

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

618R0625

HOUSE BILL NO. 1194

Introduced by: Representatives Rausch, Brunner, Burg, Dennert, Faehn, Fargen, Feickert, Feinstein, Frerichs, Hunhoff (Bernie), Jensen, Juhnke, Lange, Lucas, Novstrup (David), Peters, Pitts, Romkema, Rounds, Schlekeway, Solum, Sorenson, Street, Thompson, Tidemann, Turbiville, and Vanneman and Senators Olson (Russell), Abdallah, Ahlers, Bartling, Bradford, Brown, Dempster, Fryslie, Gillespie, Hansen (Tom), Hanson (Gary), Heidepriem, Jerstad, Kloucek, Knudson, Merchant, Nesselhuf, Peterson, Turbak Berry, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning wind easements and
2 to specify certain information to be included in the recorded documents.

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

4 Section 1. That § 43-13-16 be amended to read as follows:

5 43-13-16. For purposes of §§ 43-13-17 to 43-13-19, inclusive, the term, wind easement,
6 means a right, whether or not stated in the form of a restriction, option to obtain an easement,
7 easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf
8 of any owner of land or air space for the purpose of ensuring adequate exposure of a wind power
9 system to the winds.

10 Section 2. That § 43-13-17 be amended to read as follows:

11 43-13-17. Any property owner may grant a wind easement in the same manner and with the
12 same effect as a conveyance of an interest in real property. The easement shall be created in



1 writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the
2 county in which the easement is granted. Any such easement runs with the land or lands
3 benefited and burdened and terminates upon the conditions stated in the easement, except that
4 the term of any such easement may not exceed fifty years. Any such easement is void if no
5 development of the potential to produce energy from wind power associated with the easement
6 has occurred within five years after the easement ~~began~~ was granted. For the purposes of this
7 section, the term, development, means that a turbine foundation has been constructed on the
8 property subject to the easement. Any payments associated with the granting or continuance of
9 any such easement shall be made on an annual basis to the owner of record of the real property
10 at the time the payment is made. If the easement holder mortgages or otherwise encumbers to
11 any party any part of the easement holder's rights and interests under the easement, any such
12 mortgage or encumbrance on the easement is the responsibility of the easement holder and
13 attaches only to the easement holder's rights and does not otherwise attach to the land or obligate
14 the property owner. Each wind easement agreement shall include a statement disclosing that the
15 easement holder may mortgage or encumber any part of the easement holder's rights and
16 interests under the agreement unless otherwise specified in the agreement.

17 Section 3. That § 43-13-19 be amended to read as follows:

18 43-13-19. No interest in any resource located on a tract of land and associated with the
19 production or potential production of energy from wind power on the tract of land may be
20 severed from the surface estate as defined in § 45-5A-3, except that such rights may be leased
21 for a period not to exceed fifty years. Any such lease is void if no development of the potential
22 to produce energy from wind power has occurred on the land within five years after the lease
23 began. For the purposes of this section, the term, development, means that a turbine foundation
24 has been constructed on the property subject to the easement. The payment of any such lease

1 shall be on an annual basis.

2 Section 4. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 In addition to any other requirements of law, the wind easement required to be filed and
5 recorded pursuant to § 43-13-37 shall include the following information:

6 (1) The names and addresses of the parties;

7 (2) A legal description of the real property involved;

8 (3) Description of property rights conveyed;

9 (4) Term of the wind easement;

10 (5) Description of any restrictions placed on the property for essential services as defined
11 in § 43-13-20; and

12 (6) In the case of a third party acquisition, the name and address of the party for which
13 the wind easement is acquired.

14 This information shall be contained in a separately filed and recorded document. Nothing in this
15 section prohibits the filing of additional documents between the parties.