House
Daily Reader

Thursday, February 28, 2008

Bills Included				
HB 1061	HB 1120	HB 1132	HB 1248	HB 1283
HB 1320				

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0236

SENATE ENGROSSED NO. HB 1061 - 2/26/2008

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

FOR AN ACT ENTITLED, An Act to revise the penalty for the distribution or possession with intent to distribute marijuana to a minor.

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

Section 1. That § 22-42-7 be amended to read as follows:

22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. ~~However, the distribution of any amount of marijuana to a minor is a Class 4 felony.~~ <u>The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The</u>

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distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

258P0135

SENATE TAXATION ENGROSSED NO. HB 1120 -
2/22/2008

Introduced by: Representatives Rhoden and Hargens and Senators Knudson and Heidepriem

FOR AN ACT ENTITLED, An Act to revise the property tax levies for the general fund of a school district.

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

Section 1. That § 10-12-42 be amended to read as follows:

10-12-42. For taxes payable in ~~2008~~ 2009 and each year thereafter, the levy for the general fund of a school district shall be as follows:

(1) The maximum tax levy shall be nine dollars and ~~eleven~~ nine cents per thousand dollars of taxable valuation subject to the limitations on agricultural property as provided in subdivision (2) of this section, owner-occupied property as provided for in subdivision (3) of this section, and nonagricultural acreage property as provided for in subdivision (4) of this section;

(2) The maximum tax levy on agricultural property for such school district shall be two dollars and ~~seventy-one~~ sixty-nine cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies shall maintain the same proportion to each other as represented in the

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mathematical relationship at the maximum levies;

(3) The maximum tax levy for an owner-occupied single-family dwelling as defined in § 10-13-40, for such school district may not exceed four dollars and ~~twenty-six~~ twenty-four cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies; and

(4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-33.14, for such school district shall be three dollars and ~~seventy-one~~ sixty-nine cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies.

All levies in this section shall be imposed on valuations where the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue and Regulation. These valuations shall be used for all school funding purposes. If the district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies in this section. The school district may elect to tax at less than the maximum amounts set forth in this section.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

628P0245

SENATE ENGROSSED NO. HB 1132 - 2/26/2008

Introduced by: The Committee on Judiciary at the request of the Chief Justice

FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the circumstances under which children may be held in temporary custody.

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

Section 1. That § 26-7A-14 be amended to read as follows:

26-7A-14. An apparent abused or neglected child taken into temporary custody and not released to the child's parents, guardian, or custodian may be placed in the temporary care of the Department of Social Services, foster care, or a shelter as designated by the court to be the least restrictive alternative for the child. A child apparently in need of supervision or an apparent delinquent child taken into temporary custody and not released to the child's parents, guardian, or custodian may be placed in foster care, shelter, or detention as designated by the court to be the least restrictive alternative for the child. The temporary caretaker of the child shall promptly notify the state's attorney of the child's placement.

No child may be held in temporary custody longer than forty-eight hours, or twenty-four hours pursuant to § 26-8B-3, excluding Saturdays, Sundays, and court holidays, unless a <u>temporary custody petition for an apparent abuse or neglect case or other</u> petition has been filed,

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the child is within the jurisdiction of the court and the court orders longer custody during a noticed hearing or a telephonic hearing.

The court may at any time order the release of a child from temporary custody without holding a hearing, either with or without restriction or condition or upon written promise of the child's parents, guardian, or custodian regarding the care and protection of an apparent abused or neglected child or regarding custody and appearance in court of an apparent child in need of supervision or an apparent delinquent child at a time, date, and place to be determined by the court.

Provisions of this chapter on temporary custody do not abrogate or limit the authority of the court to order temporary custody of any child during any noticed hearing after an action has been commenced.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

714P0010

SENATE APPROPRIATIONS

ENGROSSED NO. HB 1248 - 2/22/2008

Introduced by: Representatives Gillespie, Dennert, Dykstra, Halverson, Hargens, Putnam, Rhoden, Street, and Tidemann and Senators Hanson (Gary), Bartling, Dempster, Heidepriem, McNenny, and Peterson (Jim)

FOR AN ACT ENTITLED, An Act to establish the South Dakota soil conservation award program and to make an appropriation therefor.

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

Section 1. The South Dakota soil conservation award program is hereby established. Under the program, each conservation district may select not more than five residents of the conservation district each year as recipients of the Soil Conservation Award. To be eligible for an award, a person shall be a South Dakota resident who is directly and actively engaged in agricultural production in South Dakota. In selecting award recipients, the conservation district may consult with the South Dakota State Conservation Commission and other relevant entities. Awards shall be based upon the recipient's contribution toward the preservation and conservation of soil and other natural resources in South Dakota in conjunction with the recipient's agricultural operations.

Section 2. Each recipient shall receive a sign displaying the words "South Dakota Soil Conservation Award" "Award Winning Soil Conservation Farm" and the year of the award. The

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South Dakota Conservation Commission shall promulgate rules pursuant to chapter 1-26 governing the soil conservation award program. The rules shall include the following:

(1) Criteria for selecting award recipients in accordance with the requirements of this Act, which shall include efforts to maintain grass waterways and eliminating cultivation of waterways; terracing; crop rotation; leaving crop residue after harvesting; and no till;

(2) Procedures for nominating and selecting award recipients;

(3) Procedures to publicize and raise awareness of the need for soil conservation practices as outlined in subdivision (1) of this section;

(4) Other procedures necessary for the administration of the award program.

Section 3. There is hereby appropriated from the coordinated natural resources conservation fund established pursuant to § 38-7-25 the sum of five thousand dollars ($5,000), or so much thereof as may be necessary, to the State Conservation Commission to implement the soil conservation award program as provided in this Act.

Section 4. The commission is authorized to accept and expend any gifts or contributions from any source for the purposes of this Act.

Section 5. The secretary of agriculture shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2009, shall revert in accordance with the procedures prescribed in chapter 4-8.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

564P0675

SENATE ENGROSSED NO. HB 1283 - 2/26/2008

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

Introduced by: Representatives Brunner and Peters and Senators Maher and Nesselhuf

FOR AN ACT ENTITLED, An Act to revise on-sale alcoholic beverage license fees for certain municipalities and to declare an emergency.

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

Section 1. Notwithstanding the provisions of subdivision 35-4-2(4), any municipality that is incorporated after July 1, 2007, may charge a fee not to exceed thirty thousand dollars for an on-sale license.

Section 2. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0737

SENATE STATE AFFAIRS

ENGROSSED NO. HB 1320 - 2/20/2008

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

FOR AN ACT ENTITLED, An Act to provide tax incentives for certain wind energy facilities and energy transmission equipment.

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

Section 1. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

Terms as used in sections 1 to 7 of this Act, inclusive, mean:

(1) "Collector system," all property used or constructed to interconnect individual wind turbines within a wind farm into a common project, including step-up transformers, electrical collection equipment, collector substation transformers, and communication systems;

(2) "Company," any person, corporation, limited liability company, association, company, partnership, political subdivision, rural electric cooperative, or any group or combination acting as a unit;

(3) "Nameplate capacity," the number of kilowatts a wind farm can produce, as assigned to the power units in the wind farm by the manufacturer and determined by the

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secretary;

(4) "Wind farm," all real or personal property used or constructed for the purpose of producing electricity for commercial purposes utilizing the wind as an energy source and with a nameplate capacity of at least five thousand kilowatts. The term includes the collector system;

(5) "Transmission line," an electric transmission line and associated facilities including the collector system, with a design of one hundred fifteen kilovolts or more.

Section 2. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

Any company owning or holding under lease, or otherwise, real or personal property used, or intended for use, as a wind farm producing power for the first time on or after July 1, 2007, shall pay the alternative annual taxes provided in sections 3 and 4 of this Act. The alternative taxes imposed by sections 3 and 4 of this Act are in lieu of all taxes levied by the state, counties, municipalities, school districts, or other political subdivisions of the state on the personal and real property of the company which is used or intended for use as a wind farm, but are not in lieu of the retail sales and service tax imposed by chapter 10-45, the use tax imposed by chapter 10-46, or any other tax.

Section 3. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

Any company owning or holding under lease, or otherwise, real or personal property used, or intended for use, as a wind farm producing power for the first time on or after July 1, 2007, shall pay an annual tax equal to three dollars multiplied by the nameplate capacity of the wind farm. The tax shall be imposed beginning the first calendar year the wind farm generates gross receipts. The tax shall be paid annually to the secretary the first day of February of the following

year. The tax for the first calendar year shall be prorated based upon the percentage of the calendar year remaining after the company generates gross receipts. Except as otherwise provided in this Act, the provisions of chapter 10-59 apply to the administration of the tax.

Section 4. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

Any company owning or holding under lease, or otherwise, real or personal property used, or intended for use, as a wind farm producing power for the first time on or after July 1, 2007, shall pay an annual tax of two percent of the gross receipts of the wind farm. For purposes of this section, the gross receipts of the wind farm is its production of electricity in kilowatt hours multiplied by the South Dakota electricity base rate of $0.0475 per kilowatt hour in 2008, with the electricity base rate of $0.0475 per kilowatt hour increasing by 2.5 percent on an annual basis thereafter, as determined by the secretary. The owner of a wind farm subject to tax under this section shall file a report with the secretary detailing the amount of electricity in kilowatt-hours that was produced by the wind farm for the previous calendar year. The secretary shall prescribe the form of the report. The tax for the gross receipts generated in a calendar year shall become due and be payable to the secretary on the first day of February of the following year. Except as otherwise provided in this Act, the provisions of chapter 10-59 apply to the administration of the tax.

Section 5. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

The secretary shall deposit the tax imposed by sections 3 and 4 of this Act into the wind energy tax fund. There is created in the state treasury the wind energy tax fund.

Section 6. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

The secretary shall distribute all of the tax deposited in the wind energy tax fund pursuant to section 3 of this Act and twenty percent of the tax deposited in the wind energy tax fund pursuant to section 4 of this Act to the county treasurer where the wind farm is located. If the wind energy tax fund contains less than twenty percent of the gross receipts tax from section 4 of this Act, due to the transmission line rebate under section 7 of this Act, the secretary shall distribute the remainder of funds after the rebate to the county treasurer where the wind farm is located. If a wind farm is located in more than one county, each county shall receive the same percentage of the tax as the percentage of wind towers in the wind farm located in the county. Upon receipt of the taxes, the county auditor shall apportion the tax among all taxing jurisdictions where a wind tower is located. The tax shall be apportioned in the same manner as agricultural real property taxes would have been apportioned between the taxing jurisdictions. The secretary shall distribute the money to the counties on or before the first day of May.

Section 7. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

Any company requiring transmission lines or wind farm collector systems or both in South Dakota for a wind farm or a power generation facility as described in § 10-35-1.3, is eligible for a partial rebate of the tax paid under section 4 of this Act. The company shall apply for the rebate on forms prescribed by the secretary. The total amount of tax rebated shall be no more than fifty percent of the cost of the transmission lines and wind farm collector systems in South Dakota.

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

year period.

The secretary shall rebate the tax from the wind energy tax fund prior to the distribution of any money as provided in section 6 of this Act. The secretary may provide a tax credit, in lieu of full payment of the gross receipts tax, of up to eighty percent of the transmission rebate value that has been approved by the secretary. Any revenue in the wind energy tax fund after the rebates are paid shall be deposited in the property tax reduction fund.

Section 8. That § 10-4-36 be amended to read as follows:

10-4-36. ~~All~~ For wind energy properties with less than five thousand kilowatts of nameplate capacity, all real property used or constructed for the purpose of producing electricity for commercial purposes that utilizes the wind as an energy source is classified for tax purposes as wind energy property and shall be assessed and taxed in the same manner as other real property and shall be locally assessed by the county director of equalization pursuant to § 10-3-16. For the purposes of §§ 10-4-36 to 10-4-38, inclusive, real property includes the base, foundation, tower, and substations. Real property does not include the wind turbine or blades attached thereto.

Section 9. That § 10-4-37 be amended to read as follows:

10-4-37. Any wind energy property of a commercial wind power production facility with less than five thousand kilowatts of nameplate capacity shall be assessed under the provisions of this chapter.

Section 10. That chapter 10-46C be amended by adding thereto a NEW SECTION to read as follows:

Any project receiving a permit for the payment of the tax pursuant to chapter 10-46C is not eligible for the refund provided in chapter 10-45B.

Section 11. That chapter 10-45B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any project receiving a permit for the refund of the tax pursuant to chapter 10-45B is not

3 eligible for the permit provided in chapter 10-46C.