



2021 South Dakota Legislature

House Bill 1024

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

1 **An Act to repeal obsolete provisions and revise statutory cross-references for the**
 2 **energy minerals severance tax, state and municipal sales taxes, contractor's**
 3 **excise tax, alcohol licenses, and gaming tax.**

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

5 **Section 1.** That § 10-39A-3 be REPEALED.

6 **10-39A-3. Collection and administration according to mineral severance tax**
 7 **procedures.**

8 **Section 2.** That § 10-39A-7 be AMENDED.

9 **10-39A-7. Severance tax in lieu of taxes other than sales, use, and property**
 10 **taxes.**

11 This tax is in lieu of the ~~tax provided in § 10-39-24~~ and in lieu of all other
 12 occupational, excise, income, privilege, franchise taxes, and any other mineral taxes
 13 levied by the ~~State of South Dakota~~ state, but is not in lieu of sales, use, and property
 14 taxes.

15 **Section 3.** That § 10-39A-8 be AMENDED.

16 **10-39A-8. Proceeds distributed.**

17 All taxes, interest and penalties imposed and collected by the secretary ~~of revenue~~
 18 under this chapter shall be distributed as follows:

- 19 (1) One-half shall be returned to the county in which the energy minerals or mineral
 20 products were severed; and
 21 (2) One-half share shall be paid into the state treasury and credited to the general fund.

22 **Section 4.** That § 10-39A-9 be AMENDED.

1 **10-39A-9. Funds paid to counties.**

2 Funds paid to counties under this chapter shall be paid out on warrants drawn by
3 the state auditor on vouchers approved by the ~~director of the Office of Economic~~
4 ~~Development or his designee~~ secretary.

5 **Section 5.** That § 10-39A-11 be REPEALED.

6 **10-39A-11. Prepayment of county share of tax.**

7 **Section 6.** That § 10-39A-12 be REPEALED.

8 **10-39A-12. Prepayment to be voluntary--Compulsion as malfeasance.**

9 **Section 7.** That § 10-39A-13 be REPEALED.

10 **10-39A-13. Prepayment limited to county portion of tax.**

11 **Section 8.** That § 10-39A-14 be REPEALED.

12 **10-39A-14. Computation of tax due--Credit for tax prepaid.**

13 **Section 9.** That § 10-39B-2 be AMENDED.

14 **10-39B-2. Imposition of tax--Rate--Payment--Disposition--Collection.**

15 There is imposed on the severance of energy minerals in this state an excise tax,
16 to be known as a conservation tax, equal to two and four-tenths mills of the taxable value
17 of any energy minerals severed and saved. The tax shall be paid by the operator as defined
18 in subdivision 10-39A-1.1(3). An operator may not pass the tax on to the owner of the
19 energy minerals. The tax provided for in this chapter shall be placed in the environment
20 and natural resources fee fund established pursuant to § 1-40-30 and collected in
21 accordance with chapter ~~10-39A~~ except that ~~§§ 10-39A-1, 10-39A-3, and 10-39A-7 to 10-~~
22 ~~39A-14, inclusive, do not apply to the tax imposed by this chapter~~ 10-59. The tax collected
23 from the production of oil or gas may be used to carry out the duties as set forth in chapter
24 45-9. The tax collected from the production of coal or uranium may be used to carry out
25 the duties as set forth in chapters 45-6B and 45-6D.

26 **Section 10.** That § 10-45-61 be AMENDED.

1 **10-45-61. Exemption certificate--Responsibilities of purchaser--Violation as**
2 **misdemeanor--Retention of certificate--Rules and forms.**

3 ~~Notwithstanding § 10-54-1, a~~ A seller, who possesses an exemption certificate
4 from a purchaser of tangible personal property, any product transferred electronically, or
5 services ~~which~~ that indicates the items or services being purchased are exempt, may rely
6 on the exemption certificate and not charge sales tax to the provider of the exemption
7 certificate until the provider of the exemption certificate gives notice that the items or
8 services being purchased are no longer exempt by filing a new exemption certificate with
9 the seller.

10 The exemption certificate shall be signed by the purchaser. The exemption certificate
11 shall provide the purchaser's name, address, and valid state tax license number, if
12 applicable. However, any person filing an electronic exemption certificate is not required
13 to sign the exemption certificate.

14 The purchaser claiming the protection of an exemption certificate is responsible for
15 assuring that the goods and services delivered thereafter are of a type covered by the
16 exemption certificate. A seller of property, any product transferred electronically, or
17 services which are generally described under the exemption certificate is not responsible
18 for the collection of the tax unless otherwise directed by the purchaser.

19 If the purchaser later determines there is any tax due and owing, the purchaser shall
20 remit the tax owed by the purchaser to the state. If the purchaser makes an exempt
21 purchase and later determines that the goods or services purchased are not exempt, the
22 purchaser shall report the transaction and pay the use tax on the next filing of the
23 purchaser's return.

24 Any purchaser who knowingly files an exemption certificate with a retailer in order to
25 purchase tangible personal property, any product transferred electronically, or services
26 with the intent to evade payment of the tax, and fails to timely report the same with the
27 department is guilty of a Class 1 misdemeanor. The secretary of revenue may assess a
28 penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest may
29 be charged on the penalty.

30 The seller shall retain the exemption certificate for a period of three years from the
31 date it is filed by the purchaser and provide the exemption certificate to the department
32 upon request.

33 The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for
34 exemption certificates.

35 **Section 11.** That § 10-46A-1.2 be AMENDED.

1 **10-46A-1.2. Contracts subject to tax imposed by chapter 10-46B.**

2 The tax imposed upon contractors performing realty improvement contracts for
3 those persons subject to tax under chapter 10-28, 10-33,~~10-34~~, 10-35, 10-36 or 10-36A
4 or any municipal telephone company subject to chapter 9-41 or any rural water system is
5 not subject to this chapter and the contracts are subject to the contractors' excise tax
6 imposed by chapter 10-46B.

7 **Section 12.** That § 10-52-3 be AMENDED.

8 **10-52-3. Referendum procedure and scope--Continuing tax ordinances.**

9 Any tax imposed by the governing board of any municipality pursuant to the
10 provisions of this chapter, may be referred to a vote of the people for its approval or
11 disapproval in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax
12 imposed by municipal ordinance which was in effect on December 31, 2003, is continued
13 under the provisions of this chapter if:

- 14 (1) The governing board of the municipality has reviewed the existing tax ordinance to
15 determine compliance with the provisions of this chapter; and
16 (2) The governing board of the municipality documents the review, any amendment,
17 and the intent to continue the tax in the official minutes of the governing board.

18 Any amendment made by the municipality to comply with the provisions of chapter
19 10-45C, §§ 10-1-44.3, 10-45-1 to 10-45-1.4, inclusive, 10-45-2.3, 10-45-3.4, 10-45-5,
20 10-45-5.3, 10-45-8, 10-45-24, 10-45-30, 10-45-61, 10-45-108 and 10-45-109, 10-46-
21 1, 10-46-17.6, 10-52-2, 10-52-2.10, 10-52-3, 10-52-9, 10-52-13 to ~~10-52-16~~, inclusive,
22 10-52-14, and 10-59-27 or the determination to continue the tax under the provisions of
23 this chapter is deemed to be an administrative decision pursuant to § 9-20-19 and is not
24 subject to referendum.

25 **Section 13.** That § 10-52-15 be REPEALED.

26 **10-52-15. Legislative findings--Certain municipalities not to reduce tax**
27 **levies.**

28 **Section 14.** That § 10-52A-15 be REPEALED.

29 **10-52A-15. Legislative findings--Limitations on reduction of tax levy.**

30 **Section 15.** That § 35-2-12 be AMENDED.

1 **35-2-12. Investigation--Revocation or suspension proceedings.**

2 If the secretary receives information of a violation by any licensee of any provision
3 of this title, the secretary shall investigate the alleged violation. If there is substantial
4 evidence to support that a violation of any provision of this title has occurred, the secretary
5 shall proceed in accordance with the provisions of §§ 35-2-10, ~~35-20-10.1~~ 35-2-10.1, and
6 35-2-21.

7 **Section 16.** That § 42-7-89 be AMENDED.

8 **42-7-89. Payments to state in lieu of other taxes.**

9 The payments required in §§ 42-7-63, 42-7-79, 42-7-85, ~~42-7-88~~, and 42-7-102
10 to be made by the licensee to the state treasurer are in lieu of all other or further excise
11 or occupational taxes to the state or any county, municipality, or other political
12 subdivision.

13 **Section 17.** That § 42-7B-48.1 be AMENDED.

14 **42-7B-48.1. Distribution of funds following payment to City of Deadwood.**

15 Disbursements from the Gaming Commission fund shall be as set forth in § 42-7B-
16 48 until such time as the net municipal proceeds paid to the City of Deadwood equals six
17 million eight hundred thousand dollars for each year, and after payment of commission
18 expenses pursuant to subdivision 42-7B-48(2), and after payment of one hundred
19 thousand dollars to the State Historical Preservation Grant and Loan fund pursuant to
20 subdivision ~~42-7B-48(4)~~ 42-7B-48(3). Thereafter, all remaining funds shall be distributed
21 as follows:

- 22 (1) Seventy percent to the state general fund;
- 23 (2) Ten percent to be distributed to municipalities in Lawrence County, except the City
24 of Deadwood, pro rata according to their population;
- 25 (3) Ten percent to be distributed to school districts, pro rata based upon the previous
26 year's average daily membership, located in whole or in part, in Lawrence County.
27 For any school district located only partly in Lawrence County, only that portion of
28 the district's average daily attendance which represents students residing in
29 Lawrence County shall be considered in calculating the proration required by this
30 subdivision; and
- 31 (4) Ten percent to the City of Deadwood for deposit in the historic restoration and
32 preservation fund.

1 **Section 18.** That § 42-7B-54 be AMENDED.

2 **42-7B-54. Anticipatory revenue bonds.**

3 The City of Deadwood may issue revenue bonds in anticipation of the receipt of net
4 municipal proceeds as provided in subdivision ~~42-7B-48(4)~~ 42-7B-48(3). The proceeds of
5 the sale of such revenue bonds shall be deposited in the Deadwood historic restoration
6 and preservation fund and used for the purposes thereof. The revenue bonds shall be
7 payable solely from the net municipal proceeds, and the city shall, in the ordinance or
8 resolution authorizing the revenue bonds, irrevocably pledge and appropriate so much of
9 the net municipal proceeds received by the city as may be necessary for the payment of
10 the revenue bonds and the restoration of any reserves established in connection with the
11 bonds. The principal amount of any issue of revenue bonds may not exceed the sum of
12 the estimated capital needs of the historic restoration and preservation fund for the
13 current and next three succeeding fiscal years of the city, a debt service reserve fund not
14 exceeding the maximum annual debt service on the issue, the premium for bond insurance
15 or other credit enhancement for the issue and the estimated cost of issuance of the
16 revenue bonds. The revenue bonds shall be authorized, issued and sold as provided in
17 chapter 6-8B, except that no election is required to authorize the issuance of the bonds.