

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

735R0749

SENATE ENGROSSED NO. **SB 195** - 2/23/2010

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Gray, Dempster, Knudson, and Rhoden and Representatives Faehn, Rave, and Tidemann

1 FOR AN ACT ENTITLED, An Act to revise the refunds for new or expanded agricultural
2 facilities and new or expanded business facilities, to repeal the contractors' excise tax on
3 new or expanded power production facilities, to exempt certain new business facilities from
4 certain tax refunds, and to make certain transfers to the revolving economic development
5 and initiative fund.

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

7 Section 1. That § 10-45B-2 be amended to read as follows:

8 10-45B-2. ~~Any person~~ As provided in this chapter, any person holding a permit issued
9 pursuant to § 10-45B-6 may apply for and obtain a refund or credit for contractors' excise taxes
10 imposed and paid under the provisions of chapter 10-46A for the construction of a new
11 agricultural processing facility and for sales or use taxes imposed and paid by such person under
12 the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural processing
13 equipment.

14 Section 2. That § 10-45B-4 be repealed.



1 ~~10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to~~
2 ~~project costs incurred and paid after April 1, 1997, and within thirty-six months of the~~
3 ~~construction date as stated on the application required by § 10-45B-6. No refund may be made~~
4 ~~unless:~~

5 ~~(1) The project cost exceeds the sum of four million five hundred thousand dollars; and~~

6 ~~(2) The person applying for the refund obtains a permit from the secretary as set forth in~~
7 ~~§ 10-45B-6.~~

8 Section 3. That § 10-45B-4.1 be repealed.

9 ~~10-45B-4.1. The refund of taxes pursuant to § 10-45B-2.1 pertains only to project costs~~
10 ~~incurred and paid after February 1, 2005, up to and including thirty-six months from the~~
11 ~~construction date if the project costs are sixty million dollars or less and after February 1, 2005,~~
12 ~~up to and including seventy-two months from the construction date if the project costs are more~~
13 ~~than sixty million dollars. There is no refund if the person applying for the refund does not~~
14 ~~obtain a permit from the secretary as set forth in § 10-45B-6.~~

15 ~~Upon a showing of good cause, the time limits prescribed by this section may be extended~~
16 ~~by the secretary for a period not to exceed twenty-four months.~~

17 Section 4. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The refund of taxes pursuant to §§ 10-45B-2 and 10-45B-2.1 pertains only to project costs
20 incurred and paid after January 1, 2008, up to and including thirty-six months from the
21 construction date. No refund may be paid unless the person applying for the refund obtains a
22 permit from the secretary as set forth in § 10-45B-6.

23 Section 5. That § 10-45B-5 be repealed.

24 ~~10-45B-5. If the project cost for a new agricultural processing facility exceeds four million~~

1 ~~five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed~~
2 ~~to the project cost.~~

3 Section 6. That § 10-45B-5.1 be repealed.

4 ~~10-45B-5.1. The amount of the tax refund for a new business facility shall be a percentage~~
5 ~~of the taxes paid, as follows:~~

6 ~~(1) For project costs of less than ten million dollars, there shall be no refund;~~

7 ~~(2) For project costs of ten or more million dollars but less than fifteen million dollars~~
8 ~~there shall be a refund of twenty-five percent of the taxes paid;~~

9 ~~(3) For project costs of fifteen or more million dollars but less than twenty million~~
10 ~~dollars there shall be a refund of thirty-three percent of the taxes paid;~~

11 ~~(4) For project costs of twenty or more million dollars but less than forty million dollars~~
12 ~~there shall be a refund of fifty percent of the taxes paid;~~

13 ~~(5) For project costs of forty or more million dollars but less than sixty million dollars~~
14 ~~there shall be a refund of sixty-seven percent of the taxes paid;~~

15 ~~(6) For project costs of sixty million dollars or more but less than six hundred million~~
16 ~~dollars there shall be a refund of seventy-five percent of the taxes paid; and~~

17 ~~(7) For project costs of six hundred million dollars and greater there shall be a refund of~~
18 ~~ninety percent of the taxes paid.~~

19 Section 7. That § 10-45B-6.1 be repealed.

20 ~~10-45B-6.1. Any person issued a permit pursuant to this chapter prior to March 31, 1997,~~
21 ~~may continue to submit claims for the project.~~

22 Section 8. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Notwithstanding any provision of chapter 10-45B or this Act, this section controls the

1 amount of refunds payable under chapter 10-45B for any new agricultural processing facility
2 or new business facility that has a construction date before July 1, 2010:

3 (1) For project costs incurred and paid before July 1, 2010, the amount of the refund
4 shall be determined by applying the provisions of chapter 10-45B in effect prior to
5 the effective date of this Act;

6 (2) For project costs incurred before July 1, 2011, and paid from July 1, 2010, to June 30,
7 2011, inclusive, the amount of the refund shall be as follows:

8 (a) For project costs of less than ten million dollars, there shall be no refund;

9 (b) For project costs of ten or more million dollars but less than forty million
10 dollars, there shall be a refund of forty percent of the taxes paid;

11 (c) For project costs of forty or more million dollars but less than five hundred
12 million dollars, there shall be a refund of fifty percent of the taxes paid; and

13 (d) For project costs of five hundred million or more dollars, there shall be no
14 refund;

15 When applying subdivision (2) of this section, all the project costs described in
16 subdivision (1) of this section shall be utilized to determine which refund subsection
17 or subsections apply in subdivision (2) of this section;

18 (3) For project costs incurred before July 1, 2012, and paid from July 1, 2011, to June 30,
19 2012, inclusive, the amount of the refund shall be as follows:

20 (a) For project costs of less than ten million dollars, there shall be no refund;

21 (b) For project costs of ten or more million dollars but less than forty million
22 dollars, there shall be a refund of forty percent of the taxes paid;

23 (c) For project costs of forty or more million dollars but less than five hundred
24 million dollars, there shall be a refund of twenty-five percent of the taxes paid;

1 and

2 (d) For project costs of five hundred million or more dollars, there shall be no
3 refund;

4 When applying subdivision (3) of this section, all the project costs described in
5 subdivisions (1) and (2) of this section shall be utilized to determine which refund
6 subsection or subsections apply in subdivision (3) of this section; and

7 (4) For project costs incurred before July 1, 2012, and paid after July 1, 2012, or for
8 project costs incurred and paid after June 30, 2012, the amount of the refund shall be
9 as follows:

10 (a) For project costs of less than ten million dollars, there shall be no refund;

11 (b) For project costs of ten or more million dollars but less than forty million
12 dollars, there shall be a refund of forty percent of the taxes paid; and

13 (c) For project costs of forty or more million dollars, there shall be no refund;

14 When applying subdivision (4) of this section, all the project costs described in
15 subdivisions (1), (2), and (3) of this section shall be utilized to determine which
16 refund subsection or subsections apply in subdivision (4) of this section.

17 Subdivisions (2), (3), and (4) of this section do not apply to any project that is a pipeline for
18 the transmission or distribution of water, natural gas, crude oil, oil, or refined petroleum
19 products.

20 Section 9. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Notwithstanding any provision of chapter 10-45B or this Act, this section controls the
23 amount of refunds payable under chapter 10-45B for any new agricultural processing facility
24 or new business facility that has a construction date on or after July 1, 2010:

1 (1) For project costs incurred and paid before July 1, 2011, the amount of the refund
2 shall be as follows:

3 (a) For project costs of less than ten million dollars, there shall be no refund;

4 (b) For project costs of ten or more million dollars but less than forty million
5 dollars, there shall be a refund of forty percent of the taxes paid;

6 (c) For project costs of forty or more million dollars but less than five hundred
7 million dollars, there shall be a refund of fifty percent of the taxes paid; and

8 (d) For project costs of five hundred million or more dollars, there shall be no
9 refund;

10 (2) For project costs incurred before July 1, 2012, and paid from July 1, 2011, to June 30,
11 2012, inclusive, the amount of the refund shall be as follows:

12 (a) For project costs of less than ten million dollars, there shall be no refund;

13 (b) For project costs of ten or more million dollars but less than forty million
14 dollars, there shall be a refund of forty percent of the taxes paid;

15 (c) For project costs of forty or more million dollars but less than five hundred
16 million dollars, there shall be a refund of twenty-five percent of the taxes paid;
17 and

18 (d) For project costs of five hundred million or more dollars, there shall be no
19 refund;

20 When applying subdivision (2) of this section, all the project costs described in
21 subdivision (1) of this section shall be utilized to determine which refund subsection
22 or subsections apply in subdivision (2) of this section; and

23 (3) For project costs incurred before July 1, 2012, and paid after July 1, 2012, or for
24 project costs incurred and paid after June 30, 2012, the amount of the refund shall be

1 as follows:

2 (a) For project costs of less than ten million dollars, there shall be no refund;

3 (b) For project costs of ten or more million dollars but less than forty million
4 dollars, there shall be a refund of forty percent of the taxes paid;

5 (c) For project costs of forty or more million dollars, there shall be no refund;

6 When applying subdivision (3) of this section, all the project costs described in
7 subdivisions (1) and (2) of this section shall be utilized to determine which refund
8 subsection or subsections apply in subdivision (3) of this section.

9 This section does not apply to any project that is a pipeline for the transmission or
10 distribution of water, natural gas, crude oil, oil, or refined petroleum products.

11 Section 10. That § 10-45B-8 be amended to read as follows:

12 10-45B-8. Any person issued a permit pursuant to this chapter shall submit a claim for
13 refund to the department no more frequently than on or before the last day of each month and
14 no less frequently than on or before the last day of each month following each calendar quarter.

15 The secretary shall determine and pay the amount of the tax refund within ninety days of receipt
16 of the claim for refund. Ninety-five percent of the amount of refund shall be paid to the claimant
17 in accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
18 department. No interest may be paid on the refund amount. ~~If electronic funds transfer is~~
19 ~~available to the secretary, the secretary shall pay the refund by electronic funds transfer if~~
20 ~~requested by the claimant.~~ The secretary shall pay the refund by electronic funds transfer.

21 Section 11. That § 10-45B-8.1 be repealed.

22 ~~10-45B-8.1. No claim for refund pursuant to this chapter may be considered by the~~
23 ~~department if the claim for refund is received after the following applicable time period:~~

24 ~~(1) Twelve months after the thirty-six month time period of § 10-45B-4;~~

1 ~~—(2)— Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
2 ~~with project costs of sixty million dollars or less;~~

3 ~~—(3)— Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects~~
4 ~~with project costs of more than sixty million dollars; or~~

5 ~~—(4)— Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~
6 ~~obtained a time limit extension from the secretary.~~

7 ~~Moreover, any such claim is barred from any future refund eligibility.~~

8 Section 12. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
9 as follows:

10 No claim for refund pursuant to this chapter may be considered by the department if the
11 claim for refund is received twelve months after the thirty-six month time period of section 4
12 of this Act. Moreover, any such claim is barred from any future refund eligibility.

13 Section 13. That § 10-45B-8.2 be repealed.

14 ~~—10-45B-8.2. No document or record in support of any claim for refund may be considered~~
15 ~~by the department if the documents or records in support of any claim for refund are received~~
16 ~~after the following applicable time period:~~

17 ~~—(1)— Twelve months after the thirty-six month time period of § 10-45B-4;~~

18 ~~—(2)— Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
19 ~~with project costs of sixty million dollars or less;~~

20 ~~—(3)— Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects~~
21 ~~with project costs of more than sixty million dollars; or~~

22 ~~—(4)— Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~
23 ~~obtained a time limit extension from the secretary.~~

24 ~~Moreover, any such document or record is barred from any future consideration.~~

1 ~~However, if the department requests any additional document or record from the project~~
2 ~~owner after a review of the claim for refund, and the request is made after the applicable time~~
3 ~~period provided by this section has expired, the project owner has sixty days to provide the~~
4 ~~requested document or record. No document or record received after this sixty-day period may~~
5 ~~be considered by the department. Moreover, any such document or record is barred from any~~
6 ~~future consideration.~~

7 Section 14. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
8 as follows:

9 No document or record in support of any claim for refund may be considered by the
10 department if the document or record in support of any claim for refund is received twelve
11 months after the thirty-six month time period of section 4 of this Act. Moreover, any such
12 document or record is barred from any future consideration.

13 However, if the department requests any additional document or record from the project
14 owner after a review of the claim for refund, and the request is made after the applicable time
15 period provided by this section has expired, the project owner has sixty days to provide the
16 requested document or record. No document or record received after this sixty-day period may
17 be considered by the department. Moreover, any such document or record is barred from any
18 future consideration.

19 Section 15. That § 10-45B-8.3 be repealed.

20 ~~10-45B-8.3. The provisions of §§ 10-45B-8.1 and 10-45B-8.2 apply to refunds for projects~~
21 ~~only if the permit was applied for after June 30, 2009.~~

22 Section 16. That § 10-45B-9 be amended to read as follows:

23 10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be
24 retained until the project has been completed and the claimant has met all the conditions of § 10-

1 ~~45B-4 or 10-45B-4.1~~ section 4 of this Act, at which time all sums retained shall be paid to
2 claimant.

3 Section 17. That chapter 10-46C be repealed.

4 Section 18. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The department shall transfer to the revolving economic development and initiative fund
7 established by § 1-16G-3 an amount equal to ten percent per fiscal year of the sales, use, and
8 contractors' excise taxes paid on projects receiving a refund under section 9 of this Act. The
9 total amount transferred pursuant to this section per fiscal year may not exceed ten million
10 dollars.

11 Section 19. That § 10-45B-1.1 be amended to read as follows:

12 10-45B-1.1. For the purposes of this chapter, the term, new business facility, means a new
13 building or structure or the expansion of an existing building or structure, including a power
14 generation facility, the construction of which is subject to the contractor's excise tax pursuant
15 to chapter 10-46A or 10-46B. A new business facility does not include any building or structure:

- 16 (1) Used predominantly for the sale of products at retail, other than the sale of electricity
17 at retail, to individual consumers;
- 18 (2) Used predominantly for residential housing or transient lodging;
- 19 (3) Used predominantly to provide health care services; ~~or~~
- 20 (4) That is not subject to ad valorem real property taxation or equivalent taxes measured
21 by gross receipts; or
- 22 (5) That is a pipeline for the transmission or distribution of water, natural gas, crude oil,
23 oil, or refined petroleum products.

24 Section 20. That chapter 10-45B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Notwithstanding any provision of chapter 10-45B or this Act, no refund may be paid under
3 this chapter based on project costs paid after July 1, 2010, for any project that is a pipeline for
4 the transmission or distribution of water, natural gas, crude oil, oil, or refined petroleum
5 products.