

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0331      **SENATE AGRICULTURE AND NATURAL RESOURCES**  
**COMMITTEE ENGROSSED NO. SB 17 - 01/27/2005**

Introduced by: The Committee on State Affairs at the request of the Public Utilities  
Commission

1    FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the authority of the  
2        Public Utilities Commission with regard to wind energy facilities.

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

4        Section 1. That § 49-41B-1 be amended to read as follows:

5        49-41B-1. The Legislature finds that energy development in South Dakota and the Northern  
6    Great Plains significantly affects the welfare of the population, the environmental quality, the  
7    location and growth of industry, and the use of the natural resources of the state. The Legislature  
8    also finds that by assuming permit authority, that the state must also ensure that these facilities  
9    are constructed in an orderly and timely manner so that the energy requirements of the people  
10   of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and  
11   operation of ~~energy conversion facilities and transmission~~ facilities will produce minimal  
12   adverse effects on the environment and upon the citizens of this state by providing that ~~an~~  
13   ~~energy conversion or transmission~~ a facility may not be constructed or operated in this state  
14   without first obtaining a permit from the ~~Public Utilities Commission~~ commission.

15        Section 2. That § 49-41B-2 be amended to read as follows:



1 49-41B-2. Terms as used in this chapter mean:

2 (1) "Associated facilities," facilities which include, ~~but are not limited to~~, aqueducts,  
3 diversion dams, transmission substations of two hundred fifty kilovolts or more,  
4 storage ponds, reservoirs, or cooling ponds;

5 (2) "Commission," the State Public Utilities Commission;

6 (3) "Construction," any clearing of land, excavation, or other action that would affect the  
7 environment of the site for each land or rights of way upon or over which a facility  
8 may be constructed, but not including activities incident to preliminary engineering  
9 or environmental studies;

10 (4) "Energy conversion facility," any new facility, or facility expansion, designed for or  
11 capable of generation of one hundred megawatts or more of electricity, but does not  
12 include any wind energy facilities;

13 (5) "Facility," any energy conversion facility, transmission facility, or ~~both~~ wind energy  
14 facility, and associated facilities;

15 (6) "Permit," the permit issued by the commission under this chapter required for the  
16 construction and operation of a facility;

17 (7) "Person," an individual, partnership, limited liability company, joint venture, private  
18 or public corporation, association, firm, public service company, cooperative,  
19 political subdivision, municipal corporation, government agency, public utility  
20 district, or any other public or private entity, however organized;

21 (8) "Siting area," that area within ten miles in any direction of a proposed energy  
22 conversion facility or which is determined by the commission to be affected by a  
23 proposed energy conversion facility;

24 (9) "Trans-state transmission facility," an electric transmission line and its associated

1 facilities which originates outside the State of South Dakota, crosses this state and  
 2 terminates outside the State of South Dakota; and which transmission line and  
 3 associated facilities delivers electric power and energy of twenty-five percent or less  
 4 of the design capacity of such line and facilities for use in the State of South Dakota;

5 (10) "Utility," any person engaged in and controlling the generation or transmission of  
 6 electric energy and gas or liquid transmission facilities as defined by § 49-41B-2.1;

7 (11) "Wind energy facility," a new facility, or facility expansion, consisting of a  
 8 commonly managed integrated system of towers, wind turbine generators with  
 9 blades, power collection systems, and electric interconnection systems, that converts  
 10 wind movement into electricity and that is designed for or capable of generation of  
 11 one hundred megawatts or more of electricity. A wind energy facility expansion  
 12 includes the addition of new wind turbines, designed for or capable of generating  
 13 twenty-five megawatts or more of electricity, which are to be managed in common  
 14 and integrated with existing turbines and the combined megawatt capability of the  
 15 existing and new turbines is one hundred megawatts or more of electricity. The  
 16 number of megawatts generated by a wind energy facility is determined by adding the  
 17 nameplate power generation capability of each wind turbine.

18 Section 3. That § 49-41B-25 be amended to read as follows:

19 49-41B-25. Within six months of receipt of the initial application for a permit for the  
 20 construction of ~~substations~~ a wind energy facility, substation, or transmission lines ~~line~~ of less  
 21 than two hundred fifty kilovolts, the ~~Public Utilities Commission~~ commission shall make  
 22 complete findings, and render a decision, regarding whether a permit should be granted, denied,  
 23 or granted upon such terms, conditions or modifications of the construction, operation or  
 24 maintenance as the commission may deem appropriate. In its decision the commission must find

1 that the construction of the facility meets all requirements of this chapter. Notice of the  
2 commission's decision shall be given to the applicant and to parties to the hearing within ten  
3 days following the decision.

4 Section 4. That § 49-41B-35 be amended to read as follows:

5 49-41B-35. To implement the provisions of this chapter regarding ~~energy conversion and~~  
6 ~~transmission~~ facilities, the commission shall promulgate rules pursuant to chapter 1-26. The  
7 commission shall prepare, in consultation with other state agencies, a single application form  
8 which incorporates information requirements of those state agencies or their boards or  
9 commissions which have related permit issuing powers that must be exercised prior to  
10 construction of a facility. Rules may be adopted by the commission:

11 (1) To establish the information requirements and procedures that every utility must  
12 follow when filing plans with the commission regarding its ~~existing and proposed~~  
13 ~~energy conversion facilities, and for proposed and existing transmission~~ facilities;  
14 ~~and~~

15 (2) To establish procedures for utilities to follow when filing an application for a permit  
16 to construct ~~an energy conversion facility or a transmission~~ a facility, and the  
17 information required to be included in the application; and

18 (3) To require bonds, guarantees, insurance, or other requirements to provide funding for  
19 the decommissioning or removal of a wind energy facility.

20 Section 5. That § 49-41B-36 be amended to read as follows:

21 49-41B-36. ~~This chapter shall not~~ Nothing in this chapter may be construed as a delegation  
22 to the ~~Public Utilities Commission~~ commission of the authority to route a transmission facility,  
23 or to designate or mandate location of an energy conversion facility or wind energy facility.