

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

189X0564

HOUSE ENGROSSED NO. **SB 100** - 03/07/2016

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Brown, Cammack, Tidemann, and White

1 FOR AN ACT ENTITLED, An Act to enhance South Dakota economic development through  
2 broadband infrastructure improvements.

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

4 Section 1. That § 1-16G-56 be amended to read:

5 1-16G-56. Terms used in §§ 1-16G-56 to 1-16G-68, inclusive, mean:

6 (1) "Board," the Board of Economic Development;

7 (2) "Broadband telecommunications network facilities," the electronics, equipment,  
8 transmission facilities, fiber optic and copper cables and any other property capable  
9 of transmission speeds ten megabits per second of download speed and one megabit  
10 per second of upload speed;

11 (3) "Commissioner," the commissioner of the Governor's Office of Economic  
12 Development;

13 ~~(3)~~(4) "Completed the project" or "completion of the project," the first date when the project  
14 is operational;

15 ~~(4)~~(5) "Construction date," the first date earth is excavated or a contractor has initiated work



1 for the purpose of constructing a new or expanded facility or the first date new  
2 equipment is located on the project site or existing equipment is removed from the  
3 project site for the purpose of equipment upgrades, whichever occurs first;

4 ~~(5)~~(6) "Data center," any facility established for the purpose of processing, storage,  
5 retrieval, or communication of data;

6 ~~(6)~~(7) "Department," the Department of Revenue;

7 ~~(7)~~(8) "Equipment upgrades," the installation of new equipment or the replacement or  
8 improvement of existing equipment, which is subject to the sales or use tax imposed  
9 by chapters 10-45 or 10-46 or contractor's excise tax imposed by chapters 10-46A or  
10 10-46B;

11 ~~(8)~~(9) "GOED," the Governor's Office of Economic Development;

12 ~~(9)~~(10) "New or expanded facility," a new building or structure, or the expansion,  
13 renovation, or retrofitting of an existing building or structure, which is subject  
14 to the contractor's excise tax imposed by chapters 10-46A or 10-46B;

15 ~~(10)~~(11) "Person," any individual, firm, copartnership, joint venture, association,  
16 cooperative, nonprofit development corporation, limited liability company,  
17 limited liability partnership, corporation, estate, trust, business trust, receiver,  
18 or any group or combination acting as a unit;

19 ~~(11)~~(12) "Project," a new or expanded facility with a project cost which exceed twenty  
20 million dollars, or equipment upgrades with a project cost which exceed two  
21 million dollars. A project includes laboratory and testing facilities,  
22 manufacturing facilities, data centers, power generation facilities, power  
23 transmission facilities, broadband telecommunication network facilities,  
24 agricultural processing facilities, wind energy facilities, and facilities defined

1 by GOED as targeted industries. A project does not include any building or  
2 structure:

3 (a) Used predominantly for the sale of products at retail, other than the sale of  
4 electricity at retail, to individual consumers or other than to provide  
5 telecommunication service as defined in § 10-45-1.17;

6 (b) Used predominantly for residential housing or transient lodging;

7 (c) Used predominantly to provide health care services;

8 (d) Used predominantly for the transportation or transmission of natural gas, oil,  
9 or crude oil by means of a pipeline; or

10 (e) That is not subject to ad valorem real property taxation or equivalent taxes  
11 measured by gross receipts;

12 ~~(12)~~(13) "Project cost," the amount paid by the project owner in money, credits,  
13 property, or other consideration associated with a project including, without  
14 limitation, land, labor, materials, furniture, equipment, fees, or fixtures;

15 ~~(13)~~(14) "Wind energy facility," any new facility or facility expansion that:

16 (a) Consists of a commonly managed integrated system of towers, wind turbine  
17 generators with blades, power collection systems, and electric interconnection  
18 systems, that convert wind movement into electricity, and is subject to the tax  
19 imposed by §§ 10-35-18 and 10-35-19; and

20 (b) The construction of which is subject to contractors' excise tax pursuant to  
21 chapter 10-46A or 10-46B.

22 Section 2. That § 1-16G-61 be amended to read:

23 1-16G-61. Any person that has timely filed the application and is holding a permit issued  
24 by GOED, and has completed the project, shall file an affidavit for reinvestment payment with

1 GOED.

2 The affidavit for reinvestment payment shall contain the following information:

- 3 (1) The project owner's name and contact information;
- 4 (2) The general description of the project;
- 5 (3) The date of completion of the project;
- 6 (4) The final project costs;
- 7 (5) The amount of South Dakota sales tax, use tax, and contractors excise tax paid for
- 8 the construction of the project;
- 9 (6) The location of the project;
- 10 (7) The legal description of the project location;
- 11 (8) A list of the contractors and subcontractors that performed work on the project;
- 12 (9) If the reinvestment payment was assigned or transferred, the name and address of the
- 13 person to whom the reinvestment payment has been assigned or transferred; and
- 14 (10) Any other information that GOED may require.

15 The affidavit for reinvestment payment shall be on a form prescribed by the commissioner.

16 The affidavit for reinvestment payment shall be signed by the project owner and signed under  
17 oath before a notary public. No affidavit for reinvestment payment may include more than one  
18 project.

19 In addition, a project for broadband telecommunication network facilities broadband  
20 infrastructure funded in part using federal funds, shall attest to the satisfaction of the conditions  
21 of such grant. The attestation shall satisfy any requirement by GOED that the project would not  
22 have been undertaken but for the reinvestment payment.

23 Section 3. That § 1-16G-59 be amended to read:

24 1-16G-59. The Board of Economic Development shall review the application and make a

1 determination of whether the project shall be approved or disapproved. The board shall consider  
2 the likelihood that the project would have occurred without the reinvestment payment. The  
3 board may approve a reinvestment payment that is equal to or less than South Dakota sales and  
4 use tax paid on the project costs.

5 The board shall consider the following factors when making that determination:

- 6 (1) Has the county or municipality adopted a formula to reduce property taxation for the  
7 project for five years under the discretionary formula pursuant to § 10-6-35.2;
- 8 (2) Has the county or municipality approved a tax incremental district pursuant to  
9 chapter 11-9 for the area where the project will be located;
- 10 (3) Has the municipality approved a municipal sales tax refund pursuant § 10-52-10;
- 11 (4) Economic activity that may occur in the community, area, and state; ~~and~~
- 12 (5) Criteria established by rules promulgated pursuant to § 1-16G-67;
- 13 (6) For all broadband applications the award of a reinvestment payment shall be subject  
14 to the board determination that the reinvestment payment increases the scope of the  
15 project on terms and conditions satisfactory to the board; and
- 16 (7) Notwithstanding all of the above, the board shall have the discretion to award or deny  
17 a reinvestment payment based on its determination on whether the reinvestment  
18 payment will have a positive effect on economic development and job growth.