

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

615Q0255

## HOUSE BILL NO. 1112

Introduced by: Representatives Hunhoff (Bernie), Engels, Faehn, Fargen, Gibson, Kirschman, Solberg, Steele, and Wink and Senators Peterson, Fryslyie, Maher, Nelson, and Vehle

1 FOR AN ACT ENTITLED, An Act to establish certain restrictions and notification  
2 requirements related to encumbrances on wind easements.

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

4 Section 1. That § 43-13-17 be amended to read as follows:

5 43-13-17. Any property owner may grant a wind easement in the same manner and with the  
6 same effect as a conveyance of an interest in real property. The easement shall be created in  
7 writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the  
8 county in which the easement is granted. Any such easement runs with the land or lands  
9 benefited and burdened and terminates upon the conditions stated in the easement, except that  
10 the term of any such easement may not exceed fifty years. Any such easement is void if no  
11 development of the potential to produce energy from wind power associated with the easement  
12 has occurred within five years after the easement began. Any payments associated with the  
13 granting or continuance of any such easement shall be made on an annual basis to the owner of  
14 record of the real property at the time the payment is made. If the easement holder mortgages



1 or otherwise encumbers to any party any part of the easement holder's rights and interests under  
2 the easement, the property owner shall be notified of the mortgage or encumbrance. Any such  
3 mortgage or encumbrance on the easement is the responsibility of the easement holder and does  
4 not attach to the land or obligate the property owner. Each wind easement agreement shall  
5 include a statement disclosing that the easement holder may mortgage or encumber any part of  
6 the easement holder's rights and interests under the agreement unless otherwise specified in the  
7 agreement.