

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1049

Introduced by Langemeier, 23.

Read first time January 21, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to energy; to amend sections 70-1902, 70-1903,
2 and 77-2704.57, Reissue Revised Statutes of Nebraska;
3 to change provisions relating to community-based energy
4 projects; to change tax exemption provisions; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1902, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 70-1902 It is the intent of the Legislature to
4 create new rural economic development opportunities through
5 rural community-based energy development, broaden Nebraska's
6 manufacturing and services base, and create a significant number of
7 jobs in Nebraska in the growing field of renewable energy.

8 Sec. 2. Section 70-1903, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 70-1903 For purposes of the Rural Community-Based Energy
11 Development Act:

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

14 (a) Has ~~an ownership~~ a structure as follows:

15 (i) For a C-BED project that consists of more than two
16 turbines: ~~has~~

17 (A) Has one or more qualified owners with no single
18 individual qualified owner owning directly or indirectly more than
19 fifteen percent of the project and with at least thirty-three
20 percent of the gross power purchase agreement payments flowing to
21 the qualified owner or owners or local community; or

22 (B) Uses qualified inputs for the C-BED project that
23 comprise at least thirty-three percent of the total cost to
24 construct the C-BED project, including hard and soft costs; or

25 (ii) For a C-BED project that consists of one or two

1 turbines; ~~it~~ has

2 (A) Has one or more qualified owners with at least
3 thirty-three percent of the gross power purchase agreement payments
4 flowing to a qualified owner or owners or local community; and or

5 (B) Uses qualified inputs for the C-BED project that
6 comprise at least thirty-three percent of the total cost to
7 construct the C-BED project, including hard and soft costs; and

8 (b) Has a resolution of support adopted:

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

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

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

19 (3) Electric utility means an electric supplier that:

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

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

25 (c) Has the obligation to directly serve more than two

1 hundred megawatts of wholesale or retail electric load in the State
2 of Nebraska;

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

10 (5) Qualified inputs means: (a) Concrete, steel, gravel,
11 towers, turbines, blades, wire, contractor services, engineering
12 services, geotechnical services, environmental consulting services,
13 meteorological services and legal services, or other components,
14 equipment, materials, or services that are necessary to construct
15 the C-BED project that are obtained from a company that was
16 organized or incorporated in Nebraska under Nebraska law not less
17 than eighteen months before the date of the project application
18 for certification as a C-BED project and has employed at least ten
19 Nebraska residents for at least eighteen months before the date of
20 the project application for certification as a C-BED project; or
21 (b) physical parts, materials, or components that are manufactured,
22 assembled, or fabricated in Nebraska; and

23 ~~(5)~~ (6) Qualified owner means:

24 (a) A Nebraska resident;

25 (b) A limited liability company that is organized under

1 the Limited Liability Company Act and that is made up of members
2 who are Nebraska residents;

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

5 (d) An electric supplier as defined in section
6 70-1001.01, except that ownership in a single C-BED project is
7 limited to no more than:

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

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

12 (e) A tribal council.

13 Sec. 3. Section 77-2704.57, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-2704.57 (1) Sales and use tax shall not be imposed
16 on the gross receipts from the sale, lease, or rental of personal
17 property for use in a C-BED project or community-based energy
18 development project. This exemption shall be conditioned upon
19 filing requirements for the exemption as imposed by the Tax
20 Commissioner. The requirements imposed by the Tax Commissioner
21 shall be related to ensuring that the property purchased qualifies
22 for the exemption. The Tax Commissioner may require the filing
23 of the documents showing compliance with section 70-1907, the
24 organization of the project, the distribution of the payments,
25 the companies providing inputs to the projects and the cost of

1 such inputs, the power purchase agreements, the project pro forma,
2 articles of incorporation, operating agreements, and any amendments
3 or changes to these documents during construction of the project or
4 the life of the power purchase agreement.

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

13 (3) For purposes of this section:

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

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

17 (A) For a C-BED project that consists of more than two
18 turbines; ~~7~~ has

19 (I) Has one or more qualified owners with no single
20 individual qualified owner owning directly or indirectly more than
21 fifteen percent of the project and with at least thirty-three
22 percent of the gross power purchase agreement payments flowing to
23 the qualified owner or owners or local community; or

24 (II) Use qualified inputs for the C-BED project that
25 comprise at least thirty-three percent of the total cost to

1 construct the C-BED project, including hard and soft costs; or

2 (B) For a C-BED project that consists of one or two
3 turbines; ~~has~~

4 (I) Has one or more qualified owners with at least
5 thirty-three percent of the gross power purchase agreement payments
6 flowing to a qualified owner or owners or local community; ~~and or~~

7 (II) Use qualified inputs for the C-BED project that
8 comprise at least thirty-three percent of the total cost to
9 construct the C-BED project, including hard and soft costs; and

10 (ii) Has a resolution of support adopted:

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

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

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

21 (c) New wind energy project means any tangible
22 personal property incorporated into the manufacture, installation,
23 construction, repair, or replacement of a device, such as a wind
24 charger, windmill, or wind turbine, which is used to convert wind
25 energy to electrical energy or for the transmission of electricity

1 to the purchaser; and

2 (d) Qualified inputs means: (a) Concrete, steel, gravel,
3 towers, turbines, blades, wire, contractor services, engineering
4 services, geotechnical services, environmental consulting services,
5 meteorological services and legal services, or other components,
6 equipment, materials, or services that are necessary to construct
7 the C-BED project that are obtained from a company that was
8 organized or incorporated in Nebraska under Nebraska law not less
9 than eighteen months before the date of the project application
10 for certification as a C-BED project and has employed at least ten
11 Nebraska residents for at least eighteen months before the date of
12 the project application for certification as a C-BED project; or
13 (b) physical parts, materials, or components that are manufactured,
14 assembled, or fabricated in Nebraska; and

15 ~~(d)~~ (e) Qualified owner means:

16 (i) A Nebraska resident;

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

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

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

25 (A) Fifteen percent either directly or indirectly by a

1 single electric supplier; and

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

4 (v) A tribal council.

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

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

18 (6) The Department of Revenue may examine the actual
19 payments and the distribution of the payments to determine if
20 the projected distributions were met and the receipts, invoices,
21 and orders for materials, equipment, and services necessary to
22 construct the project. If the payment distributions to qualified
23 owners or the receipts, invoices, and orders do not meet the
24 requirements of this section, the department may recover the amount
25 of the sales or use tax that was not paid by the project at any

1 time up until the end of three years after the end of the power
2 purchase agreement.

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

7 (8) The amount of the tax due under either subsection
8 (6) or (7) of this section shall be increased by interest at the
9 rate specified in section 45-104.02, as such rate may from time to
10 time be adjusted, from the date the tax would have been due if no
11 exemption was granted until the date paid.

12 Sec. 4. Original sections 70-1902, 70-1903, and
13 77-2704.57, Reissue Revised Statutes of Nebraska, are repealed.