

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1137

Introduced by Preister, 5; Dierks, 40; Pankonin, 2.

Read first time January 23, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 70-1903, 70-1904, 70-1905, 70-1907, and 77-2704.57,
3 Revised Statutes Supplement, 2007; to change a sales tax
4 exemption related to new wind energy projects; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1903, Revised Statutes Supplement,
2 2007, 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 project that:

7 (a) Has an ownership structure as follows:

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

14 (ii) For a C-BED project that consists of one or two
15 turbines, ~~is owned by~~ has one or more qualified owners with at
16 least thirty-three percent of the gross power purchase agreement
17 payments flowing to a qualified owner or owners or local community;
18 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) Electric utility means an electric supplier that:

25 (a) Owns more than one hundred miles of

1 one-hundred-fifteen-kilovolt or larger transmission lines in the
2 State of Nebraska;

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

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

8 (3) Qualified owner means:

9 (a) A Nebraska resident;

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

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

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

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

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

22 (e) A tribal council.

23 Sec. 2. Section 70-1904, Revised Statutes Supplement,
24 2007, is amended to read:

25 70-1904 (1) A C-BED project developer and an electric

1 utility are authorized to negotiate in good faith mutually
2 agreeable power purchase agreement terms.

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

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

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

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

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

24 Sec. 3. Section 70-1905, Revised Statutes Supplement,
25 2007, is amended to read:

1 70-1905 An electric utility shall:

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

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

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

12 Sec. 4. Section 70-1907, Revised Statutes Supplement,
13 2007, is amended to read:

14 70-1907 To the extent feasible, a C-BED project developer
15 shall provide, in writing, an opportunity to ~~invest~~ become a
16 qualified owner in the C-BED project to each property owner on
17 whose property a turbine is located.

18 Sec. 5. Section 77-2704.57, Revised Statutes Supplement,
19 2007, is amended to read:

20 77-2704.57 (1) Sales and use tax shall not be imposed
21 on the gross receipts from the sale, lease, or rental of personal
22 property for use in a C-BED project or community-based energy
23 development project. This exemption shall be conditioned upon
24 filing requirements for the exemption as imposed by the Tax
25 Commissioner. The requirements imposed by the Tax Commissioner

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

8 (2) The Tax Commissioner shall notify an electric utility
 9 that has a power purchase agreement with a C-BED project if there
 10 is a change in project ownership which makes the project no longer
 11 eligible as a C-BED project.

12 (3) For purposes of this section:

13 ~~(1)~~ (a) C-BED project or community-based energy
 14 development project means a new wind energy project that:

15 ~~(a)~~ (i) Has an ownership structure as follows:

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

22 ~~(ii)~~ (B) For a C-BED project that consists of one or two
 23 turbines, ~~is owned by~~ has one or more qualified owners with at
 24 least thirty-three percent of the gross power purchase agreement
 25 payments flowing to a qualified owner or owners or local community;

1 and

2 ~~(b)~~ (ii) Has a resolution of support adopted:

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

5 ~~(ii)~~ (B) By the tribal council for a C-BED project
6 located within the boundaries of an Indian reservation;

7 ~~(2)~~ (b) New wind energy project ~~includes any materials~~
8 means any tangible personal property used to manufacture, install,
9 construct, repair, or replace a device, such as a wind charger,
10 windmill, or wind turbine, ~~that converts~~ which is used to convert
11 wind energy to a form of usable electrical energy; and

12 ~~(3)~~ (c) Qualified owner means:

13 ~~(a)~~ (i) A Nebraska resident;

14 ~~(b)~~ (ii) A limited liability company that is organized
15 under the Limited Liability Company Act and that is entirely made
16 up of members who are Nebraska residents;

17 ~~(c)~~ (iii) A Nebraska nonprofit corporation organized
18 under the Nebraska Nonprofit Corporation Act;

19 ~~(d)~~ (iv) An electric supplier as defined in section
20 70-1001.01, except that ownership in a single C-BED project is
21 limited to no more than:

22 ~~(i)~~ (A) Fifteen percent either directly or indirectly by
23 a single electric supplier; and

24 ~~(ii)~~ (B) A combined total of twenty-five percent
25 ownership either directly or indirectly by multiple electric

1 suppliers; or

2 ~~(e)~~ (v) A tribal council.

3 (4) Power purchase agreements payments are the total
4 amount of payments during the life of the agreement. For the
5 purposes of determining eligibility of the project, an estimate of
6 the payments and their recipients shall be used.

7 (5) Payments to the local community include, but are not
8 limited to, lease payments to property owners on whose property
9 a turbine is located, wind energy easement payments, and personal
10 property tax receipts from the C-BED project.

11 (6) The Department of Revenue may examine the actual
12 payments and the distribution of the payments to determine if the
13 projected distributions were met. If the payment distributions to
14 qualified owners do not meet the requirements of this section, the
15 department may recover the amount of the sales or use tax that was
16 not paid by the project at any time up until the end of three years
17 after the end of the purchase power agreement.

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

22 (8) The amount of the tax due under either subsection
23 (6) or (7) of this section shall be increased by interest at the
24 rate specified in section 45-104.02, as such rate may from time to
25 time be adjusted, from the date the tax would have been due if no

1 exemption was granted until the date paid.

2 Sec. 6. Original sections 70-1903, 70-1904, 70-1905,
3 70-1907, and 77-2704.57, Revised Statutes Supplement, 2007, are
4 repealed.