



2026 South Dakota Legislature

House Bill 1281

Introduced by: **Representative Muckey**

1 **An Act to reduce the sales and use tax rates on food, to increase the rates for certain**
 2 **taxes, use taxes, and excise taxes, and to provide a new fund for school**
 3 **district capital outlay projects.**

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

5 **Section 1. That § 10-45-1 be AMENDED:**

6 **10-45-1.** Terms used in this chapter mean:

- 7 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
 8 fiber upon agricultural land, including dairy products, livestock, and crops. The
 9 services of custom harvesters, chemical applicators, fertilizer spreaders, hay
 10 grinders, and cultivators are considered agricultural purposes. The harvesting of
 11 timber on land within the state is considered an agricultural purpose;
- 12 (2) "Business," any activity engaged in by any person or caused to be engaged in by
 13 such person with the object of gain, benefit, or advantage, either direct or indirect;
- 14 (3) ~~"Candy," any preparation of sugar, honey, or other natural or artificial sweeteners~~
 15 ~~in combination with chocolate, fruits, nuts or other ingredients or flavorings in the~~
 16 ~~form of bars, drops, or pieces. The term, candy, does not include any preparation~~
 17 ~~containing flour and does not require refrigeration;~~
- 18 (4) ~~"Delivery charges," charges by the retailer for preparation and delivery to a location~~
 19 ~~designated by the purchaser of tangible personal property, any product transferred~~
 20 ~~electronically, or services including transportation, shipping, postage, handling,~~
 21 ~~erating, and packing. The term does not include postage for direct mail;~~
- 22 (5) ~~"Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,~~
 23 ~~frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans~~
 24 ~~and is consumed for its taste or nutritional value. The term, food, does These terms~~
 25 ~~do not include alcoholic beverages, tobacco, or prepared food;~~
- 26 (a) Alcoholic beverages, as defined in § 35-1-1;

- 1 **(b) Cannabis or cannabis products, as defined in § 34-20G-1;**
 2 **(c) Cigarettes, as defined in § 10-50B-4;**
 3 **(d) Prepared food; or**
 4 **(e) Tobacco products, as defined in § 10-50-1;**
 5 ~~(6)~~ ~~Repealed by SL 2007, ch 56, § 1.~~
 6 ~~(7)~~(4) "Person," any individual, firm, copartnership, joint adventure, association, limited
 7 liability company, corporation, municipal corporation, estate, trust, business trust,
 8 receiver, the State of South Dakota and its political subdivisions, or any group or
 9 combination acting as a unit;
 10 ~~(8)~~(5) "Prepared food," any ~~food~~:
 11 **(a) Food** sold in a heated state or heated by the seller; ~~two~~
 12 **(b) Two** or more food ingredients mixed or combined by the seller for sale as a
 13 single item; ~~or food~~
 14 **(c) Food** sold with eating utensils provided by the seller, including plates,
 15 knives, forks, spoons, glasses, cups, napkins, or straws. ~~A, but a~~ plate does
 16 not include a container or packaging used to transport the food.
 17 Prepared food does not include food that is only cut, repackaged, or pasteurized
 18 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal
 19 foods requiring cooking by the consumer as recommended by the Food and Drug
 20 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
 21 so as to prevent food borne illnesses;
 22 ~~(8A)~~(6) "Product transferred electronically," any product obtained by the purchaser by
 23 means other than tangible storage media. A product transferred electronically does
 24 not include any intangible such as a patent, stock, bond, goodwill, trademark,
 25 franchise, or copyright.;
 26 ~~(9)~~(7) "Relief agency," the state, and county, municipality or district thereof, or any
 27 agency engaged in actual relief work;
 28 ~~(10)~~(8) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other
 29 than for resale, sublease, or subrent;
 30 ~~(11)~~(9) "Retailer," any person engaged in the business of selling ~~tangible~~:
 31 **(a) Tangible** goods, wares, or merchandise at retail, ~~or the furnishing of gas;~~
 32 **(b) Gas,** electricity, water, and communication service, ~~and tickets;~~
 33 **(c) Tickets** or admissions to places of amusement and athletic events as
 34 provided in this chapter, ~~and the sale at retail of products;~~ and
 35 **(d) Products** transferred electronically at retail.

1 The term ~~also includes~~ does not include any person ~~subject to the tax imposed by~~
 2 ~~§§ 10-45-4 and 10-45-5. The~~ that engages in the isolated or occasional sale of tangible
 3 personal property or of any product transferred electronically at retail ~~by a,~~ provided the
 4 person ~~who~~ does not hold ~~himself or herself~~ itself out to the public as engaging in the
 5 business of selling ~~such~~ tangible personal property or products transferred electronically
 6 at retail ~~does not constitute such person a retailer;~~

7 ~~(12)(10)~~ "Sale," any transfer, exchange, or barter, conditional or otherwise, in any
 8 manner or by any means whatsoever, for a consideration; and

9 ~~(13)~~ "Soft drinks," any nonalcoholic beverages ~~that contain natural or artificial~~
 10 sweeteners. ~~The term, soft drinks, does not include any beverage that contains~~
 11 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
 12 percent of vegetable or fruit juice by volume;

13 ~~(14)(11)~~ "Tangible personal property," personal property that can be seen, weighed,
 14 measured, felt, or touched, or that is in any other manner perceptible to the
 15 senses. The term includes electricity, water, gas, steam, and prewritten computer
 16 software.

17 **Section 2. That § 10-45-2 be AMENDED:**

18 **10-45-2.** There is ~~hereby~~ imposed a tax upon the privilege of engaging in business
 19 as a retailer, ~~a tax of four and two tenths~~ at the rate of five percent upon the gross receipts
 20 of all sales of tangible personal property consisting of goods, wares, or merchandise,
 21 except as otherwise provided in this chapter, sold at retail in the state to consumers or
 22 users.

23 **Section 3. That § 10-45-5 be AMENDED:**

24 **10-45-5.** There is imposed a tax, at the rate of four and two tenths percent set
 25 forth in § 10-45-2, upon the gross receipts of any person from engaging or continuing in
 26 any of the following businesses or services in this state: ~~abstracters~~

27 (1) Abstracters;

28 (2) accountants Accountants;

29 (3) ancillary Ancillary services;

30 (4) architects Architects;

31 (5) barbers Barbers;

32 (6) beauty Beauty shops;

33 (7) bill Bill collection services;

- 1 (8) ~~blacksmith~~Blacksmith shops;
- 2 (9) ~~car~~Car washing;
- 3 (10) ~~dry~~Dry cleaning;
- 4 (11) ~~dyeing~~Dyeing;
- 5 (12) ~~exterminators~~Exterminators;
- 6 (13) ~~garage~~Garage and service stations;
- 7 (14) ~~garment~~Garment alteration;
- 8 (15) ~~cleaning~~Cleaning and pressing;
- 9 (16) ~~janitorial~~Janitorial services and supplies;
- 10 (17) ~~specialty~~Specialty cleaners;
- 11 (18) ~~laundry~~Laundry;
- 12 (19) ~~linen~~Linen and towel supply;
- 13 (20) ~~membership~~Membership or entrance fees for the use of a facility or for the right to
- 14 purchase tangible personal property, any product transferred electronically, or
- 15 services;
- 16 (21) ~~photography~~Photography;
- 17 (22) ~~photo~~Photo developing and enlarging;
- 18 (23) ~~tire~~Tire recapping;
- 19 (24) ~~welding~~Welding and all repair services, except repair services for farm machinery,
- 20 attachment units, and irrigation equipment used exclusively for agricultural
- 21 purposes;
- 22 (25) ~~cable~~Cable television; and
- 23 (26) ~~rentals~~Rentals of tangible personal property, ~~except leases of tangible personal~~
- 24 property between one telephone company and another telephone company, motor
- 25 vehicles as defined pursuant to § 32-5-1 leased under a single contract for more
- 26 than twenty-eight days, and mobile homes. ~~However, the~~
- 27 The specific enumeration of businesses and professions made in this section does
- 28 not, in any way, limit the scope and effect of the provisions of § 10-45-4.

29 **Section 4. That § 10-45-5.3 be AMENDED:**

30 **10-45-5.3.** There is imposed, at the rate of ~~four and two-tenths percent~~ set forth

31 in § 10-45-2, an excise tax on the gross receipts of any person engaging in oil and gas

32 field services ~~(, group no. 138),~~ as enumerated in the Standard Industrial Classification

33 Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management

34 and Budget, Office of the President.

1 **Section 5. That § 10-45-6 be AMENDED:**

2 **10-45-6.** There is ~~hereby~~ imposed a tax ~~of four and two tenths percent, at the~~
3 rate set forth in § 10-45-2, upon the gross receipts from sales, furnishing, or service of
4 gas, electricity, and water, including the gross receipts from ~~such the~~ sales by any
5 municipal corporation furnishing gas, and electricity, to the public in its proprietary
6 capacity, except as otherwise provided in this chapter, when sold at retail in ~~the State of~~
7 South Dakota this state to consumers or users.

8 **Section 6. That § 10-45-6.1 be AMENDED:**

9 **10-45-6.1.** Except as provided in § 10-45-6.2, there is ~~hereby~~ imposed a tax ~~of~~
10 four and two tenths percent, at the rate set forth in § 10-45-2, upon the gross receipts
11 from providing any intrastate, interstate, or international telecommunications service that
12 originates or terminates in this state and that is billed or charged to a service address in
13 this state, or that both originates and terminates in this state. However, the tax imposed
14 by this section does not apply to:

- 15 (1) Any eight hundred or eight hundred-type service, unless the service both originates
16 and terminates in this state;
- 17 (2) Any sale of a telecommunication service to a provider of telecommunication
18 services, including access service, for use in providing any telecommunication
19 service; or
- 20 (3) Any sale of interstate telecommunication service provided to a call center that has
21 been certified by the secretary of revenue to meet the criterion established in § 10-
22 45-6.3 and the call center has provided to the telecommunications service provider
23 an exemption certificate issued by the secretary indicating that it meets the
24 criterion.

25 If a call center uses an exemption certificate to purchase services not meeting the
26 criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty,
27 and interest.

28 **Section 7. That § 10-45-6.2 be AMENDED:**

29 **10-45-6.2.** There is ~~hereby~~ imposed a tax ~~of four and two tenths percent, at the~~
30 rate set forth in § 10-45-2, upon the gross receipts of mobile telecommunications services,
31 as defined in 4 U.S.C. § 124(7) ~~as of (January 1, 2002),~~ that originate and terminate in
32 the same state and are billed to a customer with a place of primary use in this state or

1 are deemed to have originated or been received in this state and to be billed or charged
 2 to a service address in this state if the customer's place of primary use is located in this
 3 state regardless of where the service actually originates or terminates. Notwithstanding
 4 any other provision of this chapter and for purposes of the tax imposed by this section,
 5 the tax imposed upon mobile telecommunication services must be administered in
 6 accordance with 4 U.S.C. §§ 116-~~to 126~~, as in effect on, inclusive (July 28, 2000).

7 **Section 8. That § 10-45-8 be AMENDED:**

8 **10-45-8.** Except as otherwise provided in this chapter, there is imposed a tax ~~of~~
 9 ~~four and two tenths percent,~~ at the rate set forth in § 10-45-2, upon the gross receipts
 10 from all sales of tickets or admissions to:

- 11 (1) Places of amusement;
 12 (2) Athletic contests; or
 13 (3) Events.

14 **Section 9. That § 10-45-71 be AMENDED:**

15 **10-45-71.** There is imposed a tax ~~of four and two tenths percent on,~~ at the rate
 16 set forth in § 10-45-2, upon the gross receipts from the transportation of passengers. The
 17 tax imposed by this section applies to any transportation of passengers if the passenger
 18 boards and exits the mode of transportation within this state.

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

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

22 **Section 11. That § 10-46-1 be AMENDED:**

23 **10-46-1.** Terms, as used in this chapter mean:
 24 (1) "Business," any activity engaged in by any person or caused to be engaged in by
 25 such person with the object of gain, benefit, or advantage, either direct or indirect;
 26 (2) ~~"Candy," any preparation of sugar, honey, or other natural or artificial sweeteners~~
 27 ~~in combination with chocolate, fruits, nuts or other ingredients or flavorings in the~~
 28 ~~form of bars, drops, or pieces. The term, candy, does not include any preparation~~
 29 ~~containing flour and does not require refrigeration;~~

1 ~~(3)~~ "Delivery charges," charges by the retailer for preparation and delivery to a location
 2 designated by the purchaser of tangible personal property, any product transferred
 3 electronically, or services including transportation, shipping, postage, handling,
 4 crating, and packing. The term does not include postage for direct mail;

5 ~~(4)~~ "Fair market value," the price at which a willing seller and willing buyer will trade.
 6 Fair market value ~~shall~~ must be determined at the time of purchase. If a public
 7 corporation is supplying tangible personal property or any product transferred
 8 electronically that ~~will~~ is to be used in the performance of a contract, fair market
 9 value ~~shall~~ must be determined pursuant to § 5-18B-7. This definition also applies
 10 to chapter 10-45;

11 ~~(5)~~(3) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
 12 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
 13 and is consumed for its taste or nutritional value. ~~The term, food, does~~ These terms
 14 do not include alcoholic beverages, tobacco, or prepared food;

15 (a) Alcoholic beverages, as defined in § 35-1-1;

16 (b) Cannabis or cannabis products, as defined in § 43-20G-1;

17 (c) Cigarettes, as defined in § 10-50B-4;

18 (d) Prepared food; or

19 (e) Tobacco products, as defined in § 34-20G-1;

20 ~~(6)~~(4) "Included in the measure of tax," the tangible personal property, any product
 21 transferred electronically, or the service was purchased from a retailer licensed
 22 under chapter 10-45 and that retailer has included the tax in the amount received
 23 from the sale;

24 ~~(7)~~(5) "In this state" or "in the state," within the exterior limits of the State of South
 25 Dakota and includes all territory within ~~such~~ the limits owned by or ceded to the
 26 United States of America;

27 ~~(8)~~(6) "Prepared food," any ~~food~~ ;

28 (a) Food sold in a heated state or heated by the seller; ~~two~~

29 (b) Two or more food ingredients mixed or combined by the seller for sale as a
 30 single item; or ~~food~~

31 (c) Food sold with eating utensils provided by the seller, including plates,
 32 knives, forks, spoons, glasses, cups, napkins, or straws. ~~A plate, but~~ does
 33 not include a container or packaging used to transport the food.

34 Prepared food does not include food that is only cut, repackaged, or pasteurized
 35 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal

1 foods requiring cooking by the consumer as recommended by the Food and Drug
2 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
3 so as to prevent food borne illnesses;

4 ~~(8A)~~(7) "Product transferred electronically," any product obtained by the purchaser by
5 means other than tangible storage media. A product transferred electronically does
6 not include any intangible such as a patent, stock, bond, goodwill, trademark,
7 franchise, or copyright;

8 ~~(9)~~(8) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any
9 manner or by any means whatsoever, for a consideration. A transaction, whereby
10 the possession of property is transferred but the seller retains the title as security
11 for the payment of the price, is a purchase;

12 ~~(10)~~(9) "Purchase price," ~~shall have~~ the same meaning as gross receipts defined in
13 chapter 10-45;

14 ~~(11)~~(10) "Retailer," any person performing services in this state or engaged in the
15 business of selling tangible personal property or products transferred electronically
16 for use, storage or other consumption within the meaning of this chapter. However,
17 if in the opinion of the secretary of revenue, it is necessary for the efficient
18 administration of this chapter to regard any salesmen, representatives, truckers,
19 peddlers, or canvassers as agents of the dealers, distributors, supervisors,
20 employers, or persons under whom they operate or from whom they obtain the
21 tangible personal property or any product transferred electronically sold by them
22 irrespective of whether they are making sales on their own behalf or on behalf of
23 such dealers, distributors, supervisors, employers, or persons, the secretary of
24 revenue may so regard them and may regard the dealers, distributors, supervisors,
25 employers, or persons as retailers for purposes of this chapter;

26 ~~(12)~~(11) "Retailer maintaining a place of business in the state," any retailer having or
27 maintaining within this state, directly or by a subsidiary, an office, distribution
28 house, sales house, warehouse, or other place of business, or any agents operating
29 within the state under the authority of the retailer or its subsidiary, irrespective of
30 whether such place of business or agent is located here permanently or temporarily
31 or whether such retailer or subsidiary is admitted to do business within this state
32 pursuant to the laws of the State of South Dakota granting the rights of foreign
33 corporations to do business in this state;

1 ~~(13)~~(12) "Secretary," the secretary of the Department of Revenue or any duly authorized
 2 and appointed assistant, deputies, or agents of the secretary charged with the
 3 administration or enforcement of this chapter;

4 ~~(14)~~ "Soft drinks," any nonalcoholic beverages that contain natural or artificial
 5 sweeteners. The term, soft drinks, does not include any beverage that contains
 6 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
 7 percent of vegetable or fruit juice by volume;

8 ~~(15)~~(13) "Storage," any keeping or retention in this state for use or other consumption
 9 in the State of South Dakota for any purpose except sale in the regular course of
 10 business;

11 ~~(16)~~(14) "Tangible personal property," personal property that can be seen, weighed,
 12 measured, felt, or touched, or that is in any other manner perceptible to the senses
 13 if furnished or delivered to consumers or users within this state. The term includes
 14 electricity, water, gas, steam, and prewritten computer software; and

15 ~~(17)~~(15) "Use," the exercise of right or power over tangible personal property or any
 16 product transferred electronically incidental to the ownership of that property,
 17 except that it does not include the sale of that property in the regular course of
 18 business. Use also includes the use of the types of services, the gross receipts from
 19 the sale of which are to be included in the measure of the tax imposed by chapter
 20 10-45, and the delivery or causing delivery into this state of tangible personal
 21 property or any product transferred electronically intended to advertise any
 22 product or service or promote or facilitate any sale to South Dakota residents.

23 **Section 12. That § 10-46-2.1 be AMENDED:**

24 **10-46-2.1.** For the privilege of using services in ~~South Dakota~~ this state, except
 25 those types of services exempted by § 10-46-17.3, there is imposed on the person using
 26 the service an excise tax ~~equal to four and two-tenths~~ at the rate of five percent of the
 27 value of the services at the time they are rendered. ~~However, this~~ This tax may not be
 28 imposed on any ~~service~~;

29 (1) Service rendered by a related corporation, ~~as defined in subdivision 10-43-1(11),~~
 30 for use by a financial institution, as defined in ~~subdivision 10-43-1(4); or on any~~
 31 service § 10-43-1; or

32 (2) Service rendered by a financial institution, as defined in ~~subdivision 10-43-1(4)~~
 33 § 10-43-1, for use by a related corporation ~~as defined in subdivision 10-43-1(11).~~

1 For the purposes of this section, ~~the term, "related corporation," includes a means~~
 2 a corporation associated with another as its parent or subsidiary, or in a brother-sister
 3 relationship. The term includes a corporation, which together with the financial institution,
 4 is part of a controlled group of corporations, as defined in 26 U.S.C. § 1563 ~~as in effect~~
 5 ~~on~~ (January 1, 1989), except that the eighty percent ownership requirements set forth in
 6 26 U.S.C. ~~§ 563(a)(2)(A)~~ § 1563(a) for a brother-sister controlled group are reduced to
 7 fifty-one percent.

8 For the purpose of this chapter, services rendered by an employee for the use of
 9 the employer are not taxable.

10 **Section 13. That § 10-46-2.2 be AMENDED:**

11 **10-46-2.2.** An excise tax is imposed upon the privilege of the use of rented
 12 tangible personal property and any product transferred electronically in this state at the
 13 ~~rate of four and two tenths percent of~~ set forth in § 10-46-2.1, on the rental payments
 14 upon the property.

15 **Section 14. That § 10-46-48 be AMENDED:**

16 **10-46-48.** ~~All revenue arising under the operation of~~ Except as otherwise
 17 provided, revenue collected pursuant to this chapter shall immediately must be turned
 18 over to the state treasurer and ~~by him credited to~~ deposited in the general fund.

19 The treasurer shall deposit in the school building construction fund, established in
 20 section 25 of this Act, two percent of the taxes collected by the secretary of the
 21 Department of Revenue pursuant to this chapter.

22 **Section 15. That § 10-46-58 be AMENDED:**

23 **10-46-58.** There is imposed a tax ~~of four and two tenths percent on,~~ at the rate
 24 set forth in § 10-46-2.1, upon the privilege of the use of any transportation of passengers.
 25 The tax imposed by this section applies to any transportation of passengers if the
 26 passenger boards and exits the mode of transportation within this state.

27 **Section 16. That § 10-46-69 be AMENDED:**

28 **10-46-69.** There is ~~hereby~~ imposed a tax ~~of four and two tenths percent,~~ at the
 29 rate set forth in § 10-46-2.1, upon the privilege of the use of mobile telecommunications
 30 services, as defined in 4 U.S.C. § 124(7) ~~as of~~ (January 1, 2002), that originate and

1 terminate in the same state and are billed to a customer with a place of primary use in
 2 this state. Notwithstanding any other provision of this chapter and for purposes of the tax
 3 imposed by this section, the tax imposed upon mobile telecommunication services must
 4 be administered in accordance with 4 U.S.C. §§ 116-~~to 126~~, ~~as in effect on~~, inclusive
 5 (July 28, 2000).

6 **Section 17. That § 10-46-69.1 be AMENDED:**

7 **10-46-69.1.** Except as provided in § 10-46-69, there is ~~hereby~~ imposed a tax ~~of~~
 8 ~~four and two-tenths percent~~, at the rate set forth in § 10-46-2.1, upon the privilege of the
 9 use of any intrastate, interstate, or international telecommunications service that
 10 originates or terminates in this state and that is billed or charged to a service address in
 11 this state, or that both originates and terminates in this state. ~~However, the~~ The tax
 12 imposed by this section does not apply to:

- 13 (1) Any eight hundred or eight hundred type service unless the service both originates
 14 and terminates in this state;
- 15 (2) Any sale of a telecommunication service to a provider of telecommunication
 16 services, including access service, for use in providing any telecommunication
 17 service; or
- 18 (3) Any sale of interstate telecommunication service provided to a call center that has
 19 been certified by the secretary of revenue to meet the criterion established in § 10-
 20 45-6.3 and the call center has provided to the telecommunications service provider
 21 an exemption certificate issued by the secretary indicating that it meets the
 22 criterion.

23 If a call center uses an exemption certificate to purchase services not meeting the
 24 criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty,
 25 and interest.

26 **Section 18. That § 10-46-69.2 be AMENDED:**

27 **10-46-69.2.** There is ~~hereby~~ imposed a tax ~~of four and two-tenths percent~~, at the
 28 rate set forth in § 10-46-2.1, upon the privilege of the use of any ancillary services.

29 **Section 19. That a NEW SECTION be added to chapter 10-46:**

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

1 **Section 20. That § 10-46E-1 be AMENDED:**

2 **10-46E-1.** There is hereby imposed an excise tax of ~~four and two-tenths percent,~~
3 at the rate of five percent, on the gross receipts from the sale, resale, or lease of farm
4 machinery, attachment units, and irrigation equipment used exclusively for agricultural
5 purposes. ~~However, if~~ If any trade-in or exchange of used farm machinery, attachment
6 units, and irrigation equipment is involved in the transaction, the excise tax is only due
7 and may only be collected on the cash difference.

8 **Section 21. That § 10-46E-9 be AMENDED:**

9 **10-46E-9.** ~~The~~ Except as otherwise provided, revenue from the tax imposed by
10 this chapter shall be deposited in the general fund.

11 The treasurer shall deposit in the school building construction fund, established in
12 section 25 of this Act, two percent of the taxes collected by the secretary of the
13 Department of Revenue pursuant to this chapter.

14 **Section 22. That § 10-50-3 be AMENDED:**

15 **10-50-3.** A tax is imposed, whether or not a sale occurs, at the following rates on
16 all cigarettes held in this state for sale by any person:

17 Class A, on cigarettes weighing not more than three pounds per thousand, ~~seventy-~~
18 ~~six and one-half mills~~ twelve and one-half cents on each cigarette.

19 Class B, on cigarettes weighing more than three pounds per thousand, ~~seventy-six~~
20 ~~and one-half mills~~ twelve and one-half cents on each cigarette.

21 **Section 23. That § 10-58-1 be AMENDED:**

22 **10-58-1.** There is imposed upon owners and operators a special amusement
23 excise tax of ~~four and two-tenths~~ five percent of the gross receipts from the sale or the
24 operation of any mechanical or electronic amusement device. The tax imposed by this
25 section is in lieu of the tax imposed pursuant to chapter 10-45.

26 **Section 24. That § 10-58-5 be AMENDED:**

27 **10-58-5.** ~~The~~ Except as otherwise provided, the tax generated by this chapter
28 must be deposited in the general fund.

1 The treasurer shall deposit in the school building construction fund, established in
2 section 25 of this Act, two percent of the taxes collected by the secretary of the
3 Department of Revenue pursuant to this chapter.

4 **Section 25. That a NEW SECTION be added to chapter 13-24:**

5 There is created the school building construction fund, to be administered by the
6 Department of School and Public Lands, for the purpose of making loans to school districts
7 to construct or expand a school building, as provided in section 26 of this Act. The
8 treasurer shall deposit in the fund two percent of the taxes collected pursuant to:

9 (1) Chapter 10-45;

10 (2) Chapter 10-46;

11 (3) Chapter 10-46E; and

12 (4) Chapter 10-58.

13 Any interest earned on moneys in the fund must remain in the fund. Any repayment
14 of the principal amount of a loan must be deposited into the fund and used for making
15 new loans. Money in the fund designated for loans is appropriated through the general
16 appropriation bill for the purposes provided in section 26 of this Act.

17 The commissioner of the department shall approve vouchers, and the state auditor
18 shall draw warrants to pay expenditures authorized from this fund.

19 **Section 26. That a NEW SECTION be added to chapter 13-24:**

20 The Department of School and Public Lands may make loans from the school
21 building construction fund, created in section 25 of this Act, to a school district for the
22 purpose of constructing or expanding a school building. The amount of the loan may not
23 exceed forty percent of the total cost of the construction or expansion project. The
24 department may use up to one percent of the principal amount of a loan to offset the
25 department's expenses in administering the loan.

26 Any loan made by the department must be provided to the district at an interest
27 rate of zero percent. The terms of the loan may not require collateral from the district.

28 The terms of the loan must require that the payments be based on a straight and
29 level amortization of twenty years and be made annually over a term of twenty years,
30 with the first payment due one year from the date of the funding of the loan.

31 The department shall make available moneys from the school building construction
32 fund, created in section 25 of this Act, as follows:

1 (1) Thirty percent for the construction or expansion of a school building in a school
2 district that has four thousand or more students; and

3 (2) Seventy percent for the construction or expansion of a school building in all other
4 school districts.

5 The amount of loans made in a year under this section must exceed sixty-million
6 dollars and may not exceed ninety-million dollars.

7 For purposes of this section, a "school building" is a structure that houses the
8 academic instruction, extracurricular activities, and other functions of a kindergarten
9 through twelfth grade educational program.

10 **Section 27. That a NEW SECTION be added to chapter 13-24:**

11 A school district is not eligible for a loan under section 26 of this Act if:

12 (1) The school district is eligible for a loan under § 11-15-8;

13 (2) The municipality in which the district is headquartered is less than ten miles from
14 a municipality in which another school district is headquartered; or

15 (3) The school district has a fall enrollment of fewer than two hundred students and is
16 not designated as a sparse school district, as defined in § 13-13-78.

17 **Section 28. That a NEW SECTION be added to chapter 13-24:**

18 The School Finance Accountability Board within the Department of Education shall
19 promulgate rules, pursuant to chapter 1-26, specifying:

20 (1) The process by which:

21 (a) A school district applies for a loan;

22 (b) The Department of Education reviews, assesses, and approves a school
23 district's application; and

24 (c) The Department of School and Public Lands disburses a loan to a school
25 district; and

26 (2) The information a school district must provide when applying for a loan pursuant
27 to section 26 of this Act, including:

28 (a) The amount of money currently in the district's capital outlay fund;

29 (b) The amount of money the district has transferred and the number of
30 transfers the district has made from the capital outlay fund, pursuant to
31 § 13-16-6 during the previous ten years;

32 (c) The district's current levy for the capital outlay fund;

33 (d) The district's fall enrollment for the current fiscal year; and

- 1 (e) The enrollment trends of the district during the previous ten years; and
- 2 (3) The criteria by which the Department of Education assesses a school district's
- 3 application for a loan in accordance with section 26 of this Act, including:
- 4 (a) The minimum amount of money, in proportion to the district's fall
- 5 enrollment, that must currently be in a district's capital outlay fund;
- 6 (b) The maximum amount of money a district may have transferred from the
- 7 capital outlay fund, pursuant to § 13-16-6 during the previous ten years;
- 8 (c) The maximum levy a district may currently have set for the district's capital
- 9 outlay fund; and
- 10 (d) The minimum increase necessary in the district's capital outlay levy to be
- 11 sufficient for the district to repay the loan.

12 **Section 29. That a NEW SECTION be added to chapter 13-24:**

13 On or before August first of each year, the Department of School and Public Lands
 14 shall submit a report to the special committee, created in § 4-8A-2, detailing the number,
 15 amounts, and recipients of loans provided by the school building construction fund created
 16 in section 25 of this Act, and other relevant information pertaining to the fund or program,
 17 as requested by the committee.

18 **Section 30. That 2023 Session Laws, chapter 32, § 19 be REPEALED:**

19 ~~**Section 31.** The amendments to the Code sections in sections 1 to 17, inclusive,~~
 20 ~~of this Act are repealed on June 30, 2027, and those Code sections will revert in word and~~
 21 ~~substance to that which existed immediately prior to the effective date of this Act.~~