



2025 South Dakota Legislature

House Bill 1165

Introduced by: **Representative Gosch**

1 **An Act to provide a means by which an agricultural producer can reject the**
 2 **imposition of an assessment on crops.**

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

4 **Section 1. That § 38-10-20 be AMENDED:**

5 **38-10-20.** In connection with and in furtherance of the policy and purpose
 6 declared in § 38-10-1, the wheat commission may promulgate rules pursuant to chapter
 7 1-26 concerning:

- 8 (1) The procedures for obtaining a declaratory ruling;
 9 (2) The procedures for fee collection for wheat sold either in-state or out-of-state;
 10 (3) The procedures for obtaining a refund of the fee; ~~and~~
 11 (4) The procedures for collecting delinquent fees and assessing penalties; and
 12 (5) The creation, distribution, and utilization of a form by which a grower may refuse
 13 the assessment and imposition of a promotional fee, as set forth in § 38-10-22.

14 **Section 2. That § 38-10-22 be AMENDED:**

15 **38-10-22.** There is hereby assessed a promotional fee of four-tenths of one
 16 percent of the value of the net market price per bushel upon all wheat sold through
 17 commercial channels ~~in the State of South Dakota. The fee shall~~ this state. Except as
 18 otherwise provided for in section 3 of this Act, the fee must be assessed and imposed on
 19 the grower at the time of sale or delivery, and ~~shall~~ must be collected and remitted by the
 20 first purchaser in the manner described by the commission ~~pursuant to administrative,~~ in
 21 rules promulgated pursuant to chapter 1-26. No wheat is subject to the fee more than
 22 once.

23 **Section 3. That a NEW SECTION be added to chapter 38-10:**

1 A grower may refuse the assessment and imposition of the promotional fee as set
 2 forth in § 38-10-22, by completing a refusal form at the time of settlement. The form
 3 must contain the grower's name, mailing address, date, and signature. The commission
 4 shall provide the form to each purchaser of wheat and make the form available on its
 5 website.

6 **Section 4. That § 38-10-24 be AMENDED:**

7 **38-10-24.** ~~The~~Unless otherwise refused by the grower in accordance with section
 8 3 of this Act, the fee established pursuant to § 38-10-22, shall must be deducted, as
 9 provided by this chapter, whether such wheat is stored or sold in this or any other state.
 10 ~~However, if agreements have not been made with dealers~~ If collected, a dealer outside of
 11 the state ~~for collecting shall remit~~ the fee to the wheat commission, or the grower shall
 12 remit the fee to the wheat commission, ~~as provided in administrative rules promulgated~~
 13 ~~pursuant to chapter 1-26 on all wheat so sold by him outside the state.~~

14 **Section 5. That § 38-10-28 be AMENDED:**

15 **38-10-28.** In the case of a pledge or mortgage of wheat as security for a loan
 16 under the federal price support program, unless otherwise refused by the grower in
 17 accordance with section 3 of this Act, the fee-assessed by established pursuant to § 38-
 18 10-22 shall must be deducted from the proceeds of ~~such the~~ loans at the time the loans
 19 are made, or be deducted thereafter by agencies of the federal government, ~~and~~. A
 20 producer's note and loan agreement ~~(commodity loan Form B) or, a~~ producer's note and
 21 supplemental loan agreement ~~(commodity loan Form A),~~ or delivery instructions
 22 ~~(commodity purchaser Form 3)~~ issued by the federal agency to the grower are hereby
 23 approved as fulfilling the requirements for invoices, and the approved forms ~~herein~~
 24 ~~approved shall be~~ are deemed to constitute proof of payment of ~~such the~~ promotional fee
 25 on the wheat listed thereon.

26 **Section 6. That § 38-10-33 be AMENDED:**

27 **38-10-33.** If any person, ~~business or entity,~~ public or private, has not refused the
 28 assessment and imposition of the promotional fee and is thereby subject to the payment
 29 of the fee under § 38-10-22, and if the person fails to make a report and remittance ~~when~~
 30 ~~and~~ as required in this chapter, the executive director of the wheat commission shall
 31 determine the amount of ~~such the~~ fee according to ~~his~~ the director's best judgment and

1 information, which amount so fixed ~~shall~~ must be prima facie correct, and ~~such the person~~
 2 ~~so having who~~ failed to make ~~such the~~ report shall, within ten days after notice of the
 3 amount of the fee so fixed and computed by the director is mailed to ~~such the~~ person, pay
 4 ~~said the~~ fee, together with a penalty of five percent on the amount of the fee ~~or he may~~.
 5 The person may dispute the fee as fixed by the director and request the commission to
 6 hold a hearing to determine the amount of the fee and penalty to be imposed. No payment
 7 may be made until the commission enters its order determining the amount of ~~such the~~
 8 payment, but ~~such shall be paid~~ once determined, payment must be made within ten days
 9 of notice of such decision.

10 **Section 7. That § 38-10-34 be AMENDED:**

11 **38-10-34.** ~~Any person, firm, or corporation subject to~~ If any person who has paid
 12 the fee provided in this chapter ~~that objects to the collection of the fee payment, the~~
 13 person may, within sixty days following the ~~collection payment,~~ apply to the wheat
 14 commission for a refund of the fee. Upon the return of the refund application, accompanied
 15 by a true, legible record of the invoices delivered by the purchaser to the grower, the
 16 commission shall, within thirty days, refund the net amount of the fee ~~collected~~ paid to
 17 the grower. If no request for refund has been made within sixty days after the ~~collection~~
 18 payment of the fee, the grower ~~shall be~~ is conclusively presumed to have agreed to the
 19 deduction fee.

20 **Section 8. That § 38-27-8.1 be AMENDED:**

21 **38-27-8.1.** The council may promulgate rules pursuant to chapter 1-26
 22 concerning:
 23 (1) The procedures for obtaining a declaratory ruling;
 24 (2) The procedures for assessments collected for sunflowers, safflowers, canola, or flax
 25 grown or sold to a first purchaser;
 26 (3) The procedures for obtaining a refund of the assessment;
 27 (4) The procedures for collecting delinquent assessments and assessing penalties; ~~and~~
 28 (5) The record-keeping and reporting requirements of first purchasers; and
 29 (6) The creation, distribution, and utilization of a form by which a grower may refuse
 30 the imposition of an assessment, as set forth in § 38-27-11.

31 **Section 9. That § 38-27-11 be AMENDED:**

1 **38-27-11.** An assessment at the rate of four cents per hundredweight ~~shall~~ must
2 be levied and imposed upon all sunflowers, safflowers, and canola grown in the state or
3 sold to a first purchaser, and an assessment at the rate of one cent per bushel ~~shall~~ must
4 be levied and imposed upon all flax grown in the state or sold to a first purchaser. ~~The~~
5 Except as otherwise provided for in section 10 of this Act, the assessment is due upon any
6 identifiable lot or quantity of sunflowers, safflowers, canola, or flax.

7 **Section 10. That a NEW SECTION be added to chapter 38-27:**

8 A grower may refuse the assessment imposed in accordance with § 38-27-11, by
9 completing a refusal form at the time of settlement. The form must contain the grower's
10 name, mailing address, date, and signature. The council shall provide the form to each
11 first purchaser of sunflowers, safflowers, canola, or flax and make the form available on
12 its website.

13 **Section 11. That § 38-27-12 be AMENDED:**

14 **38-27-12.** ~~Any~~ Unless otherwise refused by the grower in accordance with section
15 10 of this Act, the first purchaser of sunflowers, safflowers, canola, or flax shall collect the
16 assessment imposed by this chapter by charging and collecting from the ~~seller~~ grower the
17 assessment at the prescribed rate, by deducting the assessment from the purchase price
18 of all sunflowers, safflowers, canola, or flax subject to the assessment and purchased by
19 the first purchaser.

20 **Section 12. That § 38-27-16 be AMENDED:**

21 **38-27-16.** ~~Any~~ If any grower subject to who has paid the assessment provided in
22 this chapter objects to the payment, the grower may, within sixty days following the
23 assessment, ~~may~~ payment, make application to the oilseeds council for a refund of the
24 assessment payment. Upon return of the refund application accompanied by a record of
25 the ~~assessment~~ payment by the first purchaser, the grower shall, within sixty days, be
26 refunded the net amount of the ~~assessment~~ collected payment.

27 ~~However, a~~ A grower, for any reason, having who paid the assessment more than
28 once on the same sunflowers, safflowers, canola, or flax, is, upon furnishing proof of this
29 to the council, ~~is~~ entitled to a refund of the overpayment.

30 **Section 13. That § 38-27-17 be AMENDED:**

1 **38-27-17.** The oilseeds council, to inform the grower, shall develop and
 2 disseminate information and instructions relating to the purpose of the oilseeds
 3 assessment, the manner by which payment of an assessment may be refused, and the
 4 manner in which refunds may be claimed, ~~and to this extent shall cooperate with~~
 5 ~~governmental agencies, state and federal, and private businesses engaged in the purchase~~
 6 ~~of sunflowers, safflowers, canola, or flax.~~

7 **Section 14. That § 38-29-1 be AMENDED:**

8 **38-29-1.** Terms used in this chapter, unless the context plainly otherwise requires,
 9 mean:

- 10 (1) "Council," the South Dakota Soybean Research and Promotion Council;
- 11 (2) "First purchaser," any person who initially places soybeans, whether as an owner
 12 or agent, into the channels of trade and commerce, or who is engaged in the
 13 processing of soybeans into any form. However, a grower who sells unharvested
 14 soybeans, or delivers soybeans from the farm on which they are produced to
 15 storage facilities, packing shed, or processing plant, within the state, is not a first
 16 purchaser;
- 17 (3) "Grower," any person who plants, raises, and harvests soybeans from more than
 18 ten acres;
- 19 (4) "Participating grower," a grower who has not refused to pay an assessment or
 20 requested a refund from the payment of assessments on soybean production under
 21 this chapter for a particular year and any person who owns or operates an
 22 agricultural producing or growing facility for soybeans and shares in the profits and
 23 risks of loss from such operation, and who produces soybeans in South Dakota
 24 during the current or preceding marketing year;
- 25 (5) "Secretary," the secretary of the South Dakota Department of Agriculture and
 26 Natural Resources;
- 27 (6) "Soybean," all varieties of soybeans marketed or harvested within the state; and
- 28 (7) "Net market price," the sale price received by a producer for soybeans after
 29 adjustments for any premium or discount based on grading or quality factors.

30 **Section 15. That § 38-29-7.1 be AMENDED:**

31 **38-29-7.1.** The council may promulgate rules pursuant to chapter 1-26
 32 concerning:

- 33 (1) The procedures for obtaining a declaratory ruling;

- 1 (2) The procedures for assessments collected for soybeans grown or sold to a first
 2 purchaser;
- 3 (3) The procedures for obtaining a refund of the assessment;
- 4 (4) The procedures for collecting delinquent assessments and assessing penalties;
- 5 (5) The record-keeping and reporting requirements of first purchasers; ~~and~~
- 6 (6) The requirements governing grants and loans made pursuant to § 38-29-7,
 7 including eligibility requirements and requirements for application, awards, and
 8 administration; and
- 9 (7) The creation, distribution, and utilization of a form by which a grower may refuse
 10 the imposition of an assessment as set forth in § 38-29-8.

11 **Section 16. That § 38-29-9 be AMENDED:**

12 **38-29-9.** Any first purchaser of soybeans shall collect the assessment imposed by
 13 this chapter by deducting the assessment from the purchase price of all soybeans subject
 14 to the assessment and purchased by the first purchaser. This section does not apply if a
 15 grower has refused imposition of the assessment by completing and providing the first
 16 purchaser with a refusal form. The form must contain the grower's name, mailing address,
 17 date, and signature. The council shall provide the form to each first purchaser of soybeans
 18 and shall make the form available on its website.

19 **Section 17. That a NEW SECTION be added:**

20 A grower may refuse the imposition of the assessment as set forth in § 38-29-8,
 21 by completing a refusal form at the time of settlement. The form must contain the grower's
 22 name, mailing address, date, and signature. The commission shall provide the form to
 23 each purchaser of soybeans and make the form available on its website.

24 **Section 18. That § 38-32-1 be AMENDED:**

25 **38-32-1.** Terms used in this chapter mean:

26 (1) "Bushel," fifty-six pounds of corn by weight;

27 (2) "Corn," all varieties of corn marketed within the state except sweet corn, popcorn,
 28 or seed corn;

29 (3) "Council," the South Dakota Corn Utilization Council;

30 (4) "First purchaser," any person who buys, accepts for shipment, or otherwise
 31 acquires corn from a grower, except any mortgagee, pledgee, lienor, or other

1 person having a claim against a grower if actual or constructive possession of such
 2 corn is taken as partial payment or in satisfaction of such mortgage, pledge, lien,
 3 or claim. However, first purchaser does not include sales between growers not for
 4 resale;

5 (5) "Grower," any person who plants, raises, and harvests corn;

6 (6) "Participating grower," a grower who has not refused to pay an assessment or
 7 requested a refund from the payment of assessments on corn production under
 8 this chapter for a particular year, and any person who owns or operates an
 9 agricultural producing or growing facility for corn and shares in the profits and risks
 10 of loss from such operation, and who produces corn in South Dakota during the
 11 current or preceding marketing year;

12 (7) "Secretary," the secretary of the South Dakota Department of Agriculture and
 13 Natural Resources.

14 **Section 19. That § 38-32-14 be AMENDED:**

15 **38-32-14.** The council may promulgate rules pursuant to chapter 1-26
 16 concerning:

17 (1) The procedures for obtaining a declaratory ruling;

18 (2) The procedures for assessments collected for corn sold to a first purchaser;

19 (3) The procedures for obtaining a refund of the assessment;

20 (4) The procedures for collecting delinquent assessments and assessing penalties;

21 (5) The record keeping and reporting requirements of first purchasers; ~~and~~

22 (6) Procedures, forms, public notices, and other requirements for nominating director
 23 candidates and for conducting and certifying elections; and

24 (7) The creation, distribution, and utilization of a form by which a grower may refuse
 25 the imposition of an assessment, as set forth in § 38-32-15.

26 **Section 20. That § 38-32-16 be AMENDED:**

27 **38-32-16.** Every first purchaser of corn shall collect the assessment imposed by
 28 this chapter by deducting the assessment from the purchase price of all corn subject to
 29 the assessment and purchased by the first purchaser. This section does not apply if a
 30 grower has refused imposition of the assessment by completing and providing the first
 31 purchaser with a refusal form. The form must contain the grower's name, mailing address,
 32 date, and signature. The council shall provide the form to each first purchaser of soybeans
 33 and shall make the form available on its website.

1 **Section 21. That § 38-32-20 be AMENDED:**

2 **38-32-20.** ~~Any~~If any grower subject to who has paid the assessment provided for
 3 in this chapter objects to the payment, the grower may, within sixty days following ~~such~~
 4 the assessment, make application to the council for a refund of the assessment. Upon ~~the~~
 5 return of the refund application, accompanied by a record of the assessment by the first
 6 purchaser, the grower shall, within sixty days, be refunded the net amount of the
 7 assessment collected. ~~However, a~~A grower who has paid the assessment more than once
 8 on the same corn is entitled to a refund of the overpayment.

9 **Section 22. That § 38-34-1 be AMENDED:**

10 **38-34-1.** Terms used in this chapter mean:
 11 (1) "Council," the South Dakota Pulse Crop Council;
 12 (2) "First purchaser," any person, firm, corporation, association, partnership, agent,
 13 or broker buying, accepting for sale, or otherwise acquiring pulse crops after
 14 harvest from a grower. A grower selling unharvested pulse crops or delivering pulse
 15 crops from the farm on which they are produced to storage facilities, packing shed,
 16 or processing plant is not a first purchaser;
 17 (3) "Grower," any person who is the legal initial owner of pulse crops harvested from
 18 more than ten acres;
 19 (4) "Participating grower," a grower who has not refused to pay an assessment or
 20 requested a refund from the payment of assessments on pulse crops under this
 21 chapter for the current or previous year;
 22 (5) "Pulse crops," lentils, dry peas, chickpeas, and lupines;
 23 (6) "Secretary," the secretary of the Department of Agriculture and Natural Resources.

24 **Section 23. That § 38-34-8 be AMENDED:**

25 **38-34-8.** The council shall promulgate rules pursuant to chapter 1-26 concerning:
 26 (1) The procedures for obtaining a declaratory ruling;
 27 (2) The procedures by which assessments are collected for pulse crops grown or sold
 28 to a first purchaser;
 29 (3) The procedures for obtaining a refund of the assessment;
 30 (4) The procedures for collecting delinquent assessments and assessing penalties; ~~and~~
 31 (5) The record-keeping and reporting requirements of first purchasers; and

1 (6) The creation, distribution, and utilization of a form by which a grower may refuse
 2 the imposition of an assessment, as set forth in § 38-34-10.

3 **Section 24. That a NEW SECTION be added:**

4 A grower may refuse the imposition of an assessment as set forth in § 38-34-10
 5 by completing a refusal form at the time of settlement. The form must contain the grower's
 6 name, mailing address, date, and signature. The council shall provide the form to each
 7 purchaser of pulse crops and make the form available on its website.

8 **Section 25. That § 38-34-10 be AMENDED:**

9 **38-34-10.** ~~An~~ Except as otherwise provided for in section 24 of this Act, an
 10 assessment at the rate of one percent of the net market price is levied and imposed on
 11 any pulse crop grown or sold in ~~South Dakota~~ this state to a first purchaser. The council
 12 may enter into reciprocal agreements with other states that also have a pulse checkoff to
 13 remit the assessment to the state where the crop is grown. This assessment is due on any
 14 identifiable lot or quantity of a pulse crop.

16 **Section 26. That § 38-34-11 be AMENDED:**

17 **38-34-11.** ~~Each~~ Unless otherwise refused by the grower, each first purchaser of
 18 pulse crops shall collect the assessment imposed by this chapter by charging and collecting
 19 from the seller the assessment at the prescribed rate, by deducting the assessment from
 20 the purchase price of the crops subject to the assessment and purchased by the first
 21 purchaser. The assessments ~~shall~~ must be paid to the department within thirty days of
 22 the end of each calendar quarter.

24 **Section 27. That § 38-34-14 be AMENDED:**

25 **38-34-14.** In the case of a pledge or mortgage of pulse crops as security for a
 26 loan under the federal price support program, unless otherwise refused by the grower in
 27 accordance with section 24 of this Act, the assessment established under § 38-34-10 ~~shall~~
 28 must be deducted from the proceeds of the loan at the time the loan is made, or be
 29 deducted thereafter by agencies of the federal government. The producer's note and loan
 30 agreement, producer's note and supplemental loan agreement, or delivery instructions
 31 issued by the federal agency to the grower fulfill the requirements for invoices, and these

1 documents constitute proof of payment of the assessment on the pulse crops. Forms
2 supplemental or alternate to those approved in this section that are provided by the
3 Commodity Credit Corporation of the United States Department of Agriculture and contain
4 the necessary information may be used for the purposes of this section. Identification
5 numbers created by the Commodity Credit Corporation for use in lieu of the name of the
6 grower from whom the assessment was collected are approved, if authorized officials of
7 ~~the State of South Dakota~~ this state have access at all reasonable times to records in the
8 United States Department of Agriculture Farm Service Agency county offices showing the
9 names of growers to whom such identification numbers have been assigned.

10

11 **Section 28. That § 38-34-18 be AMENDED:**

12 **38-34-18.** ~~Any~~ If any grower subject to who has paid the assessment provided in
13 this chapter objects to the payment, the grower may, within sixty days following the
14 assessment, may apply to the council for a refund of the assessment. Upon return of the
15 refund application accompanied by a record of the assessment by the first purchaser, the
16 grower shall, within sixty days, be refunded the net amount of the assessment collected.
17 Additionally, a grower, who for any reason, pays the assessment more than once on the
18 same pulse crops, upon furnishing proof of this to the council, is entitled to a refund of
19 the overpayment.

20

21 **Section 29. That § 38-34-19 be AMENDED:**

22 **38-34-19.** The council shall develop and disseminate information and instructions
23 relating to the purpose of the pulse crop assessment, the manner by which payment of
24 an assessment may be refused, and the manner in which refunds may be claimed.