

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

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## HOUSE TAXATION ENGROSSED NO. **HB 1177** - 02/16/2016

Introduced by: Representatives Solum, Hawley, Peterson (Kent), Rozum, and Wiik and  
Senators Holien, Brown, Cammack, and Parsley

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning tax incentives for  
2 certain energy facilities.

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

4 Section 1. That § 10-35-16 be amended to read:

5 10-35-16. Terms as used in this section and §§ 10-35-17 to 10-35-21, inclusive, mean:

6 (1) "Collector system," all property used or constructed to interconnect individual wind  
7 turbines or solar panels within a ~~wind farm~~ renewable facility into a common project,  
8 including inverters, step-up transformers, electrical collection equipment, collector  
9 substation transformers, and communication systems;

10 (2) "Company," any person, corporation, limited liability company, association,  
11 company, partnership, political subdivision, rural electric cooperative, or any group  
12 or combination acting as a unit;

13 (3) "Nameplate capacity," the number of kilowatts a ~~wind farm~~ renewable facility can  
14 produce, as assigned to the power units in the ~~wind farm~~ renewable facility by the



1 manufacturer and determined by the secretary;

2 (4) "Renewable facility," any wind farm or solar facility;

3 (5) "Solar facility," all real or personal property used or constructed for the purpose of  
4 producing electricity for commercial purposes utilizing solar radiation as an energy  
5 source and with a nameplate capacity of at least five thousand kilowatts. The term  
6 includes the collector system;

7 (6) "Transmission line," an electric transmission line and associated facilities including  
8 the collector system, with a design of one hundred fifteen kilovolts or more;

9 ~~(4)~~(7) "Wind farm," all real or personal property used or constructed for the purpose of  
10 producing electricity for commercial purposes utilizing the wind as an energy source  
11 and with a nameplate capacity of at least five thousand kilowatts. The term includes  
12 the collector system;

13 ~~(5)~~ ~~"Transmission line," an electric transmission line and associated facilities including~~  
14 ~~the collector system, with a design of one hundred fifteen kilovolts or more.~~

15 Section 2. That § 10-35-17 be amended to read:

16 10-35-17. 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 ~~July 1~~ June 30, 2007, and ~~prior to~~ before April 1, 2015, shall pay the alternative annual taxes  
19 provided in §§ 10-35-18 and 10-35-19. A wind farm that produces power for the first time ~~on~~  
20 ~~or after April 1~~ March 31, 2015, or a solar facility, shall pay the alternative annual taxes  
21 provided in §§ 10-35-18 and 10-35-19.1. The alternative taxes imposed by §§ 10-35-18, 10-35-  
22 19, and 10-35-19.1, are in lieu of all taxes levied by the state, counties, municipalities, school  
23 districts, or other political subdivisions of the state on the personal and real property of the  
24 company which is used or intended for use as a ~~wind farm~~ renewable facility, but are not in lieu

1 of the retail sales and service tax imposed by chapter 10-45, the use tax imposed by chapter 10-  
2 46, or any other tax.

3 Section 3. That § 10-35-18 be amended to read:

4 10-35-18. Any company owning or holding under lease, or otherwise, real or personal  
5 property used, or intended for use, as a wind farm producing power for the first time ~~on or~~ after  
6 ~~July~~ June 30, 2007, or a solar facility, shall pay an annual tax equal to three dollars multiplied  
7 by the nameplate capacity of the ~~wind farm~~ renewable facility. The tax shall be imposed  
8 beginning the first calendar year the ~~wind farm~~ renewable facility generates gross receipts. The  
9 tax shall be paid annually to the secretary the first day of February of the following year. The  
10 tax for the first calendar year shall be prorated based upon the percentage of the calendar year  
11 remaining after the company generates gross receipts. Except as otherwise provided in §§ 10-35-  
12 16 to 10-35-21, inclusive, the provisions of chapter 10-59 apply to the administration of the tax.

13 Section 4. That § 10-35-19.1 be amended to read:

14 10-35-19.1. Any company owning or holding under lease, or otherwise, real or personal  
15 property used, or intended for use, as a wind farm producing power for the first time ~~on or~~ after  
16 ~~April~~ March 31, 2015, shall pay an annual tax of \$.00045 per kilowatt hour of electricity  
17 produced by the wind farm. Any company owning or holding under lease, or otherwise, real or  
18 personal property used, or intended for use, as a solar facility, shall pay an annual tax of \$.00090  
19 per kilowatt hour of electricity produced by the solar facility. The owner of a ~~wind farm~~  
20 renewable facility subject to the tax shall file a report with the secretary detailing the amount  
21 of electricity in kilowatt-hours that was produced by the ~~wind farm~~ renewable facility for the  
22 previous calendar year. The secretary shall prescribe the form of the report. The tax for the  
23 electricity produced in a calendar year shall become due and be payable to the secretary on the  
24 first day of February of the following year. Except as otherwise provided in §§ 10-35-16 to 10-

1 35-21, inclusive, the provisions of chapter 10-59 apply to the administration of the tax.

2 Section 5. That § 10-35-20 be amended to read:

3 10-35-20. The secretary shall deposit the tax imposed by §§ 10-35-18, 10-35-19, and 10-35-  
4 19.1 into the ~~wind energy~~ renewable facility tax fund. There is created in the state treasury the  
5 ~~wind energy~~ renewable facility tax fund.

6 Section 6. That § 10-35-21 be amended to read:

7 10-35-21. The secretary shall distribute all of the tax deposited in the ~~wind energy~~ renewable  
8 facility tax fund pursuant to § 10-35-18 and twenty percent of the tax deposited in the ~~wind~~  
9 ~~energy~~ renewable facility tax fund pursuant to §§ 10-35-19 and 10-35-19.1 to the county  
10 treasurer where the ~~wind farm~~ renewable facility is located. If a ~~wind farm~~ renewable facility  
11 is located in more than one county, each county shall receive the same percentage of the tax as  
12 the percentage of wind towers or solar facilities in the ~~wind farm~~ renewable facility located in  
13 the county. Upon receipt of the taxes, the county auditor shall apportion the tax among the  
14 school districts, the county, and the organized townships where a wind tower or solar facility  
15 is located. The tax shall be apportioned by the county auditor by allocating fifty percent of the  
16 tax to the school district where each wind tower or solar facility is located, fifteen percent to the  
17 organized township where each wind tower or solar facility is located, and thirty-five percent  
18 to the county. If a wind tower or solar facility is located in a township that is not organized, the  
19 unorganized township's share of the tax for that wind tower or solar facility is allocated to the  
20 county. The secretary shall distribute the money to the counties on or before the first day of  
21 May. Any remaining revenue in the ~~wind energy~~ renewable facility tax fund shall be deposited  
22 in the state general fund.