

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

366E0471

SENATE BILL NO. 174

Introduced by: Senators Symens, Apa, Dennert, Drake, Duxbury, Hutmacher, Koetzle, Moore, Reedy, Sutton (Dan), and Volesky and Representatives Hanson (Gary), Bartling, Burg, Elliott, Hargens, Hundstad, Kloucek, Lange, Nachtigal, Peterson (Jim), Sigdestad, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for a refund of certain taxes attributed to the
2 construction of a new or expanded wind energy generation facilities.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the Department of Revenue;

6 (2) "New or expanded facility," a new structure or realty improvement or addition to an
7 existing structure, the construction or installation of which is subject to contractors'
8 excise tax pursuant to chapter 10-46A or 10-46B;

9 (3) "Project," the installation or construction of a new or expanded facility;

10 (4) "Project cost," the amount paid in money for a project;

11 (5) "Secretary," the secretary of the Department of Revenue.

12 Section 2. Any person may apply for and obtain a refund or credit for contractors' excise
13 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
14 of a new or expanded facility that is for the purpose of producing and transmitting energy from

1 wind power.

2 Section 3. The refund pertains only to project costs incurred and paid after July 1, 2001. The
3 refund pertains only to project costs that were incurred and paid within thirty-six months of the
4 approval of the application required by this Act. No refund may be made unless:

- 5 (1) The project costs exceed five hundred thousand dollars; and
- 6 (2) The person applying for the refund obtains a permit from the secretary as set forth in
7 section 5 of this Act.

8 Section 4. The amount of the tax refund shall be one hundred percent of the contractor's
9 excise taxes attributed to the project cost.

10 Section 5. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
11 from the secretary at least thirty days prior to commencement of the project. The application for
12 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
13 be made and submitted for each project. Upon approval of the application, the secretary shall
14 issue a permit entitling the applicant to submit refund claims as provided by this Act. The permit
15 or refund claims are not assignable or transferable except as collateral or security pursuant to
16 chapter 57A-9.

17 Section 6. Any claim for refund shall be submitted on forms prescribed by the secretary and
18 shall be supported by such documentation as the secretary may require. The secretary may deny
19 any claim where the claimant has failed to provide information or documentation requested or
20 considered necessary by the secretary to determine the validity of the claim.

21 Section 7. Any claim for refund shall be submitted to the department on or before the last day
22 of the month following each quarterly period. The secretary shall determine the amount of the
23 tax refund. Ninety percent of the amount of refund shall be paid to the claimant in accordance
24 with §§ 10-59-22 and 10-59-23, and ten percent shall be withheld by the department.

1 Section 8. The amounts withheld by the department in accordance with section 7 of this Act
2 shall be retained until the project has been completed and the claimant has met all the conditions
3 of this Act, at which time all sums retained shall be paid to claimant.

4 Section 9. If any claim has been fraudulently presented or supported as to any item in the
5 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be rejected
6 in its entirety and all sums previously refunded to the claimant shall constitute a debt to the state
7 and a lien in favor of the state upon all property and rights to property whether real or personal
8 belonging to the claimant and may be recovered in an action of debt.

9 Section 10. Any person aggrieved by the denial in whole or in part of a refund claimed under
10 this Act, may within thirty days after service of the notice of a denial by the secretary, demand
11 and is entitled to a hearing, upon notice, before the secretary. The hearing shall be conducted
12 pursuant to chapter 1-26.

13 Section 11. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
14 procedures for filing refund claims and the requirements necessary to qualify for a refund.