

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

480I0026

SENATE BILL NO. 110

Introduced by: Senators Kloucek, Kooistra, and Nachtigal and Representatives Elliott, Bartling, Bradford, Gassman, Hargens, Hundstad, Lange, Thompson, Valandra, and Van Norman

1 FOR AN ACT ENTITLED, An Act to authorize the refund of certain contractors' excise and
2 sales and use taxes associated with certain wind power generation facilities.

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

4 Section 1. That § 49-34A-80 be amended to read as follows:

5 49-34A-80. Any commercial small power production facility, utilizing renewable resources,
6 such as sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2001,
7 produces ten megawatts or less of electricity as measured by nameplate rating, and is located
8 within one county and owned by a natural person, corporation, nonprofit or for profit business
9 organization, or tribal council (if the facility is located outside the boundaries of the reservation),
10 irrigation district, drainage district, or other political subdivision or agency of the state
11 authorized by statute to carry on the business of developing, transmitting, utilizing, or
12 distributing electric power is subject to the provisions of §§ 49-34A-80 to 49-34A-92, inclusive,
13 for any new or expanded facility.

14 Any cooperative wind power production facility that begins generating electricity after
15 June 30, 2003, is subject to the provisions of §§ 49-34A-80 to 49-34A-92, inclusive, for any new



1 or expanded facility. A cooperative wind power production facility is a facility for the generation
2 of electricity through wind power if the facility is owned by a cooperative as defined in § 47-15-
3 1 and if a controlling interest in the cooperative is held by persons who are engaged in farming
4 as defined in § 47-9A-2.

5 Section 2. That § 49-34A-81 be amended to read as follows:

6 49-34A-81. Rural electric cooperatives developing commercial small power production
7 facilities utilizing renewable energy or developing cooperative wind power production facilities
8 are not subject to tax pursuant to § 10-35-1.2 but are subject to a gross receipts tax as defined
9 in § 10-36-6.

10 Section 3. That § 49-34A-82 be amended to read as follows:

11 49-34A-82. Terms used in §§ 49-34A-80 to 49-34A-92, inclusive, mean:

- 12 (1) "Department," the Department of Revenue;
- 13 (2) "New or expanded facility," a new commercial small power production facility as or
14 a new cooperative wind power production facility as those terms are defined in
15 § 49-34A-80 or an addition to an existing commercial small power production facility
16 or cooperative wind power production facility, the construction or installation of
17 which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B;
- 18 (3) "Project," the installation or construction of the first ten megawatts of generation
19 capacity of a new or expanded commercial small power production facility or the
20 installation or construction of a new or expanded cooperative wind power production
21 facility;
- 22 (4) "Project cost," the amount paid in money for a project;
- 23 (5) "Secretary," the secretary of the Department of Revenue.

24 Section 4. That § 49-34A-83 be amended to read as follows:

1 49-34A-83. Any person may apply for and obtain a refund or credit for contractors' excise
2 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
3 of a new or expanded facility that is a commercial small power production facility that is defined
4 in § 49-34A-80. Any person may apply for and obtain a refund or credit for contractors' excise
5 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
6 of a new or expanded wind power production facility as defined in § 49-34A-80 and for sales or
7 use taxes imposed and paid by such person under the provisions of chapters 10-45 and 10-46 for
8 the construction of a new or expanded wind power production facility.

9 Section 5. That § 49-34A-84 be amended to read as follows:

10 49-34A-84. The refund for a commercial small power production facility pertains only to
11 project costs incurred and paid after July 1, 2001. The refund for a cooperative wind power
12 production facility pertains only to project costs incurred and paid after July 1, 2003. The refund
13 pertains only to project costs that were incurred and paid within thirty-six months of the approval
14 of the application required by §§ 49-34A-80 to 49-34A-92, inclusive. No refund may be made
15 unless:

- 16 (1) The project costs exceed five hundred thousand dollars; and
17 (2) The person applying for the refund obtains a permit from the secretary as set forth in
18 § 49-34A-86.

19 Section 6. That § 49-34A-85 be amended to read as follows:

20 49-34A-85. The amount of the tax refund shall be one hundred percent of the contractor's
21 excise taxes and one hundred percent of the sales and use taxes attributed to the project cost,
22 excluding any associated transmission facilities.