

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

138P0628

## HOUSE BILL NO. 1296

Introduced by: Representatives Ahlers, Halverson, Hargens, Noem, Putnam, Rausch, Tidemann, and Vehle and Senators Peterson (Jim), Dempster, Hansen (Tom), Heidepriem, Kloucek, Olson (Ed), and Sutton

1 FOR AN ACT ENTITLED, An Act to authorize community renewable energy development  
2 projects and to provide for certain tax benefits for such projects.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Commission," the Public Utilities Commission;

6 (2) "Community renewable energy project" or "project," the installation or construction  
7 of a facility for the generation of electricity from renewable sources that meets the  
8 requirements of section 3 of this Act;

9 (3) "Department," the Department of Revenue and Regulation;

10 (4) "Electric utility," as the term is defined in § 49-34A-1;

11 (5) "Qualifying owner," a:

12 (a) Natural person who is a South Dakota resident;

13 (b) Limited liability company that is organized under chapter 47-34A and that is  
14 made up of members who are South Dakota residents;



- 1 (c) South Dakota nonprofit organization organized under chapter 47-22;
- 2 (d) South Dakota cooperative association organized under chapter 47-15 or 47-21,  
3 including a rural electric cooperative association;
- 4 (e) South Dakota political subdivision or local government, including a municipal  
5 electric utility or a municipal power agency, a county, municipality, school  
6 district, public or private higher education institution, or any other local or  
7 regional governmental organization such as a board, commission, or  
8 association; or
- 9 (f) Tribal council;
- 10 (6) "Renewable," a technology or energy source listed in § 49-34A-94.

11 Section 2. Any community renewable energy project that meets the requirements of section  
12 3 of this Act and holds a permit issued by the Public Utilities Commission pursuant to section  
13 4 of this Act may apply for and obtain a refund or credit for sales or use tax imposed and paid  
14 by the project under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes  
15 imposed and paid under the provisions of chapter 10-46A or 10-46B on the costs incurred for  
16 the development and construction of the project. The refund shall be one hundred percent of the  
17 taxes attributed to the taxable project costs. The refund of taxes pertains only to project costs  
18 incurred and paid after July 1, 2008.

19 Section 3. For purposes of this Act, a community renewable energy project is a project  
20 located in South Dakota to provide for the generation of electricity from renewable sources that  
21 meets the following requirements:

- 22 (1) A community renewable energy project developer, an electric utility, and other  
23 potential qualified and nonqualified owners may negotiate in good faith mutually  
24 agreeable power purchase agreement terms;

- 1       (2)    At least twenty-five percent of the ownership interest of the project shall consist of  
2                   qualified owners who either reside or are headquartered within a fifty-mile radius of  
3                   the project facility. If the qualified owner is a natural person, the person's residence  
4                   shall be within the fifty mile radius. If the qualified owner is an entity other than a  
5                   natural person, the entity's headquarters shall be within the fifty-mile radius;
- 6       (3)    No single qualified owner may own more than fifteen percent of the project, and not  
7                   more than seventy-five percent of the power purchase agreement payments may flow  
8                   to nonqualified owners;
- 9       (4)    Except for an inherited interest, the transfer of a community renewable energy project  
10                  to any person other than a qualified owner is prohibited during the initial ten years  
11                  of the power purchase agreement; and
- 12       (5)    The project has a resolution of support adopted by the county board of each county  
13                  in which the project is to be located, or in the case of a project located within the  
14                  boundaries of a reservation, the tribal council for that reservation.

15       Section 4. Any person desiring to claim a refund pursuant to this Act shall apply for a permit  
16       from the commission on a form prescribed by the commission. Upon approval of the  
17       application, the commission shall issue a permit entitling the applicant to submit refund claims  
18       to the Department of Revenue and Regulation as provided by this Act. The permit or refund  
19       claims are not assignable or transferable except as collateral or security pursuant to chapter  
20       57A-9.

21       Section 5. Any claim for refund shall be submitted to the Department of Revenue and  
22       Regulation on forms prescribed by the department and shall be supported by such  
23       documentation as the department requires in rules promulgated pursuant to chapter 1-26. The  
24       department may deny any claim if the claimant has failed to provide information or

1 documentation requested or considered necessary by the department to determine the validity  
2 of the claim. The claim shall be submitted to the department within six months after the  
3 completion of the project. The department shall determine and pay the amount of the tax refund  
4 within sixty days of receipt of the return.

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

10 Section 7. Any person, aggrieved by the denial in whole or in part of a of a permit applied  
11 for under this Act or of a refund or credit claimed under this Act, may, within thirty days after  
12 service of the notice of such denial by the commission or the department, demand a hearing,  
13 upon notice, before the commission or the department. The hearing shall be conducted pursuant  
14 to chapter 1-26.

15 Section 8. The Public Utilities Commission shall promulgate rules pursuant o to chapter  
16 1-26 to provide for the issuance of permits pursuant to section 4 of this Act governing the  
17 classification of any project as a community renewable energy project and the eligibility of any  
18 project for any tax refunds or credits authorized for community renewable energy projects  
19 pursuant to this Act. The commission's rules shall include permit application and issuance  
20 procedures and criteria.

21 The Department of Revenue and Regulation shall promulgate rules pursuant to chapter 1-26  
22 to provide for the claiming and payment of tax refunds and credits authorized for community  
23 renewable energy projects pursuant to this Act. The department's rules shall include forms and  
24 procedures for filing claims, record keeping requirements, auditing methods, and other

1 requirements and procedures necessary for providing the tax refunds and credits.

2 Section 9. Any electric utility that intends to construct new generation, or purchase the  
3 output from new generation shall take reasonable steps to determine whether one or more  
4 community renewable energy projects are available and are technically, economically, and  
5 operationally feasible and meet the utility's cost and reliability requirements to fulfill some or  
6 all of the identified need at minimal impact to customer rates. Nothing in this Act obligates an  
7 electric utility to enter into a power purchase agreement as part of a community renewable  
8 energy project.

9 Section 10. To the extent feasible, a developer of a community renewable energy project  
10 shall provide, in writing, an opportunity to invest in the project to each property owner on whose  
11 property a high-voltage transmission line is constructed that will transmit the energy generated  
12 by the project to market. This section applies if the property is located and the owner resides  
13 within the fifty-mile radius specified in section 3 of this Act.

14 Section 11. Any electric utility providing electric service to retail or wholesale customers  
15 in South Dakota and an independent power producer may, subject to the limits specified in this  
16 Act, participate in a community renewable energy project, whether as an owner, equity partner,  
17 or provider of technical or financial assistance.