

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0782

CONFERENCE COMMITTEE ENGROSSED NO. **HB** **1260** - 03/04/2005

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

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Energy Infrastructure Authority.

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

3 Section 1. Terms used in this Act mean as follows:

4 (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to
5 this Act;

6 (2) "Board," the board of directors of the authority.

7 Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and
8 expand the state's economy by developing in this state the energy production facilities and the
9 energy transmission facilities necessary to produce and transport energy to markets within the
10 state and outside of the state.

11 Section 3. The authority may provide for the financing, construction, development,
12 maintenance, and operation of new or upgraded energy transmission facilities. The authority
13 may own, lease, or rent such facilities. The authority may enter into partnerships with public and
14 private entities to develop and operate such facilities.



1 Section 4. If the authority becomes the owner or partial owner of any energy transmission
2 facility, the authority shall divest itself of ownership as soon as economically practical.
3 Recovery by the authority of its net investment in the energy production facility or energy
4 transmission facility is deemed to be economically practical.

5 Section 5. In order to finance energy transmission facilities authorized pursuant to this Act,
6 the authority may issue and have outstanding bonds to finance such facilities in an amount not
7 to exceed one billion dollars. However, no bonds may be issued until the issuance of the bonds
8 is specifically approved by an act of the Legislature. The authority shall have contracts sufficient
9 to justify the issuance of bonds.

10 Section 6. The authority shall:

- 11 (1) Meet with any interested owner of transmission lines in South Dakota and any
12 interested generator and distributor of electricity to consumers in South Dakota by
13 August first each year to understand the generation of electricity in South Dakota and
14 the transmission enhancements needed for the transmission of electricity to, from,
15 and within South Dakota, and to analyze how the authority could proactively assist
16 in developing the generation and transmission infrastructure;
- 17 (2) Report its findings and make recommendations to the Governor, the Legislature, and
18 the South Dakota congressional delegation by December first of each year concerning
19 what the private sector, the state, and the federal government can do to create and
20 enhance the generation of electricity in South Dakota and the transmission of
21 electricity to, from, and within South Dakota. The report due December 1, 2005, shall
22 address and quantify market opportunities for the development, use in-state, and
23 export of South Dakota's enormous wind power resource;
- 24 (3) Annually evaluate state laws and rules affecting electric generation and electric

1 transmission and make recommendations to the Governor and the Legislature for
2 improvements by December first of each year;

3 (4) Annually evaluate federal laws and rules affecting electric generation and electric
4 transmission and make recommendations to the South Dakota congressional
5 delegation for improvements by December first of each year;

6 (5) Identify opportunities where owners of transmission lines in South Dakota and
7 generators and distributors of electricity to consumers in South Dakota can cooperate
8 to improve and increase electric transmission in South Dakota and communicate
9 those opportunities to owners, generators, and distributors of electricity in South
10 Dakota;

11 (6) Assist any entity that wants to build new or upgrade existing electric transmission
12 facilities to, from, and within South Dakota by helping the entity develop a business
13 plan and identify financing options; and

14 (7) Assist other state transmission authorities and any federal or regional entity wanting
15 to build new or upgrade existing transmission facilities to deliver electricity to, from,
16 and within South Dakota.

17 Section 7. The governing and administrative powers of the authority are vested in its board
18 of directors consisting of five members. The Governor shall appoint the directors, with the
19 advice and consent of the Senate. Not all members of the board may be of the same political
20 party. The terms of the members of the board may not exceed six years. The terms of the initial
21 board of directors shall be staggered by the drawing of lots so that not more than two of the
22 director's terms shall end at the same time. Members of the board may serve more than one term.

23 Section 8. The Governor may remove any member of the board for cause, including
24 incompetence, neglect of duty, or malfeasance in office.

1 Section 9. Members of the board shall receive compensation for the performance of their
2 duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the
3 authority. Members may be reimbursed at rates established by the Bureau of Personnel for
4 necessary expenses, including travel and lodging expenses, incurred in connection with the
5 performance of their duties as members.

6 Section 10. Each member of the board shall, before entering upon the duties of office, take
7 and subscribe the constitutional oath of office.

8 Section 11. The board may appoint an executive director. The executive director may not
9 be a member of the board. The executive director shall hold office at the discretion of the board.
10 The executive director shall be the chief administrative and operational officer of the authority,
11 shall direct and supervise its administrative affairs and general management, shall perform such
12 other duties as may be prescribed from time to time by the board, and shall receive
13 compensation fixed by the board. The executive director shall attend all meetings of the board.
14 However, no action of the board or the authority is invalid on account of the absence of the
15 executive director from a meeting. The board may engage the services of such other agents and
16 employees as they deem appropriate, including attorneys, appraisers, scientists, researchers,
17 engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and
18 fix their compensation.

19 Section 12. The board shall meet on the call of the chair, upon the written request of four
20 members of the board, or upon the request of the executive director.

21 Section 13. A majority of the members of the board constitute a quorum for the transaction
22 of business. All official acts of the authority shall require the affirmative vote of at least four
23 members of the board at a meeting of the board at which the members casting those affirmative
24 votes are present.

1 Section 14. Notwithstanding any other law to the contrary it is not a conflict of interest for
2 a trustee, director, officer, or employee of any financial institution, investment banking firm,
3 brokerage firm, commercial bank or trust company, architectural firm, utility company,
4 engineering firm, mining firm, insurance company, energy company, or any other firm, person,
5 or corporation to serve as a member of the authority, if the trustee, director, officer, or employee
6 abstains from deliberation, action, and vote by the authority in each instance where the business
7 affiliation of any such trustee, director, officer, or employee is involved.

8 Section 15. Each meeting of the authority for any purpose whatsoever shall be open to the
9 public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the
10 authority. Resolutions need not be published or posted.

11 Section 16. The executive director or other person designated by the authority shall keep a
12 record of the proceedings thereof and shall be custodian of all books, documents, and papers
13 filed with the authority, the minute books or journal of the authority and its official seal. The
14 executive director or other person designated by the authority may cause copies to be made of
15 all minutes and other records and documents of the authority and may give certificates under
16 the official seal of the authority to the effect that such copies are true copies and all persons
17 dealing with the authority may rely on such certificates.

18 Section 17. The authority shall establish and collect fees, schedules of fees, rentals and other
19 charges for the use of the transmission facilities of the authority as the board may determine, and
20 may borrow funds for the execution of the purposes of the authority, and mortgage and pledge
21 any lease or leases granted, assigned, or subleased by the authority.

22 Section 18. The authority may:

- 23 (1) Have perpetual succession as a body politic and corporate exercising essential public
24 functions;

- 1 (2) Sue and be sued in its own name;
- 2 (3) Have an official seal and alter the seal at will;
- 3 (4) Maintain an office at such places within the state as the authority may designate;
- 4 (5) Make and execute contracts and all other instruments necessary or convenient for the
5 performance of its duties and the exercise of its powers and functions under this Act;
- 6 (6) Employ fiscal consultants, engineers, attorneys, and such other consultants and
7 employees as may be required and contract with agencies of the state to provide staff
8 and support services;
- 9 (7) Procure insurance against any loss in connection with its property and other assets,
10 including loans and notes in such amounts and from such insurers as it may deem
11 advisable;
- 12 (8) Borrow money and issue bonds as provided by this Act;
- 13 (9) Procure insurance, letters of credit, guarantees, or other credit enhancement
14 arrangements from any public or private entities, including any department, agency,
15 or instrumentality of the United States or the state, for payment of all or any portion
16 of any bonds issued by the authority, including the power to pay premiums, fees, or
17 other charges on any such insurance, letters of credit, guarantees, or credit
18 arrangements;
- 19 (10) Receive and accept from any source financial aid or contributions of moneys,
20 property, labor, or other things of value to be held, used, and applied to carry out the
21 purposes of this Act subject to the conditions upon which the grants or contributions
22 are made, including, gifts or grants from any department, agency, or instrumentality
23 of the United States for any purpose consistent with the provisions of this Act;
- 24 (11) To the extent permitted under its contract with the holders of bonds of the authority,

1 consent to any modification with respect to the rate of interest, time, and payment of
2 any installment of principal or interest, or any other term of any contract, loan, loan
3 note, loan note commitment, contract, lease, or agreement of any kind to which the
4 authority is a party;

5 (12) To make loans and grants to, and enter into financing agreements with, any
6 governmental agency or any person for the costs incurred in connection with the
7 development, construction, acquisition, improvement, maintenance, operation, or
8 decommissioning of electric transmission facilities, or for the maintenance of the
9 physical or structural integrity of real or personal property incorporated or which may
10 be incorporated into such facilities, in accordance with a written agreement between
11 the authority and such governmental agency or person. However, no such loan or
12 grant may exceed the total cost of such facilities as determined by the governmental
13 agency or person and approved by the authority;

14 (13) Cooperate with and exchange services, personnel, and information with any
15 governmental agency;

16 (14) Enter into agreements for management on behalf of the authority of any of its
17 properties upon such terms and conditions as may be mutually agreeable;

18 (15) Sell, exchange, lease, donate, and convey any of its properties whenever the authority
19 finds such action to be in furtherance of the purposes for which it was organized;

20 (16) Acquire, hold, lease, and dispose of real and personal property, and construct,
21 develop, maintain, operate, and decommission electric transmission facilities;

22 (17) Indemnify any person or governmental agency for such reasonable risks as the
23 authority deems advisable if the indemnification is a condition of a grant, gift, or
24 donation to the authority. However, any such obligation to indemnify may only be

1 paid from insurance or from revenues of the authority, and such obligation does not
2 constitute a debt or obligation of the State of South Dakota;

3 (18) Do any act and execute any instrument which in the authority's judgment is necessary
4 or convenient to the exercise of the powers granted by this Act or reasonably implied
5 from it;

6 (19) After consultation with the Public Utilities Commission and any other relevant
7 governmental authority, establish and charge reasonable fees, rates, tariffs, or other
8 charges for the use of all facilities administered by the authority and for all services
9 rendered by it;

10 (20) Investigate, plan, prioritize, and establish corridors for the transmission of electricity;
11 and

12 (21) Acquire by condemnation, in accordance with chapter 21-35, within the state any
13 properties necessary or useful for the authority's purposes. However, the authority
14 may not condemn any existing facilities.

15 Section 19. The authority may invest any funds not needed for immediate investment in the
16 following:

17 (1) Bonds, notes, certificates of indebtedness, treasury bills, or other securities
18 constituting direct obligations of, or obligations the principal of and interest on which
19 are fully guaranteed or insured by, the United States of America;

20 (2) Obligations issued by or obligations the principal of and interest on which are fully
21 guaranteed or insured by any agency or instrumentality of the United States of
22 America;

23 (3) Certificates of deposit or time deposits constituting direct obligations of any bank
24 which is a qualified public depository or any savings and loan association which is

1 a savings and loan depository under the Public Deposit Insurance Act pursuant to
2 chapter 4-6A, unless sufficient volume of such certificates is not available at
3 competitive interest rates. In that event, the authority may purchase noncollateralized
4 direct obligations of any bank or savings institution or holding company if such
5 institution or holding company is rated in the highest two quality categories by a
6 nationally recognized rating agency;

7 (4) Obligations of any solvent insurance company or other corporation or business entity
8 existing under the laws of the United States or any state thereof, if the obligation of
9 the insurance company or other corporation or business entity is rated in the two
10 highest classifications established by a standard rating service of insurance
11 companies or a nationally recognized rating agency;

12 (5) Short term discount obligations of the Federal National Mortgage Association;

13 (6) Obligations issued by any state of the United States or any political subdivision,
14 public instrumentality, or public authority of any state of the United States, which
15 obligations are not callable before the date the principal thereof will be required to
16 be paid and which obligations are fully secured as to both sufficiency and timely
17 payment by, and payable solely from, securities described in subdivision (1) and
18 which obligations are rated in the highest investment classification by at least two
19 standard rating services of such obligations.

20 Any securities may be purchased at the offering or market price thereof at the time of the
21 purchase. All securities so purchased shall mature or be redeemable on a date or dates prior to
22 the time when, in the judgment of the authority, the funds so invested will be required for
23 expenditure. The express judgment of the authority as to the time when any funds will be
24 required for expenditure or be redeemable is final and conclusive. Investment in any obligation

1 enumerated in this section may be made either directly or in the form of securities of, or other
2 interests in, an investment company registered under the Federal Investment Act of 1940, whose
3 shares are registered under the Federal Securities Act of 1933, and whose investments are
4 limited to these obligations.

5 Section 20. The authority may issue revenue bonds, notes, or other evidences of
6 indebtedness to pay the cost incurred in connection with developing, constructing, acquiring,
7 improving, maintaining, operating, and decommissioning electric transmission facilities. For
8 the purpose of evidencing the obligations of the authority to repay any money borrowed, the
9 authority may, pursuant to resolution, from time to time issue and dispose of its interest bearing
10 revenue bonds, notes, or other instruments and may also from time to time issue and dispose of
11 such bonds, notes, or other instruments to refund, at maturity, at a redemption date or in advance
12 of either, any revenue bonds, notes, or other instruments pursuant to redemption provisions or
13 at any time before maturity. All such revenue bonds, notes, or other instruments shall be payable
14 solely from the revenues or income to be derived with respect to such facilities, from the leasing
15 or sale of such facilities, or from any other funds available to the authority for such purposes.
16 The revenue bonds, notes, or other instruments may bear such date or dates, may mature at such
17 time or times not exceeding forty years from their respective dates, may bear interest at such rate
18 or rates, may be in such form, may carry such registration privileges, may be executed in such
19 manner, may be payable at such place or places, may be made subject to redemption in such
20 manner and upon such terms, with or without premium as is stated on the face thereof, may be
21 authenticated in such manner, and may contain such terms and covenants as may be provided
22 by an applicable resolution.

23 Section 21. Any holder of any revenue bonds, notes, or other instruments issued by the
24 authority may bring suits at law or proceedings in equity to compel the performance and

1 observance by any corporation or person or by the authority or any of its agents or employees
2 of any contract or covenant made with the holders of such revenue bonds, notes, or other
3 instruments, to compel such corporation, person, the authority, and any of its agents or
4 employees to perform any duties required to be performed for the benefit of the holders of any
5 such revenue bonds, notes, or other instruments by the provision of the resolution authorizing
6 their issuance and to enjoin such corporation, person, the authority, and any of its agents or
7 employees from taking any action in conflict with any such contract or covenant.

8 Section 22. If the authority fails to pay the principal of or interest on any of the revenue
9 bonds or premium, if any, as the same become due, a civil action to compel payment may be
10 instituted in the appropriate circuit court by the holder or holders of the revenue bonds on which
11 such default of payment exists or by an indenture trustee acting on behalf of such holders.
12 Delivery of a summons and a copy of the complaint to the chair of the board constitutes
13 sufficient service to give the circuit court jurisdiction of the subject matter of such a suit and
14 jurisdiction over the authority and its officers named as defendants for the purpose of
15 compelling such payment.

16 Section 23. Notwithstanding the form and tenor of any such revenue bonds, notes, or other
17 instruments and in the absence of any express recital on the face of any such revenue bond, note,
18 or other instruments that it is non-negotiable, all such revenue bonds, notes, and other
19 instruments shall be negotiable instruments. Pending the preparation and execution of any such
20 revenue bonds, notes, or other instruments, temporary revenue bonds, notes, or instruments may
21 be issued as provided by resolution.

22 Section 24. To secure the payment of any or all of such revenue bonds, notes, or other
23 instruments, the revenues to be received by the authority from a lease agreement or loan
24 agreement shall be pledged, and, for the purpose of setting forth the covenants and undertakings

1 of the authority in connection with the issuance thereof and the issuance of any additional
2 revenue bonds, notes, or other instruments payable from such revenues, income, or other funds
3 to be derived from electric transmission facilities, the authority may execute and deliver a trust
4 agreement. A remedy for any breach or default of the terms of any such trust agreement by the
5 authority may be by mandamus proceedings in the appropriate circuit court to compel the
6 performance and compliance therewith, but the trust agreement may prescribe by whom or on
7 whose behalf the action may be instituted.

8 Section 25. The revenue bonds or notes shall be secured as provided in the authorizing
9 resolution which may, notwithstanding any other provision of this Act, include in addition to
10 any other security a specific pledge or assignment of and lien on or security interest in any or
11 all revenues or money of the authority from whatever source which may by law be used for debt
12 service purposes and a specific pledge or assignment of and lien on or security interest in any
13 funds or accounts established or provided for by resolution of the authority authorizing the
14 issuance of such revenue bonds, notes, or other instruments. Any pledge made by the authority
15 of revenues or other moneys received or to be received by the authority pursuant to an
16 agreement with a governmental agency relating to a project to pay revenue bonds, notes, or other
17 evidences of indebtedness of the authority shall be binding from the time the pledge is made.
18 Revenues and other moneys received or to be received by the authority pursuant to an agreement
19 with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or
20 other evidences of indebtedness of the authority shall be held outside of the state treasury and
21 in the custody of the authority or a trustee or a depository appointed by the authority. Revenues
22 or other moneys received or to be received by the authority pursuant to an agreement with a
23 governmental agency relating to a project so pledged to pay revenue bonds, notes, or other
24 evidences of indebtedness of the authority and thereafter received by the authority or such

1 trustee or depository shall immediately be subject to the lien of the pledge without any physical
2 delivery thereof or further act, and the lien of any pledge shall be binding against all parties
3 having claims of any kind of tort, contract, or otherwise against the authority or the State of
4 South Dakota, irrespective of whether the parties have notice thereof. Neither the resolution nor
5 any other instrument by which a pledge is created need be filed or recorded except in the records
6 of the authority.

7 Section 26. The State of South Dakota pledges to and agrees with the holders of the revenue
8 bonds and notes of the authority issued pursuant to this Act that the state will not limit or
9 decrease the rights and powers vested in the authority by this Act so as to impair the terms of
10 any contract made by the authority with such holders or in any way impair the rights and
11 remedies of such holders until such revenue bonds, notes, or other instruments, together with
12 interest thereon, with interest on any unpaid installments of interest, and all costs and expenses
13 in connection with any action or proceedings by or on behalf of such holders, are fully met and
14 discharged. The authority may include these pledges and agreements of the state in any contract
15 with the holders of revenue bonds, notes, or other instruments issued pursuant to this section.

16 Section 27. Nothing in this Act may be construed to authorize the authority to create a debt
17 of the state within the meaning of the Constitution or statutes of South Dakota and all revenue
18 bonds, notes, other instruments and obligations issued by the authority pursuant to the
19 provisions of this Act are payable and shall state that they are payable solely from the funds
20 pledged for their payment in accordance with the resolution authorizing their issuance or in any
21 trust indenture or mortgage or deed of trust executed as security therefor. The state is not in any
22 event liable for the payment of the principal of or interest on any bonds, notes, instruments, or
23 obligations issued by the authority or for the performance of any pledge, mortgage, obligation,
24 or agreement of any kind whatsoever which may be undertaken by the authority. No breach of

1 any such pledge, mortgage, obligation, or agreement may impose any pecuniary liability upon
2 the state or any charge upon its general credit or against its taxing power.

3 Section 28. The state and all counties, municipalities, political subdivisions, public bodies,
4 public officers, banks, bankers, trust companies, savings banks and institutions, building and
5 loan associations, savings and loan associations, personal representatives, conservators, trustees,
6 and other fiduciaries may legally invest any debt service funds, money, or other funds belonging
7 to them or within their control in any bonds or notes issued pursuant to this Act.

8 Section 29. Any documentary material or data made or received by the authority for
9 purposes under this Act, to the extent that such material or data consists of trade secrets,
10 scientific or technical secrets, matters involving national security, or commercial or financial
11 information regarding the operation of a business, may not be considered public records, and
12 are exempt from disclosure. Any discussion or consideration of such information may be held
13 by the authority in executive session.

14 Section 30. The authority may acquire title to any electric transmission facility with respect
15 to which it exercises its authority.

16 Section 31. The authority may acquire by purchase, lease, gift, or otherwise any property or
17 rights to any property from any person or any governmental agency, whether improved for the
18 purposes of any prospective project or unimproved. The authority may also accept any donation
19 of funds for its purposes from any of those sources.

20 Section 32. The authority may acquire, develop, construct, improve, maintain, operate, and
21 decommission any electric transmission facilities, either under its own direction or through
22 collaboration with any approved applicant, or to acquire any project through purchase or
23 otherwise, using for that purpose the proceeds derived from its sale of revenue bonds, notes, or
24 other instruments or governmental loans, grants, or other funds and to hold title to those projects

1 in the name of the authority.

2 Section 33. The authority may enter into intergovernmental agreements with any
3 governmental agency.

4 Section 34. The authority may share employees with governmental agencies.

5 Section 35. The provisions of § 5-2-19 do not apply to real or personal property given to the
6 authority.

7 Section 36. The authority shall designate a qualified public depository as defined in § 4-6A-
8 1 as a depository of its money. Those depositories shall be designated only within the state and
9 upon condition that bonds approved as to form and surety by the authority and at least equal in
10 amount to the maximum sum expected to be on deposit at any one time shall be first given by
11 the depositories to the authority, those bonds to be conditioned for the safekeeping and prompt
12 repayment of the deposits. If any of the funds of the authority are deposited by the treasurer in
13 any such depository, the treasurer and the sureties on the treasurer's official bond are, to that
14 extent, exempt from liability for the loss of any of the deposited funds by reason of the failure,
15 bankruptcy, or any other act or default of the depository. However, the authority may accept
16 assignments of collateral by any depository of its funds to secure the deposits to the same extent
17 and conditioned in the same manner as assignments of collateral are permitted by law to secure
18 deposits of the funds consistent with the provisions of chapter 4-6A.

19 Section 37. The income of the authority and all land, improvements, equipment, fixtures,
20 or other property interests owned by the authority are exempt from all taxation in the State of
21 South Dakota. The authority is exempt from the provisions of chapter 47-31A.

22 Section 38. The authority is attached to the Department of Tourism and State Development
23 for reporting purposes. The authority shall submit such records, information, and reports in the
24 form and at such times as required by the secretary. However, the authority shall report at least

1 annually.

2 Section 39. Notwithstanding any other provisions of law, all funds received by the authority

3 shall be set forth in an informational budget as described in § 4-7-7.2.