

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

753M0355

SENATE BILL NO. 187

Introduced by: Senator Peterson (Jim) and Representative Hargens

1 FOR AN ACT ENTITLED, An Act to provide for the creation of rural economic development
2 zones and to provide contractors' excise, sales, and use tax refunds and property tax
3 abatements for certain economic development projects.

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

5 Section 1. The Governor may designate five rural economic development zones in the state
6 for a period of time not to exceed three years. The term, rural economic development zone,
7 means any county, municipality, or township or a contiguous area of at least thirty-six square
8 miles in any county which does not have organized townships. The population of the rural
9 economic development zone may not exceed five thousand persons based on the most recent
10 decennial census of the United States Department of Commerce, Bureau of the Census. Any
11 project proposed within the rural economic development zone that meets the requirements and
12 criteria of this Act is eligible for a tax refund and a property tax abatement.

13 Section 2. Terms used in this Act mean:

- 14 (1) "Construction date," the first date earth is excavated for the purpose of constructing
15 a project;
- 16 (2) "Department," the Department of Revenue and Regulation;



- 1 (3) "Person," any individual, firm, copartnership, joint venture, association, limited
2 liability company, limited liability partnership, corporation, estate, trust, business
3 trust, receiver, unit of government, political subdivision of any state, or any group or
4 combination acting as a unit;
- 5 (4) "Project," the installation or construction of a new or expanded facility by a person
6 who meets the criteria provided in section 5 of this Act;
- 7 (5) "Project cost," the amount of money, credits, property, or other money's worth for a
8 project incurred and paid after July 1, 2006, for a project;
- 9 (6) "Secretary," the secretary of the Department of Revenue and Regulation.

10 Section 3. Any person may apply for and obtain a refund or credit for contractors' excise
11 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
12 of a project and for sales or use taxes imposed and paid by such person under the provisions of
13 chapters 10-45 and 10-46 for the purchase or use of equipment.

14 Section 4. As provided in this Act, any person holding a permit issued pursuant to section
15 6 of this Act may apply for and obtain a refund or credit for sales or use tax imposed and paid
16 by such person under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes
17 imposed and paid under the provisions of chapter 10-46A or 10-46B on the project costs.

18 Section 5. The refund of taxes for a project pertains only to project costs incurred and paid
19 after July 1, 2006, and within thirty-six months of the approval of the application required by
20 section 6 of this Act. No refund may be made unless:

- 21 (1) The project costs exceed the sum of three million dollars;
- 22 (2) Agrees to employ at least twelve full time employees; and
- 23 (3) The person applying for the refund obtains a permit from the secretary as set forth in
24 section 6 of this Act.

1 Section 6. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
2 from the secretary at least thirty days prior to the construction date. The application for a permit
3 shall be submitted on a form prescribed by the secretary. A separate application shall be made
4 and submitted for each project. Upon approval of the application, the secretary shall issue a
5 permit entitling the applicant to submit refund claims as provided by sections 7 and 8 of this
6 Act. Such permit or refund claims are not assignable or transferable except as collateral or
7 security pursuant to chapter 57A-9.

8 Section 7. Any claim for refund shall be submitted on forms prescribed by the secretary and
9 shall be supported by such documentation as the secretary may require. The secretary may deny
10 any claim where the claimant has failed to provide information or documentation requested or
11 considered necessary by the secretary to determine the validity of the claim.

12 Section 8. Any person issued a permit pursuant to this Act shall submit a return to the
13 department no more frequently than on or before the last day of each month and no less
14 frequently than on or before the last day of each month following each calendar quarter. The
15 secretary shall determine and pay the amount of the tax refund within thirty days of receipt of
16 the return. Ninety-five percent of the amount of refund shall be paid to the claimant in
17 accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
18 department. No interest may be paid on the refund amount. If electronic funds transfer is
19 available to the secretary, the secretary shall pay the refund by electronic funds transfer if
20 requested by the claimant.

21 Section 9. The amounts withheld by the department in accordance with section 8 of this Act
22 shall be retained until the project has been completed and the claimant has met all the conditions
23 of this Act, at which time all sums retained shall be paid to claimant.

24 Section 10. If any claim has been fraudulently presented or supported as to any item in the

1 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be
2 rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt
3 to the state and a lien in favor of the state upon all property and rights to property whether real
4 or personal belonging to the claimant and may be recovered in an action of debt.

5 Section 11. Any person, aggrieved by the denial in whole or in part of a refund claimed
6 under this Act, may, within thirty days after service of the notice of such denial by the secretary,
7 demand a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant
8 to chapter 1-26.

9 Section 12. Any person aggrieved by a decision of the secretary under this Act, may, within
10 thirty days of receipt of written notice of the secretary's decision, make written application to
11 the secretary for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be
12 conducted and appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of
13 the hearing examiner's proposed decision, findings of fact, and conclusions of law shall be
14 served on all parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D,
15 accepts the final decision of the hearing examiner, no appeal from a final decision of the
16 secretary upon any additional tax to be paid may be taken unless any amount ordered paid by
17 the secretary is paid or a bond filed to insure payment of the amount. However, if the final
18 decision of the secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the
19 hearing examiner regarding the amount due, an appeal may be taken without payment of the
20 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed
21 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the
22 secretary is paid or a bond is filed to insure payment of such amount.

23 Section 13. Any amount refunded pursuant to this Act for a project that is not completed
24 within the time frames prescribed by section 5 of this Act, including any extensions granted by

1 the secretary, shall be returned to the state without interest. Any refunded amounts not returned
2 pursuant to this section and all sums previously refunded to the claimant constitute a debt to the
3 state and a lien in favor of the state upon all property and rights to property whether real or
4 personal belonging to the claimant and may be recovered in an action of debt.

5 Section 14. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
6 procedures for filing refund claims and the requirements necessary to qualify for a refund.

7 Section 15. Any project that received a tax refund pursuant to sections 2 to 14 of this Act,
8 inclusive, shall be valued for taxation purposes in the usual manner. However, the board of
9 county commissioners of the county where the project is located shall adopt a formula for the
10 value to be used for tax purposes. The taxable value of the project shall be zero percent of its
11 assessed value in the first year, twenty-five percent in the second year, fifty percent in the third
12 year, seventy five percent fourth year; and one hundred percent in the fifth year and each year
13 thereafter. Nothing in this section prohibits the county commissioners of any county where the
14 project is located to adopt a formula that sets a taxable value of the project that is lower than the
15 percentage established by this section during that five year period.