



2022 South Dakota Legislature

Senate Bill 36

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

1 **An Act to require financial security for the decommissioning of solar facilities.**

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

3 **Section 1. That § 49-41B-39 be AMENDED:**

4 **49-41B-39.** All right and title in any financial security required by the commission
 5 for the decommissioning of wind turbines ~~shall~~ or solar facilities must be controlled by the
 6 commission, in accordance with the terms of the financial security agreement or
 7 instrument, until the commission by order releases the security. The financial security of
 8 the person required to provide it may not be cancelled, assigned, revoked, disbursed,
 9 replaced, or allowed to terminate without commission approval.

10 The commission may require, accept, hold, or enter into any agreement or
 11 instrument for the provision of financial security, including any funds reserved or held by
 12 any person to satisfy or guarantee the obligation of an owner of wind turbines or solar
 13 facilities permitted under this chapter, to decommission and remove the wind turbines or
 14 solar facilities. The form, term, and conditions of the financial security are subject to the
 15 approval of the commission. The commission shall determine any claim upon the financial
 16 security made by any landowner for decommissioning and removal of turbines or solar
 17 facilities.

18 Any financial security provided under this chapter may not be pledged or used as
 19 security for any other obligation of the wind turbine or solar facilities owner, and is exempt
 20 from attachment or mesne process, from levy or sale on execution, and from any other
 21 final process issued from any court on behalf of third-party creditors of the owner of the
 22 wind turbines or solar facilities. Any commission decision based on any claim made by the
 23 owner of the wind turbines or solar facilities for refund or return of the financial security,
 24 or for actual expenses of decommissioning, or any related agreements, may be appealed.

25 In any case, the commission may appear in court and defend the integrity and
 26 viability of the financial security for purposes of decommissioning and removal of wind

1 turbines or solar facilities. The commission may not require any financial security from an
2 owner of wind turbines or solar facilities who is also a public utility as defined in ~~subdivision~~
3 ~~49-34A-1(12)~~ § 49-34A-1.