

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
FIRST SPECIAL SESSION
LEGISLATIVE BILL 12

Introduced by Stuthman, 22.

Read first time November 05, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to electricity; to amend sections 70-1903,
2 70-1904, and 77-2704.57, Revised Statutes Supplement,
3 2009; to change provisions relating to C-BED projects;
4 to change a sales tax exemption; to repeal the original
5 sections; and to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1903, Revised Statutes Supplement,
2 2009, is amended to read:

3 70-1903 For purposes of the Rural Community-Based Energy
4 Development Act:

5 (1) C-BED project or community-based energy development
6 project means a new wind energy project that:

7 (a) Has an ownership structure as follows:

8 (i) For a C-BED project that consists of more than
9 two turbines, has one or more qualified owners with no single
10 individual qualified owner owning directly or indirectly more than
11 fifteen percent of the project and with at least thirty-three
12 percent of the gross power purchase agreement payments flowing to
13 the qualified owner or owners or local community; or

14 (ii) For a C-BED project that consists of one or
15 two turbines, has one or more qualified owners with at least
16 thirty-three percent of the gross power purchase agreement payments
17 flowing to a qualified owner or owners or local community; and

18 (b) Has a resolution of support adopted:

19 (i) By the county board of each county in which the C-BED
20 project is to be located; or

21 (ii) By the tribal council for a C-BED project located
22 within the boundaries of an Indian reservation;

23 ~~(2) Debt financing payments means principal, interest,~~
24 ~~and other typical financing costs paid by the C-BED project company~~
25 ~~to one or more third-party financial institutions for the financing~~

1 ~~or refinancing of the construction of the C-BED project. Debt~~
2 ~~financing payments does not include the repayment of principal at~~
3 ~~the time of a refinancing;~~

4 ~~(3)~~ (2) Electric utility means an electric supplier that:

5 (a) Owns more than one hundred miles of
6 one-hundred-fifteen-kilovolt or larger transmission lines in the
7 State of Nebraska;

8 (b) Owns more than two hundred megawatts of electric
9 generating facilities; and

10 (c) Has the obligation to directly serve more than two
11 hundred megawatts of wholesale or retail electric load in the State
12 of Nebraska; and

13 ~~(4)~~ Gross power purchase agreement payments means the
14 total amount of payments during the life of the agreement. For
15 power purchase agreements entered into on or before December 31,
16 2011, if the qualified owners have a combined total of at least
17 thirty-three percent of the equity ownership in the C-BED project,
18 gross power purchase agreement payments shall be reduced by the
19 debt financing payments; and

20 ~~(5)~~ (3) Qualified owner means:

21 (a) A Nebraska resident;

22 (b) A limited liability company that is organized under
23 the Limited Liability Company Act and that is made up of members
24 who are Nebraska residents;

25 (c) A Nebraska nonprofit corporation organized under the

1 Nebraska Nonprofit Corporation Act;

2 (d) An electric supplier as defined in section
3 70-1001.01, except that ownership in a single C-BED project is
4 limited to no more than:

5 (i) Fifteen percent either directly or indirectly by a
6 single electric supplier; and

7 (ii) A combined total of twenty-five percent ownership
8 either directly or indirectly by multiple electric suppliers; or

9 (e) A tribal council.

10 Sec. 2. Section 70-1904, Revised Statutes Supplement,
11 2009, is amended to read:

12 70-1904 (1) A C-BED project developer and an electric
13 utility are authorized to negotiate in good faith mutually
14 agreeable power purchase agreement terms.

15 (2) A qualified owner or any combination of qualified
16 owners may develop a C-BED project with an equity partner that is
17 not a qualified owner, if not more than sixty-seven percent of the
18 ~~gross~~ power purchase agreement payments flow to the nonqualified
19 owners.

20 (3) Except for an inherited interest, the transfer of
21 a C-BED project to any person other than a qualified owner is
22 prohibited during the initial ten years of the power purchase
23 agreement.

24 (4) A C-BED project that is operating under a power
25 purchase agreement is not eligible for any applicable net energy

1 billing.

2 (5) A C-BED project shall be subject to approval by the
3 Nebraska Power Review Board in accordance with Chapter 70, article
4 10, or shall receive certification as a qualifying facility in
5 accordance with the federal Public Utility Regulatory Policies Act
6 of 1978, 16 U.S.C. 2601 et seq., with written notice of such
7 certification provided to the Nebraska Power Review Board.

8 (6) A C-BED project developer shall notify the electric
9 utility that has a power purchase agreement with a C-BED project if
10 there is a change in project ownership which makes the project no
11 longer eligible as a C-BED project.

12 Sec. 3. Section 77-2704.57, Revised Statutes Supplement,
13 2009, is amended to read:

14 77-2704.57 (1) Sales and use tax shall not be imposed
15 on the gross receipts from the sale, lease, or rental of personal
16 property for use in a C-BED project or community-based energy
17 development project. This exemption shall be conditioned upon
18 filing requirements for the exemption as imposed by the Tax
19 Commissioner. The requirements imposed by the Tax Commissioner
20 shall be related to ensuring that the property purchased qualifies
21 for the exemption. The Tax Commissioner may require the filing
22 of the documents showing compliance with section 70-1907, the
23 organization of the project, the distribution of the payments,
24 the power purchase agreements, the project pro forma, articles of
25 incorporation, operating agreements, and any amendments or changes

1 to these documents during the life of the power purchase agreement.

2 (2) The Tax Commissioner shall notify an electric utility
3 that has a power purchase agreement with a C-BED project if
4 there is a change in project ownership which makes the project no
5 longer eligible as a C-BED project. Purchase of a C-BED project
6 by an electric utility prior to the end of the power purchase
7 agreement disqualifies the C-BED project for the exemption, but the
8 Department of Revenue may not recover the amount of the sales and
9 use tax that was not paid by the project prior to the purchase.

10 (3) For purposes of this section:

11 (a) C-BED project or community-based energy development
12 project means a new wind energy project that:

13 (i) Has an ownership structure as follows:

14 (A) For a C-BED project that consists of more than
15 two turbines, has one or more qualified owners with no single
16 individual qualified owner owning directly or indirectly more than
17 fifteen percent of the project and with at least thirty-three
18 percent of the gross power purchase agreement payments flowing to
19 the qualified owner or owners or local community; or

20 (B) For a C-BED project that consists of one or
21 two turbines, has one or more qualified owners with at least
22 thirty-three percent of the gross power purchase agreement payments
23 flowing to a qualified owner or owners or local community; and

24 (ii) Has a resolution of support adopted:

25 (A) By the county board of each county in which the C-BED

1 project is to be located; or

2 (B) By the tribal council for a C-BED project located
3 within the boundaries of an Indian reservation;

4 ~~(b) Debt financing payments means principal, interest,~~
5 ~~and other typical financing costs paid by the C-BED project company~~
6 ~~to one or more third-party financial institutions for the financing~~
7 ~~or refinancing of the construction of the C-BED project. Debt~~
8 ~~financing payments does not include the repayment of principal at~~
9 ~~the time of a refinancing;~~

10 ~~(e) (b) New wind energy project means any tangible~~
11 ~~personal property incorporated into the manufacture, installation,~~
12 ~~construction, repair, or replacement of a device, such as a wind~~
13 ~~charger, windmill, or wind turbine, which is used to convert wind~~
14 ~~energy to electrical energy or for the transmission of electricity~~
15 ~~to the purchaser; and~~

16 ~~(d) (c) Qualified owner means:~~

17 (i) A Nebraska resident;

18 (ii) A limited liability company that is organized under
19 the Limited Liability Company Act and that is entirely made up of
20 members who are Nebraska residents;

21 (iii) A Nebraska nonprofit corporation organized under
22 the Nebraska Nonprofit Corporation Act;

23 (iv) An electric supplier as defined in section
24 70-1001.01, except that ownership in a single C-BED project is
25 limited to no more than:

1 (A) Fifteen percent either directly or indirectly by a
2 single electric supplier; and

3 (B) A combined total of twenty-five percent ownership
4 either directly or indirectly by multiple electric suppliers; or

5 (v) A tribal council.

6 (4) ~~Gross power~~ Power purchase agreement payments are the
7 total amount of payments during the life of the agreement. ~~For~~
8 ~~power purchase agreements entered into on or before December 31,~~
9 ~~2011, if the qualified owners have a combined total of at least~~
10 ~~thirty-three percent of the equity ownership in the C-BED project,~~
11 ~~gross power purchase agreement payments shall be reduced by the~~
12 ~~debt financing payments.~~ For the purpose of determining eligibility
13 of the project, an estimate of the payments and their recipients
14 shall be used.

15 (5) Payments to the local community include, but are not
16 limited to, lease payments to property owners on whose property a
17 turbine is located, wind energy easement payments, and real and
18 personal property tax receipts from the C-BED project.

19 (6) The Department of Revenue may examine the actual
20 payments and the distribution of the payments to determine if the
21 projected distributions were met. If the payment distributions to
22 qualified owners do not meet the requirements of this section, the
23 department may recover the amount of the sales or use tax that was
24 not paid by the project at any time up until the end of three years
25 after the end of the power purchase agreement.

1 (7) At any time prior to the end of the power purchase
2 agreements, the project may voluntarily surrender the exemption
3 granted by the Tax Commissioner and pay the amount of sales and use
4 tax that would have otherwise have been due.

5 (8) The amount of the tax due under either subsection
6 (6) or (7) of this section shall be increased by interest at the
7 rate specified in section 45-104.02, as such rate may from time to
8 time be adjusted, from the date the tax would have been due if no
9 exemption was granted until the date paid.

10 Sec. 4. Original sections 70-1903, 70-1904, and
11 77-2704.57, Revised Statutes Supplement, 2009, are repealed.

12 Sec. 5. Since an emergency exists, this act takes effect
13 when passed and approved according to law.