

Minutes: Senate Taxation

Wednesday, January 28, 2026 10:00 AM

Roll Call

Present: Sen. Crabtree, Sen. Grove, Sen. Blanc, Sen. Davis, Sen. Hulse, Sen. Hohn, and Sen. Peterson (Sue)

The meeting was called to order by Senator Peterson (Sue)

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, JANUARY 21ST

Moved by: Grove
Second by: Hulse
Action: Prevailed by voice vote

SB 97 : adjust a limit on the percentage increase in revenue payable from property taxes.

Presented by: Senator Randy Deibert

Proponents: Jim Terwilliger, Bureau of Finance and Management
Heath VonEye, City Of Harrisburg (Handout(s) #1)
Eric Jennings, Self
Shawn Pritchett, City of Sioux Falls
Savanna Cruz, South Dakota Police Chiefs Association
Garth Wadsworth, Elevate Rapid City
Mitch Rave, Greater Sioux Falls Chamber of Commerce
Heath Larson, Associated School Boards of South Dakota
Ryan Budmayr, South Dakota Chamber of Commerce & Industry
Sara Rankin, South Dakota Municipal League
Eric Erickson, South Dakota Association of County Commissioners
Justin Weiland, City of Tea
Joe Kippley, Minnehaha County Commissioner, Minnehaha County

MOTION: DO PASS SB 97

Moved by: Crabtree
Second by: Davis
Action: Prevailed by Majority Members Elect (6-1-0-0)

Voting Yes: Crabtree, Grove, Davis, Hulse, Hohn, and Peterson (Sue)

Voting No: Blanc

SB 99 : create the property tax local effort replacement fund, to reduce certain property taxes, and to increase the rates for certain gross receipts taxes and use taxes.

Presented by: Senator Jim Mehlhaff

Opponents: Derek Johnson, Bureau of Finance and Management
Nathan Sanderson, South Dakota Retailers Association
Matthew Bogue, South Dakota Farm Bureau Federation

MOTION: AMEND SB 99

99C

On page 1, line 2, of the Introduced bill, after "taxes," insert " to reduce the sales and use tax rates on food,"

On page 2, after line 4, of the Introduced bill, insert: "

Section 2. That § 10-45-1 be AMENDED:**10-45-1.** Terms used in this chapter mean:

- (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes. The harvesting of timber on land within the state is considered an agricultural purpose;
- (2) "Business," any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit, or advantage, either direct or indirect;
- (3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The term, candy, does not include any preparation containing flour and does not require refrigeration;
- (4) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property, any product transferred electronically, or services including transportation, shipping, postage, handling, crating, and packing. The term does not include postage for direct mail;
- (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. ~~The term, food, does~~
These terms do not include alcoholic beverages, tobacco, or prepared food:
 - (a) Alcoholic beverages, as defined in § 35-1-1;
 - (b) Cannabis or cannabis products, as defined in § 34-20G-1;
 - (c) Cigarettes, as defined in § 10-50B-4;
 - (d) Prepared food; or
 - (e) Tobacco products, as defined in § 10-50-1;
- (6) Repealed by SL 2007, ch 56, § 1.
- (7) "Person," any individual, firm, copartnership, joint adventure, association, limited liability company, corporation, municipal corporation, estate, trust, business trust, receiver, the State of South Dakota and its political subdivisions, or any group or combination acting as a unit;
- (8) "Prepared food," any ~~food~~:
 - (a) Food sold in a heated state or heated by the seller; ~~two~~
 - (b) Two or more food ingredients mixed or combined by the seller for sale as a single item; ~~or food~~
 - (c) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. ~~A, but a~~ plate does not include a container or packaging used to transport the food.

Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses;

- (8A) "Product transferred electronically," any product obtained by the purchaser by means other than tangible storage media. A product transferred electronically does not include any intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.
- (9) "Relief agency," the state, and county, municipality or district thereof, or any agency engaged in actual relief work;
- (10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;
- (11) "Retailer," any person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this chapter, and the sale at retail of products transferred electronically. The term also includes any person subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible personal property or any product transferred electronically at retail by a person who does not hold himself or herself out as engaging in the business of selling such tangible personal property or products transferred electronically at retail does not constitute such person a retailer;
- (12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
- (13) "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume;
- (14) "Tangible personal property," personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software."

On page 2, line 7, of the Introduced bill, delete " two-tenths" and insert " one-half"

On page 5, after line 11, of the Introduced bill, insert: "

Section 11. That a NEW SECTION be added to chapter 10-45:

The rate imposed by this chapter upon the gross receipts of all sales of food and food ingredients, as defined by § 10-45-1, is zero percent."

On page 5, after line 11, of the Introduced bill, insert: "

Section 12. That § 10-46-1 be AMENDED:

10-46-1. Terms, as used in this chapter mean:

- (1) "Business," any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit or advantage either direct or indirect;
- (2) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The term, candy, does not include any preparation containing flour and does not require refrigeration;

- (3) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property, any product transferred electronically, or services including transportation, shipping, postage, handling, crating, and packing. The term does not include postage for direct mail;
- (4) "Fair market value," the price at which a willing seller and willing buyer will trade. Fair market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property or any product transferred electronically that will be used in the performance of a contract, fair market value shall be determined pursuant to § 5-18B-7. This definition also applies to chapter 10-45;
- (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. ~~The term, food, does~~
These terms do not include alcoholic beverages, tobacco, or prepared food:
 - (a) Alcoholic beverages, as defined in § 35-1-1;
 - (b) Cannabis or cannabis products, as defined in § 43-20G-1;
 - (c) Cigarettes, as defined in § 10-50B-4;
 - (d) Prepared food; or
 - (e) Tobacco products, as defined in § 34-20G-1;
- (6) "Included in the measure of tax," the tangible personal property, any product transferred electronically, or the service was purchased from a retailer licensed under chapter 10-45 and that retailer has included the tax in the amount received from the sale;
- (7) "In this state" or "in the state," within the exterior limits of the State of South Dakota and includes all territory within such limits owned by or ceded to the United States of America;
- (8) "Prepared food," any food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.
 Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses;
- (8A) "Product transferred electronically," any product obtained by the purchaser by means other than tangible storage media. A product transferred electronically does not include any intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.
- (9) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. A transaction, whereby the possession of property is transferred but the seller retains the title as security for the payment of the price, is a purchase;
- (10) "Purchase price," shall have the same meaning as gross receipts defined in chapter 10-45;
- (11) "Retailer," any person performing services in this state or engaged in the business of selling tangible personal property or products transferred electronically for use, storage or other consumption within the meaning of this chapter. However, if in the opinion of the secretary of revenue, it is necessary for the efficient administration of this chapter to regard any salesmen,

- representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property or any product transferred electronically sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the secretary of revenue may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter;
- (12) "Retailer maintaining a place of business in the state," any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agents operating within the state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily or whether such retailer or subsidiary is admitted to do business within this state pursuant to the laws of the State of South Dakota granting the rights of foreign corporations to do business in this state;
 - (13) "Secretary," the secretary of the Department of Revenue or any duly authorized and appointed assistant, deputies, or agents of the secretary charged with the administration or enforcement of this chapter;
 - (14) "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice of similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume;
 - (15) "Storage," any keeping or retention in this state for use or other consumption in the State of South Dakota for any purpose except sale in the regular course of business;
 - (16) "Tangible personal property," personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses if furnished or delivered to consumers or users within this state. The term includes electricity, water, gas, steam, and prewritten computer software;
 - (17) "Use," the exercise of right or power over tangible personal property or any product transferred electronically incidental to the ownership of that property, except that it does not include the sale of that property in the regular course of business. Use also includes the use of the types of services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by chapter 10-45, and the delivery or causing delivery into this state of tangible personal property or any product transferred electronically intended to advertise any product or service or promote or facilitate any sale to South Dakota residents."

On page 5, line 15, of the Introduced bill, delete " two-tenths" and insert " one-half"

On page 6, line 10, of the Introduced bill, delete " 25" and insert " 29"

On page 7, line 17, of the Introduced bill, after "is" delete " hereby"

On page 7, after line 18, of the Introduced bill, insert: "

Section 20. That a NEW SECTION be added to chapter 10-46:

The rate of tax imposed by this chapter upon the use, storage, or consumption in this state of food and food ingredients is zero percent."

On page 7, line 21, of the Introduced bill, delete " two-tenths" and insert " one-half"

On page 7, line 30, of the Introduced bill, delete " 25" and insert " 29"

On page 8, line 3, of the Introduced bill, delete " two-tenths" and insert " one-half"

On page 8, line 10, of the Introduced bill, delete " 25" and insert " 29"

On page 10, line 3, of the Introduced bill, after "10-46E;" insert " and"

On page 10, line 4, of the Introduced bill, after "10-58" delete "; and

(5) § 32-5B-20"

On page 13, line 23, of the Introduced bill, after "zero-tenths." delete "Section 28. That § 32-5B-20 be AMENDED:

"

On page 13, line 24, of the Introduced bill, after "AMENDED:" delete "32-5B-20. "

On page 13, line 24, of the Introduced bill, after "32-5B-20. " delete "There is hereby imposed a tax of four and two-tenths, at the rate of six and two-tenths percent, upon the gross receipts of any person renting a rental vehicle as defined in § 32-5B-19. This tax applies to all vehicles registered in accordance with § 32-5-6, 32-5-8. 1, or 32-5-9. Any rental vehicle not licensed in accordance with § 32-5-6, 32-5-8. 1, or 32-5-9 is subject to the motor vehicle excise tax in § 32-5B-1.

The tax imposed by this section is in addition to any tax levied pursuant to chapter 10-45 or 10-46 upon the rental of a rental vehicle. The provisions of chapter 10-45 apply to the administration and enforcement of the tax imposed by this section. The tax imposed by this section is in lieu of the tax levied by § 32-5B-1 on the sales of such motor vehicles. A violation of this section is a Class 1 misdemeanor."

On page 14, line 1, of the Introduced bill, after "misdemeanor." delete "Section 29. That § 32-5B-25 be AMENDED:

"

On page 14, line 2, of the Introduced bill, after "AMENDED:" delete "32-5B-25. "

On page 14, line 2, of the Introduced bill, after "32-5B-25. " delete "All Except as otherwise provided, all excise taxes collected on the purchase of an off-road vehicle as provided by § 32-5B-1 shall must be deposited in the state general fund.

The treasurer shall deposit in the local effort replacement fund, established in section 25 of this Act, thirty-two and three-tenths percent of the taxes collected by the secretary of the Department of Revenue pursuant to § 32-5B-20."

On page 15, line 4, of the Introduced bill, delete " 20" and insert " 24"

On page 15, line 4, of the Introduced bill, delete " sections 25, 28, and" and insert " section"

On page 15, line 5, of the Introduced bill, delete " July" and insert " January"

Moved by: Crabtree

Second by: Blanc

Action: Prevailed by voice vote

MOTION: DEFER SB 99 TO THE 41ST LEGISLATIVE DAY

Moved by: Crabtree

Second by: Davis

Action: Prevailed by Majority Members Elect (6-1-0-0)

Voting Yes: Crabtree, Grove, Davis, Hulse, Hohn, and Peterson (Sue)

Voting No: Blanc

MOTION: ADJOURN

Moved by: Crabtree

Second by: Hohn

Action: Prevailed by voice vote

Amy Hansen, Committee Secretary

/s/ SUE PETERSON
Sue Peterson, Chair