

Amendments to LB 104

Introduced by Schilz

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 70-1903, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 70-1903 For purposes of the Rural Community-Based Energy
6 Development Act:

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

10 (a) Has an ownership structure as follows: ~~(i)~~ For a
11 C-BED project that consists of more than two turbines, has one
12 or more qualified owners with no single individual qualified
13 owner owning directly or indirectly more than fifteen percent
14 of the project and with at least ~~thirty-three~~ (i) at least ten
15 percent of the gross power purchase agreement payments flowing
16 to the qualified owner or owners or as payments to the local
17 community for any C-BED project on which onsite physical work
18 of a significant nature has begun prior to January 1, 2014, and
19 continuous construction occurs to completion of the C-BED project,
20 (ii) at least fifteen percent of the gross power purchase agreement
21 payments flowing to the qualified owner or owners or as payments to
22 the local community for any C-BED project on which onsite physical
23 work of a significant nature has begun on or after January 1, 2014,

1 and prior to January 1, 2015, and continuous construction occurs
2 to completion of the C-BED project, or (iii) at least twenty-five
3 percent of the gross power purchase agreement payments flowing
4 to the qualified owner or owners or as payments to the local
5 community for any C-BED project on which onsite physical work of a
6 significant nature has begun on or after January 1, 2015; ~~or~~ and

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

11 (b) Has a resolution of support adopted:

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

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

16 ~~(2) Debt financing payments means principal, interest,~~
17 ~~and other typical financing costs paid by the C-BED project company~~
18 ~~to one or more third-party financial institutions for the financing~~
19 ~~or refinancing of the construction of the C-BED project. Debt~~
20 ~~financing payments does not include the repayment of principal at~~
21 ~~the time of a refinancing;~~

22 (2) Continuous construction has the same meaning as set
23 forth in Internal Revenue Service Notice 2013-29;

24 (3) Contributions to an employee ownership arrangement
25 means contributions of cash or equity interests to an arrangement
26 meeting the requirements of section 4975(e)(7) of the Internal
27 Revenue Code or requirements specified by rules and regulations

1 adopted and promulgated by the Department of Revenue, the object
2 of which is to provide substantially all onsite maintenance and
3 operations employees with:

4 (a) Equitable ownership of stock or equity ownership
5 interests in the owner of the C-BED project;

6 (b) The right to redeem stock or equity ownership
7 interests after severing employment at fair market value,
8 determined by independent appraisal if the stock or equity
9 ownership interests are not publicly traded; and

10 (c) Rights in relation to the owner of the C-BED project
11 similar to the rights of a participant in an employee stock
12 ownership plan described in section 4975(e)(7) of the Internal
13 Revenue Code.

14 ~~(3)~~ (4) Electric utility means an electric supplier that:

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

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

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

23 ~~(4)~~ (5) Gross power purchase agreement payments means the
24 total amount of payments during the life first twenty years of
25 the agreement; ~~For power purchase agreements entered into on or~~
26 ~~before December 31, 2011, if the qualified owners have a combined~~
27 ~~total of at least thirty-three percent of the equity ownership in~~

1 the C-BED project, gross power purchase agreement payments shall be
2 reduced by the debt financing payments, and

3 (6) Onsite physical work of a significant nature means
4 physical work of a significant nature as defined in Internal
5 Revenue Service Notice 2013-29, which occurs at or on the location
6 of the C-BED project;

7 (7) Payments to the local community include, but are not
8 limited to:

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

11 (b) Contract payments for concrete, steel, gravel,
12 towers, turbines, blades, wire, or engineering, procurement,
13 construction, geotechnical, environmental, meteorological, or legal
14 services or payments for other components, equipment, materials,
15 or services that are necessary to permit or construct the C-BED
16 project and that are provided by a company that has been organized
17 or incorporated in Nebraska under Nebraska law for a purpose or
18 purposes other than to participate in a C-BED project for at
19 least twelve months prior to the date of the application for
20 certification as a C-BED project;

21 (c) Payments for physical parts, materials, or components
22 that are manufactured, assembled, or fabricated in Nebraska that
23 are not described in subdivision (a) or (b) of this subdivision;
24 and

25 (d) Contributions to an employee ownership arrangement,
26 multiplied by a factor of four, benefiting employees of the C-BED
27 project entity or a related entity.

1 Such payments need not be made directly from power
2 purchase agreement revenue and may be made from other funds in
3 advance of receiving power purchase agreement revenue; and

4 ~~(5)~~ (8) Qualified owner means:

5 (a) A Nebraska resident;

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

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

12 (d) An electric supplier as defined in section
13 70-1001.01, except that ownership in a single C-BED project is
14 limited to no more than:

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

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

19 (e) A tribal council;

20 (f) A domestic corporation organized in Nebraska under
21 the Business Corporation Act and domiciled in Nebraska; or

22 (g) A cooperative corporation organized under sections
23 21-1301 to 21-1306 and domiciled in Nebraska.

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

26 70-1904 ~~(1)~~ A C-BED project developer and an electric
27 utility are authorized to negotiate in good faith mutually

1 ~~agreeable power purchase agreement terms.~~

2 ~~(2) (1) A qualified owner or any combination of qualified~~
3 ~~owners may develop a C-BED project with an equity partner that~~
4 ~~is not a qualified owner. 7 if not more than sixty-seven~~
5 ~~percent of the gross power purchase agreement payments flow to~~
6 ~~the nonqualified owners.~~

7 ~~(3) (2) Except for an inherited interest, the transfer of~~
8 ~~the interest of a qualified owner in a C-BED project to any person~~
9 ~~other than a another qualified owner or other qualified owners~~
10 ~~is prohibited during the initial ten years of the power purchase~~
11 ~~agreement.~~

12 ~~(4) (3) A C-BED project that is operating under a power~~
13 ~~purchase agreement is not eligible for any applicable net energy~~
14 ~~billing.~~

15 ~~(5) (4) A C-BED project shall be subject to approval~~
16 ~~by the Nebraska Power Review Board in accordance with Chapter 70,~~
17 ~~article 10, or shall receive certification as a qualifying facility~~
18 ~~in accordance with the federal Public Utility Regulatory Policies~~
19 ~~Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such~~
20 ~~certification provided to the Nebraska Power Review Board.~~

21 ~~(6) (5) A C-BED project developer shall notify ~~the~~ any~~
22 ~~electric utility that has a power purchase agreement with a the~~
23 ~~C-BED project if there is a change in project ownership which makes~~
24 ~~the project no longer eligible as a C-BED project.~~

25 Sec. 3. Section 70-1909, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 70-1909 An electric supplier as defined in section

1 70-1001.01 may agree to limit its exercise of the power of
2 eminent domain to acquire a C-BED project ~~which is a renewable~~
3 ~~energy generation facility producing electricity with wind and any~~
4 related facilities if such electric supplier enters into a contract
5 to purchase output from such ~~facility~~ C-BED project for a term of
6 ten years or more.

7 Sec. 4. Section 77-2704.57, Revised Statutes Cumulative
8 Supplement, 2012, is amended to read:

9 77-2704.57 (1) ~~Sales~~ All sales and use tax shall not be
10 imposed on the gross receipts from the sale, lease, or rental of
11 personal property for use in a C-BED project or community-based
12 energy development project shall be refunded to the taxpayer. This
13 ~~exemption refund~~ shall be conditioned upon filing requirements
14 for the ~~exemption refund~~ as imposed by the Tax Commissioner. The
15 requirements imposed by the Tax Commissioner shall be related to
16 ensuring that the property purchased qualifies for the ~~exemption-~~
17 refund, including, but not limited to, evidence confirming that
18 the entire C-BED project has been fully commissioned or placed
19 into commercial operation. The Tax Commissioner may require the
20 filing of the documents showing compliance with section 70-1907,
21 the organization of the project, the distribution of the payments,
22 the power purchase agreements, the project pro forma, articles of
23 incorporation, operating agreements, and any amendments or changes
24 to these documents during the life of the power purchase agreement.

25 (2) The Tax Commissioner shall notify an electric utility
26 that has a power purchase agreement with a C-BED project if there
27 is 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~~, refund, but the
4 Department of Revenue may not recover the amount of ~~the sales and~~
5 ~~use tax~~ any refund that was ~~not~~ paid by the project prior to the
6 purchase.

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

12 (i) Has an ownership structure as follows:

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

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

23 (ii) Has a resolution of support adopted:

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

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

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

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

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

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

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

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

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

24 ~~(A) Fifteen percent either directly or indirectly by a~~
25 ~~single electric supplier; and~~

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

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

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

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

15 ~~(6) (4)~~ The Department of Revenue may examine the actual
16 payments and the distribution of the payments to determine if the
17 projected distributions were met. If the payment distributions ~~to~~
18 ~~qualified owners~~ do not meet the requirements of this section,
19 the department may recover the amount of ~~the sales or use tax~~ any
20 refund that was ~~not~~ paid by the project at any time up until the
21 end of three years after the end of the power purchase agreement.

22 ~~(7) (5)~~ At any time prior to the end of the power
23 purchase agreements, the project may voluntarily surrender ~~the~~
24 ~~exemption~~ any refunds granted by the Tax Commissioner and pay the
25 amount of sales and use tax that would otherwise have been due.

26 ~~(8) (6)~~ The amount of the tax due under either subsection
27 (4) or (5) ~~(6) or (7)~~ of this section shall be increased by

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

5 Sec. 5. Section 77-27,235, Revised Statutes Cumulative
6 Supplement, 2012, is amended to read:

7 77-27,235 (1) Any producer of electricity generated by a
8 new renewable electric generation facility shall earn a renewable
9 energy tax credit. For electricity generated on or after July
10 14, 2006, and before October 1, 2007, the credit shall be .075
11 cent for each kilowatt-hour of electricity generated by a new
12 renewable electric generation facility. For electricity generated
13 on or after October 1, 2007, and before January 1, 2010, the credit
14 shall be .1 cent for each kilowatt-hour of electricity generated
15 by a new renewable electric generation facility. For electricity
16 generated on or after January 1, 2010, and before January 1, 2013,
17 the credit shall be .075 cent per kilowatt-hour for electricity
18 generated by a new renewable electric generation facility. For
19 electricity generated on or after January 1, 2013, the credit shall
20 be .05 cent per kilowatt-hour for electricity generated by a new
21 renewable electric generation facility. The credit may be earned
22 for production of electricity for ten years after the date that the
23 facility is placed in operation on or after July 14, 2006.

24 (2) For purposes of this section:

25 (a) Electricity generated by a new renewable electric
26 generation facility means electricity that is exclusively produced
27 by a new renewable electric generation facility;

1 (b) Eligible renewable resources means wind, moving
2 water, solar, geothermal, fuel cell, methane gas, or photovoltaic
3 technology; and

4 (c) New renewable electric generation facility means an
5 electrical generating facility located in this state that is first
6 placed into service on or after July 14, 2006, which utilizes
7 eligible renewable resources as its fuel source.

8 (3) The credit allowed under this section may be used
9 to reduce the producer's Nebraska income tax liability or to
10 obtain a refund of state sales and use taxes paid by the producer
11 of electricity generated by a new renewable electric generation
12 facility. A claim to use the credit for refund of the state
13 sales and use taxes paid, either directly or indirectly, by the
14 producer may be filed quarterly for electricity generated during
15 the previous quarter by the twentieth day of the month following
16 the end of the calendar quarter. The credit may be used to obtain
17 a refund of state sales and use taxes paid during the quarter
18 immediately preceding the quarter in which the claim for refund is
19 made, except that the amount refunded under this subsection shall
20 not exceed the amount of the state sales and use taxes paid during
21 the quarter.

22 (4) The Department of Revenue may adopt and promulgate
23 rules and regulations to permit verification of the validity and
24 timeliness of any renewable energy tax credit claimed.

25 (5) The total amount of renewable energy tax credits that
26 may be used by all taxpayers shall be limited to fifty thousand
27 dollars without further authorization from the Legislature.

1 (6) The credit allowed under this section may not be
2 claimed by a producer who received a sales tax ~~exemption~~ refund
3 under section 77-2704.57 for the new renewable electric generation
4 facility.

5 Sec. 6. Original sections 70-1904 and 70-1909, Reissue
6 Revised Statutes of Nebraska, and sections 70-1903, 77-2704.57,
7 and 77-27,235, Revised Statutes Cumulative Supplement, 2012, are
8 repealed.