

LEGISLATIVE BILL 736

Approved by the Governor April 06, 2016

Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Rural Community-Based Energy Development Act; to amend sections 70-1905, 70-1906, and 70-1908, Reissue Revised Statutes of Nebraska, sections 70-1904 and 77-2704.57, Revised Statutes Cumulative Supplement, 2014, and section 70-1903, Revised Statutes Supplement, 2015; to provide, change, and eliminate definitions; to change provisions relating to power purchase agreements and community-based energy development projects; to eliminate annual statements as prescribed; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Nebraska Uniform 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 70-1014.02, except that qualified ownership in a single C-BED project is limited to no more than:~~

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

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

~~(e) A tribal council;~~

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

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

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

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

(3) Except for an inherited interest, the transfer of the interest of a qualified owner in a C-BED project to any person other than another qualified owner or other qualified owners 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.

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

Sec. 3. Section 70-1905, Reissue Revised Statutes of Nebraska, is amended to read:

70-1905 An electric supplier utility shall:

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

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

~~(3) Annually prepare a statement by March 1 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. The statement shall be posted on the electric utility's web site.~~

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

70-1906 The governing body of an electric supplier 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. 5. Section 70-1908, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

77-2704.57 (1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

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

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

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

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

(6) The amount of the tax due under either subsection (4) or (5) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the

tax would have been due if no exemption was granted until the date paid.

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