

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 402

Introduced by Mello, 5.

Read first time January 22, 2013

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the rural community-based energy development;
2 to amend section 70-1904, Reissue Revised Statutes of
3 Nebraska, and sections 70-1903 and 77-2704.57, Revised
4 Statutes Cumulative Supplement, 2012; to redefine terms;
5 to change provisions relating to power purchase
6 agreements; to harmonize provisions; and to repeal the
7 original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1903, Revised Statutes Cumulative
2 Supplement, 2012, 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 generation project using wind,
7 biomass, or landfill gas as the fuel source that:

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

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

19 (b) Has a resolution of support adopted:

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

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

24 ~~(2) Debt financing payments means principal, interest,~~
25 ~~and other typical financing costs paid by the C-BED project company~~

1 ~~to one or more third party financial institutions for the financing~~
2 ~~or refinancing of the construction of the C-BED project. Debt~~
3 ~~financing payments does not include the repayment of principal at the~~
4 ~~time of a refinancing;~~

5 ~~(3)~~ (2) Electric utility means an electric supplier that:

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

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

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

14 ~~(4)~~ (3) Gross power purchase agreement payments means the
15 total amount of payments during the ~~life~~ first twenty years of the
16 agreement; ~~and~~ . For power purchase agreements entered into on or
17 before December 31, 2011, if the qualified owners have a combined
18 total of at least thirty three percent of the equity ownership in the
19 C-BED project, gross power purchase agreement payments shall be
20 reduced by the debt financing payments; and

21 (4) Payments to the local community include, but are not
22 limited to:

23 (a) Lease and easement payments to property owners on
24 whose property a turbine is located;

25 (b) Contract payments for concrete, steel, gravel,

1 towers, turbines, blades, wire, engineering, procurement,
2 construction, geotechnical, environmental, meteorological, legal, or
3 payments for other components, equipment, materials, or services that
4 are necessary to permit or construct the C-BED project and that are
5 obtained from a company that has been organized or incorporated in
6 Nebraska under Nebraska law and has employed at least ten Nebraska
7 residents for at least eighteen months prior to the date of the
8 project application for certification as a C-BED project; and

9 (c) Payments for physical parts, materials, or components
10 that are manufactured, assembled, or fabricated in Nebraska.

11 Such payments need not be made directly from power
12 purchase agreement revenue and may be made from other funds in
13 advance of receiving power purchase agreement revenue; and

14 (5) Qualified owner means:

15 (a) A Nebraska resident;

16 (b) A limited liability company that is organized under
17 the Limited Liability Company Act or the Nebraska Uniform Limited
18 Liability Company Act and that is made up of members who are Nebraska
19 residents;

20 (c) A Nebraska nonprofit corporation organized under the
21 Nebraska Nonprofit Corporation Act;

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

25 (i) Fifteen percent either directly or indirectly by a

1 single electric supplier; and

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

4 (e) A tribal council; or -

5 (f) A corporation organized under the Business
6 Corporation Act and domiciled in Nebraska.

7 Sec. 2. Section 70-1904, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 70-1904 (1) A C-BED project developer and an electric
10 utility are authorized to negotiate in good faith mutually agreeable
11 power purchase agreement terms.

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

16 ~~(3) Except for an inherited interest, the transfer of a~~
17 ~~C-BED project to any person other than a qualified owner is~~
18 ~~prohibited during the initial ten years of the power purchase~~
19 ~~agreement.~~

20 ~~(4)-(2)~~ A C-BED project that is operating under a power
21 purchase agreement is not eligible for any applicable net energy
22 billing.

23 ~~(5)-(3)~~ A C-BED project shall be subject to approval by
24 the Nebraska Power Review Board in accordance with Chapter 70,
25 article 10, or shall receive certification as a qualifying facility

1 in accordance with the federal Public Utility Regulatory Policies Act
2 of 1978, 16 U.S.C. 2601 et seq., with written notice of such
3 certification provided to the Nebraska Power Review Board.

4 ~~(6)~~(4) A C-BED project developer shall notify the
5 electric utility that has a power purchase agreement with a C-BED
6 project if there is a change in project ownership which makes the
7 project no longer eligible as a C-BED project.

8 Sec. 3. Section 77-2704.57, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

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

23 (2) The Tax Commissioner shall notify an electric utility
24 that has a power purchase agreement with a C-BED project if there is
25 a change in project ownership which makes the project no longer

1 eligible as a C-BED project. Purchase of a C-BED project by an
2 electric utility prior to the end of the power purchase agreement
3 disqualifies the C-BED project for the exemption, but the Department
4 of Revenue may not recover the amount of the sales and use tax that
5 was not paid by the project prior to the purchase.

6 (3) For purposes of this section, the terms + (a) C-BED
7 project or community-based energy development project, (b) gross
8 power purchase agreement payments, and (c) qualified owner have the
9 definitions found in section 70-1903. ~~means a new wind energy project~~
10 ~~that:~~

11 (i) ~~Has an ownership structure as follows:~~

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

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

22 (ii) ~~Has a resolution of support adopted:~~

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

25 (B) ~~By the tribal council for a C-BED project located~~

1 within the boundaries of an Indian reservation;

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

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

14 ~~(d) Qualified owner means:~~

15 ~~(i) A Nebraska resident;~~

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

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

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

25 ~~(A) Fifteen percent either directly or indirectly by a~~

1 ~~single electric supplier; and~~

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

4 ~~(v) A tribal council.~~

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

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

17 ~~(6)-(4)~~ The Department of Revenue may examine the actual
18 payments and the distribution of the payments to determine if the
19 projected distributions were met. If the payment distributions to
20 qualified owners do not meet the requirements of this section, the
21 department may recover the amount of the sales or use tax that was
22 not paid by the project at any time up until the end of three years
23 after the end of the power purchase agreement.

24 ~~(7)-(5)~~ At any time prior to the end of the power
25 purchase agreements, the project may voluntarily surrender the

1 exemption granted by the Tax Commissioner and pay the amount of sales
2 and use tax that would otherwise have been due.

3 ~~(8)-(6)~~ The amount of the tax due under either subsection
4 (4) or (5) ~~(6) or (7)~~ of this section shall be increased by interest
5 at the rate specified in section 45-104.02, as such rate may from
6 time to time be adjusted, from the date the tax would have been due
7 if no exemption was granted until the date paid.

8 Sec. 4. Original section 70-1904, Reissue Revised
9 Statutes of Nebraska, and sections 70-1903 and 77-2704.57, Revised
10 Statutes Cumulative Supplement, 2012, are repealed.