

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

348E0455

HOUSE BILL NO. 1141

Introduced by: Representatives Flowers, Bartling, Bradford, Burg, Elliott, Hanson (Gary), Hargens, Hundstad, Kooistra, Nachtigal, Nesselhuf, Olson (Mel), Peterson (Jim), and Sigdestad and Senators Dennert, Koetzle, McIntyre, Moore, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to impose a severance tax on the quarrying of certain
2 minerals.

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

4 Section 1. For the privilege of severing minerals in this state, there is imposed an excise tax
5 of six percent of the taxable value of any minerals severed. A mineral is subject to the severance
6 tax when it is sold or consumed for any purpose, whichever occurs first.

7 Section 2. Terms used in this Act mean:

8 (1) "Mineral," quartzite, gypsum, and limestone;

9 (2) "Market value," the price at which the property would change hands between a willing
10 buyer and willing seller, neither being under any compulsion to buy or sell and both
11 having reasonable knowledge of the facts;

12 (3) "Operator," a person who directly or physically severs minerals from the land;

13 (4) "Owner of interest" or "owner," an owner of a landowner's royalty, of an overriding
14 royalty, or of profits and working interests, or any combination thereof. The term

1 does not include an owner of federal, state, or local governmental royalty interest;

2 (5) "Sale price," the total consideration received in exchange for minerals;

3 (6) "Secretary," the secretary of the Department of Revenue;

4 (7) "Severing," the mining, extracting, or producing of any minerals in South Dakota..

5 Section 3. The taxable value of any mineral that has been sold is the sale price of the mineral
6 less any rental or royalty payment belonging to the United States or the State of South Dakota
7 or its political subdivisions. The taxable value of any severed and saved mineral that has not been
8 sold is the market value of the mineral less any rental or royalty payment belonging to the United
9 States or the State of South Dakota or its political subdivisions.

10 Section 4. Any owner of interests in minerals produced from a mine shall designate an
11 operator to file all required returns and to pay the tax imposed by this Act. The tax, subject to
12 certain provisions in a written contract, lease, or other agreement, shall be withheld from
13 distributions that otherwise be made to the owner by the operator for payment to the state. If any
14 owner of interests in minerals produced from a mine fails to designate an operator, then the
15 person holding the greatest portion of the working interest in the mine is deemed to be the
16 designated operator for purposes of this section.

17 Section 5. Within thirty days after the close of each quarter ending on March thirty-first, June
18 thirtieth, September thirtieth, and December thirty-first of each year, the owner or operator
19 designated to remit the tax on behalf of the owner shall file with the secretary of revenue, under
20 oath, a report of the amount of minerals subject to the severance tax in the previous quarter and
21 the amount of tax due. The owner or operator shall remit the amount of tax due with the report.
22 Any report made shall be on forms prescribed by the secretary of revenue. A violation of this
23 section is a Class 1 misdemeanor.

24 Section 6. This tax is in lieu of all other occupational, excise, income, privilege, franchise,

1 and other mineral taxes levied by the State of South Dakota, but is not in lieu of sales, use, and
2 property taxes.

3 Section 7. Any tax, interest, and penalty imposed and collected by the secretary of revenue
4 pursuant to this Act shall be distributed as follows:

5 (1) Ten percent shall be returned to the county in which the minerals or mineral products
6 were severed and credited to the general fund; and

7 (2) Ninety percent shall be paid into the state treasury and credited to the general fund.

8 Section 8. All delinquent taxes under this Act constitute a debt due to the State of South
9 Dakota and may be collected by action brought by the secretary in the name of the state against
10 the delinquent tax debtor in any court of competent jurisdiction. No exemptions from the
11 execution of a judgment so obtained may be permitted except those made absolute by the
12 exemption laws of this state.

13 Section 9. A tax due and unpaid under this Act is a lien on the property of the taxpayer
14 against whom the taxes are assessed. A lien is perfected by the filing and recording of a notice
15 of lien with the register of deeds of the county where the taxpayer resides or has property and
16 constitutes constructive notice to purchasers of the existence and superiority of the lien. A notice
17 of lien shall contain the name of the tax debtor, the amount of taxes claimed to be due, and a
18 description of the property against which the lien is claimed. The register of deeds of the county
19 where the lien is filed shall index the lien in the same form and manner and in the same book as
20 provided for the indexing of liens pursuant to chapter 10-43, except that the entry in the index
21 shall show that the lien is a severance tax lien. Upon payment of the tax, the secretary shall
22 release the lien.

23 Section 10. The secretary of revenue may promulgate rules pursuant to chapter 1-26
24 concerning:

- 1 (1) The determination of market value;
- 2 (2) The procedures for filing a tax return and payment of the tax; and
- 3 (3) The application of the tax and exemptions.

4 Section 11. Any owner or operator who is subject to the tax imposed by this Act or is
5 severing minerals shall, on demand by the secretary of revenue, make available all books,
6 records, inventories, correspondence, and memoranda relating to the severing of minerals. Any
7 person violating the provisions of this section is guilty of a Class 2 misdemeanor.

8 Section 12. Any person, required by this Act to make or file a statement or to verify it under
9 oath, who intentionally makes or verifies under oath a false statement is guilty of perjury with
10 punishment, upon conviction, as provided by law.