

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

690U0585

HOUSE BILL NO. 1161

Introduced by: Representatives Munsterman, Hunhoff (Bernie), and Lust and Senators Brown, Frerichs, and Olson (Russell)

1 FOR AN ACT ENTITLED, An Act to establish and provide certain incentives for projects that
2 create new jobs or promote economic activity.

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

4 Section 1. Terms used in this Act mean:

- 5 (1) "Construction date," the first date excavation, demolition, or construction begins for
6 a project;
- 7 (2) "Department," the Department of Revenue;
- 8 (3) "Equipment," any new equipment that is installed or placed in a new or expanded
9 facility;
- 10 (4) "New or expanded facility," a new building or structure, or the expansion of an
11 existing building or structure;
- 12 (5) "Person," any individual, firm, copartnership, joint venture, association, cooperative,
13 limited liability company, limited liability partnership, corporation, estate, trust,
14 business trust, receiver, or any group or combination acting as a unit;
- 15 (7) "Project," the construction of a new or expanded facility and the equipment installed



1 or placed at a single site;

2 (8) "Project cost," the amount paid in money, credits, property, or other money's worth
3 for a project; and

4 (9) "Secretary," the secretary of the Department of Revenue.

5 Section 2. For the purposes of this Act, the term, new or expanded facility, does not include
6 any building or structure:

7 (1) Used predominantly for residential housing; or

8 (2) Used predominantly to provide nonprofit health care services.

9 Section 3. For the purposes of this Act, to qualify for the refund, the project shall meet the
10 following criteria:

11 (1) A business plan is submitted to the local development corporation which shows that
12 additional jobs will be created and economic activity will occur if the project is
13 constructed;

14 (2) The local development corporation has reviewed the business plan for the project and
15 has made a determination of the economic impact including job growth which is
16 scored pursuant to section 18 of this Act;

17 (3) The municipality has adopted a motion to approve the municipal sales and use tax
18 incentives provided by this Act and to authorize the department to refund such tax
19 to the person holding a permit issued pursuant to section 6 of this Act;

20 (4) A copy of the resolution is submitted with the application to the department for the
21 municipal tax refund; and

22 (5) The county or municipality has agreed to reduce property taxation for the project for
23 five years under the discretionary formula pursuant to § 10-6-35.2.

24 Section 4. As provided in this Act, any person holding a permit issued pursuant to section 6

1 of this Act may apply for and obtain a refund or credit of the municipal sales or use tax imposed
2 and paid by such person under the provisions of chapter 10-52 and to receive a matching grant
3 from the business incentive grant fund. The grant from the business incentive grant fund shall
4 be based on the amount of municipal sales and use tax revenue refunded by the municipality on
5 a matching basis.

6 If a project is located outside the incorporated limits of a municipality, the Board of
7 Economic Development, created pursuant to chapter 1-16G, may waive the municipal sales tax
8 refund match requirement and approve a grant from the business incentive grant fund if the
9 other provisions of this Act have been met. However, no such grant may exceed fifty percent
10 of the state sales and use tax collected from such project.

11 Section 5. The refund of taxes pursuant to section 4 of this Act pertains only to project costs
12 incurred and paid after July 1, 2013, within twenty-four months from the construction date. No
13 refund may be paid unless:

- 14 (1) A resolution has been adopted by the municipality where the project is located
15 agreeing to refund all or a portion of the sales and use taxes imposed on the project
16 by the municipality; and
- 17 (2) The person applying for the refund obtains a permit from the secretary as provided
18 in section 6 of the Act.

19 Section 6. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
20 from the secretary prior to or within ninety days after the construction date. The application for
21 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
22 be made and submitted for each project. Upon approval of the application, the secretary shall
23 issue a permit entitling the applicant to submit refund claims as provided by sections 7 and 8
24 of this Act. Such permit or refund claims are not assignable or transferable except as collateral

1 or security pursuant to chapter 57A-9. However, the secretary may permit the assignment or
2 transfer of a permit and refund claim if the initial permit holder entity reorganizes into a new
3 entity, if the new entity and the initial entity share common ownership and the reorganization
4 was completed solely for a legitimate business purpose. The new entity shall file with the
5 department an amended application for permit.

6 Section 7. Any claim for refund shall be submitted on forms prescribed by the secretary and
7 shall be supported by such documentation as the secretary may require. The secretary may deny
8 any claim where the claimant has failed to provide information or documentation requested or
9 considered necessary by the secretary to determine the validity of the claim.

10 Section 8. Any person issued a permit pursuant to this Act shall submit a claim for refund
11 to the department no more frequently than on or before the last day of each month and no less
12 frequently than on or before the last day of each month following each calendar quarter. The
13 secretary shall determine and pay the amount of the tax refund within ninety days of receipt of
14 the claim for refund. However, no refund claim may be paid until on or after the construction
15 date. Ninety-five percent of the amount of refund shall be paid to the claimant in accordance
16 with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the department. No
17 interest may be paid on the refund amount. The secretary shall pay the refund by electronic
18 funds transfer.

19 Section 9. No claim for refund pursuant to this Act may be considered by the department if
20 the claim for refund is received twelve months after the twenty-four month time period set by
21 section 5 of this Act. Moreover, any such claim is barred from any future refund eligibility.

22 Section 10. No document or record in support of any claim for refund may be considered
23 by the department if the document or record in support of any claim for refund is received
24 twelve months after the twenty-four month time period of section 5 of this Act. Moreover, any

1 such document or record is barred from any future consideration.

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

8 Section 11. The amounts withheld by the department in accordance with section 8 of this
9 Act shall be retained until the project has been completed and the claimant has met all the
10 conditions of this Act, at which time all sums retained shall be paid to claimant.

11 Section 12. If any claim has been fraudulently presented or supported as to any item in the
12 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be
13 rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt
14 to the state and a lien in favor of the state upon all property and rights to property whether real
15 or personal belonging to the claimant and may be recovered in an action of debt.

16 Section 13. Any person aggrieved by the denial in whole or in part of a refund claimed under
17 this Act, may within thirty days after service of the notice of such denial by the secretary,
18 demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be
19 conducted pursuant to chapter 1-26.

20 Section 14. Any amount refunded pursuant to this Act for a project that is not completed
21 within the time frames prescribed in this Act, including any extensions granted by the secretary,
22 shall be returned to the state without interest. Any refunded amounts not returned pursuant to
23 this section and all sums previously refunded to the claimant constitute a debt to the state and
24 a lien in favor of the state upon all property and rights to property whether real or personal

1 belonging to the claimant and may be recovered in an action of debt.

2 Section 15. Any person aggrieved by a decision of the secretary under this Act may, within
3 thirty days of receipt of written notice of the secretary's decision, make written application to
4 the secretary for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be
5 conducted and appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of
6 the hearing examiner's proposed decision, findings of fact, and conclusions of law shall be
7 served on all parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D,
8 accepts the final decision of the hearing examiner, no appeal from a final decision of the
9 secretary upon any additional tax to be paid may be taken unless any amount ordered paid by
10 the secretary is paid or a bond filed to insure payment of the amount. However, if the final
11 decision of the secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the
12 hearing examiner regarding the amount due, an appeal may be taken without payment of the
13 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed
14 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the
15 secretary is paid or a bond is filed to insure payment of such amount.

16 Section 16. The secretary shall promulgate rules, pursuant to chapter 1-26, concerning the
17 procedures for filing refund claims and the requirements necessary to qualify for a refund.

18 Section 17. The name of any person or entity that receives a refund or credit of sales and use
19 tax pursuant to this Act and the amount of any such refund or credit is public information and
20 shall be available and open to public inspection as provided in § 1-27-1.

21 Section 18. The local economic development corporation shall determine the economic
22 impact of the new or expanded facility by using the following factors:

23 (1) Project impact factors;

24 (a) Economic impact of primary jobs created or retained;

- 1 (b) Net economic effect of increasing or stabilizing the economy on the
- 2 community, area, and state;
- 3 (c) Competitive effect on existing businesses;
- 4 (d) Support of the public entities of the community and area;
- 5 (e) The amount of the owner's equity contributed to the project;
- 6 (f) The effect of the project on the environment, health, and safety of the people
- 7 in the community, area, and state;
- 8 (g) Compatibility with economic development plans of the area and state;
- 9 (h) Type of business;
- 10 (i) Payroll, pay structure, and employee benefit structure; and
- 11 (j) Number of jobs created or retained; and
- 12 (2) Business feasibility factors:
 - 13 (a) The potential success of the business and the potential for creating quality jobs
 - 14 and the growth of those jobs;
 - 15 (b) The character, experience, management record, and background of the
 - 16 business management;
 - 17 (c) The economic feasibility of the project;
 - 18 (d) The financial status of the project, business plan, and applicant;
 - 19 (e) The satisfaction of engineering, legal, and environmental regulations; and
 - 20 (f) The availability of necessary public utilities.

21 Section 19. If the municipality has adopted a resolution to approve the municipal sales and
22 use tax incentives pursuant to section 3 of this Act, an application and business plan shall be
23 submitted to the Board of Economic Development. The board shall review the application and
24 business plan and determine whether to provide a matching grant from the business incentive

1 grant fund.

2 Section 20. There is hereby created in the state treasury the business incentive grant fund.
3 The Board of Economic Development may award grants from the fund for projects that create
4 jobs and economic benefits to the state. The board may accept and expend for the purposes of
5 this Act any funds obtained from appropriations or any other source if such acceptance and
6 expenditure is approved in accordance with § 4-8B-10. Interest earned on money in the fund
7 shall be deposited into the fund. Expenditures from this fund shall be appropriated through the
8 normal budgeting process.

9 Section 21. The Board of Economic Development shall promulgate rules pursuant to chapter
10 1-26 concerning the following:

- 11 (1) Establish application procedures for a business incentive grant;
- 12 (2) The submission of a business plan;
- 13 (3) Establish criteria to determine which applicant may receive a grant;
- 14 (4) Establish criteria for the terms and conditions upon which a grant may be made,
15 including performance criteria and matching requirements plan; and
- 16 (5) Determine the procedures for distributing the grant funds to the applicant.