, and covenants and
 15 agreements as set forth therein, remain in effect, and none of those rights, privileges,
 16 duties, covenants, or agreements are impaired or diminished by abolition of the Value
 17 Added Finance Authority. The Economic Development Finance Authority is substituted for
 18 the Value Added Finance Authority and succeeds to the rights, privileges, and duties, and
 19 leases, indentures, accounts, and other documents or transactions, including those related
 20 to the nutrient management bond program, the agribusiness bond program, the beginning
 21 farmer bond program, the value-added agriculture subfund, and the value-added
 22 agriculture agribusiness relending program of the Value Added Finance Authority are
 23 hereby transferred to the Economic Development Finance Authority.

24 **Section 3.** That § 1-16B-1 be AMENDED:

1 **1-16B-1. Definitions.**

2 Terms used in this chapter mean:

- 3 (1) "Agricultural enterprise," the acquisition, construction, reconstruction,
4 rehabilitation, or improvement of land, buildings, improvements thereto, or
5 personal property located in the state that are necessary or suitable for use in
6 farming, ranching, or the production of agricultural commodities or necessary or
7 suitable for treating, processing, storing, or transporting raw agricultural
8 commodities;
- 9 (2) "Authority," the South Dakota Economic Development Finance Authority created by
10 this chapter;
- 11 (3) "Beginning farmer," an individual or partnership with a low or moderate net worth
12 that engages in or wishes to engage in farming or ranching;
- 13 ~~(2)~~(4) "Board," the board of directors of the authority;
- 14 (5) "Bonds," bonds, notes and certificates, and bond, grant, or revenue anticipation
15 notes or any other evidence of indebtedness representing an obligation to pay
16 money;
- 17 (6) "Business enterprise," a work or improvement located within the state including real
18 property, buildings, equipment, furnishings and, any other real and personal
19 property or any interest therein, financed, refinanced, acquired, owned,
20 constructed, reconstructed, extended, rehabilitated, improved, or equipped,
21 directly or indirectly, in whole or in part, by the authority or through loans made by
22 the authority and which is designed and intended for the purpose of providing
23 facilities for manufacturing, industry, processing, warehousing, commerce
24 (including wholesale or retail trade), recreation, hotel, office, research, business
25 (whether or not for profit), or other related purposes, including the machinery and
26 equipment necessary or desirable for the operation thereof;
- 27 (7) "Cost" or "Cost of establishing a development project," any or all of the following:
28 (a) The cost of construction, including the cost of acquisition and remodeling of
29 existing buildings and structures, demolishing, removing, or relocating
30 existing buildings or structures, the construction of new buildings and
31 structures, and heating, air conditioning, lighting, and plumbing;
- 32 (b) The cost of all lands, property, rights, easements, and franchises acquired,
33 that are necessary for the construction;

- 1 (c) Financing charges, interest prior to and during construction, the cost of
2 engineering, legal expenses, plans, specifications, surveys, and necessary
3 reserves;
- 4 (d) Estimates of costs and other expenses necessary or incidental to
5 determining the feasibility or practicability of any development project
6 together with any other expenses necessary or incidental to the financing
7 and construction of the development project and the placing of the
8 development project in operation; and
- 9 (e) The cost of acquisition and installation of machinery, equipment, and other
10 tangible personal property;
- 11 (8) "Development project," any site, structure, facility, service, utility, or undertaking
12 comprising, serving, or being a part of any industrial or agricultural or
13 nonagricultural products, storage, distribution, or manufacturing enterprise;
- 14 (9) "Enterprise," except when a part of the term, business enterprise, any person,
15 partnership, firm, limited liability company, company, or corporation, organized for
16 profit or not, which is determined by the authority, after proper investigation, to
17 be financially responsible to assume all loan payments and all other obligations
18 prescribed by the authority in the purchase of a development project and in the
19 operation of an industrial, processing, storage, distribution, or manufacturing
20 enterprise therein or thereon;
- 21 (10) "Lender," any federal or state chartered bank, insurance company, credit union,
22 mortgage loan company, federal land bank, production credit association, bank for
23 cooperatives, federal or state chartered savings and loan association or building
24 and loan association, small business investment company, or any other institution
25 or association qualified within this state to originate and service loans;
- 26 (11) "Working capital needs of business," the requirements of any manufacturing,
27 industrial, processing, warehousing, commercial (including wholesale or retail
28 trade), recreational, hotel, office, research, farming, or ranching enterprise located
29 in the state or enterprise located in the state engaged in the production of
30 agricultural commodities to finance cash flow, inventory, receivables or other
31 current assets or to finance the cost of operating expenses of the enterprise or any
32 combination of the foregoing.

33 **Section 4.** That a NEW SECTION be added:

1 **1-16B-57. Duties and goals--Agricultural production.**

2 The board shall administer the beginning farmer bond program and make annual
 3 recommendations to the Legislature and Governor on programs to develop and promote
 4 agricultural processing activity in the state, including the initial or subsequent production,
 5 use, or processing of any form of agricultural commodity, product, or by-product in this
 6 state. The authority's goal in so doing is to facilitate the retention of agricultural
 7 commodities and products in this state for the maximum feasible time span during the life
 8 cycle, use, or consumption of the commodity or product.

9 **Section 5.** That § 1-16B-14 be AMENDED:

10 **1-16B-14. Powers of authority.**

11 The authority may exercise all powers necessary or appropriate to carry out the
 12 purposes of this chapter, including the following:

- 13 (1) To conduct examinations and to hear testimony and take proof, under oath or
 14 affirmation at public or private hearings, on any matter material for ~~its~~ the
 15 authority's information and necessary to the establishment of development projects
 16 hereunder or other determinations related to the exercise of the authority's lawful
 17 powers;
- 18 (2) To authorize any member or members of ~~such~~ the authority to conduct hearings,
 19 administer oaths, and take affidavits;
- 20 (3) To sue and be sued;
- 21 ~~To adopt rules pursuant to chapter 1-26 to establish procedures to implement this~~
 22 ~~chapter and which will establish a priority system for the granting of loan requests~~
 23 ~~based on the availability of capital in the areas from which the applications are~~
 24 ~~received, thus assuring priority is accorded to those applications received from~~
 25 ~~those areas where capital shortages exist;~~
- 26 ~~(5) To make contracts and to execute all instruments;~~
- 27 ~~(6) To adopt, use, and alter a corporate seal;~~
- 28 ~~(7)~~ (5) To enter into agreements with any federal agency;
- 29 (6) To procure insurance against any loss in connection with the property and other
 30 assets, including loans and loan notes in any amounts and from any insurers as the
 31 authority considers advisable;
- 32 (7) To borrow money and issue bonds as provided by this chapter;
- 33 (8) To procure insurance, letters of credit, guarantees, or other credit enhancement
 34 arrangements from any public or private entities, including any department,

- 1 agency, or instrumentality of the United States, for payment of all or any portion of
2 any bonds issued by the authority, including the power to pay premiums, fees, or
3 other charges on the insurance, letters of credit, guarantees, or credit
4 arrangements;
- 5 (9) To receive and accept from any source aid or contributions of moneys, property,
6 labor, or other things of value to be held, used and applied to carry out the purposes
7 of this chapter subject to the conditions upon which the grants or contributions are
8 made, including gifts or grants from any department, agency, or instrumentality of
9 the United States for any purpose consistent with the provisions of this chapter;
- 10 (10) To enter into agreements with any department, agency, or instrumentality of the
11 United States or this state and with lenders or others and enter into loan
12 agreements, sales contracts and leases or other financing arrangements with a
13 beginning farmer or other contracting parties in connection with the beginning
14 farmer bond program or for the purpose of planning, regulating, and providing for
15 the financing or refinancing of any agricultural and business enterprises or financing
16 or refinancing the working capital needs of businesses;
- 17 (11) To enter into contracts or agreements with lenders for the servicing and processing
18 of loans or with any person or entity providing credit enhancement for the bonds of
19 the authority;
- 20 (12) To provide technical assistance to local public bodies and to profit and nonprofit
21 entities in the development or operation of agricultural and business enterprises
22 and distribute data and information concerning the encouragement and
23 improvement of agricultural and business enterprises;
- 24 (13) To the extent permitted under the authority's contract with the holders of bonds of
25 the authority, to consent to any modification with respect to the rate of interest,
26 time, and payment of any installment of principal or interest, or any other term of
27 any contract, loan, loan note, loan note commitment, contract, lease, or agreement
28 of any kind to which the authority is a party;
- 29 (14) To the extent permitted under the authority's contract with the holders of bonds of
30 the authority, to enter into contracts with any lender containing provisions enabling
31 the lender to reduce the rental or carrying charges to persons unable to pay the
32 regular schedule or charges when, by reason of other income or payment by any
33 department, agency, or instrumentality of the United States or of this state, the
34 reduction can be made without jeopardizing the economic stability of the
35 agricultural or business enterprise being financed;

- 1 (15) To collect fees and charges, as the authority determines to be reasonable, in
2 connection with the authority's loans, advances, insurance, commitments,
3 servicing, and other activities;
- 4 (16) To cooperate with and exchange services, personnel, and information with any
5 federal, state, or local governmental agency;
- 6 (17) To sell, at public or private sale, with or without public bidding, any loan or other
7 obligation held by the authority;
- 8 (18) To purchase the equity of redemption in any mortgage, deed of trust, debenture,
9 bond, or other security interest;
- 10 (19) To mortgage, pledge, assign, or grant security interests in any or all of the
11 authority's notes or other instruments, contract rights or other property, including,
12 without limitation to, any receipts from insurance on or guarantees of any of the
13 authority's notes or other instruments, as security for the payment of the principal
14 of, premium, if any, and interest on any bonds issued by the authority, or as security
15 for any credit enhancement or other agreements made in connection therewith,
16 whether then owned or thereafter acquired, and to pledge the revenues from which
17 the bonds are payable and any other available revenues or assets as security for
18 the payment of the principal of, premium, if any, and interest on the bonds and any
19 agreements made in connection therewith;
- 20 (20) To enter into agreements for management on behalf of the authority of any of the
21 authority's properties upon the terms and conditions as may be mutually agreeable;
- 22 (21) To sell, exchange, donate, and convey any or all of the authority's properties
23 whenever the authority determines the action is in furtherance of the purposes for
24 which the corporation was organized;
- 25 (22) To do any act and execute any instrument which in the authority's judgment is
26 necessary or convenient to the exercise of the powers granted by this chapter or
27 reasonably implied from it;
- 28 (23) To assign the loans or security documents or other instruments to bondholders as
29 security without recourse;
- 30 (24) To acquire, hold, and dispose of real and personal property for the authority's
31 purposes; and
- 32 (25) To foreclose any mortgages, deeds of trust, notes, debentures, bonds, and other
33 security interests held by the authority, either by action or by exercise of a power
34 of sale, and to sell the equity of redemption in the security interests in accordance

1 with the terms of the instruments and applicable state law, and to take all other
2 actions necessary to enforce any obligation held by the authority.

3 **Section 6.** That a NEW SECTION be added:

4 **1-16B-58. Lending power of authority.**

5 The authority may:

6 (1) Make, and undertake commitments to make, loans or deposits with lenders
7 including certificates of deposits, under terms and conditions that require the
8 lenders to make loans (in an amount substantially equal to the principal amount of
9 the loan or deposit) to or enter into leases with borrowers to finance the costs of
10 agricultural enterprises, to finance the cost of business enterprises, to finance the
11 working capital needs of businesses, to refinance existing indebtedness incurred
12 for any of the foregoing purposes or any combination of the foregoing;

13 (2) Invest in, purchase or make commitments to invest in or purchase, and take
14 assignments of, loans made by lenders to borrowers to finance the costs of
15 agricultural enterprises, to finance the cost of business enterprises, to finance the
16 working capital needs of businesses, to refinance existing indebtedness incurred
17 for any of the foregoing purposes or any combination of the foregoing;

18 (3) Invest in, purchase or make commitments to invest in or purchase, any securities
19 or obligations determined necessary or desirable by the authority for the purpose
20 of pledging the securities or obligations as security for any bonds of the authority;
21 and

22 (4) Make loans directly to a beginning farmer and enter into agreements, contracts,
23 and other instruments with a beginning farmer or lender in connection with the
24 beginning farmer bond program.

25 **Section 7.** That a NEW SECTION be added:

26 **1-16B-59. Bond authorization, terms, and sale--Interest rate--Noninterest-**
27 **bearing bonds.**

28 The bonds shall be authorized by a resolution of the authority, shall bear the date
29 or dates and shall mature at the time or times as the resolution or the instrument providing
30 for the issuance of the bonds may provide, except that no bond may mature more than
31 fifty years from the date of its issue. The bonds shall bear interest at the rate or rates, be
32 in the denominations, be in the form, either coupon or registered, be evidenced by physical
33 certificates or uncertificated, carry the registration privileges, be executed in the manner,

1 be payable in the medium of payment, at the place or places, and be subject to the terms
2 of redemption, including redemption prior to maturity, as the resolution or the instrument
3 providing for the issuance of the bonds may provide. No other state laws relating to the
4 offer, sale or issuance of revenue bonds or any other security may apply to bonds issued
5 by the authority. Bonds of the authority may be sold by the authority at public or private
6 sale, and at the price or prices as the authority shall determine.

7 The bonds of the authority may bear interest at a fixed, variable or adjustable rate
8 and may be convertible from one method of calculating interest to another. The interest
9 rate may be based upon any formula or contractual arrangement for the periodic
10 determination of interest rates. All interest rates may be established in the resolution or
11 instrument providing for the issuance of the bonds. Any formula or contractual
12 arrangement may authorize the delegation of the interest rate setting function to a third
13 party subject only to the standards or criteria as shall be set forth in the resolution or
14 instrument providing for the issuance of the bonds. In no event may the setting or
15 resetting of the rate of interest on the authority's bonds or the conversion from one
16 method of determining interest to another constitute a reissuance or refunding of bonds
17 issued by the authority if the action is taken in accordance with the resolution or
18 instrument providing for the initial issuance of the bonds.

19 The authority may issue noninterest bearing bonds or bonds bearing interest at a
20 rate of zero percent and sell the same at the price or prices as may be determined by the
21 authority.

22 **Section 8.** That a NEW SECTION be added:

23 **1-16B-60. Pledges by authority.**

24 Any pledge made by the authority shall be valid and binding from the time when
25 the pledge is made. The revenue, money, or properties pledged and thereafter received
26 by or on behalf of the authority shall immediately be subject to the lien of the pledge
27 without any physical delivery thereof or further act, and the lien of any such pledge shall
28 be valid and binding as against all parties having claims of any kind in tort, contract, or
29 otherwise against the authority, irrespective of whether the parties have notice thereof.
30 Neither the resolution nor the trust indenture, if any, nor any other instrument by which
31 a pledge is created need be recorded.

32 **Section 9.** That a NEW SECTION be added:

1 **1-16B-61. Redemption of bonds.**

2 The authority, subject to any agreements with bondholders as may then exist, may
3 refund, purchase, or cancel the authority's bonds out of any funds available therefor, at
4 any reasonable price which, if the bonds are then redeemable, may not exceed the
5 redemption price then applicable plus accrued interest to the next interest payment
6 thereon.

7 **Section 10.** That a NEW SECTION be added:

8 **1-16B-62. Trust indenture securing authority bonds.**

9 The bonds may be secured by a trust indenture by and between the authority and
10 a corporate trustee which may be any bank having the power of a trust company or any
11 trust company within or without the state. The trust indenture may contain any provisions
12 for protecting and enforcing the rights and remedies of the bondholders as may be
13 reasonable and proper and not in violation of law, including covenants setting forth the
14 duties of the authority in relation to the exercise of the authority's powers and the custody,
15 safekeeping, and application of all money. The authority may provide by the trust
16 indenture for the payment of the proceeds of the bonds and the revenue to the trustee
17 under the trust indenture or other depository, and for the method of disbursement thereof,
18 with any safeguards and restrictions as the authority may determine. All expenses
19 incurred in carrying out the trust indenture may be treated as a part of the operating
20 expenses of the authority.

21 **Section 11.** That a NEW SECTION be added:

22 **1-16B-63. Proceeds of bonds--Investments.**

23 Any proceeds of bonds not needed for immediate disbursement may be held
24 uninvested or invested in any one or more of the following:

- 25 (1) Obligations issued or guaranteed by the United States of America;
26 (2) Obligations issued or guaranteed by any person controlled or supervised by and
27 acting as an instrumentality of the United States of America pursuant to authority
28 granted by the Congress of the United States of America;
29 (3) Obligations issued or guaranteed by any state of the United States of America, or
30 the District of Columbia, or any political subdivision of any state or district;
31 (4) Commercial paper or corporate debt obligations having a rating by Standard &
32 Poor's Corporation or Moody's Investors Service equal to an "A" or higher rating
33 assigned by the organization;

1 (5) Banker's acceptances drawn on and accepted by any bank, trust company or
2 national banking association organized under the laws of any state or of the United
3 States of America;

4 (6) Repurchase agreements fully secured by obligations issued or guaranteed by the
5 United States of America or by any person controlled or supervised by and acting
6 as an instrumentality of the United States of America pursuant to authority granted
7 by the Congress of the United States of America;

8 (7) Certificates of deposit or time deposits issued by any bank, trust company or
9 national banking association organized under the laws of any state or of the United
10 States of America;

11 (8) United States dollar-denominated certificates of deposits issued by, or time
12 deposits with, the European subsidiaries of any bank, trust company or national
13 banking association incorporated or doing business under the laws of the United
14 States of America or one of the states thereof;

15 (9) Certificates or units issued by any mutual fund, unit investment trust or similar
16 entity evidencing interest in obligations described in this section.

17 **Section 12.** That a NEW SECTION be added:

18 **1-16B-64. Bonds as negotiable instruments.**

19 Whether or not the bonds are in the form and character of negotiable instruments,
20 the bonds are hereby made negotiable instruments, subject only to provisions of the bonds
21 relating to registration.

22 **Section 13.** That a NEW SECTION be added:

23 **1-16B-65. Execution of bonds--Seal.**

24 Bonds of the authority may be executed by the manual or facsimile signatures of
25 the board members or officers of the authority authorized by the resolution of the authority
26 to execute the bonds. If the resolution authorizes or directs the affixing of the seal of the
27 authority on bonds of the authority, the seal or a facsimile thereof may be impressed or
28 imprinted thereon. If any board members or officers of the authority ceases to be
29 members or officers of the authority before the delivery of any bonds or coupons signed
30 by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient
31 for all purposes, the same as if the members or officers had remained in office until the
32 delivery.

1 **Section 14.** That a NEW SECTION be added:

2 **1-16B-66. Immunity from personal liability on bonds.**

3 Neither the members of the authority nor any other person executing the bonds
4 issued under this chapter is subject to personal liability or accountability by reason of the
5 issuance thereof.

6 **Section 15.** That a NEW SECTION be added:

7 **1-16B-67. Conflict of interest --Disclosure--Participation in transaction.**

8 Any member or employee of the authority who has, will have, or later acquires a
9 personal interest, direct or indirect, in any transaction with the authority shall immediately
10 disclose the nature and extent of the interest in writing to the authority as soon as the
11 member or employee has knowledge of the actual or prospective interest. The disclosure
12 shall be entered upon the minutes of the authority. Upon any disclosure, the member or
13 employee may not participate in any action by the authority authorizing the transaction.
14 Actions taken when the member or employee reasonably believed that the member or
15 employee had and would not have any conflict are not invalidated because of the conflict.
16 The fact that a member is also an officer or owner of an organization is not considered to
17 be a direct or indirect interest unless:

- 18 (1) The member has an ownership interest of greater than five percent in the
19 organization; or
20 (2) The transaction in question does not involve all similar organizations, but rather
21 involves only the authority and the organization.

22 **Section 16.** That a NEW SECTION be added:

23 **1-16B-68. Tax exemption--Filing fee exemption.**

24 The exercise of the powers granted by this chapter shall be in all respects for the
25 benefit of the people of the state. The authority is not required to pay any tax or
26 assessment on any property owned by the authority under the provisions of this chapter
27 or upon the income therefrom; nor is the authority required to pay any transfer tax of any
28 kind on account of instruments recorded by the authority or on the authority's behalf.

29 **Section 17.** That a NEW SECTION be added:

1 **1-16B-69. Bonds as authorized investments and securities for deposits.**

2 The bonds and notes of the authority are hereby made securities in which all public
3 officers and bodies of this state and all municipal subdivisions, all insurance companies
4 and associations and other persons carrying on insurance business, all banks, bankers,
5 trust companies, including savings and loan associations, building and loan associations,
6 investment banking companies, and other persons carrying on an investment banking
7 business, all personal representatives, conservators, trustees, and other fiduciaries, and
8 all other persons who are authorized to invest in bonds or obligations of the state, may
9 properly and legally invest in the bonds and notes of the authority funds including capital
10 in their own control or belonging to them. The bonds and notes are also hereby made
11 securities which may be deposited with and may be received by all public officers and
12 bodies of this state and all municipalities and municipal subdivisions for any purpose for
13 which the deposit of bonds or notes or other obligations of this state is authorized.

14 **Section 18.** That a NEW SECTION be added:

15 **1-16B-70. Promulgation of rules.**

16 The authority may, pursuant to chapter 1-26, adopt any rules or regulations as it
17 determines necessary or desirable to implement the purposes of this chapter, including:
18 (1) Setting forth the procedures for applicants to apply for loans under this chapter;
19 (2) Establishing criteria for determining which applicants will receive the loans;
20 (3) Governing the use of proceeds of the loans;
21 (4) Establishing criteria for the terms and conditions upon which the loans shall be
22 made, including the terms of security given, if any, to secure the loans; and
23 (5) Governing the use of proceeds by lenders of funds advanced to the lenders by the
24 authority including the terms and conditions upon which the proceeds shall be
25 loaned to borrowers for the purposes described in this chapter.

26 **Section 19.** That a NEW SECTION be added:

27 **1-16B-71. Liberal construction of chapter.**

28 This chapter, being necessary for the welfare of the state and its inhabitants, shall
29 be liberally construed so as to effectuate its purposes.

30 **Section 20.** That a NEW SECTION be added:

1 **1-16B-72. Disposition of authority assets on dissolution.**

2 If, after all indebtedness and other obligations of the authority are discharged, the
3 authority is dissolved, its remaining assets shall inure to the benefit of the state.

4 **Section 21.** That a NEW SECTION be added:

5 **1-16B-73. Compliance with Internal Revenue Code.**

6 Notwithstanding any other provision of law, the authority in order to accomplish
7 the purposes provided in this chapter may perform all acts necessary to comply with the
8 requirements of § 103 of the Internal Revenue Code of 1986, as amended, and any
9 regulation promulgated pursuant to § 103 to insure that all interest from bonds issued
10 under this chapter are tax exempt.

11 All hearings or acts necessary to comply with § 147(f) of the Internal Revenue
12 Code of 1986, as amended, and any regulations promulgated pursuant to § 147(f) are
13 exempt from the requirements and procedures of chapter 1-26.

14 The Governor is the approving representative for the state for the purpose of
15 complying with the applicable provisions of § 147(f) of the Internal Revenue Code of 1986,
16 as amended, and any regulations promulgated pursuant to § 147(f) necessary to insure
17 that all interest from bonds issued are tax exempt.

18 **Section 22.** That a NEW SECTION be added:

19 **1-16B-74. Authority contracts--Payment or interest rate risks for bonds.**

20 The authority may enter into any contract that the authority determines necessary
21 or appropriate to manage payment or interest rate risk for bonds issued pursuant to this
22 chapter, the investment of proceeds, or other funds of the authority. The contracts may
23 include: interest rate exchange agreements; contracts providing for payment or receipt of
24 funds based on levels of or changes in interest rates; contracts to exchange cash flows or
25 series of payments; or contracts incorporating interest rate caps, collars, floors, or locks.

26 **Section 23.** That § 1-53-35 be AMENDED:

27 **1-53-35. Value added agriculture subfund.**

28 ~~The Value Added Finance Authority Board of Economic Development~~ shall
29 administer the value added agriculture subfund, and make grants or loans from the value
30 added agriculture subfund. The value added agriculture subfund shall be used to develop
31 and promote value added agriculture in South Dakota including the initial or subsequent

1 production, use, or processing of any form of agricultural commodity, product, or by-
2 product in this state.

3 **Section 24.** That § 1-53-37 be AMENDED:

4 **1-53-37. Promulgation of rules--Value-added agriculture subfund.**

5 In connection with the administration of the value added agriculture subfund, the
6 ~~Value Added Finance Authority~~ Board of Economic Development may, pursuant to chapter
7 1-26, promulgate ~~such any~~ rules as it deems the board determines are necessary to
8 implement the purposes of §§ 1-53-34 to 1-53-36, inclusive, including:

- 9 (1) Setting the application procedures for those who apply for loans or grants from the
10 value added agriculture subfund;
- 11 (2) Establishing criteria to determine which applicants will receive such loans or grants;
- 12 (3) Governing the use of proceeds of such loans or grants;
- 13 (4) Establishing criteria for the terms and conditions upon which such loans or grants
14 shall be made, including the terms of security given, if any, to secure such loans;
15 and
- 16 (5) Governing the use of proceeds by lenders of funds advanced to the lenders by the
17 ~~Value Added Finance Authority~~ Board of Economic Development including the terms
18 and conditions upon which the proceeds shall be loaned to borrowers for the
19 purposes described in §§ 1-53-34 to 1-53-36, inclusive.

20 **Section 25.** That § 4-6A-1 be AMENDED:

21 **4-6A-1. Definitions.**

22 Terms as used in this chapter mean:

- 23 (1) "Commission," the South Dakota Public Deposit Protection Commission created
24 under § 4-6A-2;
- 25 (2) "Deposit insurance," insurance provided by the Federal Deposit Insurance
26 Corporation or the National Credit Union Administration;
- 27 (3) "Eligible collateral," collateral which is eligible as security for public deposits
28 pursuant to §§ 51A-10-9, 51A-4-25, and 51A-4-26 and also includes certificates of
29 deposit that are owned by the qualified public depository and that are fully insured
30 by deposit insurance, and that portion of loans which are unconditionally
31 guaranteed by a United States government agency including Government National
32 Mortgage Association (GNMA), the Veterans' Administration (VA), the Federal
33 Housing Administration (FHA), the Farmers Home Administration (FmHA), the

- 1 Export-Import Bank (EXIMBANK), the Overseas Private Investment Corporation
2 (OPIC), the Commodity Credit Corporation (CCC), and the Small Business
3 Administration (SBA). Further, in lieu of pledging eligible securities, a qualified
4 public depository may furnish to a public depositor irrevocable standby letters of
5 credit issued by Federal Home Loan Banks to the public depositor accompanied by
6 a written evidence of that bank's public debt rating which may not be less than "AA"
7 or better by Moody's Investors Service, Inc., or Standard & Poor's Corporation, or
8 a qualified public depository may furnish to a public depositor a corporate surety
9 bond of a corporation authorized to do business in South Dakota;
- 10 (4) "Loss," issuance of an order of supervisory authority restraining a qualified public
11 depository from making payments of deposit liabilities or the appointment of a
12 receiver for a qualified public depository;
- 13 (5) "Maximum liability," a sum equal to one hundred percent of the public deposit
14 accounts which exceed deposit insurance, which are held by the qualified public
15 depository;
- 16 (6) "Public deposit," all general, special, and other funds held or administered by this
17 state or any political subdivision thereof, including counties, municipalities,
18 townships, and school districts, or by any officer, commission, board, bureau, or
19 agency of the state or political subdivision or any tribal government funds, and
20 which public deposit is insured, in whole or in part, by deposit insurance. ~~Deposits~~
21 ~~placed in banks by the Value Added Finance Authority created pursuant to chapter~~
22 ~~1-16E are not public deposits;~~
- 23 (7) "Qualified public depository," a state bank, national bank, federal savings and loan
24 association, or a federally chartered credit union located in this state which receives
25 or holds public deposits; and segregates eligible collateral for public deposits as
26 described in § 4-6A-3;
- 27 (8) "Treasurer," the state treasurer, a county treasurer, a treasurer of any other
28 municipal corporation, or the custodian of any public funds.

29 **Section 26.** That §§ 1-16B-3, 1-16B-4, and 1-16B-6 be REPEALED.

30 **Section 27.** That § 51A-4-41 be REPEALED.

31 **51A-4-41. Deposits from Value Added Finance Authority.**

32 **Section 28.** That § 51A-4-9 be AMENDED:

1 **51A-4-9. Real property authorized to be held by bank--Maximum book value**
2 **of premises.**

3 Except as provided in §§ 51A-4-10 and ~~51A-4-41~~, a bank may lease, purchase,
4 hold, and convey in its own name, or through investment in a corporation organized solely
5 to lease such property to it, only the following real property:

- 6 (1) That which it occupies or intends to occupy for the transaction of its business or
7 which it partly so occupies and partly rents or leases to others;
8 (2) That which is used for accommodation in the transaction of the bank's business,
9 including parking, storage and preservation of records, and data processing
10 facilities; or
11 (3) That which is used for housing or recreation accommodations for attracting and
12 retaining employees.

13 All such accommodations shall be of a reasonable nature.

14 The book value of a bank's premises may not exceed in the aggregate one hundred
15 percent of the bank's capital stock and surplus. However, the director may authorize a
16 larger investment, upon formal application and after an investigation, if the sound conduct
17 of banking will not be adversely affected by the larger investment. For the purposes of
18 this section, book value includes those amounts which are to be reported as premises and
19 fixed assets according to the instructions for consolidated reports of condition filed with
20 the division.

21 **Section 29.** That § 51A-4-25 be AMENDED:

22 **51A-4-25. Bank investments--Restrictions set by rule--Limitations.**

23 A bank may purchase for its own account investment securities and registered
24 mutual funds that invest exclusively in securities of the United States or its agencies and
25 annuities as defined in § 51A-4-25.1 under such limits and restrictions as the commission
26 may prescribe by rule, promulgated pursuant to chapter 1-26. In no event may the total
27 amount of the investment securities of any one obligor or maker held by the bank for its
28 own account exceed twenty percent of the capital stock and surplus and ten percent of
29 the undivided profits of such bank except as provided in ~~§§ 51A-4-26 and 51A-4-31 to~~
30 ~~51A-4-41, inclusive~~ § 51A-4-26.

31 **Section 30.** That § 1-16B-49 be AMENDED:

1 **1-16B-49. Cumulative rights and powers of authority.**

2 The rights, powers, authority, privileges, functions, and other properties of the
3 South Dakota Economic Development Finance Authority, whether derived under this
4 chapter, ~~under chapter 1-16E~~, by executive order, or otherwise are cumulative and may
5 be exercised by the authority either separately or in any combination as the board of the
6 authority may determine to be necessary or appropriate.

7 **Section 31.** That § 5-18A-22 be AMENDED:

8 **5-18A-22. Procurements exempt from chapters 5-18A through 5-18D.**

9 The provisions of this chapter and chapters 5-18B, 5-18C, and 5-18D do not apply
10 to:

- 11 (1) Any highway construction contract entered into by the Department of
12 Transportation;
- 13 (2) Any contract for the purchase of supplies from the United States or its agencies or
14 any contract issued by the General Services Administration;
- 15 (3) Any purchase of supplies or services, other than professional services, by
16 purchasing agencies from any active contract that has been awarded by any
17 government entity by competitive sealed bids or competitive sealed proposals or
18 from any contract that was competitively solicited and awarded within the previous
19 twelve months;
- 20 (4) Any equipment repair contract;
- 21 (5) Any procurement of electric power, water, or natural gas; chemical and biological
22 products; laboratory apparatus and appliances; published books, maps, periodicals
23 and technical pamphlets; works of art for museum and public display; medical
24 supplies; communications technologies, computer hardware and software,
25 peripheral equipment, and related connectivity; tableware or perishable foods;
- 26 (6) Any supplies, services, and professional services required for externally funded
27 research projects at institutions under the control of the Board of Regents;
- 28 (7) Any property or liability insurance or performance bonds, except that the actual
29 procurement of any insurance or performance bonds by any department of the state
30 government, state institution, and state agency shall be made under the supervision
31 of the Bureau of Administration;
- 32 (8) Any supplies needed by the Department of Human Services or the Department of
33 Social Services or prison industries for the manufacturing of products;

- 1 (9) Any printing involving student activities, conducted by student organizations and
2 paid for out of student fees, at institutions under the control of the Board of Regents.
3 However, nothing in this subdivision exempts, from the requirements of this chapter
4 and chapters 5-18B, 5-18C, and 5-18D, purchases that involve printing for other
5 activities at institutions under the control of the Board of Regents;
- 6 (10) Any purchase of surplus property from another purchasing agency;
- 7 (11) Any animals purchased;
- 8 (12) Any purchase by a school district of perishable food, raw materials used in
9 construction or manufacture of products for resale, or for transportation of
10 students;
- 11 (13) Any authority authorized by chapters 1-16A, 1-16B, ~~1-16E~~, 1-16G, 1-16H, 1-16J,
12 5-12, or 11-11;
- 13 (14) Any seeds, fertilizers, herbicides, pesticides, feeds, and supplies used in the
14 operation of farms by institutions under the control of the Board of Regents;
- 15 (15) Any purchase of supplies for any utility owned or operated by a municipality if the
16 purchase does not exceed the limits established in § 5-18A-14;
- 17 (16) For political subdivisions, any contract for asbestos removal in emergency response
18 actions and any contract for services provided by individuals or firms for
19 consultants, audits, legal services, ambulance services, architectural services and
20 engineering, insurance, real estate services, or auction services;
- 21 (17) Any purchase of supplies or services from a contract established through a
22 Midwestern Higher Education Compact group purchasing program by a competitive
23 sealed bid or a competitive sealed proposal;
- 24 (18) Any contract concerning the custody, management, purchase, sale, and exchange
25 of fund investments and research by the State Investment Council or Division of
26 Investment; or
- 27 (19) For political subdivisions, any purchase of equipment involving the expenditure of
28 less than fifty thousand dollars.