

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0343

## SENATE STATE AFFAIRS ENGROSSED NO. **SB 58** - 1/20/2010

Introduced by: The Committee on State Affairs at the request of the Public Utilities  
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain real property taxes for small renewable  
2 energy facilities.

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

4 Section 1. For purposes of this Act, a renewable resource is a resource that generates  
5 electricity from facilities using one or more of the following sources:

6 (1) Wind that uses wind as the source of energy to produce electricity;

7 (2) Solar that uses the sun as the source of energy to produce electricity;

8 (3) Hydroelectric that uses water as the source of energy to produce electricity;

9 (4) Hydrogen that is generated from one of the sources listed in this section;

10 (5) Biomass that uses agricultural crops and agricultural wastes and residues, wood and  
11 wood wastes and residues, animal and other degradable organic wastes, municipal  
12 solid waste, or landfill gas as the fuel to produce electricity; or

13 (6) Geothermal that uses energy contained in heat that continuously flows outward from  
14 the earth as the source of energy to produce electricity.



1 Section 2. For purposes of this Act, a renewable energy facility is a facility that uses a  
2 renewable resource as its energy source for the purpose of producing electricity.

3 Section 3. For renewable energy facilities with less than five megawatts of nameplate  
4 capacity, all real property used or constructed for the purpose of producing electricity using a  
5 renewable resource as an energy source is classified for tax purposes as renewable energy  
6 property and shall be assessed and taxed in the same manner as other real property and shall be  
7 locally assessed by the county director of equalization pursuant to § 10-3-16. For the purposes  
8 of this Act, the first fifty thousand dollars of the assessed value of the renewable energy property  
9 or seventy percent of the assessed value of the renewable energy property, whichever is greater,  
10 is exempt from the real property tax.

11 Section 4. Renewable energy property is not subject to any discretionary formulas authorized  
12 by Title 10.

13 Section 5. That § 10-4-36 be repealed.

14 ~~10-4-36. For wind energy properties with less than five thousand kilowatts of nameplate~~  
15 ~~capacity, all real property used or constructed for the purpose of producing electricity for~~  
16 ~~commercial purposes that utilizes the wind as an energy source is classified for tax purposes as~~  
17 ~~wind energy property and shall be assessed and taxed in the same manner as other real property~~  
18 ~~and shall be locally assessed by the county director of equalization pursuant to § 10-3-16. For~~  
19 ~~the purposes of §§ 10-4-36 to 10-4-38, inclusive, real property includes the base, foundation,~~  
20 ~~tower, and substations. Real property does not include the wind turbine or blades attached~~  
21 ~~thereto.~~

22 Section 6. That § 10-4-37 be repealed.

23 ~~10-4-37. Any wind energy property of a commercial wind power production facility with~~  
24 ~~less than five thousand kilowatts of nameplate capacity shall be assessed under the provisions~~

1 of this chapter:

2 Section 7. That § 10-4-38 be repealed.

3 ~~10-4-38. Wind energy property is not subject to any discretionary formulas authorized by~~  
4 ~~Title 10.~~

5 Section 8. That § 10-6-35.8 be repealed.

6 ~~10-6-35.8. Terms used in §§ 10-6-35.8 to 10-6-35.18, inclusive, unless the context otherwise~~  
7 ~~requires, mean:~~

8 ~~(1) "Base credit," the property tax assessment credit as authorized during the last year of~~  
9 ~~qualification under § 10-6-35.15;~~

10 ~~(2) "Biomass," an energy source derived from the conversion of organic matter by~~  
11 ~~biological, thermochemical combustion, and advanced processes. The organic matter~~  
12 ~~may include, but is not limited to, agricultural products, agriculture and forest~~  
13 ~~residues, municipal sewage, and other organic wastes;~~

14 ~~(3) "Commercial application" or "commercial," the use of a renewable resource energy~~  
15 ~~system in commercial, industrial, or agricultural production or processing;~~

16 ~~(4) "Equipment," all the controls, tanks, pumps, heat exchangers, generators, and other~~  
17 ~~hardware necessary to install a renewable resource energy system, except that~~  
18 ~~associated with a secondary system;~~

19 ~~(5) "Passive solar energy system," the equipment used, designed, and installed for~~  
20 ~~conductive, convective, or radiant energy transfer in the heating or cooling of a~~  
21 ~~structure. However, "passive solar energy system" does not include materials that~~  
22 ~~serve primarily as structural components of a structure;~~

23 ~~(6) "Renewable resource energy system" or "system," the equipment which produces~~  
24 ~~energy from a renewable resource for on-site consumption, including a passive solar~~

1 energy system;

2 ~~(7) "Renewable resources," a relatively nondepleting source of energy, including, but not~~  
3 ~~limited to the sun, wind, and geothermal and biomass sources;~~

4 ~~(8) "Residential applications" or "residential," the use of a renewable resource energy~~  
5 ~~system for space conditioning, water heating, or electrical generation or any~~  
6 ~~combination thereof, for a structure;~~

7 ~~(9) "Secondary system," the equipment and hardware necessary to supplement,~~  
8 ~~complement, or in any manner support a renewable resource energy system;~~

9 ~~(10) "Secretary," the secretary of revenue and regulation;~~

10 ~~(11) "Structure," a building whose interior space is conditioned by heating or cooling. The~~  
11 ~~term includes but is not limited to dwellings, operating plants, office buildings, and~~  
12 ~~public buildings.~~

13 Section 9. That § 10-6-35.9 be repealed.

14 ~~10-6-35.9. An owner of any real property is entitled to a property tax assessment credit if~~  
15 ~~the owner attaches or includes a renewable resource energy system as a part of an improvement~~  
16 ~~to real property for either residential or commercial applications.~~

17 Section 10. That § 10-6-35.10 be repealed.

18 ~~10-6-35.10. No property tax assessment credit may be used for systems which produce~~  
19 ~~energy for sale to persons other than the owner of the real property on which the system is~~  
20 ~~located, unless the system is a biomass renewable resource energy system using an anaerobic~~  
21 ~~digester.~~

22 Section 11. That § 10-6-35.11 be repealed.

23 ~~10-6-35.11. The property tax assessment credit shall not apply when title to the property has~~  
24 ~~been transferred. This section does not apply to transfers of residential property when the new~~

1 owner will be the first occupant of the structure.

2 Section 12. That § 10-6-35.12 be repealed.

3 ~~—10-6-35.12. The property tax assessment credit for a residential application of a renewable~~  
4 ~~resource energy system or for an ethyl alcohol production system is a sum equal to the assessed~~  
5 ~~valuation of the real property with the renewable resource energy system minus the assessed~~  
6 ~~valuation of the real property without the system. However, a property tax assessment credit~~  
7 ~~shall not be less than the actual installed cost of the renewable resource energy system or the~~  
8 ~~ethyl alcohol production system.~~

9 Section 13. That § 10-6-35.13 be repealed.

10 ~~—10-6-35.13. The property tax assessment credit for a commercial application is fifty percent~~  
11 ~~of the actual installed cost of the renewable resource energy system.~~

12 Section 14. That § 10-6-35.14 be repealed.

13 ~~—10-6-35.14. The property tax assessment credit provided for in §§ 10-6-35.12 and 10-6-~~  
14 ~~35.13 shall be adjusted to include any federal income tax credit which may be available at the~~  
15 ~~time the owner applies for the assessment credit.~~

16 Section 15. That § 10-6-35.15 be repealed.

17 ~~—10-6-35.15. The property tax assessment credit may be applied for three continuous years~~  
18 ~~for a residential application of a renewable resource energy system and three continuous years~~  
19 ~~for a commercial application or an ethyl alcohol production system. At the end of this time, the~~  
20 ~~owner of the real property is entitled to a property tax assessment credit of:~~

21 ~~—(1)— Seventy-five percent of the base credit for the first year subsequent to termination of~~  
22 ~~the credit period;~~

23 ~~—(2)— Fifty percent of the base credit for the second year subsequent to termination of the~~  
24 ~~credit period;~~

1 ~~—(3)—~~ Twenty-five percent of the base credit for the third year subsequent to termination of  
2 the credit period.

3 Section 16. That § 10-6-35.16 be repealed.

4 ~~—10-6-35.16.~~ An applicant for an energy property tax assessment credit shall file two copies  
5 of the statement with the county director of equalization of the county in which the property is  
6 located and one copy with the Department of Revenue and Regulation. An owner of more than  
7 one renewable resource energy system shall file a separate statement for each system. The  
8 statement shall be filed between November first and December tenth of the first year for which  
9 the credit is to be applied. The applicant does not need to resubmit the application for the  
10 property tax assessment credit unless the property ownership is transferred or the property has  
11 a change in use.

12 Section 17. That § 10-6-35.17 be repealed.

13 ~~—10-6-35.17.~~ The statement shall be made on forms prescribed by the secretary of the  
14 Department of Revenue and Regulation. The forms shall include at least the following  
15 information:

16 ~~—(1)—~~ The name and current address of the owner;

17 ~~—(2)—~~ The legal description of the property;

18 ~~—(3)—~~ Whether the credit is for a residential or commercial application of a renewable  
19 resource energy system or for an ethyl alcohol production system;

20 ~~—(4)—~~ The type of general energy source for the system;

21 ~~—(5)—~~ The primary use of the system;

22 ~~—(6)—~~ The total installed cost of the system; and

23 ~~—(7)—~~ Such other information as the secretary requires.

24 ~~—~~ Copies of all receipts and such other records as may be necessary to establish the actual

1 ~~installed cost of the system shall be attached to a certified statement.~~

2 Section 18. That § 10-6-35.18 be repealed.

3 ~~—10-6-35.18. Upon verification of the statement by the director of equalization of the county~~

4 ~~in which the real property is located, the auditor shall make the deduction.~~