

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

400Y0133

HOUSE BILL NO. 1012

Introduced by: The Committee on Commerce and Energy at the request of the Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to wind and solar
2 easements.

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

4 Section 1. That chapter 43-13 be amended by adding a NEW SECTION to read:

5 For purposes of §§ 43-13-17 to 43-13-20.5, inclusive, the term, solar easement, means a
6 right, whether or not stated in the form of a restriction, option to obtain an easement, easement,
7 covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any
8 owner of land or air space for the purpose of ensuring adequate exposure of a photovoltaic solar
9 power system to the sun, or an agreement to refrain from developing a photovoltaic solar power
10 system.

11 Section 2. That § 43-13-17 be amended to read:

12 43-13-17. Any property owner may grant a wind or solar easement in the same manner and
13 with the same effect as a conveyance of an interest in real property. The easement shall be
14 created in writing, and the easement or a memorandum thereof shall be filed, duly recorded, and
15 indexed in the office of the register of deeds of the county in which the easement is granted. Any



1 such easement runs with the land or lands benefited and burdened and terminates upon the
2 conditions stated in the easement, except that the term of any such easement may not exceed
3 fifty years. Any such easement is void if no development of the potential to produce energy from
4 wind power or solar power associated with the easement has occurred within five years after the
5 effective date of the easement. Any payments associated with the granting or continuance of any
6 such easement shall be made on an annual basis to the owner of record of the real property at
7 the time the payment is made. If the easement holder mortgages or otherwise encumbers to any
8 party any part of the easement holder's rights and interests under the easement, any such
9 mortgage or encumbrance on the easement is the responsibility of the easement holder and
10 attaches only to the easement holder's rights and does not otherwise attach to the land or obligate
11 the property owner. Each wind or solar easement agreement shall include a statement disclosing
12 that the easement holder may mortgage or encumber any part of the easement holder's rights and
13 interests under the agreement unless otherwise specified in the agreement.

14 Section 3. That § 43-13-18 be amended to read:

15 43-13-18. Any deed, will, or other instrument that creates a wind or solar easement shall
16 include:

- 17 (1) A description of the real property subject to the easement and a description of the real
18 property benefiting from the wind or solar easement;
- 19 (2) A description of the vertical and horizontal angles, expressed in degrees, and
20 distances from the site of the wind or solar power system in which an obstruction to
21 the wind or sun is prohibited or limited;
- 22 (3) Any terms or conditions under which the easement is granted or may be terminated;
- 23 (4) Any provisions for compensation of the owner of the real property benefiting from
24 the easement in the event of interference with the enjoyment of the easement, or

1 compensation of the owner of the real property subject to the easement for
2 maintaining the easement; and

3 (5) Any other ~~provisions~~ provision necessary or desirable to execute the instrument.

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

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 or solar power on the tract of land may
7 be severed from the surface estate as defined in § 45-5A-3, except that such rights may be leased
8 for a period not to exceed fifty years. Any such lease is void if no development of the potential
9 to produce energy from wind or solar power has occurred on the land within five years after the
10 lease began. The payment of ~~any such~~ the lease shall be on an annual basis.

11 Section 5. That § 43-13-20 be amended to read:

12 43-13-20. The holder of any wind or solar easement, wind or solar lease, or easement for
13 essential services shall accommodate the reasonable development of another holder of any wind
14 or solar easement, wind or solar lease, or easement for essential services except for competing
15 developers of wind or solar energy projects. For purposes of this section, the term, essential
16 services, includes any electric transmission and distribution lines and associated facilities,
17 telecommunications facilities, and rural water systems.

18 Section 6. That § 43-13-20.1 be amended to read:

19 43-13-20.1. The five-year development period specified in §§ 43-13-17 and 43-13-19 shall
20 be extended to a maximum development period of twelve years only for ~~any a~~ wind developer
21 that files a sworn affidavit with the Public Utilities Commission. The affidavit is for
22 informational purposes only and shall:

23 (1) State the intention of the wind developer to pursue a proposed wind energy project
24 of five hundred megawatts or greater in nameplate capacity and a transmission

1 solution for the project involving an interstate electric transmission line with a design
2 of 345 kV or greater; and

3 (2) Describe the geographic area covered by the project.

4 The twelve-year period applies to any wind easement or wind lease for property within the
5 geographic area described in the affidavit and held under a wind easement or wind lease by the
6 developer filing the certification or its affiliate, member, or partner.

7 The twelve-year maximum development period commences on the earlier of the effective
8 date of the wind easement or wind lease or the date the wind easement or wind lease was
9 executed by all parties to the agreement.

10 Section 7. That § 43-13-20.2 be amended to read:

11 43-13-20.2. For purposes of §§ 43-13-17 to 43-13-20.5, inclusive, development of the
12 potential to produce energy from wind power associated with the wind easement or wind lease
13 occurs when the foundation is poured for the first wind turbine to be installed on any property
14 that is part of any one wind energy project, on any property that is part of any single construction
15 stage of a wind energy project, or on any property that is described in the notice required by
16 § 49-41B-25.1. Development of the potential to produce energy from solar power associated
17 with the solar easement or solar lease occurs when the mounting system is installed for the first
18 photovoltaic panel on any property that is part of any one solar energy project or on any property
19 that is part of any single construction stage of a solar energy project.

20 Section 8. That § 43-13-20.3 be amended to read:

21 43-13-20.3. In addition to any other requirements of law, the filing required pursuant to
22 § 43-13-17 shall include ~~the following information:~~

23 (1) The names and addresses of the parties;

24 (2) A legal description of the real property involved;

- 1 (3) Description of property rights conveyed;
- 2 (4) Term of the wind or solar easement;
- 3 (5) Description of any restrictions placed on the property for essential services as defined
- 4 in § 43-13-20; and
- 5 (6) In the case of a third party acquisition, the name and address of the party for which
- 6 the wind or solar easement is acquired.

7 This information shall be contained in a separately filed and recorded document. Nothing in this
8 section prohibits the filing of additional documents between the parties.

9 Section 9. That § 43-13-20.4 be amended to read:

10 43-13-20.4. No wind or solar easement or wind or solar lease may be executed by the parties
11 until at least ten business days after the first proposed easement or lease has been delivered to
12 the property owner.

13 Section 10. That § 43-13-20.5 be amended to read:

14 43-13-20.5. No wind or solar developer may require a property owner to maintain the
15 confidentiality of any negotiations or terms of any proposed easement or lease except that the
16 parties may agree to a mutual confidentiality agreement in the final executed wind or solar
17 easement, wind or solar lease, or a separate document. Any disclosure of trade secrets or
18 competitive business plans of the developer may be subject to the confidentiality agreement
19 whether occurring before or after execution of the wind or solar easement or wind or solar lease.