

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 65

Introduced by Cornett, 45.

Read first time January 06, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2704.57, Revised Statutes Cumulative Supplement, 2010;
3 to change provisions relating to C-BED projects; and to
4 repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2704.57, Revised Statutes
2 Cumulative Supplement, 2010, is amended to read:

3 77-2704.57 (1) Sales and use tax shall not be imposed on
4 the gross receipts from the sale, lease, or rental of personal
5 property for use in a C-BED project or community-based energy
6 development project. This exemption shall be conditioned upon filing
7 requirements for the exemption as imposed by the Tax Commissioner.
8 The requirements imposed by the Tax Commissioner shall be related to
9 ensuring that the property purchased qualifies for the exemption. The
10 Tax Commissioner may require the filing of the documents showing
11 compliance with section 70-1907, the organization of the project, the
12 distribution of the payments, the power purchase agreements, the
13 project pro forma, articles of incorporation, operating agreements,
14 and any amendments or changes to these documents during the life of
15 the power purchase agreement.

16 (2) The Tax Commissioner shall notify an electric utility
17 that has a power purchase agreement with a C-BED project if there is
18 a change in project ownership which makes the project no longer
19 eligible as a C-BED project. Purchase of a C-BED project by an
20 electric utility prior to the end of the power purchase agreement
21 disqualifies the C-BED project for the exemption, but the Department
22 of Revenue may not recover the amount of the sales and use tax that
23 was not paid by the project prior to the purchase.

24 (3) For purposes of this section:

25 (a) C-BED project or community-based energy development

1 project means a new wind energy project that:

2 (i) Has an ownership structure as follows:

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

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

13 (ii) Has a resolution of support adopted:

14 (A) By the county board of each county in which the C-BED
15 project is to be located; or

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

18 (b) Debt financing payments means principal, interest,
19 and other typical financing costs paid by the C-BED project company
20 to one or more third-party financial institutions for the financing
21 or refinancing of the construction of the C-BED project. Debt
22 financing payments does not include the repayment of principal at the
23 time of a refinancing;

24 (c) New wind energy project means any tangible personal
25 property incorporated into the manufacture, installation,

1 construction, repair, or replacement of a device, such as a wind
2 charger, windmill, or wind turbine, which is used to convert wind
3 energy to electrical energy or for the transmission of electricity to
4 the purchaser; and

5 (d) Qualified owner means:

6 (i) A Nebraska resident;

7 (ii) A limited liability company that is organized under
8 the Limited Liability Company Act or the Nebraska Uniform Limited
9 Liability Company Act and that is entirely made up of members who are
10 Nebraska residents;

11 (iii) A Nebraska nonprofit corporation organized under
12 the Nebraska Nonprofit Corporation Act;

13 (iv) An electric supplier as defined in section
14 70-1001.01, except that ownership in a single C-BED project is
15 limited to no more than:

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

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

20 (v) A tribal council.

21 (4) Gross power purchase agreement payments are the total
22 amount of payments during the life of the agreement. For power
23 purchase agreements entered into on or before December 31, 2011, if
24 the qualified owners have a combined total of at least thirty-three
25 percent of the equity ownership in the C-BED project, gross power

1 purchase agreement payments shall be reduced by the debt financing
2 payments. For the purpose of determining eligibility of the project,
3 an estimate of the payments and their recipients shall be used.

4 (5) Payments to the local community include, but are not
5 limited to: ~~lease~~

6 (i) Lease payments to property owners on whose property a
7 turbine is located, wind energy easement payments, and real and
8 personal property tax receipts from the C-BED project; -

9 (ii) Payments for concrete, steel, gravel, towers,
10 turbines, blades, wire, contractor services, construction services,
11 engineering services, geotechnical services, environmental consulting
12 services, meteorological services, legal services, or other
13 components, equipment, materials, or services that are necessary to
14 permit or construct the C-BED project and that are obtained from a
15 company that has been organized or incorporated in Nebraska under
16 Nebraska law and has employed at least ten Nebraska residents for at
17 least eighteen months prior to the date of the project application
18 for certification as a C-BED project; and

19 (iii) Payments for physical parts, materials, or
20 components that are manufactured, assembled, or fabricated in
21 Nebraska.

22 Such payments shall not be required to be made directly
23 from power purchase agreement revenue and may be made from other
24 funds in advance of receiving power purchase agreement revenue.

25 (6) The Department of Revenue may examine the actual

1 payments and the distribution of the payments to determine if the
2 projected distributions were met. If the payment distributions to
3 qualified owners do not meet the requirements of this section, the
4 department may recover the amount of the sales or use tax that was
5 not paid by the project at any time up until the end of three years
6 after the end of the power purchase agreement.

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

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

16 Sec. 2. Original section 77-2704.57, Revised Statutes
17 Cumulative Supplement, 2010, is repealed.