

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 629**

FINAL READING

Introduced by Dierks, 40; Dubas, 34; Erdman, 47; Karpisek, 32;  
McDonald, 41; Preister, 5; Wallman, 30; Flood, 19;  
Lathrop, 12

Read first time January 17, 2007

Committee: Natural Resources

A BILL

- 1 FOR AN ACT relating to rural economic development and energy; to
- 2           adopt the Rural Community-Based Energy Development Act;
- 3           to provide severability; and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 9 of this act shall be known and  
2 may be cited as the Rural Community-Based Energy Development Act.

3           Sec. 2. It is the intent of the Legislature to  
4 create new rural economic development opportunities through rural  
5 community-based energy development.

6           Sec. 3. For purposes of the Rural Community-Based Energy  
7 Development Act:

8           (1) C-BED project or community-based energy development  
9 project means a new wind energy project that:

10           (a) Has an ownership structure as follows:

11           (i) For a C-BED project that consists of more than two  
12 turbines, is owned by qualified owners with no single qualified  
13 owner owning more than fifteen percent of the project and with at  
14 least thirty-three percent of the power purchase agreement payments  
15 flowing to the qualified owner or owners or local community; or

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

20           (b) Has a resolution of support adopted:

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

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

25           (2) Electric utility means an electric supplier that:

1           (a) Owns more than one hundred miles of  
2 one-hundred-fifteen-kilovolt or larger transmission lines in the  
3 State of Nebraska;

4           (b) Owns more than two hundred megawatts of electric  
5 generating facilities; and

6           (c) Has the obligation to directly serve more than two  
7 hundred megawatts of wholesale or retail electric load in the State  
8 of Nebraska; and

9           (3) Qualified owner means:

10           (a) A Nebraska resident;

11           (b) A limited liability company that is organized under  
12 the Limited Liability Company Act and that is made up of members  
13 who are Nebraska residents;

14           (c) A Nebraska nonprofit corporation organized under the  
15 Nebraska Nonprofit Corporation Act;

16           (d) An electric supplier as defined in section  
17 70-1001.01, except that ownership in a single C-BED project is  
18 limited to no more than:

19           (i) Fifteen percent by a single electric supplier; and

20           (ii) A combined total of twenty-five percent ownership by  
21 multiple electric suppliers; or

22           (e) A tribal council.

23           Sec. 4. (1) A C-BED project developer and an electric  
24 utility are authorized to negotiate in good faith mutually  
25 agreeable power purchase agreement terms.

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

5           (3) Except for an inherited interest, the transfer of  
 6 a C-BED project to any person other than a qualified owner is  
 7 prohibited during the initial ten years of the power purchase  
 8 agreement.

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

12           (5) A C-BED project shall be subject to approval by the  
 13 Nebraska Power Review Board in accordance with Chapter 70, article  
 14 10, or shall receive certification as a qualifying facility in  
 15 accordance with the federal Public Utility Regulatory Policies Act  
 16 of 1978, 16 U.S.C. 2601 et seq., with written notice of such  
 17 certification provided to the Nebraska Power Review Board.

18           Sec. 5. An electric utility shall:

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

21           (2) Require any qualified owner to provide sufficient  
 22 security to assure performance under the power purchase agreement;  
 23 and

24           (3) Annually prepare a statement summarizing its efforts  
 25 to purchase energy from C-BED projects, including a list of the

1 C-BED projects under a power purchase agreement and the amount of  
2 C-BED project energy purchased.

3           Sec. 6. The governing body of an electric utility  
4 that has determined a need to construct new renewable generation  
5 facilities shall take reasonable steps to determine if one or more  
6 C-BED projects are available and are technically, economically, and  
7 operationally feasible to provide some or all of the identified  
8 generation need.

9           Sec. 7. To the extent feasible, a C-BED project developer  
10 shall provide, in writing, an opportunity to invest in the C-BED  
11 project to each property owner on whose property a turbine is  
12 located.

13           Sec. 8. Nothing in sections 1 to 7 of this act shall be  
14 construed to obligate an electric utility to enter into a power  
15 purchase agreement under a C-BED project.

16           Sec. 9. An electric supplier as defined in section  
17 70-1001.01 may agree to limit its exercise of the power of eminent  
18 domain to acquire a C-BED project which is a renewable energy  
19 generation facility producing electricity with wind and any related  
20 facilities if such electric supplier enters into a contract to  
21 purchase output from such facility for a term of ten years or more.

22           Sec. 10. If any section in this act or any part of any  
23 section is declared invalid or unconstitutional, the declaration  
24 shall not affect the validity or constitutionality of the remaining  
25 portions.

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