

# 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

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

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

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

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

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

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

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



1           secretary;

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

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

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

10       Any company owning or holding under lease, or otherwise, real or personal property used,  
11       or intended for use, as a wind farm producing power for the first time on or after July 1, 2007,  
12       shall pay the alternative annual taxes provided in sections 3 and 4 of this Act. The alternative  
13       taxes imposed by sections 3 and 4 of this Act are in lieu of all taxes levied by the state, counties,  
14       municipalities, school districts, or other political subdivisions of the state on the personal and  
15       real property of the company which is used or intended for use as a wind farm, but are not in  
16       lieu of the retail sales and service tax imposed by chapter 10-45, the use tax imposed by chapter  
17       10-46, or any other tax.

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

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

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

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

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

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

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

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

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

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

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

21       The maximum rebate any company may receive in one year is ninety percent of the tax paid  
22 under section 4 of this Act for the first five years and fifty percent of the tax paid under section  
23 4 of this Act for the next five years. The secretary shall determine when the wind farm is  
24 commercially operational. No wind farm may receive a rebate under this section after this ten

1 year period.

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

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

8 10-4-36. ~~At~~ For wind energy properties with less than five thousand kilowatts of nameplate  
9 capacity, all real property used or constructed for the purpose of producing electricity for  
10 commercial purposes that utilizes the wind as an energy source is classified for tax purposes as  
11 wind energy property and shall be assessed and taxed in the same manner as other real property  
12 and shall be locally assessed by the county director of equalization pursuant to § 10-3-16. For  
13 the purposes of §§ 10-4-36 to 10-4-38, inclusive, real property includes the base, foundation,  
14 tower, and substations. Real property does not include the wind turbine or blades attached  
15 thereto.

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

17 10-4-37. Any wind energy property of a commercial wind power production facility with  
18 less than five thousand kilowatts of nameplate capacity shall be assessed under the provisions  
19 of this chapter.

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

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

24 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.