



2026 South Dakota Legislature

House Bill 1218

Introduced by: **Representative Hughes**

1 **An Act to create a new class of nonagricultural property for purposes of taxation,**
 2 **and to provide a penalty therefor.**

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

4 **Section 1. That a NEW SECTION be added to chapter 10-6:**

5 For purposes of this title, "nonagricultural property" means property classified
 6 under subdivisions 10-6-110(2) and (3).

7 **Section 2. That § 10-6-110 be AMENDED:**

8 **10-6-110.** For the purposes of taxation, all property is ~~hereby~~ classified into the
 9 following classes:

- 10 (1) Agricultural property;
 11 (2) ~~Nonagricultural-Commercial-investor nonagricultural property; and~~
 12 (3) Commercial-operator nonagricultural property; and
 13 (4) Owner-occupied single-family dwellings.

14 Agricultural property includes any land classified as agricultural land pursuant to
 15 § 10-6-112 and any improvements on the agricultural land used exclusively for
 16 agricultural purposes. ~~However, agricultural~~ Agricultural property does not include ~~any~~
 17 ~~normally an~~ an occupied dwelling ~~or~~ or automobile garage ~~or~~ or portion of a building used for that
 18 purpose by the occupant of ~~such~~ the dwelling.

19 Owner-occupied single-family dwellings include all property classified pursuant to
 20 § 10-13-39.

21 Nonagricultural property includes all ~~other~~ property not ~~otherwise~~ classified as
 22 agricultural property or owner-occupied single-family dwellings, and further classified
 23 under section 4 of this Act.

24 The director, in listing and assessing all property to which this section applies, shall
 25 designate opposite each description the class to which the property belongs.

1 **Section 3. That a NEW SECTION be added to chapter 10-6:**

2 Terms used in sections 3 to 7, inclusive, of this Act, mean:

- 3 (1) "Ownership holder," an individual holding title, a revocable living trust in which the
4 grantor is the current beneficiary, or an entity beneficially owned entirely by an
5 individual;
- 6 (2) "Family business," a commercial property, except residential property, where the
7 ownership holder or the qualified spouse materially participated for at least ten
8 years, provided the term does not extend to a commercial property after the
9 termination of the natural life of the ownership holder and, if applicable, the
10 qualified spouse;
- 11 (3) "Material participation," involvement in the day-to-day management and
12 operations contributing to the commercial activity of a property on a regular,
13 continuous, and substantial basis, as described in 26 U.S.C § 469(h) (March 11,
14 2021) and 26 C.F.R § 1.469-5T (April 1, 1996);
- 15 (4) "Qualified entity," a partnership, joint venture, limited liability company, or
16 corporation owned more than fifty percent by the ownership holder or a qualified
17 relative of the ownership holder, where the owners of at least forty percent of the
18 beneficial interest of the limited liability company or corporation materially
19 participate;
- 20 (5) "Qualified relative," a spouse, child, step-child, parent, grandparent, sibling, uncle,
21 aunt, niece, or nephew of the ownership holder; and
- 22 (6) "Qualified spouse," a spouse, or an unremarried widow, of the ownership holder or
23 of a qualified relative.

24 **Section 4. That a NEW SECTION be added to chapter 10-6:**

25 For purposes of classifying property for taxation, the following property is classified
26 as commercial-operator nonagricultural property:

- 27 (1) A family business; and
- 28 (2) Nonagricultural property, except residential property, where the ownership holder,
29 qualified entity, qualified spouse, or qualified relative materially participates.
- 30 Nonagricultural property that is not classified as commercial-operator
31 nonagricultural property is classified as commercial-investor nonagricultural property.

32 **Section 5. That a NEW SECTION be added to chapter 10-6:**

1 Prior to August first of each year, an ownership holder may submit to the director
2 of equalization an application to reclassify property, for the purpose of taxation, as
3 commercial-operator nonagricultural property. The secretary of the department shall
4 develop the application form. The ownership holder shall include in the application any
5 documentary evidence required by the director to verify eligibility for the reclassification.

6 Within thirty days of receiving a request, the director shall determine whether the
7 property meets the criteria provided in section 4 of this Act for classification as
8 commercial-operator nonagricultural property. If the property meets the criteria, the
9 director must classify the property as commercial-operator nonagricultural property for
10 the following tax year.

11 An aggrieved person may appeal the determination of the director pursuant to
12 chapter 1-26.

13 It is a Class 1 misdemeanor for an ownership holder to knowingly misrepresent the
14 facts of the application.

15 **Section 6. That a NEW SECTION be added to chapter 10-6:**

16 To renew the classification of property as commercial-operator nonagricultural
17 property, the ownership holder shall, prior to August first of each year, submit an affidavit
18 to the director of equalization attesting to the eligibility of the property as commercial-
19 operator nonagricultural property. The secretary of the department shall prescribe forms
20 for purposes of submitting an affidavit under this section.

21 If an ownership holder fails to submit an application to renew the classification of
22 the property prior to the date provided in this section, the director of equalization must
23 reclassify the property as commercial-investor nonagricultural property for the following
24 tax year.

25 **Section 7. That a NEW SECTION be added to chapter 10-6:**

26 If an application or affidavit submitted pursuant to section 5 or 6 of this Act, is
27 approved and the director determines that the ownership holder knowingly
28 misrepresented the facts on the application or affidavit, the county auditor must assess
29 a penalty on the property equal to two thousand five hundred dollars, for each year in
30 which the property was wrongly classified as commercial-operator nonagricultural
31 property.

32 If an application or affidavit, submitted pursuant to section 5 or 6 of this Act, is
33 approved and the director determines that the ownership holder negligently

1 misrepresented the facts on the application or affidavit, the county auditor must assess a
2 penalty on the property equal to five hundred dollars for each year in which the property
3 was wrongly classified as commercial-operator nonagricultural property.

4 The county treasurer shall deposit any civil penalty collected under this section in
5 the county general fund.

6 **Section 8. That § 10-12-42 be AMENDED:**

7 **10-12-42.** For taxes payable in 2026, and each year thereafter, the levy for the
8 general fund of a school district is as follows:

9 (1) ~~The~~ Except as otherwise provided in this section, the maximum tax levy on
10 nonagricultural property is five dollars and twenty-one and one-tenth cents per
11 thousand dollars of taxable valuation, ~~subject to the limitations on agricultural~~
12 ~~property as provided in subdivision (2) of this section and owner-occupied property~~
13 ~~as provided in subdivision (3) of this section;~~

14 (2) The maximum tax levy on agricultural property for the school district is one dollar
15 and twelve and five-tenths cents per thousand dollars of taxable valuation. If the
16 district's levies are less than the maximum levies as stated in this section, the
17 levies must maintain the same proportion to each other as represented in the
18 mathematical relationship at the maximum levies; and

19 (3) The maximum tax levy for an owner-occupied single-family dwelling pursuant to
20 § 10-13-40 for the school district is two dollars and fifty-one and eight-tenths cents
21 per thousand dollars of taxable valuation. If the district's levies are less than the
22 maximum levies as stated in this section, the levies must maintain the same
23 proportion to each other as represented in the mathematical relationship at the
24 maximum levies.

25 For taxes payable in 2028 and each year thereafter, the maximum levy for the
26 general fund of a school district, for commercial-operator nonagricultural property, must
27 be at least twenty-five percent lower than the maximum levy for nonagricultural property
28 provided in subdivision (1) of this section.

29 All levies in this section must be imposed on valuations where the median level of
30 assessment represents eighty-five percent of market value as determined by the
31 Department of Revenue. These valuations must be used for all school funding purposes.
32 If the district has imposed an excess levy pursuant to § 10-12-43, the levies must
33 maintain the same proportion to each other as represented in the mathematical

1 relationship at the maximum levies in this section. The school district may elect to tax at
2 less than the maximum amounts set forth in this section.

3 **Section 9.** Section 8 of this Act is effective beginning July 1, 2027.