

March 26, 2010

The Honorable Timothy Rave
Speaker of the House of Representatives
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Mr. Speaker and Members of the House of Representatives:

I return herewith House Bill 1060 and VETO the same. House Bill 1060 is An Act to provide certain tax refunds for new or expanded wind energy facilities.

My veto of House Bill 1060 must be considered in the larger context of the South Dakota Legislature's overall action on refunds and the budget this session. As introduced, HB 1060 provided a flat fifty percent refund of sales and contractor's excise taxes paid on eligible project costs between \$25 million and \$250 million. Through extensive negotiation and compromise among all interested parties, that proposal was modified to globally reform the refund program as provided in Senate Bill 195. I have signed SB 195 despite the fact that it gives away more tax dollars in refunds than HB 1060 as initially introduced, because it was the product of global discussion and compromise. It does not help to reduce our structural deficit as much as it could have, but it accommodates all interests as much as could be agreed to. HB 1060, as now written, gives away more tax dollars in a difficult budget time and does so solely as a special deal for one industry. I cannot agree to that for several reasons.

I have consistently insisted that any reform of the project refund program provide equal treatment to all industries. HB 1060 provides a special advantage to large wind projects rather than to all industries. If we have an incentive program for economic development, I think it is important to have a program that is available across the board rather than picking winners and losers among industries. The payout of tax dollars that HB 1060 provides to large scale wind projects is not equitable and sends a negative message to other industries. Throughout the legislative session, industry spoke largely with one voice to advocate for equity of treatment, and SB 195 reflected that consensus. HB 1060 was amended in the waning hours of the regular run of the session to give large wind, and perhaps only one or two projects, a special treatment. I cannot agree with that decision, because it is inequitable.

HB 1060 will negatively affect our state revenues. Much of the discussion this session has focused on the budget, the need to improve our fiscal situation, and how many dollars of increased revenue

can be attributed to revisions of the refund program. If the goal is to minimize the impact of giving tax dollars away through a refund program, it is short sighted to provide an unlimited refund for wind. The Department of Revenue and Regulation was asked to calculate the fiscal impact of refunds on a wind project of approximately \$800 million. Under current law, such a project would receive a refund of \$29,593,033 in taxes that would otherwise go to the general fund. Under HB 1060, as initially proposed, that refund would decrease to \$5,446,125. SB 195, which I have signed, would allow a refund of \$12,901,265. HB 1060 as presented would give away 20,888,915 in tax dollars. In short, the price of a special, unlimited refund for large scale wind projects is more than \$15 million over the original HB 1060 and almost \$8 million over SB 195. If the discussion of reforming the refund program to address our fiscal shortfall was not simply rhetoric, it seems that support for HB 1060 is untenable.

The fiscal detriment imposed by HB 1060 is particularly noteworthy given the breadth with which "wind energy facility" is defined in section one of the act. It encompasses not only actual wind generation facilities, but also any new or upgraded transmission facilities (without requiring them to be associated with wind projects), and any manufacturing or related facilities for "wind or transmission components." The bill actually applies far beyond the context of wind. This expands the giveaway of tax dollars, exacerbates the inequity of treatment for economic development projects in other settings, and further points out why HB 1060 represents an incompletely considered and overly hurried product that needs to

be reconsidered.

I am sure, it will be argued that we need to "support wind" and pass HB 1060. As I pointed out above, I think it is important to support all economic development. There is ultimately little reason to give more favored treatment to wind generation than other types of energy generation projects such as coal or natural gas fired plants or other renewable resources such as biomass, geothermal, or hydroelectric. HB 1060 does so, however. More fundamentally, the legislature has previously provided extensive support for wind, including tax incentives. In 2005, blades and turbines were excluded from local property taxes, resulting in a property tax break of around seventy percent. In 2008, wind farms were exempted entirely from local property taxes in favor of a tax based on nameplate generation capacity and a gross receipts tax based on electricity produced. That legislation also provided a credit for costs of building a related transmission line. Also in 2008, wind farms were exempted from the local property tax base, which excludes their value from contributing to local effort to sustain education in the case of an opt out or bond issue. Finally in 2008, wind farms were allowed to pay alternate contractor's excise tax rather than regular contractor's excise tax; this excludes owner furnished materials such as blades, turbines, and towers from contractor's excise tax. As you can see, the legislature has provided considerable targeted tax incentives to wind projects which remain in effect today.

It is worth considering the impact of these targeted tax breaks in light of the arguments against pipeline projects that were made during debate of this issue. Pipeline projects pay considerable local property taxes and have no incentives comparable to those provided to wind. While it is true that pipeline projects may not have as much discretion in placing their projects as wind projects, they certainly do have discretion on certain portions such as pumping stations and other supporting infrastructure. Our treatment of projects should be equitable because all economic development is good for South Dakota. It must also recognize that the up front contribution of sales and contractor's

excise tax is not the only tax revenue projects generate; we must look at the whole contribution of any type of project.

I see little reason to further decrease available revenues, particularly while the legislature debates making aggressive cuts to existing and important services for South Dakotans, in order to send more tax dollars back to a single industry. I believe, good tax policy is that which applies taxes equitably, simply, and sparingly. HB 1060 does not meet those goals.

Therefore, for the reasons set forth above, I respectfully request that you concur with my action and sustain my veto.

Respectfully submitted,
M. Michael Rounds
Governor

cc: The Honorable Dennis Daugaard
The Honorable Chris Nelson