

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

575H0681

SENATE BILL NO. 167

Introduced by: Senators Greenfield, Apa, Bogue, Diedrich (Larry), Drake, Koskan, and McCracken and Representatives Fryslic, Jensen, Juhnke, Klaudt, Koistinen, and Rhoden

1 FOR AN ACT ENTITLED, An Act to revise the contractor's excise tax provisions for a
2 commercial power production facility.

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

4 Section 1. That § 49-34A-80 be amended to read as follows:

5 49-34A-80. Any commercial ~~small~~ power production facility, utilizing renewable resources,
6 such as sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2001,
7 ~~produces ten megawatts or less of electricity as measured by nameplate rating,~~ and is located
8 ~~within one county and~~ owned by a natural person, corporation, nonprofit or for profit business
9 organization, or tribal council (if the facility is located outside the boundaries of the reservation),
10 irrigation district, drainage district, or other political subdivision or agency of the state
11 authorized by statute to carry on the business of developing, transmitting, utilizing, or
12 distributing electric power is subject to the provisions of §§ 49-34A-80 to 49-34A-92, inclusive,
13 for any new or expanded facility.

14 Section 2. That § 49-34A-81 be amended to read as follows:



1 49-34A-81. Rural electric cooperatives developing commercial ~~small~~ power production
2 facilities utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject
3 to a gross receipts tax as defined in § 10-36-6.

4 Section 3. That § 49-34A-82 be amended to read as follows:

5 49-34A-82. Terms used in §§ 49-34A-80 to 49-34A-92, inclusive, mean:

- 6 (1) "Department," the Department of Revenue;
- 7 (2) "New or expanded facility," a new commercial ~~small~~ power production facility as
8 defined in § 49-34A-80 or an addition to an existing commercial ~~small~~ power
9 production facility, the construction or installation of which is subject to contractors'
10 excise tax pursuant to chapter 10-46A or 10-46B;
- 11 (3) "Project," the installation or construction ~~of the first ten megawatts~~ of generation
12 capacity of a new or expanded facility;
- 13 (4) "Project cost," the amount paid in money for a project;
- 14 (5) "Secretary," the secretary of the Department of Revenue.

15 Section 4. That chapter 49-34A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 The owner of a new or expanded facility shall pay the contractors excise tax on the project
18 cost over a five year period according to the following schedule:

- 19 (1) Year one zero percent of the project cost is subject to the tax;
- 20 (2) Year two twenty-five percent of the project cost is subject to the tax;
- 21 (3) Year three twenty-five percent of the project cost is subject to the tax;
- 22 (4) Year four twenty-five percent of the project cost is subject to the tax;
- 23 (5) Year five twenty-five percent of the project cost is subject to the tax.

24 Section 5. That chapter 49-34A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 If the new or expanded facility changes ownership during the five year period in section 4 of
3 this Act, the new owner shall be liable for any unpaid portion of the contractor's excise tax.

4 Section 6. That § 49-34A-83 be repealed.

5 ~~—49-34A-83. Any person may apply for and obtain a refund or credit for contractors' excise
6 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
7 of a new or expanded facility that is a commercial small power production facility that is defined
8 in § 49-34A-80.~~

9 Section 7. That § 49-34A-84 be repealed.

10 ~~—49-34A-84. The refund pertains only to project costs incurred and paid after July 1, 2001.
11 The refund pertains only to project costs that were incurred and paid within thirty-six months of
12 the approval of the application required by §§ 49-34A-80 to 49-34A-92, inclusive. No refund
13 may be made unless:~~

14 ~~—(1)—The project costs exceed five hundred thousand dollars; and~~

15 ~~—(2)—The person applying for the refund obtains a permit from the secretary as set forth in
16 § 49-34A-86.~~

17 Section 8. That § 49-34A-85 be repealed.

18 ~~—49-34A-85. The amount of the tax refund shall be one hundred percent of the contractor's
19 excise taxes attributed to the project cost, excluding any associated transmission facilities.~~

20 Section 9. That § 49-34A-86 be repealed.

21 ~~—49-34A-86. Any person desiring to claim a refund pursuant to §§ 49-34A-80 to 49-34A-92,
22 inclusive, shall apply for a permit from the secretary at least thirty days prior to commencement
23 of the project. The application for a permit shall be submitted on a form prescribed by the
24 secretary. A separate application shall be made and submitted for each project. Upon approval~~

1 of the application, the secretary shall issue a permit entitling the applicant to submit refund claims
2 as provided by §§ ~~49-34A-80 to 49-34A-92~~, inclusive. The permit or refund claims are not
3 assignable or transferable except as collateral or security pursuant to chapter ~~57A-9~~.

4 Section 10. That § 49-34A-87 be repealed.

5 ~~—49-34A-87. Any claim for refund shall be submitted on forms prescribed by the secretary and~~
6 ~~shall be supported by such documentation as the secretary may require. The secretary may deny~~
7 ~~any claim where the claimant has failed to provide information or documentation requested or~~
8 ~~considered necessary by the secretary to determine the validity of the claim.~~

9 Section 11. That § 49-34A-88 be repealed.

10 ~~—49-34A-88. Any claim for refund shall be submitted to the department on or before the last~~
11 ~~day of the month following each quarterly period. The secretary shall determine the amount of~~
12 ~~the tax refund. Ninety percent of the amount of refund shall be paid to the claimant in accordance~~
13 ~~with §§ 10-59-22 and 10-59-23, and ten percent shall be withheld by the department. No interest~~
14 ~~shall be paid on the refund amount.~~

15 Section 12. That § 49-34A-89 be repealed.

16 ~~—49-34A-89. The amounts withheld by the department in accordance with § 49-34A-88 shall~~
17 ~~be retained until the project has been completed and the claimant has met all the conditions of~~
18 ~~§§ 49-34A-80 to 49-34A-92, inclusive, at which time all sums retained shall be paid to claimant.~~

19 Section 13. That § 49-34A-90 be repealed.

20 ~~—49-34A-90. If any claim has been fraudulently presented or supported as to any item in the~~
21 ~~claim, or if the claimant fails to meet all the conditions of §§ 49-34A-80 to 49-34A-92, inclusive,~~
22 ~~then the claim may be rejected in its entirety and all sums previously refunded to the claimant~~
23 ~~shall constitute a debt to the state and a lien in favor of the state upon all property and rights to~~
24 ~~property whether real or personal belonging to the claimant and may be recovered in an action~~

1 of debt.

2 Section 14. That § 49-34A-91 be repealed.

3 ~~— 49-34A-91. Any person aggrieved by the denial in whole or in part of a refund claimed under~~
4 ~~§§ 49-34A-80 to 49-34A-92, inclusive, may within thirty days after service of the notice of a~~
5 ~~denial by the secretary, demand and is entitled to a hearing, upon notice, before the secretary.~~
6 ~~The hearing shall be conducted pursuant to chapter 1-26.~~

7 Section 15. That § 49-34A-92 be amended to read as follows:

8 49-34A-92. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
9 procedures for ~~filing refund claims and the requirements necessary to qualify for a refund~~
10 collecting the tax according to the five year schedule pursuant to section 4 of this Act.