

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

186W0461

HOUSE ENGROSSED NO. **SB 180** - 03/10/2015

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

Introduced by: Senators Rave, Frerichs, Greenfield (Brock), and Peterson (Jim) and Representatives Solum, Deutsch, Hawley, Kirschman, and Wiik

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the production tax for
2 wind energy facilities and to declare an emergency.

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

4 Section 1. That § 10-35-17 be amended to read as follows:

5 10-35-17. Any company owning or holding under lease, or otherwise, real or personal
6 property used, or intended for use, as a wind farm producing power for the first time on or after
7 July 1, 2007, and prior to April 1, 2015, shall pay the alternative annual taxes provided in §§ 10-
8 35-18 and 10-35-19. A wind farm that produces power for the first time on or after April 1,
9 2015, shall pay the alternative annual taxes provided in § 10-35-18 and section 3 of this Act.

10 The alternative taxes imposed by §§ 10-35-18~~and~~, 10-35-19, and section 3 of this Act, are in
11 lieu of all taxes levied by the state, counties, municipalities, school districts, or other political
12 subdivisions of the state on the personal and real property of the company which is used or
13 intended for use as a wind farm, but are not in lieu of the retail sales and service tax imposed
14 by chapter 10-45, the use tax imposed by chapter 10-46, or any other tax.



1 Section 2. That § 10-35-19 be amended to read as follows:

2 10-35-19. Any company owning or holding under lease, or otherwise, real or personal
3 property used, or intended for use, as a wind farm producing power for the first time on or after
4 July 1, 2007, and prior to April 1, 2015, shall pay an annual tax of ~~two percent of the gross~~
5 ~~receipts of the wind farm. For purposes of this section, the gross receipts of \$0.00065 per kilowatt~~
6 ~~hour of electricity produced by the wind farm is its production of electricity in kilowatt hours~~
7 ~~multiplied by the South Dakota electricity base rate of \$0.0475 per kilowatt hour in 2008, with~~
8 ~~the electricity base rate of \$0.0475 per kilowatt hour increasing by 2.5 percent on an annual~~
9 ~~basis thereafter, as determined by the secretary.~~ The owner of a wind farm subject to tax ~~under~~
10 ~~this section~~ shall file a report with the secretary detailing the amount of electricity in kilowatt-
11 hours that was produced by the wind farm for the previous calendar year. The secretary shall
12 prescribe the form of the report. The tax for the ~~gross receipts generated~~ electricity produced in
13 a calendar year shall become due and be payable to the secretary on the first day of February of
14 the following year. Except as otherwise provided in §§ 10-35-16 to 10-35-22, inclusive, the
15 provisions of chapter 10-59 apply to the administration of the tax.

16 Section 3. Any company owning or holding under lease, or otherwise, real or personal
17 property used, or intended for use, as a wind farm producing power for the first time on or after
18 April 1, 2015, shall pay an annual tax of \$.00045 per kilowatt hour of electricity produced by
19 the wind farm. The owner of a wind farm subject to the tax shall file a report with the secretary
20 detailing the amount of electricity in kilowatt-hours that was produced by the wind farm for the
21 previous calendar year. The secretary shall prescribe the form of the report. The tax for the
22 electricity produced in a calendar year shall become due and be payable to the secretary on the
23 first day of February of the following year. Except as otherwise provided in §§ 10-35-16 to
24 10-35-22, inclusive, the provisions of chapter 10-59 apply to the administration of the tax.

1 Section 4. That § 10-35-22 be repealed.

2 ~~—10-35-22. Any company requiring transmission lines or wind farm collector systems or both~~
3 ~~in South Dakota for a wind farm or a power generation facility as described in § 10-35-1.3, is~~
4 ~~eligible for a partial rebate of the tax paid under § 10-35-19. The company shall apply for the~~
5 ~~rebate on forms prescribed by the secretary. The total amount of tax rebated shall be no more~~
6 ~~than fifty percent of the cost of the transmission lines and wind farm collector systems in South~~
7 ~~Dakota.~~

8 ~~—The maximum rebate any company may receive in one year is ninety percent of the tax paid~~
9 ~~under § 10-35-19 for the first five years and fifty percent of the tax paid under § 10-35-19 for~~
10 ~~the next five years. The secretary shall determine when the wind farm is commercially~~
11 ~~operational. No wind farm may receive a rebate under this section after this ten year period.~~

12 ~~—The secretary shall rebate the tax from the wind energy tax fund prior to the distribution of~~
13 ~~any money as provided in § 10-35-21. The secretary may provide a tax credit, in lieu of full~~
14 ~~payment of the gross receipts tax, of up to eighty percent of the transmission rebate value that~~
15 ~~has been approved by the secretary. Any revenue in the wind energy tax fund after the rebates~~
16 ~~are paid shall be deposited in the property tax reduction fund.~~

17 Section 5. This Act is effective on April 1, 2015. For wind farms that produced electricity
18 before April 1, 2015, one-fourth of the electricity that was produced in calendar year 2015 shall
19 be taxed and treated pursuant to the provisions in place prior to April 1, 2015, and three-fourths
20 of the electricity that was produced in calendar year 2015 shall be taxed and treated pursuant to
21 the provisions of this Act.

22 Section 6. That § 10-35-20 be amended to read as follows:

23 10-35-20. The secretary shall deposit the tax imposed by §§ 10-35-18 ~~and~~, 10-35-19, and
24 section 3 of this Act into the wind energy tax fund. There is created in the state treasury the wind

1 energy tax fund.

2 Section 7. That § 10-35-21 be amended to read as follows:

3 10-35-21. The secretary shall distribute all of the tax deposited in the wind energy tax fund
4 pursuant to § 10-35-18 and twenty percent of the tax deposited in the wind energy tax fund
5 pursuant to § 10-35-19 and section 3 of this Act to the county treasurer where the wind farm is
6 located. ~~If the wind energy tax fund contains less than twenty percent of the gross receipts tax~~
7 ~~from § 10-35-19, due to the transmission line rebate under § 10-35-22, the secretary shall~~
8 ~~distribute the remainder of funds after the rebate to the county treasurer where the wind farm~~
9 ~~is located.~~ If a wind farm is located in more than one county, each county shall receive the same
10 percentage of the tax as the percentage of wind towers in the wind farm located in the county.
11 Upon receipt of the taxes, the county auditor shall apportion the tax among the school districts,
12 the county, and the organized townships where a wind tower is located. The tax shall be
13 apportioned by the county auditor by allocating fifty percent of the tax to the school district
14 where each wind tower is located, fifteen percent to the organized township where each wind
15 tower is located, and thirty-five percent to the county. If a wind tower is located in a township
16 that is not organized, the unorganized township's share of the tax for that wind tower is allocated
17 to the county. The secretary shall distribute the money to the counties on or before the first day
18 of May. Any remaining revenue in the wind energy tax fund shall be deposited in the state
19 general fund.

20 Section 8. Whereas, this Act is necessary for the support of the state government and its
21 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
22 full force and effect from and after its passage and approval.