

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

841T0684

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **SB 170** - 2/24/2012

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

Introduced by: Senators Frerichs, Buhl, Maher, and Vehle and Representatives Brunner, Fargen, Kloucek, Munsterman, Nelson (Stace), Schrempp, and Street

1 FOR AN ACT ENTITLED, An Act to repeal the large project development fund and the
2 appropriation therefor, to provide tax rebates for certain energy projects, to establish and
3 provide for the administration of the business incentive grant fund, and to make an
4 appropriation for the business incentive grant fund.

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

6 Section 1. That chapter 6 of the 2011 Session Laws be repealed.

7 Section 2. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any wind energy facility which installs wind turbines and operates the turbines to create
10 electrical energy is eligible for a rebate of the sales and use taxes and contractors' excise taxes
11 paid on the project. The wind energy facility is eligible for the rebate if the project has a
12 construction date on or after January 1, 2013, and the total project costs exceeds fifty million
13 dollars. For project costs incurred and paid after January 1, 2013, inclusive, the amount of the
14 rebate for the wind energy facility shall be determined by multiplying the nameplate capacity,



1 in megawatts, of the installed turbines by forty-five thousand dollars. The rebate is payable
2 when construction is complete and the sales and use taxes and contractors' excise taxes have
3 been paid in full.

4 Section 3. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any new business facility that is an environmental upgrade to an existing electric generation
7 facility is eligible for a rebate of the sales and use taxes and contractors' excise taxes paid on the
8 project. The new business facility is eligible for the rebate if the project has a construction date
9 on or after January 1, 2013, and the total project costs exceeds fifty million dollars. For project
10 costs incurred and paid after January 1, 2013, inclusive, the amount of the rebate for an
11 environmental upgrade shall be fifty percent of the total sales and use taxes and contractors'
12 excise taxes paid. The rebate is payable when construction is complete and the sales and use
13 taxes and contractors' excise taxes have been paid in full.

14 Section 4. That subdivision (6) of § 10-45B-1 be amended to read as follows:

15 (6) "Power generation facility," a facility with one power unit that generates electricity
16 with a nameplate capacity of no less than ~~five~~ three hundred megawatts;

17 Section 5. That § 1-16G-1.2 be amended to read as follows:

18 1-16G-1.2. The Board of Economic Development may take title by foreclosure to any
19 property given as security if the acquisition is necessary to protect any economic development
20 grant or loan or any business incentive grant made under pursuant to the provisions of this
21 chapter, and may sell, transfer, or convey any such property to any responsible buyer. Any sale
22 of property ~~hereunder~~ pursuant to the provisions of this chapter shall be performed in a
23 commercially reasonable manner. If the sale, transfer, or conveyance cannot be effected with
24 reasonable promptness, the board may, in order to prevent financial loss and sustain

1 employment, lease the property to a responsible tenant or tenants.

2 All sale proceeds or lease payments received by the board pursuant to this section shall be
3 deposited in the fund from which the original grant or loan was made.

4 Section 6. That § 1-16G-8 be amended to read as follows:

5 1-16G-8. The Board of Economic Development shall promulgate rules pursuant to chapter
6 1-26 concerning the following:

- 7 (1) The existing barriers to economic growth and development in the state;
- 8 (2) Developing investment in research and development in high technology industries;
- 9 (3) The submission of business plans prior to the approval of economic development
10 grants or loans or business incentive grants. Business plans shall include the products
11 or services to be offered by the applicant, job descriptions with attendant salary or
12 wage information by job category, educational requirements by job category,
13 methods of accounting, financing other than that provided by the economic
14 development grant or loan or a business incentive grant, and marketing, sales,
15 merchandising, and other disciplines proposed to be used for business growth and
16 expansion;
- 17 (4) The cooperation between agencies of state government and applicant businesses for
18 nonfinancial services including loan packaging, marketing assistance, research
19 assistance, and assistance with finding solutions for complying with environmental,
20 energy, health, safety, and other federal, state, and local laws and regulations;
- 21 (5) Regular performance monitoring and reporting systems for participating businesses
22 to assure compliance with their business plans ~~and~~, terms of repayment of an
23 economic development loan and compliance with terms of an economic development
24 grant or a business incentive grant;

- 1 (6) Establish eligibility criteria for grants and loans;
- 2 (7) Establish application procedures for grants and loans, including a requirement that
- 3 grant and loan applications be signed under penalty of perjury;
- 4 (8) Establish criteria to determine which applicants will receive grants or loans;
- 5 (9) Govern the use of proceeds of grants and loans;
- 6 (10) Establish criteria for the terms and conditions upon which loans shall be made,
- 7 including matching requirements, interest rates, repayment terms, and the terms of
- 8 security given to secure such loans; ~~and~~
- 9 (11) Establish criteria for the terms and conditions upon which grants shall be made,
- 10 including permitted uses, performance criteria, and matching requirements; and
- 11 (12) Establish criteria for the terms and conditions upon which grants shall be repaid for
- 12 noncompliance with the terms and conditions upon which the grant was made.

13 Section 7. That § 1-16G-16.1 be amended to read as follows:

14 1-16G-16.1. The Board of Economic Development may use the revolving economic
15 development and initiative fund for the purpose of paying taxes and liens and for the procuring
16 of legal services and other services necessary to protect, recover, maintain, and liquidate the
17 assets of the revolving economic development and initiative fund and the business incentive
18 grant fund. Such costs may be incurred and paid up to ten percent of the loan or grant balance
19 with a majority vote of the board of economic development. Costs in excess of ten percent shall
20 be approved by a two-thirds vote of the board. Such services are not subject to state bid laws
21 so long as such services are procured in a commercially acceptable manner.

22 Section 8. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Terms used in sections 8 to 13, inclusive, of this Act mean:

1 (1) "Large-scale project," a project with a total project cost exceeding five million
2 dollars;

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

5 Section 9. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
6 follows:

7 For the purposes of sections 8 to 13, inclusive, of this Act, the term, project, means a new
8 building or structure or the expansion of an existing building or structure, the construction of
9 which is subject to the contractors' excise tax imposed by chapters 10-46A or 10-46B. A project
10 includes laboratory and testing facilities, manufacturing facilities, power generation facilities,
11 power transmission facilities, agricultural processing facilities, and wind energy facilities. A
12 project does not include any building or structure:

13 (1) Used predominantly for the sale of products at retail, other than the sale of electricity
14 at retail, to individual consumers;

15 (2) Used predominantly for residential housing or transient lodging;

16 (3) Used predominantly to provide health care services;

17 (4) Constructed for raising or feeding of livestock; or

18 (5) That is not subject to ad valorem real property taxation or equivalent taxes measured
19 by gross receipts.

20 Section 10. That chapter 1-16G be amended by adding thereto a NEW SECTION to read
21 as follows:

22 There is established in the state treasury a fund to be known as the business incentive grant
23 fund for the purpose of making grants for large-scale project development. All money in the
24 business incentive grant fund is hereby continuously appropriated for the purpose of making

1 business incentive grants as provided in this chapter. Any repayment of grants from the business
2 incentive grant fund and any interest thereon shall be receipted into the business incentive grant
3 fund.

4 Section 11. That chapter 1-16G be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The Board of Economic Development may make business incentive grants from the business
7 incentive grant fund for the purpose of promoting large-scale project development in South
8 Dakota.

9 Section 12. That chapter 1-16G be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The Board of Economic Development may accept and expend for the purposes of sections
12 10 and 11 of this Act, any funds obtained from federal sources, gifts, contributions, or any
13 source if such acceptance and expenditure is approved in accordance with § 4-8B-10.

14 Section 13. That chapter 1-16G be amended by adding thereto a NEW SECTION to read
15 as follows:

16 There is hereby continuously appropriated to the business incentive grant fund the amount
17 of eighteen percent of all deposits into the general fund of the contractors' excise tax imposed
18 by chapter 10-46A and the alternate contractors' excise tax imposed by chapter 10-46B.
19 Transfers from the general fund to the business incentive grant fund pursuant to this provision
20 shall be made on a monthly basis by the Bureau of Finance and Management.

21 Section 14. The provisions of section 13 of this Act are effective on January 1, 2013.