

AN ACT

ENTITLED, An Act to repeal certain provisions related to certification of financial good standing of utilities.

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

Section 1. That § 62-5-11 be amended to read:

62-5-11. As used in §§ 62-5-10 to 62-5-16, inclusive, an irrevocable letter of credit shall be accepted only if it is clean, irrevocable, and contains an evergreen clause.

Terms used in §§ 62-5-10 to 62-5-16, inclusive, mean:

- (1) "Clean," a letter of credit that is not conditioned on the delivery of any other documents or materials;
- (2) "Irrevocable," a letter of credit that cannot be modified or revoked without the consent of the beneficiary, once the beneficiary is established;
- (3) "Evergreen clause," a clause specifically stating that the expiration of a letter of credit will not take place without a sixty-day notice by the issuer. If prior notice of expiration is not given by the issuer, the letter of credit is automatically extended for one year.

A clean irrevocable letter of credit shall be accepted only if it is in the form prescribed by §§ 62-5-10 to 62-5-16, inclusive, and is issued by a financial institution that is authorized to engage in banking in any of the fifty states or under the laws of the United States and whose business is substantially confined to banking, and that has a long-term debt rating by a recognized national rating agency of investment grade or better. If no long-term debt rating is available, the financial institution shall have the equivalent investment grade financial characteristics.

Section 2. That § 62-5-15 be amended to read:

62-5-15. Upon the secretary sending a request to renew, request to post, or request to increase a security deposit to the maximum amount permitted by §§ 62-5-10 to 62-5-16, inclusive, a perfected

security interest is created in the private self-insured's assets in favor of the secretary to the extent of any then unsecured portion of the self-insured's incurred liabilities for workers' compensation claims. That perfected security interest is transferred to any cash or securities thereafter posted by the private self-insured with the state treasurer or other financial institution and is released only upon:

- (1) The acceptance by the secretary of a surety bond, certificate of deposit, or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation; or
- (2) The return of cash or securities by the secretary.

The private self-insured employer loses all right and title in and any right to control all assets or obligations posted or placed on deposit as security. In the event of a declaration of bankruptcy or insolvency by a court of competent jurisdiction the secretary may liquidate the deposit for application to the self-insured employer's incurred liability.

Section 3. That § 62-5-17 be repealed.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1011

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1011
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