

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 455

Introduced by Nordquist, 7; Dubas, 34; Haar, 21; Lathrop, 12;
Mello, 5; Schilz, 47.

Read first time January 20, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701, 77-2701.04, and 77-27,235, Revised Statutes
3 Cumulative Supplement, 2008; to provide a renewable
4 energy sales tax credit for certain electricity
5 generators; to provide a sales and use tax exemption
6 for certain purchases of renewable energy equipment; to
7 define terms; to harmonize provisions; to provide an
8 operative date; to repeal the original sections; and to
9 declare an emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to
4 77-27,236 and sections 3 to 7 of this act shall be known and may be
5 cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to
9 77-2713 and sections 3 to 7 of this act, unless the context
10 otherwise requires, the definitions found in sections 77-2701.05 to
11 77-2701.53 and sections 3 to 5 of this act shall be used.

12 Sec. 3. Eligible renewable resources shall mean resources
13 derived from wind, moving water, solar energy, geothermal energy,
14 biomass, fuel cells, or landfill gases.

15 Sec. 4. Renewable energy facility shall include any and
16 all property owned, used, operated, or useful for operation in
17 the generation or transmission of electricity produced by eligible
18 renewable resources.

19 Sec. 5. Eligible entity shall mean any public power
20 district organized under Chapter 70, article 6, any rural public
21 power district organized under Chapter 70, article 8, any joint
22 entity or joint public agency created pursuant to the Interlocal
23 Cooperation Act or the Joint Public Agency Act, any electric
24 cooperative corporation organized under the Electric Cooperative
25 Corporation Act, and any municipality organized under the laws of

1 this state.

2 Sec. 6. Sales and use taxes shall not be imposed on the
3 gross receipts from the sale, lease, or rental of and the storage,
4 use, or other consumption in this state by any eligible entity
5 of property used to generate or transmit electricity produced
6 from eligible renewable resources, including any renewable energy
7 facility.

8 Sec. 7. (1) Any eligible entity which generates
9 electricity from eligible renewable resources at a renewable energy
10 facility shall earn a renewable energy tax credit that may be
11 credited against the sales and use taxes imposed by the Nebraska
12 Revenue Act of 1967. The credit shall be 1.90 cents for each
13 kilowatt-hour of electricity generated from eligible renewable
14 resources at a renewable energy facility. The credit may be earned
15 for production of electricity for twenty years after the date that
16 the renewable energy facility is placed in operation on or after
17 the effective date of this act. The credit amount shall be adjusted
18 by the Tax Commissioner on January 1 of each year by the change
19 during the previous year in the unadjusted Consumer Price Index
20 for All Urban Consumers published by the Federal Bureau of Labor
21 Statistics.

22 (2) The renewable energy tax credit is nonrefundable, but
23 any credit earned but not used in the tax year may be carried
24 back as a credit against prior sales and use tax liability for a
25 period not exceeding three years and may be carried forward as a

1 credit against subsequent sales and use tax liability for a period
2 not exceeding ten years. The credit is transferable for a period
3 of ten years after it is earned. Any person to whom a credit is
4 transferred shall have only such rights to claim and use the credit
5 as would have applied to the eligible entity. This subsection shall
6 not limit the ability of a credit transferee to reduce the tax
7 liability of the transferee, regardless of the actual tax liability
8 of the eligible entity for the relevant tax period. The eligible
9 entity and any subsequent transferees shall jointly file a copy
10 of a written transfer agreement with the Department of Revenue
11 within thirty days after the transfer. The agreement shall contain
12 the name, address, and taxpayer identification number or social
13 security number of the parties to the transfer, the amount of the
14 credit being transferred, the year the credit was earned, and the
15 tax year or years for which the credit may be claimed.

16 (3) The Department of Revenue may adopt and promulgate
17 rules and regulations to permit verification of the validity and
18 timeliness of the renewable energy tax credit claimed on a tax
19 return pursuant to this section but shall not adopt and promulgate
20 any rule or regulation that unduly restricts or hinders the
21 transfer of a credit. The credit, at the election of the taxpayer,
22 may be claimed as a payment of tax, a prepayment of tax, or a
23 payment of estimated tax.

24 (4) The credit allowed under this section may be claimed
25 in addition to and independent of any credit claimed under section

1 77-27,235.

2 Sec. 8. Section 77-27,235, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 77-27,235 (1) Any producer of electricity generated by
5 a new zero-emission facility shall earn a renewable energy tax
6 credit. For electricity generated on or after July 14, 2006,
7 and before October 1, 2007, the credit shall be .075 cent for
8 each kilowatt-hour of electricity generated by a new zero-emission
9 facility. For electricity generated on or after October 1, 2007,
10 and before January 1, 2010, the credit shall be .1 cent for
11 each kilowatt-hour of electricity generated by a new zero-emission
12 facility. For electricity generated on or after January 1, 2010,
13 and before January 1, 2013, the credit shall be .075 cent per
14 kilowatt-hour for electricity generated by a new zero-emission
15 facility. For electricity generated on or after January 1, 2013,
16 and before January 1, 2018, the credit shall be .05 cent per
17 kilowatt-hour for electricity generated by a new zero-emission
18 facility. The credit may be earned for production of electricity
19 for ten years after the date that the facility is placed in
20 operation on or after July 14, 2006.

21 (2) For purposes of this section:

22 (a) Electricity generated by a new zero-emission
23 facility means electricity that is exclusively produced by a new
24 zero-emission facility;

25 (b) Eligible renewable resources means wind, moving

1 water, solar, geothermal, fuel cell, methane gas, or photovoltaic
2 technology; and

3 (c) New zero-emission facility means an electrical
4 generating facility located in this state that is first placed
5 into service on or after July 14, 2006, which utilizes eligible
6 renewable resources as its fuel source and for which the operation
7 of the facility results in no pollution or emissions that are or
8 may be harmful to the environment as certified by the Department of
9 Environmental Quality.

10 (3) The credit allowed under this section may be used to
11 reduce the producer's Nebraska income tax liability or to obtain
12 a refund of state sales and use taxes paid by the producer of
13 electricity generated by a zero-emission facility. A claim to use
14 the credit for refund of the state sales and use taxes paid, either
15 directly or indirectly, by the producer may be filed quarterly for
16 electricity generated during the previous quarter by the twentieth
17 day of the month following the end of the calendar quarter. The
18 credit may be used to obtain a refund of state sales and use taxes
19 paid during the quarter immediately preceding the quarter in which
20 the claim for refund is made, except that the amount refunded under
21 this subsection shall not exceed the amount of the state sales and
22 use taxes paid during the quarter.

23 (4) The Department of Revenue may adopt and promulgate
24 rules and regulations to permit verification of the validity and
25 timeliness of any renewable energy tax credit claimed.

1 (5) The Environmental Quality Council may adopt and
2 promulgate rules and regulations to certify that the operation of
3 a new zero-emission facility results in no pollution or emissions
4 that are or may be harmful to the environment.

5 (6) The total amount of renewable energy tax credits
6 that may be used by all taxpayers shall be limited to seven
7 hundred fifty thousand dollars without further authorization from
8 the Legislature.

9 (7) The credit allowed under this section may not be
10 claimed by a producer who received a sales tax exemption under
11 section 77-2704.57 for the new zero-emission facility.

12 (8) The credit allowed under this section may be claimed
13 in addition to and independent of any credit claimed under sections
14 3 to 7 of this act.

15 Sec. 9. This act becomes operative on July 1, 2009.

16 Sec. 10. Original sections 77-2701, 77-2701.04, and
17 77-27,235, Revised Statutes Cumulative Supplement, 2008, are
18 repealed.

19 Sec. 11. Since an emergency exists, this act takes effect
20 when passed and approved according to law.