

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

78110577

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 179** - 02/12/2003

Introduced by: Senators Symens, Abdallah, Bogue, Duenwald, McCracken, and Moore and
Representatives Hanson, Burg, Olson (Mel), and Peterson (Bill)

1 FOR AN ACT ENTITLED, An Act to revise and expand certain provisions relating to wind
2 energy development.

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

4 Section 1. That § 43-13-19 be amended to read as follows:

5 43-13-19. No interest in any resource located on a tract of land and associated with the
6 production or potential production of energy from wind power on the tract of land may be
7 severed from the surface estate as defined in § 45-5A-3, ~~except that~~ in fee, remainder, or
8 permanent easement. However, such rights may be leased as a wind easement for a period not
9 to exceed fifty years. Any such wind easement lease is void if no development of the potential
10 to produce energy from wind power has occurred on the land within five years after the lease
11 began. The payment of any such wind easement lease shall be on an annual basis.

12 Section 2. That § 43-13-18 be amended to read as follows:

13 43-13-18. Any deed, will, or other instrument that creates a wind easement shall include:

14 (1) A description of the real property subject to the easement and a description of the real
15 property benefiting from the wind easement;



1 (2) A description of the vertical and horizontal angles, expressed in degrees, and distances
2 from the site of the wind power system in which an obstruction to the wind is
3 prohibited or limited;

4 (3) Any terms or conditions under which the easement is granted or may be terminated;

5 (4) Any provisions for compensation of the owner of the real property benefiting from the
6 easement in the event of interference with the enjoyment of the easement, or
7 compensation of the owner of the real property subject to the easement for
8 maintaining the easement; and

9 (5) Any other provisions necessary or desirable to execute the instrument.

10 No instrument creating a wind easement may bind any of the parties to confidentiality
11 concerning the terms of the easement. Any such confidentiality provision is void.

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

14 No wind power turbine may be erected within a distance to an adjoining property of less than
15 three times the total swept rotorblade diameter of the installed turbine unless the adjoining
16 landowner has consented in writing for compensation received.