

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

840R0663

HOUSE BILL NO. 1263

Introduced by: Representatives Noem, Faehn, Greenfield, Kirkeby, Lust, Moser, Rave, Solum, and Tidemann and Senators Rhoden, Abdallah, Garnos, and Gray

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions relating to the terms of wind
2 easements and wind energy leases.

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

4 Section 1. That § 43-13-17 be amended to read as follows:

5 43-13-17. Any property owner may grant a wind easement in the same manner and with the
6 same effect as a conveyance of an interest in real property. The easement shall be created in
7 writing, and the easement or a memorandum of the easement shall be filed, duly recorded, and
8 indexed in the office of the register of deeds of the county in which the easement is granted. Any
9 such easement runs with the land or lands benefited and burdened and terminates upon the
10 conditions stated in the easement. The term of the easement shall be as agreed to by the property
11 owner and the easement holder, except that the term of any such easement may not exceed fifty
12 years. ~~Any such easement is void if no development of the potential to produce energy from~~
13 ~~wind power associated with the easement has occurred within five years after the easement~~
14 ~~began.~~ Any payments associated with the granting or continuance of any such easement shall
15 be made on an annual basis to the owner of record of the real property at the time the payment



1 is made. If the easement holder mortgages or otherwise encumbers to any party any part of the
2 easement holder's rights and interests under the easement, any such mortgage or encumbrance
3 on the easement is the responsibility of the easement holder and attaches only to the easement
4 holder's rights and does not otherwise attach to the land or obligate the property owner. Each
5 wind easement agreement shall include a statement disclosing that the easement holder may
6 mortgage or encumber any part of the easement holder's rights and interests under the agreement
7 unless otherwise specified in the agreement.

8 Section 2. That § 43-13-19 be amended to read as follows:

9 43-13-19. No interest in any resource located on a tract of land and associated with the
10 production or potential production of energy from wind power on the tract of land may be
11 severed from the surface estate as defined in § 45-5A-3, ~~except that.~~ However, such rights may
12 be leased for a period not to exceed fifty years in accordance with a lease agreement agreed to
13 by the property owner and the lessee. ~~Any such lease is void if no development of the potential~~
14 ~~to produce energy from wind power has occurred on the land within five years after the lease~~
15 ~~began.~~ The payment of any such lease shall be on an annual basis.