

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 736**

FINAL READING

Introduced by Friesen, 34.

Read first time January 06, 2016

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Rural Community-Based Energy  
2 Development Act; to amend sections 70-1905, 70-1906, and 70-1908,  
3 Reissue Revised Statutes of Nebraska, sections 70-1904 and  
4 77-2704.57, Revised Statutes Cumulative Supplement, 2014, and  
5 section 70-1903, Revised Statutes Supplement, 2015; to provide,  
6 change, and eliminate definitions; to change provisions relating to  
7 power purchase agreements and community-based energy development  
8 projects; to eliminate annual statements as prescribed; to harmonize  
9 provisions; and to repeal the original sections.  
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1903, Revised Statutes Supplement, 2015, is  
2 amended to read:

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

5 (1) C-BED project or community-based energy development project  
6 means a new energy generation project using wind, solar, biomass, or  
7 landfill gas as the fuel source that:

8 (a) Has at least twenty-five percent of the gross power purchase  
9 agreement payments flowing to the qualified owner or owners or as  
10 payments to the local community; and

11 (b) Has a resolution of support or zoning approval adopted:

12 (i) By the county board of each county in which the C-BED project is  
13 to be located and which has adopted zoning regulations that require  
14 planning commission, county board, or county commission approval for the  
15 C-BED project; or

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

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

19 ~~(a) Owns more than one hundred miles of one hundred-fifteen-kilovolt~~  
20 ~~or larger transmission lines in the State of Nebraska;~~

21 ~~(b) Owns more than two hundred megawatts of electric generating~~  
22 ~~facilities; and~~

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

25 (2) Electric supplier means a public power district, a public power  
26 and irrigation district, an individual municipality, a registered group  
27 of municipalities, an electric membership association, or a cooperative,  
28 unless the context requires a different meaning;

29 (3) Gross power purchase agreement payments means the total amount  
30 of payments during the first twenty years of the agreement;

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

1 (a) Lease and easement payments to property owners made as part of a  
2 C-BED project;

3 (b) Contract payments for concrete, steel, gravel, towers, turbines,  
4 blades, wire, or engineering, procurement, construction, geotechnical,  
5 environmental, meteorological, or legal services or payments for other  
6 components, equipment, materials, or services that are necessary to  
7 permit or construct the C-BED project and that are provided by a company  
8 that has been organized or incorporated in Nebraska under Nebraska law  
9 and has employed at least five Nebraska residents for at least eighteen  
10 months prior to the date of the project application for certification as  
11 a C-BED project; and

12 (c) Payments that are for physical parts, materials, or components  
13 that are manufactured, assembled, or fabricated in Nebraska and that are  
14 not described in subdivision (a) or (b) of this subdivision.

15 Such payments need not be made directly from power purchase  
16 agreement revenue and may be made from other funds in advance of  
17 receiving power purchase agreement revenue; and

18 (5) Qualified owner means:

19 (a) A Nebraska resident;

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

23 (c) A Nebraska nonprofit corporation organized under the Nebraska  
24 Nonprofit Corporation Act;

25 (d) An electric supplier ~~as defined in section 70-1014.02~~, except  
26 that qualified ownership in a single C-BED project is limited to no more  
27 than:

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

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

1 (e) A tribal council;

2 (f) A domestic corporation organized in Nebraska under the Business  
3 Corporation Act or the Nebraska Model Business Corporation Act and  
4 domiciled in Nebraska; or

5 (g) A cooperative corporation organized under sections 21-1301 to  
6 21-1306 and domiciled in Nebraska.

7 Sec. 2. Section 70-1904, Revised Statutes Cumulative Supplement,  
8 2014, is amended to read:

9 70-1904 (1) A C-BED project developer and an electric supplier  
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 owners may  
13 develop a C-BED project with an equity partner that is not a qualified  
14 owner.

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

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

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

27 (6) A C-BED project developer shall notify any electric supplier  
28 ~~utility~~ that has a power purchase agreement with the C-BED project if  
29 there is a change in project ownership which makes the project no longer  
30 eligible as a C-BED project.

31 Sec. 3. Section 70-1905, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 70-1905 An electric supplier utility shall:

3 (1) Consider mechanisms to encourage the aggregation of C-BED  
4 projects located in the same general geographical area; and

5 (2) Require any qualified owner to provide sufficient security to  
6 assure performance under the power purchase agreement, ~~;~~ and

7 ~~(3) Annually prepare a statement by March 1 summarizing its efforts~~  
8 ~~to purchase energy from C-BED projects, including a list of the C-BED~~  
9 ~~projects under a power purchase agreement and the amount of C-BED project~~  
10 ~~energy purchased. The statement shall be posted on the electric utility's~~  
11 ~~web site.~~

12 Sec. 4. Section 70-1906, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 70-1906 The governing body of an electric supplier utility that has  
15 determined a need to construct new renewable generation facilities shall  
16 take reasonable steps to determine if one or more C-BED projects are  
17 available and are technically, economically, and operationally feasible  
18 to provide some or all of the identified generation need.

19 Sec. 5. Section 70-1908, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 70-1908 Nothing in sections 70-1901 to 70-1907 shall be construed to  
22 obligate an electric supplier utility to enter into a power purchase  
23 agreement under a C-BED project.

24 Sec. 6. Section 77-2704.57, Revised Statutes Cumulative Supplement,  
25 2014, is amended to read:

26 77-2704.57 (1) Sales and use tax shall not be imposed on the gross  
27 receipts from the sale, lease, or rental of personal property for use in  
28 a C-BED project or community-based energy development project. This  
29 exemption shall be conditioned upon filing requirements for the exemption  
30 as imposed by the Tax Commissioner. The requirements imposed by the Tax  
31 Commissioner shall be related to ensuring that the property purchased

1 qualifies for the exemption. The Tax Commissioner may require the filing  
2 of the documents showing compliance with section 70-1907, the  
3 organization of the project, the distribution of the payments, the power  
4 purchase agreements, the project pro forma, articles of incorporation,  
5 operating agreements, and any amendments or changes to these documents  
6 during the life of the power purchase agreement.

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

15 (3) For purposes of this section, the terms (a) C-BED project or  
16 community-based energy development project, (b) electric supplier, (c)  
17 gross power purchase agreement payments, (d e) payments to the local  
18 community, and (e d) qualified owner have the definitions found in  
19 section 70-1903.

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

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

31 (6) The amount of the tax due under either subsection (4) or (5) of

1 this section shall be increased by interest at the rate specified in  
2 section 45-104.02, as such rate may from time to time be adjusted, from  
3 the date the tax would have been due if no exemption was granted until  
4 the date paid.

5       Sec. 7. Original sections 70-1905, 70-1906, and 70-1908, Reissue  
6 Revised Statutes of Nebraska, sections 70-1904 and 77-2704.57, Revised  
7 Statutes Cumulative Supplement, 2014, and section 70-1903, Revised  
8 Statutes Supplement, 2015, are repealed.