

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

840R0663

HOUSE STATE AFFAIRS

ENGROSSED NO. **HB 1263** - 2/19/2010

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

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 revise 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 § 43-13-16 be amended to read as follows:

5 43-13-16. For purposes of §§ 43-13-17 to ~~43-13-19~~ 43-13-20, inclusive, and sections 3 to
6 7, inclusive, of this Act, the term, wind easement, means a right, whether or not stated in the
7 form of a restriction, option to obtain an easement, easement, covenant, or condition, in any
8 deed, will, or other instrument executed by or on behalf of any owner of land or air space for
9 the purpose of ensuring adequate exposure of a wind power system to the winds, or an
10 agreement to refrain from developing a wind power system.

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

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



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

15 Section 3. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as
16 follows:

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

- 21 (1) State the intention of the wind developer to pursue a proposed wind energy project
22 of five hundred megawatts or greater in nameplate capacity and a transmission
23 solution for the project involving an interstate electric transmission line with a design
24 of 345 kV or greater; and

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

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

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

8 Section 4. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 For purposes of §§ 43-13-17 to 43-13-20, inclusive, and sections 3 to 7, inclusive, of this
11 Act, development of the potential to produce energy from wind power associated with the wind
12 easement or wind lease occurs when the foundation is poured for the first wind turbine to be
13 installed on any property that is part of any one wind energy project, on any property that is part
14 of any single construction stage of a wind energy project, or on any property that is described
15 in the notice required by § 49-41B-25.1.

16 Section 5. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 In addition to any other requirements of law, the filing required pursuant to § 43-13-17 shall
19 include the following information:

- 20 (1) The names and addresses of the parties;
- 21 (2) A legal description of the real property involved;
- 22 (3) Description of property rights conveyed;
- 23 (4) Term of the wind easement;
- 24 (5) Description of any restrictions placed on the property for essential services as defined

1 in § 43-13-20; and

2 (6) In the case of a third party acquisition, the name and address of the party for which
3 the wind easement is acquired.

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

6 Section 6. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 No wind easement or wind lease may be executed by the parties until at least ten business
9 days after the first proposed easement or lease has been delivered to the property owner.

10 Section 7. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as
11 follows:

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