

2025 South Dakota Legislature

House Bill 1165**AMENDMENT 1165B
FOR THE HOUSE AGRICULTURE AND NATURAL RESOURCES
ENGROSSED BILL**

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 ~~(5) The process by which the imposition of a promotional fee may be refused.~~

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

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

24 **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 be developed by the Department of Agriculture and Natural Resources, contain the
 4 grower's name, mailing address, date, and signature, and be available on the
 5 department's website. The commission shall provide the form to each purchaser of wheat
 6 and make the form available on its website.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 3 (1) The procedures for obtaining a declaratory ruling;
4 (2) The procedures for assessments collected for soybeans grown or sold to a first
5 purchaser;
6 (3) The procedures for obtaining a refund of the assessment;
7 (4) The procedures for collecting delinquent assessments and assessing penalties;
8 (5) The record-keeping and reporting requirements of first purchasers; ~~and~~
9 (6) The requirements governing grants and loans made pursuant to § 38-29-7,
10 including eligibility requirements and requirements for application, awards, and
11 administration; and

12 ~~(7) The creation, distribution, and utilization of a form by which a grower may refuse~~
13 ~~the imposition of an assessment as set forth in § 38-29-8~~

14 ~~(7) The process by which the imposition of an assessment may be refused.~~

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

16 **38-29-9.** Any first purchaser of soybeans shall collect the assessment imposed by
17 this chapter by deducting the assessment from the purchase price of all soybeans subject
18 to the assessment and purchased by the first purchaser. This section does not apply if a
19 grower has refused imposition of the assessment by completing and providing the first
20 purchaser with a refusal form. The form must be developed by the Department of
21 Agriculture and Natural Resources, contain the grower's name, mailing address, date, and
22 signature, and be available on the department's website. ~~The council shall provide the~~
23 ~~form to each first purchaser of soybeans and shall make the form available on its website.~~

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

25 A grower may refuse the imposition of the assessment as set forth in § 38-29-8,
26 by completing a refusal form at the time of settlement. The form must be developed by
27 the Department of Agriculture and Natural Resources, contain the grower's name, mailing
28 address, date, and signature, and be available on the department's website. ~~The~~
29 ~~commission shall provide the form to each purchaser of soybeans and make the form~~
30 ~~available on its website.~~

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

- 1 **38-32-1.** Terms used in this chapter mean:
- 2 (1) "Bushel," fifty-six pounds of corn by weight;
- 3 (2) "Corn," all varieties of corn marketed within the state except sweet corn, popcorn,
4 or seed corn;
- 5 (3) "Council," the South Dakota Corn Utilization Council;
- 6 (4) "First purchaser," any person who buys, accepts for shipment, or otherwise
7 acquires corn from a grower, except any mortgagee, pledgee, lienor, or other
8 person having a claim against a grower if actual or constructive possession of such
9 corn is taken as partial payment or in satisfaction of such mortgage, pledge, lien,
10 or claim. However, first purchaser does not include sales between growers not for
11 resale;
- 12 (5) "Grower," any person who plants, raises, and harvests corn;
- 13 (6) "Participating grower," a grower who has not refused to pay an assessment or
14 requested a refund from the payment of assessments on corn production under
15 this chapter for a particular year, and any person who owns or operates an
16 agricultural producing or growing facility for corn and shares in the profits and risks
17 of loss from such operation, and who produces corn in South Dakota during the
18 current or preceding marketing year;
- 19 (7) "Secretary," the secretary of the South Dakota Department of Agriculture and
20 Natural Resources.

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

- 22 **38-32-14.** The council may promulgate rules pursuant to chapter 1-26
23 concerning:
- 24 (1) The procedures for obtaining a declaratory ruling;
- 25 (2) The procedures for assessments collected for corn 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;
- 28 (5) The record keeping and reporting requirements of first purchasers; ~~and~~
- 29 (6) Procedures, forms, public notices, and other requirements for nominating director
30 candidates and for conducting and certifying elections; and
- 31 ~~(7) The creation, distribution, and utilization of a form by which a grower may refuse~~
32 ~~the imposition of an assessment, as set forth in § 38-32-15~~
- 33 (7) The process by which the imposition of an assessment may be refused.

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

2 **38-32-16.** Every first purchaser of corn shall collect the assessment imposed by
3 this chapter by deducting the assessment from the purchase price of all corn subject to
4 the assessment and purchased by the first purchaser. This section does not apply if a
5 grower has refused imposition of the assessment by completing and providing the first
6 purchaser with a refusal form. The form must be developed by the Department of
7 Agriculture and Natural Resources, contain the grower's name, mailing address, date, and
8 signature, and be available on the department's website. ~~The council shall provide the~~
9 ~~form to each first purchaser of corn and shall make the form available on its website.~~

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

11 **38-32-20.** ~~Any~~ If any grower subject to who has paid the assessment provided for
12 in this chapter objects to the payment, the grower may, within sixty days following ~~such~~
13 ~~the~~ assessment, make application to the council for a refund of the assessment. Upon ~~the~~
14 return of the refund application, accompanied by a record of the assessment by the first
15 purchaser, the grower shall, within sixty days, be refunded the net amount of the
16 assessment collected. ~~However, a~~ A grower who has paid the assessment more than once
17 on the same corn is entitled to a refund of the overpayment.

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

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

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

- 2 **38-34-8.** The council shall promulgate rules pursuant to chapter 1-26 concerning:
- 3 (1) The procedures for obtaining a declaratory ruling;
- 4 (2) The procedures by which assessments are collected for pulse crops grown or sold
- 5 to a first purchaser;
- 6 (3) The procedures for obtaining a refund of the assessment;
- 7 (4) The procedures for collecting delinquent assessments and assessing penalties; ~~and~~
- 8 (5) The record-keeping and reporting requirements of first purchasers; and
- 9 ~~(6) The creation, distribution, and utilization of a form by which a grower may refuse~~
- 10 ~~the imposition of an assessment, as set forth in § 38-34-10~~
- 11 ~~(6) The process by which the imposition of an assessment may be refused.~~

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

13 A grower may refuse the imposition of an assessment as set forth in § 38-34-10

14 by completing a refusal form at the time of settlement. The form must be developed by

15 the Department of Agriculture and Natural Resources, contain the grower's name, mailing

16 address, date, and signature, and be available on the department's website. ~~The council~~

17 shall provide the form to each purchaser of pulse crops and make the form available on

18 its website.

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

20 **38-34-10.** ~~An~~ Except as otherwise provided for in section 24 of this Act, an

21 assessment at the rate of one percent of the net market price is levied and imposed on

22 any pulse crop grown or sold in ~~South Dakota~~ this state to a first purchaser. The council

23 may enter into reciprocal agreements with other states that also have a pulse checkoff to

24 remit the assessment to the state where the crop is grown. This assessment is due on any

25 identifiable lot or quantity of a pulse crop.

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

27 **38-34-11.** ~~Each~~ Unless otherwise refused by the grower, each first purchaser of

28 pulse crops shall collect the assessment imposed by this chapter by charging and collecting

29 from the seller the assessment at the prescribed rate, by deducting the assessment from

30 the purchase price of the crops subject to the assessment and purchased by the first

1 purchaser. The assessments ~~shall~~ must be paid to the department within thirty days of
2 the end of each calendar quarter.

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

4 **38-34-14.** In the case of a pledge or mortgage of pulse crops as security for a
5 loan under the federal price support program, unless otherwise refused by the grower in
6 accordance with section 24 of this Act, the assessment established under § 38-34-10 ~~shall~~
7 must be deducted from the proceeds of the loan at the time the loan is made, or be
8 deducted thereafter by agencies of the federal government. The producer's note and loan
9 agreement, producer's note and supplemental loan agreement, or delivery instructions
10 issued by the federal agency to the grower fulfill the requirements for invoices, and these
11 documents constitute proof of payment of the assessment on the pulse crops. Forms
12 supplemental or alternate to those approved in this section that are provided by the
13 Commodity Credit Corporation of the United States Department of Agriculture and contain
14 the necessary information may be used for the purposes of this section. Identification
15 numbers created by the Commodity Credit Corporation for use in lieu of the name of the
16 grower from whom the assessment was collected are approved, if authorized officials of
17 ~~the State of South Dakota~~ this state have access at all reasonable times to records in the
18 United States Department of Agriculture Farm Service Agency county offices showing the
19 names of growers to whom such identification numbers have been assigned.

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

21 **38-34-18.** ~~Any~~ If any grower subject to who has paid the assessment provided in
22 this chapter objects to the payment, the grower, within sixty days following the
23 assessment, may apply to the council for a refund of the assessment. Upon return of the
24 refund application accompanied by a record of the assessment by the first purchaser, the
25 grower shall, within sixty days, be refunded the net amount of the assessment collected.
26 Additionally, a grower, who for any reason, pays the assessment more than once on the
27 same pulse crops, upon furnishing proof of this to the council, is entitled to a refund of
28 the overpayment.

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

1 **38-34-19.** The council shall develop and disseminate information and instructions
2 relating to the purpose of the pulse crop assessment, the manner by which payment of
3 an assessment may be refused, and the manner in which refunds may be claimed.

AMENDED