

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

174L0469

SENATE BILL NO. 80

Introduced by: Senators Kloucek, Bartling, Hanson (Gary), Kooistra, Nesselhuf, and Peterson (Jim) and Representatives Gassman, Dennert, Gillespie, Glover, Haley, Kroger, Lange, Peters, Roberts, Sigdestad, Thompson, and Van Norman

1 FOR AN ACT ENTITLED, An Act to provide certain electric power generation facilities a
2 refund of the contractor's excise tax.

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

4 Section 1. That chapter 10-46C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person may apply for and obtain a refund or credit for contractor's excise taxes imposed
7 and paid under the provisions of chapter 10-46A or 10-46B for the construction of a new or
8 expanded facility that produces electricity using wind energy. The refund is one hundred percent
9 of the contractor's excise taxes attributed to the project cost, excluding any associated
10 transmission facilities. The refund pertains only to project costs incurred and paid after July 1,
11 2005, and within thirty-six months of the approval of the application required by section 2 of
12 this Act. No refund may be made unless the project costs exceed five hundred thousand dollars.
13 The secretary shall promulgate rules, pursuant to chapter 1-26, concerning the procedures for
14 filing refund claims and the requirements necessary to qualify for a refund.



1 Section 2. That chapter 10-46C be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Any person desiring a refund pursuant to section 1 of this Act shall apply for a permit from
4 the secretary at least thirty days before commencement of the project. The secretary may deny
5 any claim if the claimant fails to provide information or documentation requested or considered
6 necessary by the secretary to determine the validity of the claim. Upon approval of the
7 application, the secretary shall issue a permit entitling the applicant to submit refund claims. The
8 secretary shall determine the amount of the tax refund. Ninety percent of the amount of refund
9 shall be paid to the claimant in accordance with §§ 10-59-22 and 10-59-23, and ten percent shall
10 be withheld by the department until the project has been completed and the claimant has met
11 all the conditions of this section and section 1 of this Act, at which time all sums retained shall
12 be paid to the claimant. No interest may be paid on the refund amount. The permit or refund
13 claims are not assignable or transferable except as collateral or security pursuant to chapter
14 57A-9.

15 Section 3. That chapter 10-46C be amended by adding thereto a NEW SECTION to read as
16 follows:

17 If any claim has been fraudulently presented or supported as to any item in the claim, or if
18 the claimant fails to meet all the conditions of sections 1 and 2 of this Act, the claim may be
19 rejected and all sums previously refunded to the claimant constitute a debt to the state and a lien
20 in favor of the state upon all property and rights to property whether real or personal belonging
21 to the claimant and may be recovered in an action of debt.

22 Any person aggrieved by the denial in whole or in part of a refund claimed under sections
23 1 and 2 of this Act may within thirty days after service of the notice of a denial by the secretary,
24 demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be

1 conducted pursuant to chapter 1-26.

2 Section 4. That chapter 10-46B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Any person may apply for and obtain a refund or credit for contractor's excise taxes imposed
5 and paid under this chapter for the construction of a new or expanded facility that produces
6 electricity using energy from the combustion of coal. The refund is one hundred percent of the
7 contractor's excise taxes attributed to the project cost, excluding any associated transmission
8 facilities. The refund pertains only to project costs incurred and paid after July 1, 2005 and
9 within thirty-six months of the approval of the application required by section 5 of this Act. No
10 refund may be made unless the project costs exceed five hundred thousand dollars. The
11 secretary of revenue and regulation shall promulgate rules, pursuant to chapter 1-26, concerning
12 the procedures for filing refund claims and the requirements necessary to qualify for a refund.

13 Section 5. That chapter 10-46B be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Any person desiring a refund pursuant to section 4 of this Act shall apply for a permit from
16 the secretary of revenue and regulation at least thirty days before commencement of the project.
17 The secretary may deny any claim if the claimant fails to provide information or documentation
18 requested or considered necessary by the secretary to determine the validity of the claim. Upon
19 approval of the application, the secretary shall issue a permit entitling the applicant to submit
20 refund claims. The secretary shall determine the amount of the tax refund. Ninety percent of the
21 amount of refund shall be paid to the claimant in accordance with §§ 10-59-22 and 10-59-23,
22 and ten percent shall be withheld by the department until the project has been completed and
23 the claimant has met all the conditions of this section and section 4 of this Act, at which time
24 all sums retained shall be paid to the claimant. No interest may be paid on the refund amount.

1 The permit or refund claims are not assignable or transferable except as collateral or security
2 pursuant to chapter 57A-9.

3 Section 6. That chapter 10-46B be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If any claim has been fraudulently presented or supported as to any item in the claim, or if
6 the claimant fails to meet all the conditions of sections 4 and 5 of this Act, the claim may be
7 rejected and all sums previously refunded to the claimant constitute a debt to the state and a lien
8 in favor of the state upon all property and rights to property whether real or personal belonging
9 to the claimant and may be recovered in an action of debt.

10 Any person aggrieved by the denial in whole or in part of a refund claimed under sections
11 4 and 5 of this Act may within thirty days after service of the notice of a denial by the secretary
12 of revenue and regulation, demand and is entitled to a hearing, upon notice, before the secretary.
13 The hearing shall be conducted pursuant to chapter 1-26.