

## 2026 South Dakota Legislature

**Senate Bill 234****AMENDMENT 234A  
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 pertaining to the purchasing of goods and services**  
 2 **related to data center operations, to protect residents from increased utility**  
 3 **costs and utility shortages caused by data centers, and to clarify authority to**  
 4 **regulate data centers.**

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

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

7 **1-16G-56.** Terms used in §§ 1-16G-56 to 1-16G-68, inclusive, mean:

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

- 1 ~~(8)~~ "Direct payment permit," the permit issued by the department pursuant to § 10-  
2 46-67;
- 3 ~~(7)(9)~~ "Equipment upgrades," the installation of new equipment or the replacement or  
4 improvement of existing equipment, which is subject to the sales or use tax  
5 imposed by chapters 10-45 or 10-46 or contractor's excise tax imposed by chapters  
6 10-46A or 10-46B. Equipment upgrades do not include the installation or  
7 replacement of consumable, wear, or maintenance items, or the replacement of  
8 failed equipment or components done on an ad hoc basis;
- 9 ~~(8)(10)~~ "GOED," the Governor's Office of Economic Development;
- 10 ~~(9)(11)~~ "New or expanded facility," a new building or structure, or the expansion,  
11 renovation, or retrofitting of an existing building or structure, which is subject to  
12 the contractor's excise tax imposed by chapters 10-46A or 10-46B;
- 13 ~~(10)(12)~~ "Person," any individual, firm, copartnership, joint venture, association,  
14 cooperative, nonprofit development corporation, limited liability company, limited  
15 liability partnership, corporation, estate, trust, business trust, receiver, or any  
16 group or combination acting as a unit;
- 17 ~~(11)(13)~~ "Project," a new or expanded facility with a project cost which exceed twenty  
18 million dollars, or equipment upgrades with a project cost which exceed two million  
19 dollars. A project includes laboratory and testing facilities, manufacturing facilities,  
20 advanced telecommunications capability, data centers, power generation facilities,  
21 power transmission facilities, agricultural processing facilities, wind energy  
22 facilities, and facilities defined by GOED as targeted industries. A project does not  
23 include any building or structure:
- 24 (a) Used predominantly for the sale of products at retail, other than the sale of  
25 electricity at retail, or the provision of advanced telecommunications  
26 capability, to individual consumers;
- 27 (b) Used predominantly for residential housing or transient lodging;
- 28 (c) Used predominantly to provide health care services;
- 29 (d) Used predominantly for the transportation or transmission of natural gas,  
30 oil, or crude oil by means of a pipeline; or
- 31 (e) That is not subject to ad valorem real property taxation or equivalent taxes  
32 measured by gross receipts;
- 33 ~~(12)(14)~~ "Project cost," the amount paid by the project owner in money, credits,  
34 property, or other consideration associated with a project including, without  
35 limitation, land, labor, materials, furniture, equipment, fees, or fixtures. Project

cost does not include any amount paid as part of a new or expanded facility or equipment upgrades attributable to the processing, storage, retrieval, or communication of data related to cryptocurrency;

(15) "Reinvestment payment permit," the permit issued pursuant to § 1-16G-60;

(16) "Secretary," the secretary of the Department of Revenue;

~~(13)~~(17) "Wind energy facility," any new facility or facility expansion that:

(a) Consists of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that convert wind movement into electricity, and is subject to the tax imposed by §§ 10-35-18 and 10-35-19; and

(b) The construction of which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B; and

~~(14)~~(18) "Advanced telecommunications capability," without regard to any transmission media or technology, is high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology that provides a minimum actual download speed of at least twenty-five megabits per second and actual upload speed of at least three megabits per second.

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

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

(1) The application required in § 1-16G-58 must also include all information required by the department for a direct payment permit. The commissioner shall share the relevant portion of the application with the department on a confidential basis. The department shall review the information as a written application to the secretary for a direct payment permit;

(2) Prior to the board's review of the application, the department must provide the commissioner with a determination of the person's eligibility for a direct payment permit. The appeal provisions of § 10-46-67 do not apply to an application qualified under this section. A person who is not eligible for a direct payment permit may not receive a reinvestment payment permit on the terms of this section;

- 1 (3) Following its review pursuant to § 1-16G-59, the board may, by two-thirds  
2 majority, approve a combined reinvestment payment that is equal to or less than  
3 the South Dakota sales and use tax due on the initial project cost of a new or  
4 expanded facility, as well as the project costs of any future equipment upgrades in  
5 that same facility for a term not to exceed thirty years after the construction date;  
6 (4) A reinvestment payment permit issued to a project described in this section also  
7 operates as a direct payment permit for the project applicant;  
8 (5) In addition to the affidavit requirement in § 1-16G-61, the person holding a  
9 reinvestment payment permit must also submit an annual affidavit following  
10 completion of the project detailing the project cost of any equipment upgrades  
11 during that period;  
12 (6) The three-year eligibility period for project costs in § 1-16G-62 is extended to four  
13 years for the initial project cost of a project qualified under this section. In addition,  
14 the project will also have a separate eligibility period for the project cost of any  
15 future equipment upgrades running from completion of the project until expiration  
16 of the reinvestment payment permit;  
17 (7) A reinvestment payment permit extends to a person's lessee on the same terms  
18 and may also be assigned or transferred, but in each case only if the lessee,  
19 assignee, or transferee also holds a direct payment permit;  
20 (8) The secretary shall relieve a person holding a direct payment permit of its  
21 obligation to accrue and pay the taxes imposed by chapters 10-45 and 10-46, but  
22 only to the extent covered by a reinvestment payment permit. The commissioner  
23 must subtract any relief granted by the secretary from the reinvestment fund  
24 payment to which that person is otherwise entitled under § 1-16G-63; and  
25 (9) Except as provided in this section, all other provisions of §§ 1-16G-56 to 1-16G-  
26 68, inclusive, continue to apply to projects qualified under this section.

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

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

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

1           **1-16G-59.** The Board of Economic Development shall review ~~an~~ a completed  
2 application and make a determination of whether the project is approved or disapproved  
3 within ninety days of receiving the application. The applicant may, by written consent,  
4 extend the deadline provided in this section. The extension must provide a new deadline  
5 for the board's review and determination. The board shall consider the likelihood that the  
6 project would have occurred without the reinvestment payment. The board may approve  
7 a reinvestment payment that is equal to or less than South Dakota sales and use tax paid  
8 on the project costs.

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

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

17       **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

18           For purposes of this chapter, "data center" means a centralized repository for the  
19 dissemination, management, processing, and storage of electronic data and information  
20 with a total design load greater than one hundred megawatts.

21       **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

22           The operator of a data center shall pay for all fair, just, and reasonable costs  
23 associated with the provision of electricity to the data center.

24           A provider of electricity shall establish and maintain separate terms and conditions  
25 for electric service applicable to a data center. The terms and conditions must require that  
26 the data center reimburse any provider of electricity for all costs fairly attributed to the  
27 data center for service demand and utility consumption, including costs incurred to serve  
28 the data center if the data center departs the system or materially reduces its load.

29       **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

30           The state may not preempt or otherwise limit the authority of the governing body  
31 of a county, municipality, or other political subdivision to adopt ordinances and resolutions

1 limiting, prohibiting, or otherwise regulating the construction, development, or operation  
2 of data centers.

3 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

4 Prior to commencing operation in this state, the operator of a data center shall  
5 provide notice of projected water consumption to each local water provider in the area in  
6 which the data center is proposed to be located. Each water provider receiving notice  
7 pursuant to this section shall determine whether the data center's projected water  
8 consumption is compatible with the local water supply and issue that determination in  
9 writing to the operator. The operator shall present a copy of each notice and determination  
10 to the Board of Water Management.

11 If the board receives a determination from each applicable water provider that the  
12 data center's projected water consumption is compatible with the local water supply, the  
13 board must issue, to the operator and the general public, a written statement that the  
14 operator has satisfied the requirements of this section.

15 Notwithstanding the board's issuance of a written statement pursuant to this  
16 section, the data center may not consume an amount of the local water supply exceeding  
17 limits established by order of the board, after allocation to residential and essential public  
18 services. In establishing allocation limits under this section, the board shall seek to ensure  
19 water availability and prevent disproportionate use of water by data centers.

20 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

21 The operator of a data center that is authorized to operate in this state pursuant  
22 to this chapter, shall, at the time and in the manner prescribed by the Board of Water  
23 Management, submit to the board a semi-annual report regarding the data center's water  
24 use. The report must contain average usage data and certify compliance with this section.  
25 The board shall make the usage data contained in the report available to the public.