

AMENDMENTS TO LB 402

Introduced by Natural Resources

1           1. Strike the original sections and insert the following  
2 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, landfill gas, or a low-emission fuel source that  
10 reduces the overall carbon emissions of the regional generation  
11 system as the fuel source that:

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

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

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

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

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

11 ~~(3) (2) Electric utility means an electric supplier that:~~

12 (a) Owns more than one hundred miles of  
13 one-hundred-fifteen-kilovolt or larger transmission lines in the  
14 State of Nebraska;

15 (b) Owns more than two hundred megawatts of electric  
16 generating facilities; and

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

20 ~~(4) (3) Gross power purchase agreement payments means the~~  
21 ~~total amount of payments during the life first twenty years of the~~  
22 ~~agreement; and~~ ~~For power purchase agreements entered into on or~~  
23 ~~before December 31, 2011, if the qualified owners have a combined~~  
24 ~~total of at least thirty-three percent of the equity ownership in~~  
25 ~~the C-BED project, gross power purchase agreement payments shall be~~  
26 ~~reduced by the debt financing payments; and~~

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

1 limited to:

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

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

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

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

21 (5) Qualified owner means:

22 (a) A Nebraska resident;

23 (b) A limited liability company that is organized under  
24 the Limited Liability Company Act or the Nebraska Uniform Limited  
25 Liability Company Act and that is made up of members who are  
26 Nebraska residents;

27 (c) A Nebraska nonprofit corporation organized under the

1 Nebraska Nonprofit Corporation Act;

2 (d) An electric supplier as defined in section  
3 70-1001.01, except that ownership in a single C-BED project is  
4 limited to no more than:

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

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

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

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

12 (g) A cooperative corporation organized under sections  
13 21-1301 to 21-1306 and domiciled in Nebraska.

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

16 70-1904 (1) A C-BED project developer and an electric  
17 utility are authorized to negotiate in good faith mutually  
18 agreeable power purchase agreement terms.

19 (2) A qualified owner or any combination of qualified  
20 owners may develop a C-BED project with an equity partner that  
21 is not a qualified owner. ~~if not more than sixty-seven~~  
22 ~~percent of the gross power purchase agreement payments flow to~~  
23 ~~the nonqualified owners.~~

24 (3) Except for an inherited interest, the transfer of the  
25 interest of a qualified owner in a C-BED project to any person  
26 other than a another qualified owner or other qualified owners  
27 is prohibited during the initial ten years of the power purchase

1 agreement.

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

5 (5) A C-BED project shall be subject to approval by the  
6 Nebraska Power Review Board in accordance with Chapter 70, article  
7 10, or shall receive certification as a qualifying facility in  
8 accordance with the federal Public Utility Regulatory Policies Act  
9 of 1978, 16 U.S.C. 2601 et seq., with written notice of such  
10 certification provided to the Nebraska Power Review Board.

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

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

17 70-1909 An electric supplier as defined in section  
18 70-1001.01 may agree to limit its exercise of the power of  
19 eminent domain to acquire a C-BED project ~~which is a renewable~~  
20 ~~energy generation facility producing electricity with wind and any~~  
21 related facilities if such electric supplier enters into a contract  
22 to purchase output from such facility for a term of ten years or  
23 more.

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

26 77-2704.57 (1) Sales and use tax shall not be imposed  
27 on the gross receipts from the sale, lease, or rental of personal

1 property for use in a C-BED project or community-based energy  
2 development project. This exemption shall be conditioned upon  
3 filing requirements for the exemption as imposed by the Tax  
4 Commissioner. The requirements imposed by the Tax Commissioner  
5 shall be related to ensuring that the property purchased qualifies  
6 for the exemption. The Tax Commissioner may require the filing  
7 of the documents showing compliance with section 70-1907, the  
8 organization of the project, the distribution of the payments,  
9 the power purchase agreements, the project pro forma, articles of  
10 incorporation, operating agreements, and any amendments or changes  
11 to these documents during the life of the power purchase agreement.

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

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

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

26 (A) ~~For a C-BED project that consists of more than~~  
27 ~~two turbines,~~ has one or more qualified owners with no single

1 individual qualified owner owning directly or indirectly more than  
2 fifteen percent of the project and with at least thirty-three  
3 percent of the gross power purchase agreement payments flowing to  
4 the qualified owner or owners or local community; or

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

9 (ii) Has a resolution of support adopted;

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

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

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

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

26 (d) Qualified owner means:

27 (i) A Nebraska resident;

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

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

7           (iv) An electric supplier as defined in section  
8 70-1001.01, except that ownership in a single C-BED project is  
9 limited to no more than;

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

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

14           (v) A tribal council.

15           (4) Gross power purchase agreement payments are the  
16 total amount of payments during the life of the agreement. For  
17 power purchase agreements entered into on or before December 31,  
18 2011, if the qualified owners have a combined total of at least  
19 thirty-three percent of the equity ownership in the C-BED project,  
20 gross power purchase agreement payments shall be reduced by the  
21 debt financing payments. For the purpose of determining eligibility  
22 of the project, an estimate of the payments and their recipients  
23 shall be used.

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



1           ~~(6)~~ (4) The Department of Revenue may examine the actual  
2 payments and the distribution of the payments to determine if the  
3 projected distributions were met. If the payment distributions to  
4 qualified owners do not meet the requirements of this section, the  
5 department may recover the amount of the sales or use tax that was  
6 not paid by the project at any time up until the end of three years  
7 after the end of the power purchase agreement.

8           ~~(7)~~ (5) At any time prior to the end of the power  
9 purchase agreements, the project may voluntarily surrender the  
10 exemption granted by the Tax Commissioner and pay the amount of  
11 sales and use tax that would otherwise have been due.

12           ~~(8)~~ (6) The amount of the tax due under either subsection  
13 (4) or (5) ~~(6)~~ ~~or~~ ~~(7)~~ of this section shall be increased by  
14 interest at the rate specified in section 45-104.02, as such rate  
15 may from time to time be adjusted, from the date the tax would have  
16 been due if no exemption was granted until the date paid.

17           Sec. 5. Original sections 70-1904 and 70-1909, Reissue  
18 Revised Statutes of Nebraska, and sections 70-1903 and 77-2704.57,  
19 Revised Statutes Cumulative Supplement, 2012, are repealed.