State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

682N0783

SENATE BILL NO. 205

Introduced by: Senators Kloucek, Gray, and Jerstad and Representatives Van Norman, Bradford, Dennert, Engels, Feinstein, Kirkeby, Nelson, and Sigdestad

FOR AN ACT ENTITLED, An Act to provide for incentives for the development of certain power production facilities utilizing renewable resources.

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

Section 1. Any commercial power production facility, utilizing renewable resources, such as sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2007, produces between one-fifth of a megawatt and forty megawatts of electricity as measured by nameplate rating, and is located within one county and owned in whole or part by a natural person, municipality, or school district is subject to the provisions of sections 1 to 12, inclusive, of this Act for any new or expanded facility.

Section 2. Terms used in used in this Act, inclusive, mean:

(1) "Department," the Department of Revenue and Regulation;

(2) "New or expanded facility," a new commercial power production facility as defined in section 1 of this Act or an addition to an existing commercial power production facility, the construction or installation of which is subject to sales and use tax pursuant to chapters 10-45 and 10-46 and contractor's excise tax pursuant to chapter

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

10-46A, 10-46B, or 10-46C;

(3) "Project," the installation or construction of a new or expanded facility that has a generation capacity between one-fifth of a megawatt and forty megawatts;

(4) "Project cost," the amount paid in money for a project;

(5) "Secretary," the secretary of the Department of Revenue and Regulation.

Section 3. Any person may apply for and obtain a refund or credit for sales and use taxes imposed and paid under the provisions of chapters 10-45 and 10-46 and contractor's excise taxes imposed and paid under the provisions of chapter 10-46A, 10-46B, or 10-46C for the construction of a new or expanded facility that is a commercial power production facility that is defined in section 1 of this Act.

Section 4. The refund pertains only to project costs incurred and paid after July 1, 2007. The refund pertains only to project costs that were incurred and paid within thirty-six months of the approval of the application required by sections 1 to 12, inclusive, of this Act. No refund may be made unless:

(1) The landowner where the facility is located owns at least twenty-five percent of the project;

(2) A resident of South Dakota, municipality, or school district owns at least seventy-five percent of the project; and

(3) The person applying for the refund has obtained a permit from the secretary as set forth in section 6 of this Act.

Section 5. The amount of the tax refund shall be one hundred percent of the contractor's excise taxes and the sales and use taxes attributed to the project cost, excluding any associated transmission facilities.

Section 6. Any person desiring to claim a refund pursuant to sections 1 to 12, inclusive, of

this Act shall apply for a permit from the secretary at least thirty days prior to commencement of the project. The application for a permit shall be submitted on a form prescribed by the secretary. A separate application shall be made and submitted for each project. Upon approval of the application, the secretary shall issue a permit entitling the applicant to submit refund claims as provided by sections 1 to 12, inclusive, of this Act. The permit or refund claims are not assignable or transferable except as collateral or security pursuant to chapter 57A-9.

Section 7. Any claim for refund shall be submitted on forms prescribed by the secretary and shall be supported by such documentation as the secretary may require. The secretary may deny any claim if the claimant has failed to provide information or documentation requested or considered necessary by the secretary to determine the validity of the claim.

Section 8. Any claim for refund shall be submitted to the department on or before the last day of the month following each quarterly period. The secretary shall determine the amount of the tax refund. Ninety percent of the amount of refund shall be paid to the claimant in accordance with §§ 10-59-22 and 10-59-23, and ten percent shall be withheld by the department. No interest shall be paid on the refund amount.

Section 9. The amounts withheld by the department in accordance with section 8 of this Act shall be retained until the project has been completed and the claimant has met all the conditions of sections 1 to 12, inclusive, of this Act at which time all sums retained shall be paid to claimant.

Section 10. If any claim has been fraudulently presented or supported as to any item in the claim, or if the claimant fails to meet all the conditions of sections 1 to 12, inclusive, of this Act, then the claim may be rejected in its entirety and all sums previously refunded to the claimant constitute a debt to the state and a lien in favor of the state upon all property and rights to property whether real or personal belonging to the claimant and may be recovered in an action

of debt.

Section 11. Any person aggrieved by the denial in whole or in part of a refund claimed under sections 1 to 12, inclusive, of this Act may within thirty days after service of the notice of a denial by the secretary, demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant to chapter 1-26.

Section 12. The secretary may promulgate rules, pursuant to chapter 1-26,concerning the procedures for filing refund claims and the requirements necessary to qualify for a refund.

Section 13. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as follows:

Any person constructing a new or expanded facility as defined by section 2 of this Act that begins generating electricity after June 30, 2007, but before December 31, 2013, and produces between one-fifth of a megawatt and forty megawatts of electricity as measured by nameplate rating may apply for an exemption from ad valorem taxation. The person shall apply for the exemption upon forms provided by the secretary of revenue and regulation before beginning construction of the facility. Upon approval of the application, the secretary shall issue a certificate of exemption and the facility shall be exempt from ad valorem taxation from the completion of construction until five years after that date. The secretary may require any information from the applicant necessary to administer this exemption.

No new or expanded facility is eligible for a property tax exemption pursuant to this section unless:

(1) The landowner where the facility is located owns at least twenty-five percent of the facility; and

(2) A resident of South Dakota, municipality, or school district owns at least seventy-five percent of the facility.

1 Section 14. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as
2 follows:
3 The secretary of the Department of Revenue and Regulation may promulgate rules, pursuant
4 to chapter 1-26, concerning the procedures for filing an exemption and the requirements
5 necessary to qualify for an exemption pursuant to section 13 of this Act.
6 Section 15. Sections 1 to 12, inclusive of this Act are repealed on December 31, 2013.
7 Section 16. Sections 13 and 14 are repealed on December 31, 2018.