

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

831Q0138

SENATE BILL NO. 93

Introduced by: Senators Kloucek, Bartling, Bradford, Heidepriem, Maher, Merchant, Miles, Peterson, and Schmidt and Representatives Hunhoff (Bernie), Blake, Burg, Elliott, Engels, Fargen, Feickert, Feinstein, Frerichs, Hamiel, Killer, Kirkeby, Kirschman, Kopp, Lange, Lederman, Lucas, Nygaard, Putnam, Schrempp, Solberg, Street, Thompson, Turbiville, and Wismer

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of rural community-based
2 energy development projects.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "C-BED project" or "Community-based energy development project," a new wind
6 energy project that:

7 (a) Has an ownership structure as follows:

8 (i) For a C-BED project that consists of more than two turbines, has one
9 or more qualified owners with no single individual qualified owner
10 owning directly or indirectly more than sixty-six percent of the project
11 and with at least thirty-three percent of the gross power purchase
12 agreement payments flowing to the qualified owner or owners or local
13 community; or



- 1 (ii) For a C-BED project that consists of one or two turbines, has one or
- 2 more qualified owners with at least thirty-three percent of the gross
- 3 power purchase agreement payments flowing to a qualified owner or
- 4 owners or local community; and
- 5 (b) Has a resolution of support adopted:
 - 6 (i) By the county board of each county in which the C-BED project is to
 - 7 be located; or
 - 8 (ii) By the tribal council for a C-BED project located within the boundaries
 - 9 of an Indian reservation;
- 10 (2) "Department," the Department of Revenue and Regulation;
- 11 (3) "Electric supplier," any legal entity supplying, producing, or distributing electricity
- 12 within the state for sale at wholesale or retail;
- 13 (4) "Electric utility," any retail provider of electricity and its generation supplier;
- 14 (5) "New wind energy project," any tangible personal property incorporated into the
- 15 manufacture, installation, construction, repair, or replacement of a device, such as a
- 16 wind charger, windmill, or wind turbine, that is used to convert wind energy to
- 17 electrical energy or for the transmission of electricity to the purchaser; and
- 18 (6) "Qualified owner," any of the following:
 - 19 (a) A South Dakota resident;
 - 20 (b) A limited liability company that is organized under the Limited Liability
 - 21 Company Act and that is entirely made up of members who are South Dakota
 - 22 residents;
 - 23 (c) A South Dakota nonprofit corporation;
 - 24 (d) An electric supplier, except that ownership in a single C-BED project is

1 limited to no more than:

2 (i) Sixty-six percent either directly or indirectly by a single electric
3 supplier; and

4 (ii) A combined total of sixty-six percent ownership either directly or
5 indirectly by multiple electric suppliers; or

6 (e) A tribal council.

7 Section 2. Sales and use tax may not be imposed on the gross receipts from the sale, lease,
8 or rental of personal property for use in a community-based energy development project. This
9 exemption is conditioned upon filing requirements for the exemption as imposed by the
10 department in rules promulgated pursuant to chapter 1-26. The filing requirements shall be
11 related to ensuring that the property qualifies for the exemption. The rules may require the filing
12 of the documents showing the organization of the project, distribution of payments, power
13 purchase agreements, project pro forma, articles of incorporation, operating agreements, and any
14 amendments or changes to these documents during the life of the power purchase agreement.

15 Section 3. The department shall notify an electric utility that has a power purchase
16 agreement with a C-BED project if there is a change in project ownership that makes the project
17 no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility before
18 the end of the power purchase agreement disqualifies the C-BED project for the exemption
19 authorized in section 2 of this Act, but the department may not recover the amount of the sales
20 and use tax that was not paid by the project before the purchase.

21 Section 4. Power purchase agreement payments are the total amount of payments during the
22 life of the agreement. For the purposes of determining eligibility of the project, an estimate of
23 the payments and their recipients shall be used. Payments to the local community include lease
24 payments to property owners on whose property a turbine is located, wind energy easement

1 payments, and real and personal property tax receipts from the C-BED project. The department
2 may examine the actual payments and the distribution of the payments to determine whether the
3 projected distributions were met. If the payment distributions to qualified owners do not meet
4 the requirements of this section, the department may recover the amount of the sales or use tax
5 that was not paid by the project at any time until three years after the end of the power purchase
6 agreement. At any time before the end of the power purchase agreements, the project may
7 voluntarily surrender the exemption granted by the department and pay the amount of sales and
8 use tax that would have otherwise have been due.

9 Section 5. A C-BED project developer and an electric utility may negotiate in good faith
10 mutually agreeable power purchase agreement terms. A qualified owner or any combination of
11 qualified owners may develop a C-BED project with an equity partner that is not a qualified
12 owner, if not more than sixty-seven percent of the power purchase agreement payments flow
13 to the nonqualified owners. Except for an inherited interest, the transfer of a C-BED project to
14 any person other than a qualified owner is prohibited during the initial ten years of the power
15 purchase agreement. The C-BED project developer shall notify the electric utility that has a
16 power purchase agreement with the C-BED project if there is a change in project ownership that
17 makes the project no longer eligible as a C-BED project.

18 Section 6. An electric utility shall:

- 19 (1) Consider mechanisms to encourage the aggregation of C-BED projects located in the
20 same general geographical area;
- 21 (2) Require any qualified owner to provide sufficient security to assure performance
22 under the power purchase agreement; and
- 23 (3) Annually prepare a statement by March first summarizing its efforts to purchase
24 energy from C-BED projects, including a list of the C-BED projects under a power

1 purchase agreement and the amount of C-BED project energy purchased.

2 Section 7. The governing body of an electric utility that has determined a need to construct
3 new renewable generation facilities shall take reasonable steps to determine whether one or
4 more C-BED projects are available and are technically, economically, and operationally feasible
5 to provide some or all of the identified generation need.

6 Section 8. To the extent feasible, a C-BED project developer shall provide, in writing, an
7 opportunity to become a qualified owner in the C-BED project to each property owner on whose
8 property a turbine will be located.

9 Section 9. Nothing in this Act obligates an electric utility to enter into a power purchase
10 agreement under a C-BED project.

11 Section 10. An electric supplier may agree to limit its exercise of the power of eminent
12 domain to acquire a C-BED project that is a renewable energy generation facility producing
13 electricity with wind and any related facilities if the electric supplier enters into a contract to
14 purchase output from the facility for a term of ten years or more.