

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

318P0351

SENATE BILL NO. 118

Introduced by: Senators Kloucek and Garnos and Representatives Gassman, Ahlers,
Bradford, Halverson, Lucas, Moore, Sigdestad, Thompson, and Van Norman

1 FOR AN ACT ENTITLED, An Act to establish a wind energy incentive payment program and
2 to make an appropriation therefor.

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

4 Section 1. For purposes of this Act, the term, qualified wind energy conversion facility,
5 means a wind energy conversion system in this state that:

6 (1) Produces two megawatts or less of electricity as measured by nameplate rating, and
7 is:

8 (a) Owned by a resident of South Dakota or an entity that is organized under the
9 laws of this state, is not prohibited from owning agricultural land, and owns
10 the land where the facility is sited;

11 (b) Owned by a South Dakota small business that employs no more than
12 twenty-five people;

13 (c) Owned by a South Dakota nonprofit organization;

14 (d) Owned by a tribal council if the facility is located within the boundaries of the
15 reservation;



- 1 (e) Owned by a South Dakota municipal utility or a South Dakota rural electric
2 cooperative;
 - 3 (f) Owned by a South Dakota county, municipality, school district, or any other
4 political subdivision of the state; or
 - 5 (g) Owned at least fifty-one percent by one or more of any combination of the
6 entities listed in this subdivision.
- 7 (2) Produces seven megawatts or less of electricity as measured by nameplate rating,
8 and:
- 9 (a) Is owned by a cooperative other than a rural electric cooperative; and
 - 10 (b) All shares and membership in the cooperative are held by an entity that is not
11 prohibited from owning agricultural land.

12 Section 2. The wind energy incentive payment program is hereby established for qualified
13 wind energy conversion facilities. The program shall be administered by the Public Utilities
14 Commission. Incentive payments shall be made according to this Act to the owner or operator
15 of a qualified wind energy conversion facility for electric energy generated and sold by the
16 facility or energy generated by the facility and consumed by the owner or operator. Any
17 incentive payment shall be based on the number of kilowatt hours of electricity generated. The
18 amount of the incentive payment is one cent per kilowatt hour. Payment may only be made upon
19 receipt by the commission of an incentive payment application that establishes that the applicant
20 is eligible to receive an incentive payment and that satisfies other requirements the commission
21 deems necessary. The application shall be in a form and submitted at a time the commission
22 establishes in rules pursuant to section 11 of this Act. The owner or operator of any facility that
23 receives an incentive payment shall provide reasonable access to the facility to the public
24 schools for education purposes.

1 Section 3. A facility may receive payments under this Act for a five-year period. No payment
2 under this Act may be made for electricity generated by a qualified wind energy conversion
3 facility after December 31, 2015. The payment period begins and runs consecutively from the
4 date the facility begins generating electricity. A subsequent owner of a qualified facility may
5 continue to receive the incentive payment for the duration of the original payment period if the
6 subsequent owner qualifies for the incentive under this Act.

7 Section 4. The total size of a wind energy conversion system under this Act shall be
8 determined according to this section. Unless the systems are interconnected with different
9 distribution systems, the nameplate capacity of one wind energy conversion system shall be
10 combined with the nameplate capacity of any other wind energy conversion system that is:

- 11 (1) Located within five miles of the wind energy conversion system;
- 12 (2) Constructed within the same calendar year as the wind energy conversion system; and
- 13 (3) Under common ownership.

14 In the case of a dispute, the Public Utilities Commission shall determine the total size of
15 the system and shall draw all reasonable inferences in favor of combining the systems. In
16 making a determination under this section, the commission may determine that two wind energy
17 conversion systems are under common ownership if the underlying ownership structure contains
18 similar persons or entities, even if the ownership shares differ between the two systems. Wind
19 energy conversion systems are not under common ownership solely because the same person
20 or entity provided equity financing for the systems.

21 Section 5. The Public Utilities Commission shall authorize renewable energy production
22 incentive payments to wind energy conversion systems not to exceed a total of forty megawatts
23 of nameplate capacity per year. Payment of the incentive shall be made from the renewable
24 energy development fund established pursuant to section 12 of this Act.

1 Section 6. Nothing in this Act denies any incentive payment to an otherwise qualified
2 facility that has obtained debt or equity financing for construction or operation if the ownership
3 requirements of section 1 of this Act are met. If, during the incentive payment period for a
4 qualified facility, the owner of the facility is in default of a lending agreement and the lender
5 takes possession of and operates the facility and makes reasonable efforts to transfer ownership
6 of the facility to an entity other than the lender, the lender may continue to receive the incentive
7 payment for electricity generated and sold by the facility for a period not to exceed eighteen
8 months. A lender who takes possession of a facility shall notify the Public Utilities Commission
9 immediately on taking possession and, at least quarterly, document efforts to transfer ownership
10 of the facility.

11 Section 7. If, during the incentive payment period, a qualified facility loses the right to
12 receive the incentive because of changes in ownership, the facility may regain the right to
13 receive the incentive upon cure of the ownership structure that resulted in the loss of eligibility
14 and may reapply for the incentive, but in no case may the payment period be extended beyond
15 the original five-year limit.

16 Section 8. A subsequent or requalifying owner under section 3 or 7 of this Act retains the
17 facility's original priority order for incentive payments if the ownership structure requalifies
18 within two years from the date the facility became unqualified or two years from the date a
19 lender takes possession.

20 Section 9. A qualifying project is eligible for the incentive on the date the Public Utilities
21 Commission receives:

- 22 (1) An application for payment of the incentive;
- 23 (2) One of the following:
 - 24 (a) A copy of a signed power purchase agreement;

- 1 (b) A copy of a binding agreement other than a power purchase agreement to sell
- 2 electricity generated by the project to a third person;
- 3 (c) If the project developer or owner will sell electricity to its own members or
- 4 customers, a copy of the purchase order for equipment to construct the project
- 5 with a delivery date and a copy of a signed receipt for a nonrefundable deposit;
- 6 or
- 7 (d) Documentation acceptable to the commission that specifies the amount of
- 8 electricity generated by the facility and consumed by the owner or operator of
- 9 the facility; and
- 10 (3) Any other information the commission deems necessary to determine whether the
- 11 proposed project qualifies for the incentive under this Act.

12 Section 10. The Public Utilities Commission shall determine whether a project qualifies for

13 the incentive and respond in writing to the applicant approving or denying the application within

14 fifteen working days of receipt of the information required in section 9 of this Act. A project

15 that is not operational within eighteen months of receipt of a letter of approval is no longer

16 approved for the incentive. The commission shall notify an applicant of potential loss of

17 approval not less than sixty days before the end of the eighteen-month period. Eligibility for a

18 project that loses approval may be reestablished as of the date the commission receives a new

19 completed application.

20 Section 11. The Public Utilities Commission shall promulgate rules pursuant to chapter 1-26

21 to specify application, payment, and record keeping requirements, procedures, and forms for the

22 wind energy production incentive payment program. The rules shall include qualifications and

23 criteria for participation in the program, methods to be used in determining the amount of

24 energy produced by a qualified wind energy conversion facility and sold or consumed by the

1 owner or operator of the facility, and other provisions necessary for the administration of the
2 program.

3 Section 12. There is hereby created a special fund in the state treasury known as the
4 renewable energy development fund. Money in the fund may only be used for the purposes
5 provided in this Act. The fund consists of interest on investments, principal and interest on loans
6 made from the fund, and moneys from all legal public and private sources, including legislative
7 appropriations and federal grants. Money in the fund is continuously appropriated for the
8 purposes of this Act.

9 Section 13. There is hereby appropriated from the energy conservation loan special revenue
10 fund established pursuant to § 1-33B-18 the sum of forty thousand dollars (\$40,000), or so much
11 thereof as may be necessary, to the renewable energy development fund to carry out the
12 purposes of this Act..

13 Section 14. The executive director of the Public Utilities Commission shall approve
14 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

15 Section 15. Any amounts appropriated in this Act not lawfully expended or obligated by
16 June 30, 2009, shall revert in accordance with § 4-8-21.