

AN ACT

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

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

Section 1. Any commercial power production facility, utilizing renewable resources, such as sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2002, and produces more than ten megawatts of electricity as measured by nameplate rating, and is owned by a natural person, corporation, nonprofit or for profit business organization, or tribal council (if the facility is located outside the boundaries of the reservation), irrigation district, drainage district, or other political subdivision or agency of the state authorized by statute to carry on the business of developing, transmitting, utilizing, or distributing electric power is subject to the provisions of this Act for any new or expanded facility.

Section 2. Rural electric cooperatives developing commercial power production facilities utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject to a gross receipts tax as defined in § 10-36-6.

Section 3. Terms used in this Act mean:

- (1) "Department," the Department of Revenue;
- (2) "New or expanded facility," a new commercial power production facility as defined in section 1 of this Act or an addition to an existing commercial power production facility, the construction or installation of which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B;
- (3) "Project," the installation or construction of generation capacity of a new or expanded facility, excluding any associated transmission facilities;
- (4) "Project cost," the amount of money incurred and paid after July 1, 2002, for a project;

(5) "Secretary," the secretary of the Department of Revenue.

Section 4. Notwithstanding the rate of taxation imposed by §§ 10-46A-1 and 10-46B-1, the tax imposed under chapters 10-46A and 10-46B on a new or expanded facility shall be imposed at a rate of one percent, and remitted to the state by the holder of the permit issued pursuant to section 6 of this Act.

Section 5. The owner shall file a tax return on or before December thirty-first of each year reporting the project costs subject to tax under chapters 10-46A or 10-46B incurred during the previous twelve months. The tax due from such return shall be paid in four equal annual payments with the first payment due no later than December thirty-first following the filing of the tax return. Each subsequent annual payment shall be made no later than December thirty-first following the last payment.

Section 6. A person may pay the contractor's excise tax pursuant to section 4 of this Act if the person applies for and obtains a permit from the secretary at least thirty days prior to commencement of the project. The application for a permit shall be submitted on a form prescribed by the secretary. A separate application shall be made and submitted for each project. Upon approval of the application, the secretary shall issue a permit to the applicant. The permit is not assignable or transferable except as collateral or security pursuant to chapter 57A-9.

Section 7. Any person aggrieved by the denial of a permit, may within thirty days after service of the notice of a denial by the secretary, demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant to chapter 1-26.

Section 8. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- (1) Permitting, including the permit application;
- (2) The filing of returns and payment of the tax;
- (3) Determining the application of the tax and exemptions;

(4) Taxpayer and owner record-keeping requirements; and

(5) Determining auditing methods.

Section 9. That § 10-59-1 be amended to read as follows:

10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes or fees imposed by this Act and chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B, 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

Section 10. If the secretary of revenue finds that the assessment or collection of the tax required to be paid under this Act is in jeopardy, the secretary may immediately make an assessment of the estimated tax, penalty, or interest and demand payment from the owner. If the payment is not made, a lien may be filed on the owner's real and personal property located in the state and a distress warrant issued.

Section 11. Each person subject to tax or responsible for payment of tax under this Act shall keep records and books of all receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the secretary of revenue or the secretary's duly authorized agents and employees to determine the amount of tax due. Such books and records shall be preserved for a period of three years unless the secretary of revenue, in writing, authorized their destruction or disposal at an earlier date.

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I certify that the attached Act
originated in the

SENATE as Bill No. 167

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 167

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State