

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

400U0348

## SENATE BILL NO. 15

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding state aid to special  
2 education.

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

4 Section 1. That § 13-37-2.1 be amended to read as follows:

5 13-37-2.1. As used in this chapter, the term, surrogate parent, means any individual ~~certified~~  
6 ~~by the Department of Education~~ assigned by the district to act in place of the parent of a child  
7 in need of special education when the school district cannot identify or locate the parent or the  
8 child is a ward of the state.

9 Section 2. That § 13-37-16 be amended to read as follows:

10 13-37-16. For taxes payable in ~~1997~~ 2014, and each year thereafter, the school board shall  
11 levy no more than one dollar and ~~forty~~ fifty-three and three tenths cents per thousand dollars of  
12 taxable valuation, as a special levy in addition to all other levies authorized by law for the  
13 amount so determined to be necessary, and such levy shall be spread against all of the taxable  
14 property of the district. The proceeds derived from such levy shall constitute a school district  
15 special education fund of the district for the payment of costs for the special education of all



1 children in need of special education or special education and related services who reside within  
2 the district pursuant to the provisions of §§ 13-37-8.2 to 13-37-8.10, inclusive. The levy in this  
3 section shall be based on valuations such that the median level of assessment represents 85%  
4 of market value as determined by the Department of Revenue. The total amount of taxes that  
5 would be generated at the levy pursuant to this section shall be considered local effort. Money  
6 in the special education fund may be expended for the purchase or lease of any assistive  
7 technology that is directly related to special education and specified in a student's individualized  
8 education plan. This section does not apply to real property improvements.

9 ~~— For taxes payable in 2011, the total amount of revenue payable from the levy provided in~~  
10 ~~this section may not increase more than the lesser of three percent or the index factor, as defined~~  
11 ~~in § 10-13-38, over the maximum amount of revenue that could have been generated for the~~  
12 ~~taxes payable in 2010. After applying the index factor, a school district may increase the revenue~~  
13 ~~payable from taxes on real property above the limitations provided by this section by the~~  
14 ~~percentage increase of value resulting from any improvements or change in use of real property,~~  
15 ~~annexation, minor boundary changes, and any adjustments in taxation of real property separately~~  
16 ~~classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,~~  
17 ~~and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.~~

18 ~~— Any school district created or reorganized after January 1, 2009, is exempt from the~~  
19 ~~limitation provided by this section for a period of two years immediately following its creation.~~

20 ~~— For taxes payable in 2012, 2013, 2014, and 2015, the total amount of revenue payable from~~  
21 ~~the levy provided in this section may not increase more than the lesser of three percent or the~~  
22 ~~index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have~~  
23 ~~been generated for the taxes payable in 2010 plus any unused index factor from the previous~~  
24 ~~years. After applying the index factor, a school district may increase the revenue payable from~~

1 taxes on real property above the limitations provided by this section by the percentage increase  
2 of value resulting from any improvements or change in use of real property, annexation, minor  
3 boundary changes, and any adjustments in taxation of real property separately classified and  
4 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,  
5 except § 10-6-31.4, only if assessed the same as property of equal value.

6 — For taxes payable in 2011, 2012, 2013, 2014, and 2015, the levy limitation of one dollar and  
7 forty cents per thousand dollars of taxable valuation does not apply to any school district.

8 Section 3. That § 13-37-16.2 be amended to read as follows:

9 13-37-16.2. If local effort increases on a statewide aggregate basis by a greater percentage  
10 than local need on a statewide aggregate basis from any one year to the next, for the following  
11 year, the levy specified in subdivision ~~13-37-35.1(19)~~ 13-37-35.1(7) shall be reduced  
12 proportionally so that the percentage increase in local effort on a statewide aggregate basis  
13 equals the percentage increase in need on a statewide aggregate basis.

14 Section 4. That § 13-37-16.3 be amended to read as follows:

15 13-37-16.3. Any adjustments in the levy specified in subdivision ~~13-37-35.1(19)~~ 13-37-  
16 35.1(7) made pursuant to § 13-37-16.2 shall be based on maintaining the relationship between  
17 statewide local effort as a percentage of statewide local need in the fiscal year succeeding the  
18 fiscal year in which the adjustment is made. However, for fiscal year 2014, and each year  
19 thereafter, if the levy specified in subdivision 13-37-35.1(7) is not adjusted to maintain this  
20 relationship, the funding allocation for each disability level as defined in § 13-37-35.1 shall be  
21 reduced proportionally to maintain the relationship between statewide local effort as a  
22 percentage of statewide local need.

23 Section 5. That § 13-37-18 be amended to read as follows:

24 13-37-18. Special education costs and statistical information shall be included in the annual

1 application for state aid financial report as provided in § 13-13-37.

2 Section 6. That § 13-37-35.1 be amended to read as follows:

3 13-37-35.1. Terms used in chapter 13-37 mean:

4 (1) "Level one disability," a mild disability;

5 (2) "Level two disability," cognitive disability or emotional disorder;

6 (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-  
7 blindness, orthopedic impairment, or traumatic brain injury;

8 (4) "Level four disability," autism;

9 (5) "Level five disability," multiple disabilities;

10 (5A) "Level six disability," prolonged assistance;

11 (6) "Index factor," is the annual percentage change in the consumer price index for urban  
12 wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
13 the United States Department of Labor for the year before the year immediately  
14 preceding the year of adjustment or three percent, whichever is less;

15 (7) "Local effort," shall be calculated for taxes payable in 2011 and shall be the amount  
16 of revenue that could have been generated for the taxes payable in 2010 using a  
17 special education levy of one dollar and twenty cents per one thousand dollars of  
18 valuation increased by the lesser of three percent or the index factor, as defined in  
19 § 10-13-38, plus a percentage increase of value resulting from any improvements or  
20 change in use of real property, annexation, minor boundary changes, and any  
21 adjustments in taxation of real property separately classified and subject to statutory  
22 adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except  
23 § 10-6-31.4, only if assessed the same as property of equal value.

24 ~~For taxes payable in 2012, 2013, 2014, and 2015, the total amount of local effort~~

1 shall be increased by the lesser of three percent or the index factor, established  
2 pursuant to § 10-13-38 plus a percentage increase of value resulting from any  
3 improvements or change in use of real property, annexation, minor boundary  
4 changes, and any adjustments in taxation of real property separately classified and  
5 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and  
6 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value 2014  
7 and thereafter using a special education levy of one dollar and thirty-three and three  
8 tenths cents per one thousand dollars of valuation;

9 (8) "Allocation for a student with a level one disability," for the school fiscal year  
10 beginning July 1, 2012, is \$4,525. For each school year thereafter, the allocation for  
11 a student with a level one disability shall be the previous fiscal year's allocation for  
12 such child increased by the lesser of the index factor or three percent;

13 (9) "Allocation for a student with a level two disability," for the school fiscal year  
14 beginning July 1, 2012, is \$11,124. For each school year thereafter, the allocation for  
15 a student with a level two disability shall be the previous fiscal year's allocation for  
16 such child increased by the lesser of the index factor or three percent;

17 (10) "Allocation for a student with a level three disability," for the school fiscal year  
18 beginning July 1, 2012, is \$14,788. For each school year thereafter, the allocation for  
19 a student with a level three disability shall be the previous fiscal year's allocation for  
20 such child increased by the lesser of the index factor or three percent;

21 (11) "Allocation for a student with a level four disability," for the school fiscal year  
22 beginning July 1, 2012, is \$13,204. For each school year thereafter, the allocation for  
23 a student with a level four disability shall be the previous fiscal year's allocation for  
24 such child increased by the lesser of the index factor or three percent;

1 (12) "Allocation for a student with a level five disability," for the school fiscal year  
2 beginning July 1, 2012, is \$19,993. For each school year thereafter, the allocation for  
3 a student with a level five disability shall be the previous fiscal year's allocation for  
4 such child increased by the lesser of the index factor or three percent;

5 (12A) "Allocation for a student with a level six disability," for the school fiscal year  
6 beginning July 1, 2012, is \$7,205. For each school year thereafter, the allocation for  
7 a student with a level six disability shall be the previous fiscal year's allocation for  
8 such child increased by the lesser of the index factor or three percent;

9 (13) "Child count," is the number of students in need of special education or special  
10 education and related services according to criteria set forth in rules promulgated  
11 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in  
12 accordance with rules promulgated pursuant to § 13-37-1.1;

13 (14) "Fall enrollment," the number of kindergarten through twelfth grade pupils enrolled  
14 in all schools operated by the school district on the last Friday of September of the  
15 previous school year minus the number of students for whom the district receives  
16 tuition, except any nonresident student who is in the care and custody of a state  
17 agency and is attending a public school and any student for whom tuition is being  
18 paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
19 tuition;

20 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the  
21 secretary of education for the purpose of instructing children of compulsory school  
22 age. This definition excludes any school that receives a majority of its revenues from  
23 public funds;

24 (16) "Nonpublic fall enrollment," until June 30, 2008, the number of children under age

1 sixteen, and beginning July 1, 2009, the number of children under age eighteen, who  
2 are approved for alternative instruction pursuant to § 13-27-2 on the last Friday of  
3 September of the previous school year plus:

4 (a) For nonpublic schools located within the boundaries of a public school district  
5 with a fall enrollment of six hundred or more on the last Friday of September  
6 of the previous school year, the number of kindergarten through twelfth grade  
7 pupils enrolled on the last Friday of September of the previous regular school  
8 year in all nonpublic schools located within the boundaries of the public  
9 school district;

10 (b) For nonpublic schools located within the boundaries of a public school district  
11 with a fall enrollment of less than six hundred on the last Friday of September  
12 of the previous school year, the number of resident kindergarten through  
13 twelfth grade pupils enrolled on the last Friday of September of the previous  
14 school year in all nonpublic schools located within the State of South Dakota;

15 (17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;

16 (18) "Local need," an amount to be determined as follows:

17 (a) Multiply the special education fall enrollment by 0.1004 and multiply the  
18 result by the allocation for a student with a level one disability;

19 (b) Multiply the number of students having a level two disability as reported on  
20 the child count for the previous school fiscal year by the allocation for a  
21 student with a level two disability;

22 (c) Multiply the number of students having a level three disability as reported on  
23 the child count for the previous school fiscal year by the allocation for a  
24 student with a level three disability;

1 (d) Multiply the number of students having a level four disability as reported on  
2 the child count for the previous school fiscal year by the allocation for a  
3 student with a level four disability;

4 (e) Multiply the number of students having a level five disability as reported on  
5 the child count for the previous school fiscal year by the allocation for a  
6 student with a level five disability;

7 (f) Multiply the number of students having a level six disability as reported on the  
8 child count for the previous school fiscal year by the allocation for a student  
9 with a level six disability;

10 (g) When calculating local need at the statewide level, include the amount set  
11 aside for extraordinary costs defined in § 13-37-40;

12 (h) Sum the results of (a) ~~through (f)~~ to (g), inclusive;

13 (19) "Effort factor," ~~for taxes payable in 2011, 2012, 2013, 2014, and 2015, the effort~~  
14 ~~factor is the amount of taxes payable for the year divided by the amount of local~~  
15 ~~effort as calculated in subdivision (7) the school district's special education tax levy~~  
16 in dollars per thousand divided by \$1.333. The maximum effort factor is 1.0.

17 Section 7. That § 13-37-36.1 be amended to read as follows:

18 13-37-36.1. To establish the school district special education fund statutory carryover  
19 excluding federal funds, the following calculations shall be performed:

20 (1) ~~Divide the total federal special education revenue by the total special education~~  
21 ~~revenues~~ Deduct from the total ending fund balance the amount of Title VIII of the  
22 Elementary and Secondary Education Act funds received or transferred to the special  
23 education fund; and

24 (2) ~~Multiply the federal special education percentage calculated in (1) times the total~~



1 special education fund balance; and  
 2 ~~(3) Deduct the amount of federal revenue calculated in (2) from the special education~~  
 3 ~~fund balance~~ Divide the result of subdivision (1) by the total special education ending  
 4 fund balance.

5 Section 8. That § 13-37-40 be amended to read as follows:

6 13-37-40. Subject to the limitation in § 13-37-42, the secretary of the Department of  
 7 Education shall, for school fiscal year ~~1999~~ 2014 and each year thereafter, set aside ~~5.75%~~ four  
 8 million dollars of the state aid to districts for special education appropriation for extraordinary  
 9 expenses incurred in providing special education programs or services to one or more children  
 10 with disabilities, with expenditures to be made as recommended by an oversight board and  
 11 approved by the secretary of the Department of Education. Any funds not expended or obligated  
 12 pursuant to this section shall not be subject to reversion pursuant to § 4-8-19. ~~The maximum~~  
 13 ~~amount not subject to reversion is equal to 5.75% of the state special education appropriation.~~  
 14 The total amount set aside for extraordinary expenses each fiscal year plus the total amount not  
 15 reverted from previous fiscal years may not exceed six million dollars.

16 The amount appropriated for extraordinary expenses shall be recalculated at the same time  
 17 as the amount of the allocations for disability levels as provided in § 13-37-35.2.

18 Section 9. That § 13-37-40.1 be repealed.

19 ~~13-37-40.1. A school district is not eligible for funding from the money set aside in §§ 13-~~  
 20 ~~37-38 to 13-37-40, inclusive, unless the school district certifies to the secretary of education that~~  
 21 ~~its ending special education fund balance will not exceed five percent of its special education~~  
 22 ~~expenditures for the current fiscal year.~~

23 Section 10. That § 13-37-44 be amended to read as follows:

24 13-37-44. A school district's state aid for special education as calculated pursuant to § 13-

1 37-36.1 ~~or 13-37-51~~ shall be reduced by the amount which its ending special education fund  
 2 balance exceeds ~~twenty~~ twenty-five percent of its special education expenditures for the prior  
 3 fiscal year or ~~fifty one hundred~~ thousand dollars, whichever is greater, ~~if the school district did~~  
 4 ~~not receive money set aside in § 13-37-40 during the prior fiscal year; or the amount which its~~  
 5 ~~ending special education fund balance exceeds five percent of its special education expenditures~~  
 6 ~~for the prior fiscal year if the school district received money set aside in §§ 13-37-38 to 13-37-~~  
 7 ~~40, inclusive, during the prior fiscal year.~~

8 Section 11. That § 13-37-48.1 be repealed.

9 ~~— 13-37-48.1. In addition to the purposes specified in § 13-37-40, money set aside pursuant~~  
 10 ~~to § 13-37-40 may be used by the Department of Education to establish and maintain a program~~  
 11 ~~to assist school districts with legal matters relating to special education, to employ personnel~~  
 12 ~~to audit school districts for compliance with the provisions of §§ 13-37-36.1 to 13-37-52, to~~  
 13 ~~establish and maintain state protocols to assist school districts in developing individualized~~  
 14 ~~education plans, to support activities under Part C of the Individuals with Disabilities Education~~  
 15 ~~Act, Infants and Toddlers with Disabilities, or to purchase assistive technology for students with~~  
 16 ~~a level two, three, four, or five disability.~~

17 ~~— Any approved K-12 application under the extraordinary cost fund must be funded prior to~~  
 18 ~~funding the Part C requests.~~

19 Section 12. That § 13-37-51 be repealed.

20 ~~— 13-37-51. For the transition period from school fiscal year 2000 through school fiscal year~~  
 21 ~~2003, state aid for special education shall be determined according to the following calculations:~~

22 ~~— (1) — Multiply local need of a school district by 0.96 in school fiscal year 2000, 0.97 in~~  
 23 ~~school fiscal year 2001, 0.98 in school fiscal year 2002, and 0.99 in school fiscal year~~  
 24 ~~2003;~~

- 1 ~~—(2)—~~ After making the adjustment to local need pursuant to subdivision (1) of this section,  
2 calculate state aid for special education pursuant to ~~§ 13-37-36.1;~~
- 3 ~~—(3)—~~ Subtract the result of subdivision (2) from the amount of state aid received pursuant  
4 to ~~§ 13-37-36.3 or 13-37-43 in school fiscal year 1999;~~
- 5 ~~—(4)—~~ Multiply the result of subdivision (3) by 0.80 in school fiscal year 2000, 0.60 in  
6 school fiscal year 2001, 0.40 in school fiscal year 2002, and 0.20 in school fiscal year  
7 2003;
- 8 ~~—(5)—~~ Add the result of subdivision (2) to the result of subdivision (4);
- 9 ~~—(6)—~~ State aid for special education is the greater of the result of subdivision (2) or the  
10 result of subdivision (5).

11 Section 13. That § 13-37-53 be repealed.

12 ~~— 13-37-53. If the parents or guardian of a child assigned to and enrolled in an out of district  
13 special education residential or tuition day program move to another South Dakota school  
14 district and that school district provides special education services to the child, the Department  
15 of Education shall allocate any state aid to special education attributable to the child received  
16 or scheduled to be received by the resident school district as defined by § 13-28-9.1 to the  
17 school district to which the parents or guardian have moved for the period of time that the  
18 resident school district is not providing special education services to the child. For the purposes  
19 of §§ 13-28-9.1 and 13-37-54, an approved special education program includes out-of-district  
20 residential programs and tuition day programs.~~

21 Section 14. That § 13-37-54 be amended to read as follows:

22 13-37-54. The Department of Education may promulgate rules pursuant to chapter 1-26 to  
23 provide for the reallocation of state aid to special education as provided for in §§ ~~§~~ 13-28-9.1  
24 and 13-37-53.

1 Section 15. That § 13-16-7.1 be amended to read as follows:

2 13-16-7.1. For taxes payable in ~~2011, 2012, 2013,~~ 2014; and 2015, the provisions of §§ 13-  
3 10-6; and 13-16-7, ~~13-37-16, and 13-37-35.1~~ that limit the maximum amount of revenue that  
4 may be generated by the pension; and capital outlay, ~~and special education~~ tax levies do not  
5 apply to any school district that has less than a ten percent change in the total taxable valuation  
6 from the previous year of all real property in the school district, not including the increase of  
7 value resulting from any improvements or change in use of real property.