

2026 South Dakota Legislature

Senate Bill 239**AMENDMENT 239B
FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to modify provisions relating to the reinvestment payment program, and**
 2 **relating to the purchasing of goods and services used by projects approved**
 3 **for the reinvestment payment program.**

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

5 **Section 1. That § 1-16G-56 be AMENDED:**

6 **1-16G-56.** Terms used in §§ 1-16G-56 to 1-16G-68, inclusive, mean:

- 7 (1) "Board," the Board of Economic Development;
- 8 (2) "Commissioner," the commissioner of the Governor's Office of Economic
 9 Development;
- 10 (3) "Completed the project" or "completion of the project," the first date when the
 11 project is operational;
- 12 (4) "Construction date," the first date earth is excavated or a contractor has initiated
 13 work for the purpose of constructing a new or expanded facility or the first date
 14 new equipment is located on the project site or existing equipment is removed
 15 from the project site for the purpose of equipment upgrades, whichever occurs
 16 first;
- 17 (5) "Cryptocurrency," a digital or virtual currency that is not issued by any central
 18 authority, is designed to function as a medium of exchange, and uses encryption
 19 technology to regulate the generation of units of currency, to verify fund transfers,
 20 and to prevent counterfeiting;
- 21 (6) "Data center," any facility established for the purpose of processing, storage,
 22 retrieval, or communication of data;
- 23 ~~(6)~~(7) "Department," the Department of Revenue;
- 24 (8) "Direct payment permit," the permit issued by the department pursuant to § 10-
 25 46-67;

1 ~~(7)~~(9) "Equipment upgrades," the installation of new equipment or the replacement or
2 improvement of existing equipment, which is subject to the sales or use tax
3 imposed by chapters 10-45 or 10-46 or contractor's excise tax imposed by chapters
4 10-46A or 10-46B. Equipment upgrades do not include the installation or
5 replacement of consumable, wear, or maintenance items, or the replacement of
6 failed equipment or components done on an ad hoc basis;

7 ~~(8)~~(10) "GOED," the Governor's Office of Economic Development;

8 ~~(9)~~(11) "New or expanded facility," a new building or structure, or the expansion,
9 renovation, or retrofitting of an existing building or structure, which is subject to
10 the contractor's excise tax imposed by chapters 10-46A or 10-46B;

11 ~~(10)~~(12) "Person," any individual, firm, copartnership, joint venture, association,
12 cooperative, nonprofit development corporation, limited liability company, limited
13 liability partnership, corporation, estate, trust, business trust, receiver, or any
14 group or combination acting as a unit;

15 ~~(11)~~(13) "Project," a new or expanded facility with a project cost which exceed twenty
16 million dollars, or equipment upgrades with a project cost which exceed two million
17 dollars. A project includes laboratory and testing facilities, manufacturing facilities,
18 advanced telecommunications capability, data centers, power generation facilities,
19 power transmission facilities, agricultural processing facilities, wind energy
20 facilities, and facilities defined by GOED as targeted industries. A project does not
21 include any building or structure:

22 (a) Used predominantly for the sale of products at retail, other than the sale of
23 electricity at retail, or the provision of advanced telecommunications
24 capability, to individual consumers;

25 (b) Used predominantly for residential housing or transient lodging;

26 (c) Used predominantly to provide health care services;

27 (d) Used predominantly for the transportation or transmission of natural gas,
28 oil, or crude oil by means of a pipeline; or

29 (e) That is not subject to ad valorem real property taxation or equivalent taxes
30 measured by gross receipts;

31 ~~(12)~~(14) "Project cost," the amount paid by the project owner in money, credits,
32 property, or other consideration associated with a project including, without
33 limitation, land, labor, materials, furniture, equipment, fees, or fixtures. Project
34 cost does not include any amount paid as part of a new or expanded facility or

- 1 equipment upgrades attributable to the processing, storage, retrieval, or
 2 communication of data related to cryptocurrency;
 3 (15) "Reinvestment payment permit," the permit issued pursuant to § 1-16G-60;
 4 (16) "Secretary," the secretary of the Department of Revenue;
 5 ~~(13)~~(17) "Wind energy facility," any new facility or facility expansion that:
 6 (a) Consists of a commonly managed integrated system of towers, wind turbine
 7 generators with blades, power collection systems, and electric
 8 interconnection systems, that convert wind movement into electricity, and
 9 is subject to the tax imposed by §§ 10-35-18 and 10-35-19; and
 10 (b) The construction of which is subject to contractors' excise tax pursuant to
 11 chapter 10-46A or 10-46B; and
 12 ~~(14)~~(18) "Advanced telecommunications capability," without regard to any transmission
 13 media or technology, is high-speed, switched, broadband telecommunications
 14 capability that enables users to originate and receive high-quality voice, data,
 15 graphics, and video telecommunications using any technology that provides a
 16 minimum actual download speed of at least twenty-five megabits per second and
 17 actual upload speed of at least three megabits per second.

18 **Section 2. That a NEW SECTION be added to chapter 1-16G:**

19 If the project cost for a new or expanded facility on or after April 1, 2026, exceeds
 20 the amount set pursuant to section 3 of this Act, a person may apply for a reinvestment
 21 payment as provided in § 1-16G-57, subject to the following adjustments to the
 22 procedures in §§ 1-16G-56 to 1-16G-68, inclusive:

- 23 (1) The application required in § 1-16G-58 must also include all information required
 24 by the department for a direct payment permit. The commissioner shall share the
 25 relevant portion of the application with the department on a confidential basis. The
 26 department shall review the information as a written application to the secretary
 27 for a direct payment permit;
 28 (2) Prior to the board's review of the application, the department must provide the
 29 commissioner with a determination of the person's eligibility for a direct payment
 30 permit. The appeal provisions of § 10-46-67 do not apply to an application qualified
 31 under this section. A person who is not eligible for a direct payment permit may
 32 not receive a reinvestment payment permit on the terms of this section;
 33 (3) Following its review pursuant to § 1-16G-59, the board may, by two-thirds
 34 majority, approve a combined reinvestment payment that is equal to or less than

- 1 the South Dakota sales and use tax due on the initial project cost of a new or
2 expanded facility, as well as the project costs of any future equipment upgrades in
3 that same facility for a term not to exceed thirty years after the construction date;
4 (4) A reinvestment payment permit issued to a project described in this section also
5 operates as a direct payment permit for the project applicant;
6 (5) In addition to the affidavit requirement in § 1-16G-61, the person holding a
7 reinvestment payment permit must also submit an annual affidavit following
8 completion of the project detailing the project cost of any equipment upgrades
9 during that period;
10 (6) The three-year eligibility period for project costs in § 1-16G-62 is extended to four
11 years for the initial project cost of a project qualified under this section. In addition,
12 the project will also have a separate eligibility period for the project cost of any
13 future equipment upgrades running from completion of the project until expiration
14 of the reinvestment payment permit;
15 (7) A reinvestment payment permit extends to a person's lessee on the same terms
16 and may also be assigned or transferred, but in each case only if the lessee,
17 assignee, or transferee also holds a direct payment permit;
18 (8) The secretary shall relieve a person holding a direct payment permit of its
19 obligation to accrue and pay the taxes imposed by chapters 10-45 and 10-46, but
20 only to the extent covered by a reinvestment payment permit. The commissioner
21 must subtract any relief granted by the secretary from the reinvestment fund
22 payment to which that person is otherwise entitled under § 1-16G-63; and
23 (9) Except as provided in this section, all other provisions of §§ 1-16G-56 to 1-16G-
24 68, inclusive, continue to apply to projects qualified under this section.

25 **Section 3. That a NEW SECTION be added to chapter 1-16G:**

26 The board shall adopt a policy setting the minimum project cost required for a
27 project to qualify for purposes of section 2 of this Act. The board may adopt a new policy
28 changing the minimum project cost, but may not do so within two years of setting a
29 previous policy.

30 **Section 4. That § 1-16G-59 be AMENDED:**

31 **1-16G-59.** The Board of Economic Development shall review~~an~~ a completed
32 application and make a determination of whether the project is approved or disapproved
33 within ninety days of receiving the application. The applicant may, by written consent,

1 extend the deadline provided in this section. The extension must provide a new deadline
2 for the board's review and determination. The board shall consider the likelihood that the
3 project would have occurred without the reinvestment payment. The board may approve
4 a reinvestment payment that is equal to or less than South Dakota sales and use tax paid
5 on the project costs.

6 The board shall consider the following factors when making that determination:

- 7 (1) Has the county or municipality adopted a formula to reduce property taxation for
8 the project for five years under the discretionary formula pursuant to § 10-6-137;
9 (2) Has the county or municipality approved a tax increment financing district pursuant
10 to chapter 11-9 for the area where the project will be located;
11 (3) Has the municipality approved a municipal sales tax refund pursuant § 10-52-10;
12 (4) Economic activity that may occur in the community, area, and state; and
13 (5) Criteria established by rules promulgated pursuant to § 1-16G-67.