

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

400V0268

## SENATE BILL NO. 55

Introduced by: The Committee on Taxation at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to repeal the contractor's excise tax on certain new or  
2 expanded power production facilities.

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

4 Section 1. That § 10-46C-1 be repealed.

5 ~~—10-46C-1. Any commercial power production facility, utilizing renewable resources, such~~  
6 ~~as sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2002, and~~  
7 ~~produces more than ten megawatts of electricity as measured by nameplate rating, and is owned~~  
8 ~~by a natural person, corporation, nonprofit or for profit business organization, or tribal council~~  
9 ~~(if the facility is located outside the boundaries of the reservation), irrigation district, drainage~~  
10 ~~district, or other political subdivision or agency of the state authorized by statute to carry on the~~  
11 ~~business of developing, transmitting, utilizing, or distributing electric power is subject to the~~  
12 ~~provisions of this chapter for any new or expanded facility.~~

13 Section 2. That § 10-46C-3 be repealed.

14 ~~—10-46C-3. Terms used in this chapter mean:~~

15 ~~—(1)—"Department," the Department of Revenue;~~



1 ~~— (2) — "New or expanded facility," a new commercial power production facility as defined~~  
2 ~~in § 10-46C-1 or an addition to an existing commercial power production facility, the~~  
3 ~~construction or installation of which is subject to contractors' excise tax pursuant to~~  
4 ~~chapter 10-46A or 10-46B;~~

5 ~~— (3) — "Project," the installation or construction of generation capacity of a new or expanded~~  
6 ~~facility, excluding any associated transmission facilities;~~

7 ~~— (4) — "Project cost," the amount of money incurred and paid after July 1, 2002, for a~~  
8 ~~project;~~

9 ~~— (5) — "Secretary," the secretary of the Department of Revenue.~~

10 Section 3. That § 10-46C-4 be repealed.

11 ~~— 10-46C-4. Notwithstanding the rate of taxation imposed by §§ 10-46A-1 and 10-46B-1, the~~  
12 ~~tax imposed under chapters 10-46A and 10-46B on a new or expanded facility shall be imposed~~  
13 ~~at a rate of one percent, and remitted to the state by the holder of the permit issued pursuant to~~  
14 ~~§ 10-46C-6.~~

15 Section 4. That § 10-46C-5 be repealed.

16 ~~— 10-46C-5. The owner shall file a tax return on or before December thirty-first of each year~~  
17 ~~reporting the project costs subject to tax under chapter 10-46A or 10-46B incurred during the~~  
18 ~~previous twelve months. The tax due from such return shall be paid in four equal annual~~  
19 ~~payments with the first payment due no later than December thirty-first following the filing of~~  
20 ~~the tax return. Each subsequent annual payment shall be made no later than December~~  
21 ~~thirty-first following the last payment.~~

22 Section 5. That § 10-46C-6 be repealed.

23 ~~— 10-46C-6. A person may pay the contractor's excise tax pursuant to § 10-46C-4 if the person~~  
24 ~~applies for and obtains a permit from the secretary at least thirty days prior to commencement~~

1 of the project. The application for a permit shall be submitted on a form prescribed by the  
2 secretary. A separate application shall be made and submitted for each project. Upon approval  
3 of the application, the secretary shall issue a permit to the applicant. The permit is not assignable  
4 or transferable except as collateral or security pursuant to chapter 57A-9.

5 Section 6. That § 10-46C-7 be repealed.

6 ~~10-46C-7. Any person aggrieved by the denial of a permit, may within thirty days after~~  
7 ~~service of the notice of a denial by the secretary, demand and is entitled to a hearing, upon~~  
8 ~~notice, before the secretary. The hearing shall be conducted pursuant to chapter 1-26.~~

9 Section 7. That § 10-46C-8 be repealed.

10 ~~10-46C-8. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:~~

- 11 ~~(1) Permitting, including the permit application;~~  
12 ~~(2) The filing of returns and payment of the tax;~~  
13 ~~(3) Determining the application of the tax and exemptions;~~  
14 ~~(4) Taxpayer and owner record-keeping requirements; and~~  
15 ~~(5) Determining auditing methods.~~

16 Section 8. That § 10-46C-9 be repealed.

17 ~~10-46C-9. If the secretary of revenue finds that the assessment or collection of the tax~~  
18 ~~required to be paid under this chapter is in jeopardy, the secretary may immediately make an~~  
19 ~~assessment of the estimated tax, penalty, or interest and demand payment from the owner. If the~~  
20 ~~payment is not made, a lien may be filed on the owner's real and personal property located in~~  
21 ~~the state and a distress warrant issued.~~

22 Section 9. That § 10-46C-10 be repealed.

23 ~~10-46C-10. Each person subject to tax or responsible for payment of tax under this chapter~~  
24 ~~shall keep records and books of all receipts and sales, together with invoices, bills of lading,~~

1 ~~copies of bills of sale, and other pertinent papers and documents. Such books and records and~~  
2 ~~other papers and documents shall, at all times during business hours of the day, be subject to~~  
3 ~~inspection by the secretary of revenue or the secretary's duly authorized agents and employees~~  
4 ~~to determine the amount of tax due. Such books and records shall be preserved for a period of~~  
5 ~~three years unless the secretary of revenue, in writing, authorized their destruction or disposal~~  
6 ~~at an earlier date.~~

7 Section 10. That § 10-46C-11 be repealed.

8 ~~10-46C-11. Any project receiving a permit for the payment of the tax pursuant to chapter~~  
9 ~~10-46C is not eligible for the refund provided in chapter 10-45B.~~