

# **SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL**

## **FISCAL NOTE, 2010 LEGISLATIVE SESSION**

### FISCAL NOTE 2010-HB1060A

HB 1060 revise certain provisions regarding the refunds for new or expanded agricultural facilities and the refunds for new or expanded business facilities and to declare an emergency.

#### Current Law - New Agricultural Processing Projects and Expansions

Tax on Project Costs From:

- \$0 to \$4.5 million – no refund
- \$4.5 million to unlimited – 100% refund

Taxes Covered: All contractors' excise tax, and sales and use tax collected on agricultural processing equipment

#### Current Law – New Business Projects and Expansions

Tax on Project Costs From:

- \$0 to \$10 million – no refund
- \$10 million to \$15 million – 25% refund
- \$15 million to \$20 million – 33% refund
- \$20 million to \$40 million – 50% refund
- \$40 million to \$60 million – 67% refund
- \$60 million to \$600 million – 75% refund
- \$600 million to unlimited – 90% refund

Taxes Covered: All contractors' excise tax and all sales and use tax

#### HB 1060

Combines New Agricultural Processing Projects and New Business Projects

Tax on Project Costs From:

- \$0 to \$25 million – no refund
- \$25 million to \$250 million – 50% refund
- \$250 million to unlimited – no refund

Taxes Covered: Same as current systems

Projects Covered: Same as current systems

#### Fiscal Impact (BFM)

Under HB 1060, The Bureau of Finance and Management (BFM) estimates a savings to the state general fund of \$3,560,645 in sales and use tax and contractors' excise tax as a result of fewer taxes refunded in FY11. This represents approximately a 50% reduction from what would have been refunded under the current program in FY11. BFM has made the following assumptions in their estimate:

- BFM used the amounts of sales and use tax and contractors' excise tax retained for the five months of FY10 to prorate a total tax retained for FY10.
- BFM reduced the total taxes retained in FY10 by 2/3 to calculate the total for FY11. This was done primarily due to current economic conditions.
- BFM used a median of 18 active projects currently in the refund program to compare estimated refunds under the current program against estimated refunds under HB 1060. Using this sample of 18 active projects, HB 1060 provided approximately a 50% reduction in the amount of refunds compared to the current program.
- The savings to the State is only realized when a project starts construction after HB 1060 becomes effective because the refund will be less.

Monthly Refund Withholdings	July	Aug	Sept	Oct	Nov	First Five Monthly Ave.
First 5 months of FY2010						
Sales/Use Tax	657,203.00	751,396.51	2,612,545.71	610,239.31	709,582.38	1,068,193.38
CET	438,135.20	500,931.00	1,741,697.15	406,826.21	473,054.93	712,128.90
<b>Total</b>	<b>1,095,338.20</b>	<b>1,252,327.51</b>	<b>4,354,242.86</b>	<b>1,017,065.52</b>	<b>1,182,637.31</b>	<b>1,780,322.28</b>
Using the first five months average of \$1,780,322.28 retained each month and prorating for FY2010 equals						21,363.867
Economic Adj. for FY2011 Refund Withholdings on Current system (decreased estimated FY2010 withholding by 2/3 for FY2011)						7,121.289
Change from withholding 100% of the Use tax to 50% of Use tax and associated CET (50% decrease in withholding for FY2011)						3,560.645
<b>Estimated Net Increase in Sales tax and Contractor's excise tax revenue for FY2011 as result of HB 1060</b>						<b>3,560.645</b>

### LRC Review

LRC believes the BFM baseline is a reasonable basis for a conservative estimate. However, we are aware of projects which could begin construction in FY11. If so, this could increase available general funds by up to \$5 million in FY11. It is possible that there may be additional project starts that could further increase savings.

Higher estimates may result in more dollars available to the State. However, it is important to point out that there is significant danger of over-appropriating funds if the higher estimates are used as the basis of Legislative action and then the projects do not then materialize.

Changes to this estimate will not impact the amounts refunded to individual companies.

BFM does not concur with any upwards adjustment of their baseline estimate.

This fiscal note was prepared in consultation with the Bureau of Finance and Management, pursuant to Chapter 6C of the Joint Rules of the Legislature.

APPROVED BY:                     Signed by Mr. Jim Fry                     DATE:   2/4/2010