

AN ACT

ENTITLED, An Act to revise certain provisions relating to the terms of wind easements and wind energy leases.

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

Section 1. That § 43-13-16 be amended to read as follows:

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

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

43-13-17. Any property owner may grant a wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easement shall be created in writing, and the easement or a memorandum thereof shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the easement is granted. Any such easement runs with the land or lands benefited and burdened and terminates upon the conditions stated in the easement, except that the term of any such easement may not exceed fifty years. Any such easement is void if no development of the potential to produce energy from wind power associated with the easement has occurred within five years after the effective date of the easement. Any payments associated with the granting or continuance of any such easement shall be made on an annual basis to the owner of record of the real property at the time the payment is made. If the easement holder mortgages or otherwise encumbers to any party any part of the easement holder's rights and interests under the easement, any such mortgage or encumbrance on the easement is the responsibility of the easement

holder and attaches only to the easement holder's rights and does not otherwise attach to the land or obligate the property owner. Each wind easement agreement shall include a statement disclosing that the easement holder may mortgage or encumber any part of the easement holder's rights and interests under the agreement unless otherwise specified in the agreement.

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

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

- (1) State the intention of the wind developer to pursue a proposed wind energy project of five hundred megawatts or greater in nameplate capacity and a transmission solution for the project involving an interstate electric transmission line with a design of 345 kV or greater; and
- (2) Describe the geographic area covered by the project.

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

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

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

For purposes of §§ 43-13-17 to 43-13-20, inclusive, and sections 3 to 7, inclusive, of this Act, development of the potential to produce energy from wind power associated with the wind easement

or wind lease occurs when the foundation is poured for the first wind turbine to be installed on any property that is part of any one wind energy project, on any property that is part of any single construction stage of a wind energy project, or on any property that is described in the notice required by § 49-41B-25.1.

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

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

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

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

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

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

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

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

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1263

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1263
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____,
20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State