

AMENDMENTS TO LB423

(Amendments to E & R amendments, ER93)

Introduced by Nordquist, 7.

1 1. Strike section 4 and insert the following new section:

2 Sec. 4. Section 77-27,235, Revised Statutes Cumulative Supplement,
3 2014, is amended to read:

4 77-27,235 (1) For purposes of this section, renewable electric
5 generation facility means an electrical generating facility that is
6 located in this state and is approved by the Department of Revenue as a
7 community-based energy development project as defined in section 70-1903.

8 (2) The Legislature hereby finds and declares that it is the policy
9 of this state to make revisions in Nebraska's tax structure to encourage
10 renewable electric generation facilities to locate in this state. Such
11 facilities will:

12 (a) Contribute to a diverse state economy;

13 (b) Increase state and county revenue through taxes paid by the
14 producer of electricity, the owner of the land on which the facility is
15 located, and others who sell products and services needed by the
16 facility;

17 (c) Increase investment in the state through designation of
18 renewable electric generation facilities as community-based energy
19 development projects, which must invest twenty-five percent of their
20 income in the state, and through the purchase of goods and services in
21 the state by others impacted by the facilities; and

22 (d) Create jobs in this state.

23 (3 ~~1~~) Any producer of electricity generated by a new renewable
24 electric generation facility placed into commercial operation on or after
25 the effective date of this act may claim shall earn a renewable energy
26 tax credit as provided in this section. The credit may be used to offset

1 up to one hundred percent of the producer's income tax due under the
2 Nebraska Revenue Act of 1967 or any tax due under sections 77-907 to
3 77-918 or 77-3801 to 77-3807 in the year the renewable electric
4 generation facility is placed into commercial operation and in subsequent
5 years until all credits have been utilized, subject to the limitations in
6 subsection (8) of this section. The credit shall be calculated under one
7 of the following two methods:

8 (a) A credit based on each kilowatt-hour of electricity generated by
9 a renewable electric generation facility that begins commercial operation
10 on or after the effective date of this act. The credit allowed under this
11 subdivision shall be earned for electricity generated during the first
12 ten years of commercial operation of the renewable electric generation
13 facility and shall be calculated as follows:

14 (i) For the first two years of commercial operation, the credit
15 shall be equal to one cent for each kilowatt-hour of electricity
16 generated by the renewable electric generation facility;

17 (ii) For the next two years of commercial operation, the credit
18 shall be equal to 0.9 cent for each kilowatt-hour of electricity
19 generated by the renewable electric generation facility;

20 (iii) For the next two years of commercial operation, the credit
21 shall be equal to 0.8 cent for each kilowatt-hour of electricity
22 generated by the renewable electric generation facility;

23 (iv) For the next two years of commercial operation, the credit
24 shall be equal to 0.7 cent for each kilowatt-hour of electricity
25 generated by the renewable electric generation facility; and

26 (v) For the next two years of commercial operation, the credit shall
27 be equal to 0.6 cent for each kilowatt-hour of electricity generated by
28 the renewable electric generation facility; or

29 (b) A one-time credit equal to thirty percent of the total cost of
30 construction of any renewable electric generation facility that begins
31 commercial operation on or after the effective date of this act. The

1 credit allowed under this subdivision shall not exceed two million
2 dollars.

3 (4) A renewable electric generation facility may generate
4 electricity using fuel sources other than those listed in subdivision (1)
5 of section 70-1903, but only electricity generated from the fuel sources
6 listed in such subdivision shall be eligible for the credit allowed under
7 subdivision (3)(a) of this section.

8 (5) The producer earning the credit shall select which of the
9 methods described in subsection (3) of this section will be used to
10 calculate the credit prior to placing the renewable electric generation
11 facility into commercial operation. The producer shall notify the
12 Department of Revenue in writing of its selection.

13 (6) On or before March 1 of each year after placing the renewable
14 electric generation facility into commercial operation, the producer of a
15 facility claiming credits under this section shall file with the
16 Department of Revenue a report on the following information:

17 (a) The amount of property taxes paid by such producer during the
18 previous calendar year on the property on which the renewable electric
19 generation facility is located;

20 (b) The number of full-time jobs created at the renewable electric
21 generation facility since placing the facility into commercial operation;
22 and

23 (c) For any producer seeking credits under subdivision (3)(a) of
24 this section, the actual production of the facility for the previous
25 calendar year.

26 (7)(a) If the renewable electric generation facility has a nameplate
27 capacity of twenty megawatts or less, the credit allowed under this
28 section may be transferred, sold, pledged, or assigned one or more times,
29 either in whole or in part, by or to any person or legal entity. For
30 purposes of the nameplate capacity limitation in this subsection, all
31 generating equipment located within one mile of any other generating

1 equipment using the same fuel source and interconnecting to such other
2 generating equipment shall be considered part of a single facility.

3 (b) The person transferring, selling, pledging, or assigning the
4 credit under this subsection shall notify the Department of Revenue in
5 writing within fifteen calendar days following the effective date of the
6 transfer, sale, pledge, or assignment.

7 (c) The person acquiring the credit under this subsection may claim
8 the credit against up to one hundred percent of the person's income tax
9 due under the Nebraska Revenue Act of 1967 or any tax due under sections
10 77-907 to 77-918 or 77-3801 to 77-3807 in the year the renewable electric
11 generation facility is placed into commercial operation and in subsequent
12 years until all credits have been utilized, subject to the limitations in
13 subsection (8) of this section.

14 (8) Any credits under this section which are unused may be carried
15 forward for up to five years after the first tax year in which the
16 credits may be claimed.

17 (9) If the recipient of the credit under this section is a
18 corporation having an election in effect under subchapter S of the
19 Internal Revenue Code of 1986, as amended, a partnership, or a limited
20 liability company, the credit may be distributed to the shareholders of
21 the subchapter S corporation, the partners of the partnership, or the
22 members of the limited liability company in the same manner as those
23 shareholders, partners, or members account for their proportionate shares
24 of the income or losses of the subchapter S corporation, partnership, or
25 limited liability company, or as provided in the bylaws or other executed
26 agreement of the subchapter S corporation, partnership, or limited
27 liability company.

28 (10) The Department of Revenue shall develop a system to track the
29 transfer, sale, pledge, and assignment of credits and to certify the
30 ownership of the credits.

31 (11) Credits allowed under this section may be claimed for tax years

1 beginning or deemed to begin on or after January 1, 2017, under the
2 Internal Revenue Code of 1986, as amended.

3 (12) Any tax credit claimed under this section shall be considered a
4 payment of tax for purposes of subsection (1) of section 77-2734.03.

5 ~~For electricity generated on or after July 14, 2006, and before~~
6 ~~October 1, 2007, the credit shall be .075 cent for each kilowatt-hour of~~
7 ~~electricity generated by a new renewable electric generation facility.~~
8 ~~For electricity generated on or after October 1, 2007, and before January~~
9 ~~1, 2010, the credit shall be .1 cent for each kilowatt-hour of~~
10 ~~electricity generated by a new renewable electric generation facility.~~
11 ~~For electricity generated on or after January 1, 2010, and before January~~
12 ~~1, 2013, the credit shall be .075 cent per kilowatt-hour for electricity~~
13 ~~generated by a new renewable electric generation facility. For~~
14 ~~electricity generated on or after January 1, 2013, the credit shall be .~~
15 ~~05 cent per kilowatt-hour for electricity generated by a new renewable~~
16 ~~electric generation facility. The credit may be earned for production of~~
17 ~~electricity for ten years after the date that the facility is placed in~~
18 ~~operation on or after July 14, 2006.~~

19 ~~(2) For purposes of this section:~~

20 ~~(a) Electricity generated by a new renewable electric generation~~
21 ~~facility means electricity that is exclusively produced by a new~~
22 ~~renewable electric generation facility;~~

23 ~~(b) Eligible renewable resources means wind, moving water, solar,~~
24 ~~geothermal, fuel cell, methane gas, or photovoltaic technology; and~~

25 ~~(c) New renewable electric generation facility means an electrical~~
26 ~~generating facility located in this state that is first placed into~~
27 ~~service on or after July 14, 2006, which utilizes eligible renewable~~
28 ~~resources as its fuel source.~~

29 ~~(3) The credit allowed under this section may be used to reduce the~~
30 ~~producer's Nebraska income tax liability or to obtain a refund of state~~
31 ~~sales and use taxes paid by the producer of electricity generated by a~~

~~1 new renewable electric generation facility. A claim to use the credit for
2 refund of the state sales and use taxes paid, either directly or
3 indirectly, by the producer may be filed quarterly for electricity
4 generated during the previous quarter by the twentieth day of the month
5 following the end of the calendar quarter. The credit may be used to
6 obtain a refund of state sales and use taxes paid during the quarter
7 immediately preceding the quarter in which the claim for refund is made,
8 except that the amount refunded under this subsection shall not exceed
9 the amount of the state sales and use taxes paid during the quarter.~~

10 (13 4) The Department of Revenue may adopt and promulgate rules and
11 regulations to carry out this section and to permit verification of the
12 validity and timeliness of any renewable energy tax credit claimed.

13 (14) The Department of Revenue shall have, with respect to the
14 credits authorized under this section, all authority granted to it in
15 section 77-27,119.

16 (15) The Department of Revenue shall electronically submit an annual
17 report to the Legislature beginning on July 1, 2018, and each July 1
18 thereafter. The report shall include (a) the number of renewable electric
19 generation facilities receiving credits under this section, (b) the
20 amount of credits earned, (c) the amount of credits claimed, (d) the
21 amount of credits outstanding, (e) the amount of property taxes paid by
22 producers during the previous calendar year on the properties on which
23 renewable electric generation facilities are located, as reported
24 pursuant to subsection (6) of this section, and (f) the number of full-
25 time jobs created at renewable electric generation facilities receiving
26 credits under this section, as reported pursuant to subsection (6) of
27 this section.

28 (16) No renewable electric generation facility for which an
29 application for sales tax exemption under section 77-2704.57 is filed
30 after December 31, 2021, shall be eligible for the tax credits authorized
31 under this section.

1 (17) The tax credit program authorized under this section shall be
2 subject to tax incentive performance audits conducted pursuant to the
3 Legislative Performance Audit Act.

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

7 ~~(6) The credit allowed under this section may not be claimed by a~~
8 ~~producer who received a sales tax exemption under section 77-2704.57 for~~
9 ~~the new renewable electric generation facility.~~