

September 15, 2008

**DRAFT**  
**PROPOSED BYLAWS**  
**OF**  
**SOUTH DAKOTA WIND ENERGY ASSOCIATION, INC.**

**Article I**

**Corporation**

**Section 1. Name.** The name of the corporation shall be South Dakota Wind Energy Association, Inc. (hereinafter known as the 'Association').

**Section 2. Office.** The principal office of the Association shall be (address).

**Section 3. Seal.** The Board of Directors (Board) may provide a Corporate Seal, which shall be circular in form and shall have inscribed thereon the name of the Association and the State of Incorporation and the words 'Corporate Seal.'

**Article II**

**Members**

**Section 1.** All persons, corporations, cooperatives, associations, and other legal entities which make a contribution to the Association and agree to support the mission, purpose, and goals of the Association shall be eligible as members upon approval by the Board.

The Association shall have four types of Members:

*Class IV Members:* Shall be persons, corporations, cooperatives, associations, and other legal entities which pledge and pay \$5,000 per year initially, for at least three years, to support the activities of the Association.

*Class III Members:* Shall be wind developers or interests associated with the wind services industry which pledge and pay \$5,000 per year initially, for at least three years, to support the activities of the Association.

*Class II Members:* Entities which make annual dues contributions of up to \$2,500 per year based on a dues schedule which shall be prescribed by the Board.

The Association is authorized to accept in-kind contributions in lieu of cash on an individual basis as the Board may determine. The Board may from time to time increase or decrease the dues amounts required for Class IV, Class III, and Class II

Members. The Board may also define when changes to dues payments by members shall become effective.

**Section 2.** Each member shall be entitled to one vote on each matter submitted to the membership, provided that said member has complied with all of the conditions of membership at the time of said vote.

**Section 3.** Membership in this Association is not transferable, nor assignable, nor shall a member be permitted to vote by proxy.

## **Article III**

### **Member Meetings**

**Section 1. Annual Meeting.** The annual meeting of the members of the Association shall be held at a time and place determined by the Board but not later than six months after the end of the Association's fiscal year. The purpose of the annual meeting shall be to elect directors and transact such other business as may come before the meeting.

**Section 2. Special Meetings.** Special meetings of the members of the Association may be called by the President, by the Vice President in the absence, death, or disability of the President, by the formal action of the Board, or upon the written request of at least thirty (30) percent of the members.

**Section 3. Notice of Meetings of Members.** Notice of all meetings of members shall be given not fewer than ten (10) days nor more than fifty (50) days prior to the date of such meeting in person, by telephone, by electronic means, or by mailing the notice to the usual business or residence address of each member which is to be recorded in the Association's register of members. Such notice may be waived by any member. All such notices shall state the time, place, and purpose of the meeting. The Board may provide additional notice by publication or otherwise should it be deemed advisable.

**Section 4. Voting.** All members shall be entitled to one vote on each matter properly submitted to the members for their vote, consent, or other action. Except as otherwise specifically provided in these Bylaws or South Dakota law, action approved by the affirmative vote of a majority vote of the members present at a meeting at which a quorum is present shall be the action of the members. Association action may also be taken by written consent of all the members pursuant to SDCL 47-23-6.

**Section 5. Quorum.** A quorum of any meeting of the membership of the Association shall consist of a minimum of thirty (30) percent of eligible members. Any action by a majority of those present shall constitute the action of the membership.

## **Article IV**

### **Board of Directors**

**Section 1. Number and Qualifications.** This Association shall have a Board of Directors comprised of the following:

- (a) Each Class IV member shall be entitled to name a representative to serve as a director. Such representative shall be an officer, member of the governing body, or full time employee of the member. Should any Director lose his/her status as a director, officer, or member of the governing body of a member, or lose his/her status as a full time employee of a member during the Director's term, then the alternate director described in Section 2(b) hereafter or such other alternate director as is designated by the Class IV member shall replace that Director for the remainder of his/her term.
- (b) Class III members may elect up to four members to the Board of Directors. No Class III member may have more than one representative elected to the Board.
- (c) The Board will establish not less than three or more than five director positions who will be elected to the Board by the Class II members. No Class II member, which is not an individual, may have more than one representative elected to the Board.
- (d) The Board may select up to four at-large members. The membership requirements for the at-large members shall be determined by the Board.

**Section 2. Election of Directors.**

- (a) Directors shall be elected in the manner specified in this Article IV at the organizational meeting of the members and at any meetings of the members thereafter. At the organizational meeting of the members, Directors shall be elected for terms of one, two, and three years so that approximately one-third of all directorships shall expire in any given year. The Chair of the organizational meeting shall initially determine who will occupy the one, two, and three year directorships. Thereafter, Directors shall be elected for terms of three years each and until a successor is elected and qualified.
- (b) Each person, corporation, cooperative, association, or other legal entity that is a Class IV or Class III Member of the Association shall be entitled to elect one (1) Director and one (1) alternate Director who may attend and vote at meetings of the Board in the absence of the Director designated by that member.

- (c) At large Directors who may be appointed by the Board shall serve three year terms and shall be eligible to serve no more than two consecutive three year terms.

**Section 3. Additional Qualifications.** Only members of the Association may qualify as Directors.

**Section 4. Compensation.** Directors or Officers shall receive no salary for their services as Directors or Officers of the Association. However, the Board may authorize the reimbursement of reasonable expenses for assignments authorized by the Board or Officers to represent the Association at activities other than special or regular meetings of the Board or of members of the Association.

## **Article V**

### **Management**

**Section 1.** The Board shall manage the business and affairs of the Association, and shall exercise all of the powers of this Association except as are by law, the Articles of Incorporation, or these Bylaws conferred upon or reserved to the members. The Board shall adopt such policies, rules, regulations, and actions not inconsistent with law, the Articles of Incorporation, or these Bylaws, as it may deem advisable.

**Section 2. Selection of Executive Director and Agents.** The Board of shall select an Executive Director and fix the compensation of such Executive Director. The Board may terminate the employment of the Executive Director with or without cause at any time. The Board shall also have authority (in lieu of the employment of an Executive Director) to retain other agents to provide management and/or administrative services or other defined activities and services on behalf of the Association.

## **Article VI**

### **Officers and Executive Director**

**Section 1. Election of Officers.** Within thirty (30) days following each annual meeting of the members, the Board shall elect the principle officers of the Association, which principle officers shall be President, Vice President, Secretary, and Treasurer, and/or a Secretary/Treasurer. The Board may elect one (1) or more assistant Vice Presidents, assistant Secretaries, and assistant Treasurers as it may be deemed necessary. The President, Vice President, Secretary, Treasurer, and the Secretary/Treasurer must be Directors of this Association. An officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. If any vacancies shall occur among the principle officers of this Association, such vacancies shall be filled by the Board at its next regular meeting following vacancy.

**Section 2. Duties of President.** The President shall (a) preside over all meetings of this Association and the Board; (b) call special meetings of the Board; (c) perform all acts and duties usually performed by an Executive; and (d) sign such papers of this

Association as he/she may be directed to sign by the Board; provided, however, that the Board may authorize any person to sign any or all checks, specific contracts, and other specific written documents on behalf of this Association. The President shall perform such other duties as may be described by the Board.

**Section 3. Duties of the Vice President.** In the absence or disability of the President, the Vice President shall perform the duties of the President.

**Section 4. Duties of the Secretary.** The Secretary shall attend all meetings of the Board and all meetings of the members and record all votes and keep minutes of all proceedings. He/She shall keep a complete record of all meetings of this Association and of the Board and shall have general charge and supervision of the books and records of this Association. The Secretary shall sign such other papers pertaining to this Association as authorized or directed to sign by the Board. The Secretary shall serve all notices required by law and by these Bylaws, including notices of meetings, and shall make a full report of all matters and business pertaining to the office of the Secretary to the members at the annual meeting. The Secretary shall keep complete membership records and make all reports required by law and shall perform such other duties as may be required by this Association or the Board. An Assistant Secretary, if any, shall perform the duties of the Secretary during his/her absence or disability.

**Section 5. Duties of the Treasurer.** The Treasurer shall perform such duties with respect to the finances of this Association as may be described by the Board. An Assistant Treasurer, if any, shall perform the duties of the Treasurer during his/her absence or disability.

**Section 6. Duties of the Executive Director.** The Executive Director or other agent(s) employed by this Association shall perform such duties and shall exercise such authority as the Board specifies from time to time.

**Section 7. Compensation.** The salary, compensation, and other benefits of the Executive Director or other agent(s) shall be determined by the Board.

**Section 8. Special Powers.** The Executive Director or other agent(s) may be vested by the Board with any power and charged with any duties not conferred to law or inconsistent with the Articles of Incorporation or these Bylaws.

**Section 9. Additional Support.** The Board may, from time to time, appoint, as advisors, persons whose advice, assistance, and support may be deemed helpful in determining policies and formulating programs for carrying out the Association's purpose.

## **Article VII**

### **Board Meetings**

**Section 1. Annual Meeting.** At the first meeting following the annual meeting of the members, the Board shall elect the officers and transact such business as may properly

come before the meeting. The Board shall hold additional regular meetings at such time and place as may be fixed by the Board, or at such time and place, as may be fixed by the President. Special meetings of the Board may be called by the President and shall be called by him or her upon the request of not less than five (5) directors. A majority of the members of the Board in office shall constitute a quorum.

**Section 2. Notice.** Notice of all Board meetings, except as herein otherwise provided, shall be given personally, by telephone, by electronic means, or by mailing the same at least five (5) days before the meeting to the usual business or residence address of each Director but such notice may be waived by any Director. Presence at any meeting shall constitute a waiver of notice for that meeting.

**Section 3. Majority Vote.** Except as otherwise provided by these Bylaws or as required by law, action approved by the affirmative vote of the majority of Directors present at a meeting at which a quorum is present shall be the action of the Board.

**Section 4. Other Notice.** Meetings of Directors may be held through any communication equipment if all persons participating can hear each other and such participation in a meeting shall constitute presence at such meeting.

**Section 5. Consent and Waiver.** Action of the Board may be taken without a meeting upon written consent of all the members of the Board.

## **Article VIII**

### **Financial Reports**

**Section 1. Audit.** The independent auditor appointed or approved by the Board shall, at such time as the Board may determine, at least annually, prepare for the Association a financial statement, including a statement of assets and liabilities and a statement of income, expenses, and distributions. The auditor shall also prepare such financial data as may be necessary for returns or reports required by State or Federal Government to be filed by the Association. The auditor's charges and expenses shall be proper expenses. Copies of all audits, statements, reports, and data delivered by the auditor to the Board shall be made available or furnished to each Trustee, Custodian, or Agent having custody of the funds of the Association.

**Section 2. Financial Reports.** The Board shall at least annually prepare and distribute a written report of its financial condition and activities to the members of the Association and to others as determined by the Board.

## **Article IX**

### **Committees**

**Section 1. Executive Committee.** The Board may create an Executive Committee comprised of the President, Vice President, Secretary, Treasurer, and up to three (3)

additional directors. The members which are not officers, if any, shall be determined by the Board by resolution for such purposes as considered necessary and proper.

## **Article X**

### **Fiscal Affairs**

**Section 1. Authorized Signatures.** Disbursements by the Association appointing purpose, whatsoever, shall be by check, signed and/or countersigned by such officer or officers, agent or agents, employee or employees of the Association, and in such manner as shall from time to time be determined by resolution of the Board.

**Section 2. Bond.** If required by the Board, the Treasurer shall give a bond for the faithful discharge of his or her duties, in such sum and in such surety as deemed necessary. The Treasurer shall have the charge and custody of, and be responsible for all funds of the Association, receive and give receipts for moneys due and payable to the Association from any source, and to deposit such moneys in the name of the Association in such bank or banks as directed. The Treasurer shall submit reports to the Board at any time upon the request of said Board.

## **Article XI**

### **Indemnification**

**Section 1. Legal Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that they are or were a Director, Officer, Employee or Agent of the Association, or are or were serving at the request of the Association as a Director, Officer, Employee, or Agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys fees), judgments, fines, and amounts paid in settlement actually or reasonably incurred by them in connection with such action, suit or proceeding if they acted in good faith and in the manner they reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceedings, had no reasonable cause to believe their conduct was unlawful. The determination of any action, suit or proceedings by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith or in a manner which they reasonable believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that their conduct was lawful.

**Section 2. Insurance.** The Association shall purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Employee, or Agent of the Association, or is or was serving at the request of the Association as a Director, Officer, Employee, or Agent of another corporation, partnership, joint venture, trust, or other enterprise against any liabilities suited against them and incurred by them in any such

capacity, or arising out of their status as such whether or not the Association would have the power to indemnify them against such liability under the provisions of this Section.

## **Article XII**

### **Books and Records**

The Association shall keep current and complete books and records of account, shall also keep minutes of the proceedings of its members, Board, and committees having any authority of the Board, and shall keep at its registered or principal office records of the names and addresses of its members entitled to vote. All books and records of the Association may be inspected by any member, or his or her agent or attorney, for any proper purpose at any reasonable time.

## **Article XIII**

### **Fiscal Year**

The fiscal year of the Association shall be the twelve (12) month period ending on the last day of December, or such other period as may be designated by the Board.

## **Article XIV**

### **Amendments**

**Section 1.** These Bylaws may be altered, amended, or repealed or new Bylaws may be adopted by a majority of the Association present at any regular or special meeting of the members provided that the notice of such regular or special meeting contained a summary of the amendment to be considered at the meeting.

We, the undersigned, being all the incorporators and members of the South Dakota Wind Energy Association, Inc., consent to the foregoing Bylaws and adopt them as the Bylaws of said Association.

In witness whereof, we have hereunto subscribed our names, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.