

LEGISLATIVE BILL 629

Approved by the Governor May 21, 2007

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

FOR AN ACT relating to rural economic development and energy; to adopt the Rural Community-Based Energy Development Act; to provide severability; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

(a) Has an ownership structure as follows:

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

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

(b) Has a resolution of support adopted:

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

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

(2) Electric utility means an electric supplier that:

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

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

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

(3) Qualified owner means:

(a) A Nebraska resident;

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

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

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

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

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

(e) A tribal council.

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

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

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

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

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

notice of such certification provided to the Nebraska Power Review Board.

Sec. 5. An electric utility shall:

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

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

(3) Annually prepare a statement summarizing its efforts to purchase energy from C-BED projects, including a list of the C-BED projects under a power purchase agreement and the amount of C-BED project energy purchased.

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

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

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

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

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

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