

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

915U0589

SENATE COMMERCE AND ENERGY

ENGROSSED NO. **SB 195** - 02/14/2013

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

Introduced by: Senators Rhoden, Begalka, Brown, Frerichs, Holien, Kirkeby, Krebs, Lederman, Lucas, Maher, Monroe, Olson (Russell), Rampelberg, Tidemann, and Vehle and Representatives Solum, Bartling, Bolin, Cronin, Duvall, Feickert, Gibson, Gosch, Greenfield, Hawks, Hawley, Heinemann (Leslie), Heinert, Hunhoff (Bernie), Killer, Lust, Magstadt, Otten (Herman), Parsley, Peterson, Rounds, Schoenfish, Soli, Tyler, Werner, and Wismer

1 FOR AN ACT ENTITLED, An Act to establish certain incentives for wind energy facilities, to
2 revise the amount that may be rebated for the gross receipts tax on electricity produced on
3 wind farms, to provide a penalty for filing a false affidavit, and to declare an emergency.

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

5 Section 1. Terms used in this Act mean:

- 6 (1) "Construction date," the first date earth is excavated for the purpose of constructing
7 a project;
- 8 (2) "Completed the project" or "completion of the project," the first date when the project
9 is commercially generating electricity for sale;
- 10 (3) "Department," the Department of Revenue;
- 11 (4) "Person," any individual, firm, copartnership, joint venture, association, cooperative,
12 limited liability company, limited liability partnership, corporation, estate, trust,



- 1 business trust, receiver, or any group or combination acting as a unit;
- 2 (5) "Project," the construction of a wind energy facility at a single site. The project shall
3 consist of a single project rather than an ongoing, systematic process of upgrading,
4 retooling, or modernizing an existing wind energy facility;
- 5 (6) "Project cost," the amount paid by the project owner in money, credits, property, or
6 other money's worth for a project. Project costs include the cost of the blades, wind
7 turbine generators, towers, bases, power collection systems, electric interconnection
8 systems, substations, and amounts paid to contractors. Project costs do not include
9 land acquisition costs, easement costs, environmental impact statement costs, wind
10 study costs, crop damage payments, consulting services, insurance, administrative
11 costs, employee costs, legal fees, or any costs not paid by the project owner;
- 12 (7) "Secretary," the secretary of the Department of Revenue;
- 13 (8) "Wind energy facility," any new facility or facility expansion that:
- 14 (a) Consists of a commonly managed integrated system of towers, wind turbine
15 generators with blades, power collection systems, and electric interconnection
16 systems, that converts wind movement into electricity, and is subject to the tax
17 imposed by §§ 10-35-18 and 10-35-19; and
- 18 (b) The construction of which is subject to contractors' excise tax pursuant to
19 chapter 10-46A or 10-46B.

20 Section 2. The purpose of this Act is to provide a mechanism for an incentive payment to
21 a person that constructs a wind energy facility. To receive an incentive payment as provided by
22 this Act, the person must timely file an application as required by section 3 of this Act, the
23 person must receive a permit from the department pursuant to section 4 of this Act, the person
24 must timely file the affidavit of incentive payment as required by section 5 of this Act, and the

1 person shall comply with the provisions of this Act to qualify for the incentive payment.

2 No project with a construction date before April 1, 2013, may receive an incentive payment
3 as provided by this Act.

4 Section 3. Before any person receives any incentive payment as provided in this Act, the
5 person shall file an application with the department. The application may be filed no sooner than
6 ninety days before the construction date, or no later than ninety days after the construction date.

7 No person may receive any incentive payment as provided by this Act if the application is not
8 timely filed with the department.

9 The application shall include the following information:

- 10 (1) The project owner's name and contact information;
- 11 (2) The general description of the project;
- 12 (3) The construction date of the project;
- 13 (4) The projected date for completion of the project;
- 14 (5) The projected megawatt production of the project;
- 15 (6) The number of completed wind towers to be included in the project;
- 16 (7) The proposed nameplate capacity for each wind turbine generator in the project;
- 17 (8) The estimated project costs;
- 18 (9) The location of the project;
- 19 (10) The legal description of the project location;
- 20 (11) A list of the contractors and subcontractors that will perform work on the project; and
- 21 (12) Any other information that the department may require.

22 The application shall be on a form prescribed by the secretary. The application shall be
23 signed by the project owner under penalty of perjury, and signed under oath before a notary
24 public. No application may include more than one project.

1 Section 4. Upon approval of the application, the secretary shall issue a permit entitling the
2 person to submit an affidavit for incentive payment as provided by section 5 of this Act. The
3 permit and incentive payment are not assignable or transferable except as collateral or security
4 pursuant to chapter 57A-9. However, the secretary may permit the assignment or transfer of a
5 permit and incentive payment if the initial permit holder entity reorganizes into a new entity, if
6 the new entity and the initial entity share common ownership, and the reorganization was
7 completed solely for a legitimate business purpose. The new entity shall file with the department
8 an amended application within sixty days of the reorganization.

9 Section 5. Any person that has timely filed the application and is holding a permit issued by
10 the department, and has completed the project, shall file an affidavit for incentive payment with
11 the department.

12 The affidavit for incentive payment shall contain the following information:

- 13 (1) The project owner's name and contact information;
- 14 (2) The general description of the project;
- 15 (3) The date of completion of the project;
- 16 (4) The final megawatt production of the project;
- 17 (5) The number of completed wind towers in the project;
- 18 (6) The final nameplate capacity for each wind turbine generator in the project;
- 19 (7) The final project costs;
- 20 (8) The amount of South Dakota sales tax, use tax, and contractors excise tax paid for
21 the construction of the project;
- 22 (9) The location of the project;
- 23 (10) The legal description of the project location;
- 24 (11) A list of the contractors and subcontractors that performed work on the project; and

1 (12) Any other information that the department may require.

2 The affidavit for incentive payment shall be on a form prescribed by the secretary. The
3 affidavit for incentive payment shall be signed by the project owner under penalty of perjury,
4 and signed under oath before a notary public. No affidavit for incentive payment may include
5 more than one project.

6 Section 6. The affidavit for incentive payment as required by section 5 of this Act shall be
7 filed no later than six months after the completion of the project. If the affidavit for incentive
8 payment is not timely filed, the person is ineligible for any incentive payment provided by this
9 Act. If the affidavit for incentive payment contains any false or fraudulent information, the
10 person is ineligible for any incentive payment provided by this Act.

11 No project costs that occur after three years from the construction date are eligible to be
12 included in the final project cost determination for any incentive payment provided by this Act.

13 Section 7. After the timely receipt of a completed affidavit for incentive payment, the
14 department shall provide an incentive payment to the project owner based upon the final project
15 costs. The amount of the incentive payment is based on the amount of the final project costs as
16 follows:

17 (1) For a project with a final project cost of five million dollars or more but less than
18 seven million five hundred thousand dollars, there shall be an incentive payment of
19 one hundred thousand dollars;

20 (2) For a project with a final project cost of seven million five hundred thousand dollars
21 or more but less than ten million dollars, there shall be an incentive payment of one
22 hundred fifty thousand dollars;

23 (3) For a project with a final project cost of ten million dollars or more but less than
24 twelve million five hundred thousand dollars, there shall be an incentive payment of

- 1 two hundred thousand dollars;
- 2 (4) For a project with a final project cost of twelve million five hundred thousand dollars
3 or more but less than fifteen million dollars, there shall be an incentive payment of
4 two hundred fifty thousand dollars;
- 5 (5) For a project with a final project cost of fifteen million dollars or more but less than
6 seventeen million five hundred thousand dollars, there shall be an incentive payment
7 of three hundred thousand dollars;
- 8 (6) For a project with a final project cost of seventeen million five hundred thousand
9 dollars or more but less than twenty million dollars, there shall be an incentive
10 payment of three hundred fifty thousand dollars;
- 11 (7) For a project with a final project cost of twenty million dollars or more but less than
12 twenty-five million dollars, there shall be an incentive payment of four hundred
13 thousand dollars;
- 14 (8) For a project with a final project cost of twenty-five million dollars or more but less
15 than thirty million dollars, there shall be an incentive payment of five hundred
16 thousand dollars;
- 17 (9) For a project with a final project cost of thirty million dollars or more but less than
18 thirty-five million dollars, there shall be an incentive payment of six hundred
19 thousand dollars;
- 20 (10) For a project with a final project cost of thirty-five million dollars or more but less
21 than forty million dollars, there shall be an incentive payment of seven hundred
22 thousand dollars;
- 23 (11) For a project with a final project cost of forty million dollars or more but less than
24 fifty million dollars, there shall be an incentive payment of eight hundred thousand

1 dollars;

2 (12) For a project with a final project cost of fifty million dollars or more but less than
3 sixty million dollars, there shall be an incentive payment of one million dollars;

4 (13) For a project with a final project cost of sixty million dollars or more but less than
5 seventy million dollars, there shall be an incentive payment of one million two
6 hundred thousand dollars;

7 (14) For a project with a final project cost of seventy million dollars or more but less than
8 eighty million dollars, there shall be an incentive payment of one million four
9 hundred thousand dollars;

10 (15) For a project with a final project cost of eighty million dollars or more but less than
11 ninety million dollars, there shall be an incentive payment of one million six hundred
12 thousand dollars;

13 (16) For a project with a final project cost of ninety million dollars or more but less than
14 one hundred million dollars, there shall be an incentive payment of one million eight
15 hundred thousand dollars;

16 (17) For a project with a final project cost of one hundred million dollars or more, there
17 shall be an incentive payment of two percent of the final project costs.

18 No incentive payment provided by this section may be in excess of the South Dakota sales
19 tax, use tax, and contractor's excise tax paid by the project owner on project costs for the
20 construction of the project. The department shall tender the incentive payment by electronic
21 funds transfer.

22 Section 8. The department is hereby granted the continuing appropriation authority to make
23 the incentive payments provided for by this Act.

24 Section 9. Any person receiving an incentive payment for a project pursuant to the

1 provisions of this Act may not receive any other refund, incentive payment, lower tax rate,
2 payment, or other incentive from the department for that project.

3 Section 10. Any person who files a false or fraudulent application pursuant to section 3 of
4 this Act is guilty of a Class 1 misdemeanor. Any person who files a false or fraudulent affidavit
5 for incentive payment pursuant to section 5 of this Act is guilty of a Class 6 felony.

6 Section 11. If the project is located on land that is included within the agreement area of a
7 tax collection agreement entered into by the state and an Indian tribe pursuant to chapter
8 10-12A, the department is only obligated to pay a percentage of the incentive payment as
9 required by this Act equal to the percentage of funds that the department retains pursuant to the
10 terms of the tax collection agreement.

11 Section 12. The name of any person that receives an incentive payment as provided by this
12 Act and the amount of the incentive payment is public information and shall be available and
13 open to public inspection as provided in § 1-27-1.

14 Section 13. Any person aggrieved by the denial in whole or in part of an incentive payment
15 claimed under the provisions of this Act, may within thirty days after service of the notice of
16 such denial by the secretary, demand and is entitled to a hearing, upon notice, before the
17 secretary. The hearing shall be conducted pursuant to chapter 1-26.

18 Section 14. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
19 procedures for applying for the incentive payment and the requirements necessary to qualify for
20 the incentive payment.

21 Section 15. That § 10-35-22 be amended to read as follows:

22 10-35-22. Any company requiring transmission lines or wind farm collector systems or both
23 in South Dakota for a wind farm or a power generation facility as described in § 10-35-1.3, is
24 eligible for a partial rebate of the tax paid under § 10-35-19. The company shall apply for the

1 rebate on forms prescribed by the secretary. The total amount of tax rebated shall be no more
2 than fifty percent of the cost of the transmission lines and wind farm collector systems in South
3 Dakota.

4 The maximum rebate any company may receive in one year is ninety percent of the tax paid
5 under § 10-35-19 for the first five years and fifty percent of the tax paid under § 10-35-19 for
6 the next five years. The secretary shall determine when the wind farm is commercially
7 operational. No wind farm may receive a rebate under this section after this ten year period.

8 The secretary shall rebate the tax from the wind energy tax fund prior to the distribution of
9 any money as provided in § 10-35-21. The secretary may provide a tax credit, in lieu of full
10 payment of the gross receipts tax, of up to eighty percent of the transmission rebate value that
11 has been approved by the secretary. Any revenue in the wind energy tax fund after the rebates
12 are paid shall be deposited in the property tax reduction fund.

13 No company may receive any rebate pursuant to this section if the company's wind farm first
14 generates electricity after April 1, 2013. No company may receive any rebate pursuant to this
15 section if the company receives the incentive payment as provided by section 7 of this Act.

16 Section 16. That § 10-35-21 be amended to read as follows:

17 10-35-21. The secretary shall distribute all of the tax deposited in the wind energy tax fund
18 pursuant to § 10-35-18 and twenty percent of the tax deposited in the wind energy tax fund
19 pursuant to § 10-35-19 to the county treasurer where the wind farm is located. If the wind
20 energy tax fund contains less than twenty percent of the gross receipts tax from § 10-35-19, due
21 to the transmission line rebate under § 10-35-22, the secretary shall distribute the remainder of
22 funds after the rebate to the county treasurer where the wind farm is located. If a wind farm is
23 located in more than one county, each county shall receive the same percentage of the tax as the
24 percentage of wind towers in the wind farm located in the county. Upon receipt of the taxes, the

1 county auditor shall apportion the tax among ~~all taxing jurisdictions~~ the school districts, the
2 county, and the organized townships where a wind tower is located. The tax shall be
3 apportioned ~~in the same manner as agricultural real property taxes would have been apportioned~~
4 ~~between the taxing jurisdictions~~ by the county auditor by allocating fifty percent of the tax to
5 the school district where each wind tower is located, fifteen percent to the organized township
6 where each wind tower is located, and thirty-five percent to the county. If a wind tower is
7 located in a township that is not organized, the unorganized township's share of the tax for that
8 wind tower is allocated to the county. The secretary shall distribute the money to the counties
9 on or before the first day of May.

10 Section 17. Whereas, this Act is necessary for the support of the state government and its
11 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
12 full force and effect from and after its passage and approval.