

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 736

Introduced by Friesen, 34.

Read first time January 06, 2016

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Rural Community-Based Energy
2 Development Act; to amend sections 70-1905, 70-1906, and 70-1908,
3 Reissue Revised Statutes of Nebraska, section 70-1904, Revised
4 Statutes Cumulative Supplement, 2014, and section 70-1903, Revised
5 Statutes Supplement, 2015; to define a term; to change powers and
6 duties relating to electric utilities and electric suppliers; to
7 change a notification requirement; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

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

3 70-1903 For purposes of the Rural Community-Based Energy Development
4 Act:

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

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

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

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

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

18 ~~(2) Electric utility means an electric supplier that:~~

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

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

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

25 (2) Electric supplier has the same meaning as in section 70-1014.02
26 unless the context requires a different meaning;

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

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

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

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

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

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

16 (5) Qualified owner means:

17 (a) A Nebraska resident;

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

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

23 (d) An electric supplier ~~as defined in section 70-1014.02~~, except
24 that qualified ownership in a single C-BED project is limited to no more
25 than:

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

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

30 (e) A tribal council;

31 (f) A domestic corporation organized in Nebraska under the Nebraska

1 Model Business Corporation Act and domiciled in Nebraska; or

2 (g) A cooperative corporation organized under sections 21-1301 to
3 21-1306 and domiciled in Nebraska.

4 Sec. 2. Section 70-1904, Revised Statutes Cumulative Supplement,
5 2014, is amended to read:

6 70-1904 (1) A C-BED project developer and an electric supplier
7 utility are authorized to negotiate in good faith mutually agreeable
8 power purchase agreement terms.

9 (2) A qualified owner or any combination of qualified owners may
10 develop a C-BED project with an equity partner that is not a qualified
11 owner.

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

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

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

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

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

30 70-1905 An electric supplier utility shall:

31 (1) Consider mechanisms to encourage the aggregation of C-BED

1 projects located in the same general geographical area; and

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

4 ~~(3) Annually prepare a statement by March 1 summarizing its efforts~~
5 ~~to purchase energy from C-BED projects, including a list of the C-BED~~
6 ~~projects under a power purchase agreement and the amount of C-BED project~~
7 ~~energy purchased. The statement shall be posted on the electric utility's~~
8 ~~web site.~~

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

11 70-1906 The governing body of an electric supplier utility that has
12 determined a need to construct new renewable generation facilities shall
13 take reasonable steps to determine if one or more C-BED projects are
14 available and are technically, economically, and operationally feasible
15 to provide some or all of the identified generation need.

16 Sec. 5. Section 70-1908, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 70-1908 Nothing in sections 70-1901 to 70-1907 shall be construed to
19 obligate an electric supplier utility to enter into a power purchase
20 agreement under a C-BED project.

21 Sec. 6. Original sections 70-1905, 70-1906, and 70-1908, Reissue
22 Revised Statutes of Nebraska, section 70-1904, Revised Statutes
23 Cumulative Supplement, 2014, and section 70-1903, Revised Statutes
24 Supplement, 2015, are repealed.