



2022 South Dakota Legislature

House Bill 1053

HOUSE TAXATION ENGROSSED

Introduced by: **Representative Ernie Otten**

1 **An Act to authorize counties to issue bonds for certain expenditures funded by a**
 2 **gross receipts tax.**

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

4 **Section 1. That a NEW SECTION be added to title 7:**

5 For the purposes of this chapter, the term, bond, refers only to bonds issued
 6 pursuant to this chapter.

7 **Section 2. That a NEW SECTION be added to title 7:**

8 Notwithstanding the provisions in chapter 7-24, any county may issue bonds
 9 pursuant to this section. The bonds must be authorized, issued, and sold pursuant to
 10 chapter 6-8B. The bonds are payable solely from the collections of a county gross receipts
 11 tax imposed by the county under this chapter, as determined by the governing body. The
 12 governing body shall, in the resolution or ordinance authorizing the bonds, agree that it
 13 will continue to impose and collect the tax to finance the bonds so long as the bonds are
 14 outstanding. The governing body shall also pledge so much of the collections of the tax as
 15 may be necessary to pay the principal premium and interest on the bonds and to maintain
 16 any debt service reserve established for the bonds. The proceeds of the bonds may be
 17 used for:

18 (1) Construction, repair, or renovation of courthouses, public safety centers, or jails;
 19 and

20 (2) Construction, repair, or renovation of facilities used as an accredited prevention or
 21 treatment center as defined in § 34-20A-2, or of facilities used to provide alcohol
 22 and other drug treatment services, or drug court facilities and other facilities
 23 providing a service described in § 16-22-5.1.

24 A county may only issue bonds and may only impose a county gross receipts tax
 25 pursuant to this chapter if the board of county commissioners deem it necessary and if at

1 least sixty percent of all registered voters voting at the bond election of the county have
2 voted in favor of the issuance of bonds.

3 A county may only hold a bond election to authorize the issuance of bonds pursuant
4 to this chapter if the county has not imposed a county gross receipts tax pursuant to this
5 chapter in the previous five years.

6 **Section 3. That a NEW SECTION be added to title 7:**

7 A county may impose a gross receipts tax to finance bonds issued pursuant to
8 section 1 of this Act. The county gross receipts tax authorized by this section must not
9 exceed one-half percent on the gross receipts of all sales of tangible personal property
10 and services that are taxable pursuant to chapter 10-45. The tax must conform in all
11 respects to the state tax on such items, with the exception of the tax rate.

12 **Section 4. That a NEW SECTION be added to title 7:**

13 The term, gross receipts, as used in this chapter, does not include any tax imposed
14 by this chapter and chapters 10-45, 10-45D, 10-52, and 10-52A that is separately stated
15 on the invoice, bill of sale, or similar document given to the purchaser.

16 **Section 5. That a NEW SECTION be added to title 7:**

17 The definitions, and administrative, collection, and enforcement provisions of
18 chapters 10-45 and 10-46 apply to the tax imposed by this chapter, where applicable.

19 **Section 6. That a NEW SECTION be added to title 7:**

20 The secretary shall promulgate rules pursuant to chapter 1-26 concerning:

- 21 (1) Licensing, including bonding and filing license applications;
22 (2) The filing of returns and payment of the tax;
23 (3) The application for the tax and exemptions;
24 (4) Taxpayer record-keeping requirements; and
25 (5) Auditing methods.

26 **Section 7. That a NEW SECTION be added to title 7:**

27 Any person whose receipts are subject to the tax imposed by this chapter shall,
28 except as otherwise provided in this section, file a return, and pay any tax due, to the
29 Department of Revenue on or before the twentieth day of the month following each

1 monthly period. The return shall be filed on forms prescribed and furnished by the
2 department.

3 If the person remits the tax by electronic transfer to the state, the person shall file
4 the return by electronic means on or before the twentieth day of the month following each
5 period and remit the tax on or before the twenty-fifth day of the month following each
6 period.

7 The secretary may require or allow a person to file a return, and pay any tax due,
8 on a basis other than monthly. The return and remittance are due the twentieth day of
9 the month following the reporting period or at a time otherwise determined by the
10 secretary.

11 The secretary may grant an extension of not more than five days for filing a return
12 and remittance.

13 Unless an extension is granted, penalty or interest under § 10-59-6 must be paid
14 if a return or remittance is not made on time.

15 **Section 8. That a NEW SECTION be added to title 7:**

16 Any person who:

17 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax
18 imposed by this chapter is guilty of a Class 6 felony;

19 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
20 becomes due is guilty of a Class 1 misdemeanor;

21 (3) Fails to keep the records and books required by ~~§ 10-52A-9~~section 9 of this Act or
22 refuses to exhibit these records to the secretary of revenue or the secretary's
23 agents for the purpose of examination is guilty of a Class 1 misdemeanor;

24 (4) Fails to file a return required by this chapter within sixty days from the date the
25 return is due is guilty of a Class 1 misdemeanor;

26 (5) Willfully violates any rule of the secretary of revenue for the administration and
27 enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;

28 or

29 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-
30 month period is guilty of a Class 6 felony.

31 **Section 9. That a NEW SECTION be added to title 7:**

32 Each person subject to tax under this chapter shall keep records and books of all
33 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other

1 pertinent papers and documents. The books and records and other papers and documents
2 are, at all times during business hours of the day, subject to inspection by the secretary
3 of revenue or the secretary's agents and employees to determine the amount of tax due.
4 The books and records must be preserved for a period of three years unless the secretary
5 of revenue, in writing, authorized destruction or disposal of the books and records at an
6 earlier date.

7 **Section 10. That a NEW SECTION be added to title 7:**

8 The Department of Revenue shall administer and collect the taxes adopted under
9 this chapter. The department shall prescribe forms and promulgate rules pursuant to
10 chapter 1-26 for the making of returns and for the ascertainment, assessment, and
11 collection of the tax imposed pursuant to this chapter. The department shall keep full and
12 accurate records of all moneys received, collected, and distributed under this chapter.

13 **Section 11. That a NEW SECTION be added to title 7:**

14 All moneys received and collected on behalf of a county by the Department,
15 pursuant to this chapter, must be credited to a special county tax fund and, after deducting
16 the amount of refunds made, the amounts necessary to defray the cost of collecting the
17 tax, and the administrative expenses incident thereto, must be paid within thirty days
18 after collection, to the county entitled thereto.

19 **Section 12. That a NEW SECTION be added to title 7:**

20 Any ordinance enacted under the authority of this chapter, and any tax rate
21 affected thereby, is effective on the earlier of January first or July first following at least
22 ninety days notification by the county to the secretary that the ordinance has been
23 enacted, unless the ordinance is suspended by operation of a referendum. If an ordinance
24 is referred and approved, the effective date is the earlier of January first or July first
25 following at least ninety days notification by the county to the secretary that the ordinance
26 has been approved. Notification of the enactment or approval of the ordinance shall be in
27 writing and mailed, along with a copy of the ordinance, by registered or certified mail, to
28 the secretary.

29 **Section 13. That a NEW SECTION be added to title 7:**

1 The expiration date for a tax imposed under this chapter is full payment of the
2 bond authorized pursuant to section 2 of this Act. The county shall apply any excess
3 revenue received and remaining after the expiration of the tax to expenses of maintaining
4 or operating, or both, the building, structure, or facility funded pursuant to such bond.

5 **Section 14. That chapter 7-24 be amended with a NEW SECTION:**

6 For the purposes of this chapter, the term, bond, refers only to bonds issued
7 pursuant to this chapter.