



2024 South Dakota Legislature

House Bill 1037

Introduced by: **Representative Drury**

1 **An Act to require the producers of wind and solar energy infrastructure to**
 2 **implement or participate in a wind and solar energy infrastructure**
 3 **stewardship program.**

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

5 **Section 1. That a NEW SECTION be added to title 49:**

6 Terms used in this chapter mean:

7 (1) "Brand," a name, symbol, word, or mark that identifies a solar photovoltaic module
 8 or wind energy conversion system, rather than the individual components thereof,
 9 and attributes the solar photovoltaic module or wind energy conversion system to
 10 the owner or licensee of the name, symbol, word, or mark as a producer;

11 (2) "Producer," a person that:

12 (a) Has legal ownership of a brand, brand name, or cobrand of a solar
 13 photovoltaic module or wind energy conversion system sold in the state;

14 (b) Imports a solar photovoltaic module or wind energy conversion system
 15 branded by a producer that meets the criteria of subsection (a) when the
 16 producer has no physical presence in the United States;

17 (c) Makes unbranded solar photovoltaic modules or wind energy conversion
 18 systems that are sold in the state provided that subdivisions (a) and (b) do
 19 not apply; or

20 (d) Sells solar photovoltaic modules or wind energy conversion systems at
 21 wholesale or retail, does not have legal ownership of the brand, and elects
 22 to fulfill the producer's responsibilities for the solar photovoltaic module or
 23 wind energy conversion system by certifying that election in writing to the
 24 Public Utilities Commission;

25 (3) "Sale" or "sell," the transfer of title to or lease of a solar photovoltaic module or
 26 wind energy conversion system for consideration by a producer, wholesaler, or

- 1 retailer, including a remote sale conducted through a sales outlet, catalog, website,
2 or similar electronic means;
- 3 (4) "Solar photovoltaic module" the smallest, nondivisible, self-contained physical
4 structure housing interconnected photovoltaic cells that provides a single direct
5 current of electrical output;
- 6 (5) "Stewardship assessment," the amount added to the purchase price of wind and
7 solar infrastructure sold in the state that is necessary to cover the cost of collecting,
8 transporting, and processing discarded wind and solar infrastructure by the
9 producer or stewardship organization pursuant to a product stewardship program;
- 10 (6) "Stewardship organization," an organization appointed by one or more producers
11 to act as an agent on behalf of the producer to design, submit, and administer a
12 product stewardship program under this section;
- 13 (7) "Stewardship plan," a detailed plan describing the manner in which a product
14 stewardship program will be implemented;
- 15 (8) "Wind and solar energy infrastructure," a solar photovoltaic module, wind energy
16 conversion system, or wind energy conversion system component; and
- 17 (9) "Wind energy conversion system," any wind charger, windmill, wind turbine, or
18 other device that converts wind energy to a form of usable energy.

19 **Section 2. That a NEW SECTION be added to title 49:**

20 A producer shall, individually or through a stewardship organization, implement
21 and finance a statewide product stewardship program that manages wind and solar
22 infrastructure sold in the state that has been subsequently decommissioned and is no
23 longer actively operated by reducing waste generation, promoting recycling, and
24 negotiating and executing agreements to collect, transport, and process wind and solar
25 energy infrastructure for end-of-life recycling.

26 **Section 3. That a NEW SECTION be added to title 49:**

27 On or before March 1, 2025, and before offering wind and solar infrastructure for
28 sale in the state, a producer must:

29 (1) Receive approval of a submitted stewardship plan from the Public Utilities
30 Commission; or

31 (2) Submit documentation to the commission that demonstrates that the producer has
32 entered into an agreement with a stewardship organization to be an active

1 participant in a product stewardship program, pursuant to section 2 of this Act,
2 that has been approved by the commission.

3 The entity responsible for a stewardship plan shall notify the commission within
4 thirty days of any significant change to the plan or its implementation and must submit a
5 revised written plan to the commission for review and approval within thirty days of the
6 notification. The commission may require the entity responsible for a stewardship plan to
7 submit an amendment to the plan every five years.

8 **Section 4. That a NEW SECTION be added to title 49:**

9 A stewardship plan must contain:

- 10 (1) Certification that the product stewardship program will accept all discarded wind
11 and solar energy infrastructure, regardless of the producer that produced the wind
12 and solar energy infrastructure;
- 13 (2) Contact information for the individual within the entity submitting the plan, a list
14 of all producers participating in the product stewardship program, and the brands
15 covered by the product stewardship program;
- 16 (3) A description of the methods proposed to collect the discarded wind and solar
17 energy infrastructure in all areas of the state without relying on end-of-life fees,
18 including:
- 19 (a) An explanation of how the collection system is designed to be convenient
20 and adequate to serve the needs of small businesses and residents in both
21 urban and rural areas on an ongoing basis; and
- 22 (b) A description of how the entity responsible for the stewardship plan will
23 make use of the existing household hazardous waste infrastructure;
- 24 (4) A description of the techniques to be used to monitor and maintain the adequacy
25 of the collection program;
- 26 (5) The names and locations of collectors, transporters, and recyclers that will manage
27 discarded wind and solar infrastructure;
- 28 (6) A description of how discarded wind and solar energy infrastructure are to be safely
29 and securely transported, tracked, and handled from collection through final
30 recycling and processing;
- 31 (7) A description of the method to be used to dismantle and recycle discarded wind
32 and solar energy infrastructure to ensure that, to the extent feasible, the
33 components of the wind and solar energy infrastructure are transformed or
34 remanufactured into finished products for use;

1 (8) A description of the promotion and outreach activities to be used to encourage
2 participation in the collection and recycling program;

3 (9) A description of the measures used to evaluate the promotion and outreach
4 activities' effectiveness and whether the program requires modification;

5 (10) The proposed uniform stewardship assessment for all wind and solar energy
6 infrastructure sold in the state, which must be recommended and reviewed by an
7 independent auditor to ensure that the assessment does not exceed the cost of the
8 product stewardship program;

9 (11) Evidence of adequate insurance and financial assurance required for collection,
10 handling, recycling, and disposal operations, as determined by the commission;

11 (12) A five-year performance goal, including an estimate of both the percentage and
12 amount of discarded wind and solar energy infrastructure to be collected and
13 recycled during each of the first five years of the stewardship plan and the
14 methodology used to be to determine the goals; and

15 (13) A description of the status of end markets for collected wind and solar energy
16 infrastructure and what, if any, additional end markets are needed to improve the
17 functioning of the program.

18 A five-year performance goal described in subdivision (11) must be based on the
19 most recent collection data available for the state, the estimated number and weight of
20 wind and solar energy infrastructure disposed of annually, and, if available, actual
21 collection data from other existing stewardship programs.

22 **Section 5. That a NEW SECTION be added to title 49:**

23 When developing a stewardship plan, a stewardship organization or individual
24 producer shall consult with retailers, wind and solar energy infrastructure installers,
25 owners, collectors, recyclers, and local government.

26 **Section 6. That a NEW SECTION be added to title 49:**

27 Within ninety days of receiving a proposed stewardship plan, the Public Utilities
28 Commission must determine if the plan complies with section 4 of this Act. If the
29 commission approves the plan, the commission must immediately notify the applicant in
30 writing of the plan's approval and implementation date. The date may not be later than
31 ninety days after the plan is approved. If the commission rejects the plan, the commission
32 must notify the applicant in writing of the reasons for rejecting the plan. An applicant

1 whose plan is rejected by the commission may submit a revised plan to the commission
2 within sixty days of receiving notice of rejection.

3 All draft and approved stewardship plans must be placed on the commission's
4 website and made available at the commission for public review and comment.

5 **Section 7. That a NEW SECTION be added to title 49:**

6 Beginning ninety days after the Public Utilities Commission approves a stewardship
7 plan pursuant to section 6 of this Act, a producer, wholesaler, or retailer may not sell or
8 offer for sale a solar photovoltaic module or wind energy conversion system in the state
9 unless the producer of the solar photovoltaic module or wind energy conversion system
10 participates in an approved stewardship program, either individually or through a
11 stewardship organization.

12 Each producer must either operate a product stewardship program approved by
13 the commission or enter into an agreement with a stewardship organization to operate a
14 product stewardship program approved by the commission on the producer's behalf.

15 **Section 8. That a NEW SECTION be added to title 49:**

16 A producer or stewardship organization that organizes collection, transportation,
17 and processing of wind and solar infrastructure pursuant to this chapter is immune from
18 liability for conduct under state laws pertaining to antitrust or restraint of trade. Liability
19 immunity under this section is limited to conduct necessary to plan and implement the
20 producer's or organization's chosen organized collection or recycling system.

21 **Section 9. That a NEW SECTION be added to title 49:**

22 On and after the implementation date of a product stewardship program, pursuant
23 to section 6 of this Act, a producer of wind and solar energy infrastructure must add the
24 stewardship assessment, as approved by the Public Utilities Commission, to the cost of
25 wind and solar energy infrastructure sold to retailers and distributors in the state.

26 A producer or the stewardship organization shall provide consumers with
27 educational materials regarding the stewardship assessment and product stewardship
28 program. The materials must include information regarding available end-of-life
29 management options for wind and solar energy infrastructure offered through the product
30 stewardship program and information notifying consumers that a charge for operating the

1 product stewardship program is included in the purchase price of wind and solar energy
2 infrastructure sold in the state.

3 A producer or stewardship organization must conduct and document a due
4 diligence evaluation of the collectors and recyclers with which it contracts, including the
5 assessment of items specified in section 10 of this Act. A producer or stewardship
6 organization shall maintain documentation for three years that all wind and solar energy
7 infrastructure recycled, partially recycled, or sent to downstream recycling operations
8 comply with section 10 of this Act.

9 A producer or stewardship organization must provide the Public Utilities
10 Commission with contact information for an individual who can be contacted regarding the
11 activity of the producer or stewardship organization.

12 **Section 10. That a NEW SECTION be added to title 49:**

13 Beginning on September 1, 2025, and every September first thereafter, a recycler
14 shall certify to the Public Utilities Commission that wind and solar energy infrastructure
15 recycling facilities, including all downstream recycling operations:

- 16 (1) Comply with all applicable health, environmental, safety, and financial
17 responsibility regulations;
18 (2) Are licensed by all applicable governmental authorities;
19 (3) Use no prison labor to recycle wind and solar energy infrastructure; and
20 (4) Possess liability insurance of not less than one million dollars for environmental
21 releases, accidents, and other emergencies.

22 **Section 11. That a NEW SECTION be added to title 49:**

23 Beginning ninety days after the Public Utilities Commission approves a stewardship
24 plan, pursuant to section 6 of this Act, a producer is prohibited from selling a solar
25 photovoltaic module or wind energy conversion system in the state unless the producer
26 of the wind and solar energy infrastructure is participating in an approved stewardship
27 program.

28 On and after the implementation date of a product stewardship program, a retailer
29 or distributor is prohibited from offering solar photovoltaic modules or wind energy
30 conversion systems for sale in this state unless the full amount of the stewardship
31 assessment added to the cost of the solar photovoltaic module or wind energy conversion
32 system by a producer, pursuant to section 9 of this Act, is included in the purchase price
33 of the solar photovoltaic module or wind energy conversion system.

1 A retailer or distributor does not violate this section if, on the date a solar
2 photovoltaic module or wind energy conversion system sold by the retailer or distributor
3 was ordered from the producer or its agent, the producer was listed as compliant on the
4 commission's website, pursuant to section 14 of this Act.

5 **Section 12. That a NEW SECTION be added to title 49:**

6 Beginning October 1, 2026, and every October first thereafter, a producer of wind
7 and solar energy infrastructure sold in the state shall, individually or through a
8 stewardship organization, submit a report to the Public Utilities Commission describing the
9 product stewardship program. The report must contain:

- 10 (1) A description of the methods used to collect, transport, and process wind and solar
11 energy infrastructure in all regions of the state;
12 (2) The number and weight of all wind and solar energy infrastructure collected in all
13 regions of the state and a comparison to the performance goals and recycling rates
14 contained in the stewardship plan;
15 (3) Samples of the educational material provided to consumers, an evaluation of the
16 effectiveness of the material, and an evaluation of the methods used to disseminate
17 the material; and
18 (4) An independent financial audit of the stewardship program.

19 **Section 13. That a NEW SECTION be added to title 49:**

20 Trade secret information, as defined in § 1-27-28, and sales information submitted
21 to the Public Utilities Commission under this chapter is not open to public inspection and
22 is not a public record under chapter 1-27.

23 **Section 14. That a NEW SECTION be added to title 49:**

24 The Public Utilities Commission must provide on the commission's website a list of
25 all producers and brands operating in this state and whether the producer or brand is
26 participating in an approved stewardship program.

27 **Section 15. That a NEW SECTION be added to title 49:**

28 A political subdivision of this state or other public agency may choose to participate
29 in a product stewardship program and may work with producers and stewardship

1 organizations to assist in meeting product stewardship program recycling obligations by
2 providing education and outreach.

3 **Section 16. That a NEW SECTION be added to title 49:**

4 The stewardship organization or individual producer submitting a stewardship plan
5 must pay an annual administrative fee to the Public Utilities Commission. The commission
6 may establish a variable fee based on relevant factors, including the portion of solar
7 photovoltaic modules and wind energy conversion systems sold in the state by members
8 of the organization compared to the total amount of solar photovoltaic modules and wind
9 energy conversion systems sold in the state by all organizations that have submitted a
10 stewardship plan.

11 By June 30, 2026, and by June thirtieth every year thereafter, the commission
12 must identify the commission's cost incurred pursuant to this chapter. The commission
13 shall set the fee at an amount that, when paid by every stewardship organization or
14 individual producer that submits a stewardship plan, is adequate to reimburse the
15 commission's full cost of administering this chapter. The total annual fees collected
16 pursuant to this section may not exceed the amount necessary to reimburse the cost
17 incurred by the commission to administer this chapter.

18 On or before August 1, 2026, and by August first ever year thereafter, each
19 approved stewardship organization or individual producer subject to this subdivision must
20 pay the administrative fee assessed by the commission. Each year after the initial
21 payment, the annual administrative fee assessed to each approved stewardship
22 organization or individual producer may not exceed five percent of the aggregate
23 stewardship assessment added to the cost of all wind and solar infrastructure sold by
24 producers in the state for the preceding calendar year.

25 **Section 17. That a NEW SECTION be added to title 49:**

26 There is created in the state treasury the wind and solar energy infrastructure
27 stewardship fund. The Public Utilities Commission shall administer the fund, and any
28 money in the fund is continuously appropriated to the Public Utilities Commission as
29 provided in this section. All administrative fees received pursuant to section 16 of this Act
30 an any interest earned on money in the fund must be deposited in the fund. The
31 commission shall use any money deposited into the fund to reimburse the commission for
32 all costs related to administering a statewide wind and solar energy infrastructure
33 stewardship program.