

LEGISLATIVE BILL 402

Approved by the Governor April 2, 2014

Introduced by Mello, 5; Davis, 43; Dubas, 34; Schilz, 47.

FOR AN ACT relating to community-based energy development projects; to amend sections 70-1904 and 70-1909, Reissue Revised Statutes of Nebraska, and sections 70-1903 and 77-2704.57, Revised Statutes Supplement, 2013; to define, redefine, and eliminate terms; to change provisions relating to community-based energy development projects, power purchase agreements, eminent domain, and sales and use tax exemptions; 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, 2013, 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 wind energy generation project using wind, solar, biomass, or landfill gas as the fuel source that:

(a) Has an ownership structure as follows: ~~(i) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three 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; or and~~

~~(ii) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners 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) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;~~

~~(3) (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;

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

(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 70-1001.01, except that 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 ownership either directly or indirectly by multiple electric suppliers; ~~or~~

(e) A tribal council; ~~or~~

(f) A domestic corporation organized in Nebraska under the 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, Reissue Revised Statutes of Nebraska, is amended to read:

70-1904 (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 gross power purchase agreement payments flow to the nonqualified owners.~~

(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 a 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 ~~the~~ any electric utility that has a power purchase agreement with a 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 70-1909, Reissue Revised Statutes of Nebraska, is amended to read:

70-1909 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~~ C-BED project for a term of ten years or more.

Sec. 4. Section 77-2704.57, Revised Statutes Supplement, 2013, 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 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 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) gross power purchase agreement payments, (c) payments to the local community, and (d) qualified owner have the definitions found in section 70-1903.

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

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

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

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

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

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

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

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

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

~~(d) Qualified owner means:~~

~~(i) A Nebraska resident;~~

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

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

~~(iv) 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:~~

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

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

~~(v) A tribal council.~~

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

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

~~(6) (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.~~

~~(7) (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.~~

~~(8) (6) The amount of the tax due under either subsection (6) or (7) (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. 5. Original sections 70-1904 and 70-1909, Reissue Revised Statutes of Nebraska, and sections 70-1903 and 77-2704.57, Revised Statutes

Supplement, 2013, are repealed.