

Senate File 2399 - Enrolled

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SENATE FILE 2399

AN ACT

RELATING TO RENEWABLE ENERGY INCLUDING THE RENEWABLE ENERGY
TAX CREDIT AND THE WIND ENERGY PRODUCTION TAX CREDIT AND
INCLUDING EFFECTIVE DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 476B.1, subsection 4, paragraph c, Code Supplement 2005, is amended to read as follows:

c. Was originally placed in service on or after July 1, 2005, but before July 1, ~~2008~~ 2009.

Sec. 2. Section 476B.5, subsection 1, paragraph e, Code Supplement 2005, is amended to read as follows:

e. A copy of an executed power purchase agreement or other agreement to purchase electricity upon completion of the project. An executed interconnection agreement or transmission service agreement shall be accepted by the board under this paragraph if the owner of the facility has agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

Sec. 3. Section 476B.5, subsection 3, Code Supplement 2005, is amended to read as follows:

3. A facility that is not operational within eighteen months after issuance of an approval for the facility by the board shall cease to be a qualified facility. However, a facility that is approved as qualified under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional twelve months to become operational. A facility

that is granted and thereafter loses approval may reapply to the board for a new determination.

Sec. 4. Section 476B.6, subsection 5, Code Supplement 2005, is amended by striking the subsection and inserting in lieu thereof the following:

5. A tax credit certificate may be filed pursuant to any of the following, to the extent applicable:

a. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate shall be issued directly to equity holders or beneficiaries of the applicant in proportion to their pro rata share of the income of such entity. The applicant shall, in the application made under this section, identify its equity holders or beneficiaries, and the percentage of such entity's income that is allocable to each equity holder or beneficiary.

b. If the tax credit applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate may be issued to a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company in the amounts designated by the eligible partnership, S corporation, or limited liability company. In absence of such designation, the credits under this section shall flow through to the partners, shareholders, or members in accordance with their pro rata share of the income of the entity.

The applicant shall, in the application made under this section, identify the holders or beneficiaries that are to receive the tax credit certificates and the percentage of the tax credit that is allocable to each holder or beneficiary.

c. If an applicant under this section is eligible to receive renewable electricity production credits authorized

3 4 under section 45 of the Internal Revenue Code, as amended, and
3 5 the tax credit applicant is a partnership, limited liability
3 6 company, S corporation, estate, trust, or other reporting
3 7 entity all of the income of which is taxed directly to its
3 8 equity holders or beneficiaries, for the taxes imposed under
3 9 chapter 422, division II or III, the tax credit certificates
3 10 and all future rights to the tax credit in this section may be
3 11 distributed to an equity holder or beneficiary as a
3 12 liquidating distribution or portion thereof, of a holder or
3 13 beneficiary's interest in the applicant entity.

3 14 The applicant shall, in the application made under this
3 15 section, designate the percentage of the tax credit allocable
3 16 to the liquidating equity holder or beneficiary that is to
3 17 receive the current and future tax credit certificates under
3 18 this section.

3 19 d. If the tax credit application is filed by a
3 20 partnership, limited liability company, S corporation, estate,
3 21 trust, or other reporting entity, all of whose income is taxed
3 22 directly to its equity holders or beneficiaries for the taxes
3 23 imposed under chapter 422, division V, or under chapter 432,
3 24 the tax credit certificate shall be issued directly to the
3 25 partnership, limited liability company, S corporation, estate,
3 26 trust, or other reporting entity.

3 27 Sec. 5. Section 476C.1, subsection 6, unnumbered paragraph
3 28 1, Code Supplement 2005, is amended to read as follows:

3 29 "Eligible renewable energy facility" means a wind energy
3 30 conversion facility, a biogas recovery facility, a biomass
3 31 conversion facility, a methane gas recovery facility, ~~or a~~
3 32 solar energy conversion facility, or a refuse conversion
3 33 facility that meets all of the following requirements:

3 34 Sec. 6. Section 476C.1, subsection 6, paragraph d, Code
3 35 Supplement 2005, is amended to read as follows:

4 1 d. Was initially placed into service on or after July 1,
4 2 2005, and before January 1, ~~2011~~ 2012.

4 3 Sec. 7. Section 476C.1, subsection 8, Code Supplement
4 4 2005, is amended to read as follows:

4 5 8. "Heat for a commercial purpose" means the heat in
4 6 British thermal unit equivalents from refuse derived fuel,
4 7 methane, or other biogas produced in this state sold to a
4 8 purchaser of renewable energy for use for a commercial purpose
4 9 in this state or for use by an institution in this state.

4 10 Sec. 8. Section 476C.1, Code Supplement 2005, is amended
4 11 by adding the following new subsection:

4 12 NEW SUBSECTION. 12A. "Refuse conversion facility" means a
4 13 facility in this state that converts solid waste into fuel
4 14 that can be burned to generate heat for a commercial purpose
4 15 in this state.

4 16 Sec. 9. Section 476C.3, subsections 2, 3, 4, and 5, Code
4 17 Supplement 2005, are amended to read as follows:

4 18 2. The board shall review the application and supporting
4 19 information and shall make a preliminary determination
4 20 regarding whether the facility is an eligible renewable energy
4 21 facility. The board shall notify the applicant of the
4 22 approval or denial of the application within thirty days of
4 23 receipt of the application and information required. If the
4 24 board fails to notify the applicant of the approval or denial
4 25 within thirty days, the application shall be deemed denied
4 26 unless the application is placed on a waiting list as
4 27 described in subsection 5. An applicant who receives a

4 28 determination denying an application may file an appeal with
4 29 the board within thirty days from the date of the denial
4 30 pursuant to the provisions of chapter 17A. In the absence of
4 31 a timely appeal, the preliminary determination shall be final.
4 32 If the application is incomplete, the board may grant an
4 33 extension of time for the provision of additional information.

4 34 3. A facility that is not operational within ~~eighteen~~
4 35 thirty months after issuance of an approval for the facility

5 1 by the board shall cease to be an eligible renewable energy
5 2 facility. A facility that is granted and thereafter loses
5 3 approval may reapply to the board for a new determination.

5 4 4. The maximum amount of nameplate generating capacity of
5 5 all wind energy conversion facilities the board may find
5 6 eligible under this chapter shall not exceed ~~ninety one~~
5 7 hundred eighty megawatts of nameplate generating capacity.

5 8 The maximum amount of energy production capacity equivalent of
5 9 all other facilities the board may find eligible under this
5 10 chapter shall not exceed a combined output of ~~ten twenty~~
5 11 megawatts of nameplate generating capacity and one hundred
5 12 sixty-seven billion British thermal units of heat for a
5 13 production purpose. Of the maximum amount of energy
5 14 production capacity equivalent of all other facilities found

5 15 eligible under this chapter, fifty-five billion British
5 16 thermal units of heat for a commercial purpose shall be
5 17 reserved for an eligible facility that is a refuse conversion
5 18 facility for processed, engineered fuel from a multicounty
5 19 solid waste management planning area. The maximum amount of
5 20 energy production capacity the board may find eligible for a
5 21 single refuse conversion facility is fifty-five billion
5 22 British thermal units of heat for a commercial purpose.

5 23 5. The board shall maintain a waiting list of facilities
5 24 that may have been found eligible under this section but for
5 25 the maximum capacity restrictions of subsection 4. The
5 26 priority of the waiting list shall be maintained in the order
5 27 the applications were received by the board. The board shall
5 28 remove from the waiting list any facility that has
5 29 subsequently been found ineligible under this chapter. If
5 30 additional capacity becomes available within the capacity
5 31 restrictions of subsection 4, the board shall grant approval
5 32 to facilities according to the priority of the waiting list
5 33 before granting approval to new applications. An owner of a
5 34 facility on the waiting list shall provide the board each year
5 35 by August 31 with a sworn statement of verification stating
6 1 that the information contained in the application for
6 2 eligibility remains true and correct or stating that the
6 3 information has changed and providing the new information.

6 4 5- 6. An owner meeting the requirements of section
6 5 476C.1, subsection 6, paragraph "b", shall not be an owner of
6 6 more than two eligible renewable energy facilities. A person
6 7 that has an equity interest equal to or greater than fifty-one
6 8 percent in an eligible renewable energy facility shall not
6 9 have an equity interest greater than ten percent in any other
6 10 eligible renewable energy facility.

6 11 Sec. 10. Section 476C.4, subsection 4, Code Supplement
6 12 2005, is amended by striking the subsection and inserting in
6 13 lieu thereof the following:

6 14 4. A tax credit certificate may be filed pursuant to any
6 15 of the following, to the extent applicable:

6 16 a. If the tax credit application is filed by a
6 17 partnership, limited liability company, S corporation, estate,
6 18 trust, or other reporting entity all of the income of which is
6 19 taxed directly to its equity holders or beneficiaries, for the
6 20 taxes imposed under chapter 422, division II or III, the tax
6 21 credit certificate shall be issued directly to equity holders
6 22 or beneficiaries of the applicant in proportion to their pro
6 23 rata share of the income of such entity. The applicant shall,
6 24 in the application made under this section, identify its
6 25 equity holders or beneficiaries, and the percentage of such
6 26 entity's income that is allocable to each equity holder or
6 27 beneficiary.

6 28 b. If the tax credit applicant under this section is
6 29 eligible to receive renewable electricity production credits
6 30 authorized under section 45 of the Internal Revenue Code, as
6 31 amended, and the tax credit applicant is a partnership,
6 32 limited liability company, S corporation, estate, trust, or
6 33 other reporting entity all of the income of which is taxed
6 34 directly to its equity holders or beneficiaries, for the taxes
6 35 imposed under chapter 422, division II or III, the tax credit
7 1 certificate may be issued to a partner if the business is a
7 2 partnership, a shareholder if the business is an S
7 3 corporation, or a member if the business is a limited
7 4 liability company in the amounts designated by the eligible
7 5 partnership, S corporation, or limited liability company. In
7 6 absence of such designation, the credits under this section
7 7 shall flow through to the partners, shareholders, or members
7 8 in accordance with their pro rata share of the income of the
7 9 entity.

7 10 The applicant shall, in the application made under this
7 11 section, identify the holders or beneficiaries that are to
7 12 receive the tax credit certificates and the percentage of the
7 13 tax credit that is allocable to each holder or beneficiary.

7 14 c. If an applicant under this section is eligible to
7 15 receive renewable electricity production credits authorized
7 16 under section 45 of the Internal Revenue Code, as amended, and
7 17 the tax credit applicant is a partnership, limited liability
7 18 company, S corporation, estate, trust, or other reporting
7 19 entity all of the income of which is taxed directly to its
7 20 equity holders or beneficiaries, for the taxes imposed under
7 21 chapter 422, division II or III, the tax credit certificates
7 22 and all future rights to the tax credit in this section may be
7 23 distributed to an equity holder or beneficiary as a
7 24 liquidating distribution or portion thereof, of a holder or
7 25 beneficiary's interest in the applicant entity.

7 26 The applicant shall, in the application made under this
7 27 section, designate the percentage of the tax credit allocable
7 28 to the liquidating equity holder or beneficiary that is to
7 29 receive the current and future tax credit certificates under
7 30 this section.

7 31 d. If the tax credit application is filed by a
7 32 partnership, limited liability company, S corporation, estate,
7 33 trust, or other reporting entity, all of whose income is taxed
7 34 directly to its equity holders or beneficiaries for the taxes
7 35 imposed under chapter 422, division V, or under chapter 423,
8 1 432, or 437A, the tax credit certificate shall be issued
8 2 directly to the partnership, limited liability company, S
8 3 corporation, estate, trust, or other reporting entity.

8 4 Sec. 11. Section 476C.5, Code Supplement 2005, is amended
8 5 to read as follows:

8 6 476C.5 CERTIFICATE ISSUANCE PERIOD.

8 7 A producer or purchaser of renewable energy may receive
8 8 renewable energy tax credit certificates for a ten-year period
8 9 for each eligible renewable energy facility under this
8 10 chapter. The ten-year period for issuance of the tax credit
8 11 certificates begins with the date the purchaser of renewable
8 12 energy first purchases electricity, hydrogen fuel, methane gas
8 13 or other biogas used to generate electricity, or heat for
8 14 commercial purposes from the eligible renewable energy
8 15 facility for which a tax credit is issued under this chapter.
8 16 Renewable energy tax credit certificates shall not be issued
8 17 for renewable energy purchased after December 31, ~~2020~~ 2021.

8 18 Sec. 12. EFFECTIVE DATES.

8 19 1. The sections of this Act amending section 476B.6,
8 20 subsection 5, and section 476C.4, subsection 4, being deemed
8 21 of immediate importance, take effect upon enactment.

8 22 2. The section of this Act relating to a proposal for a
8 23 study on the transmission of electricity takes effect July 1,
8 24 2006.

8 25 3. Except as otherwise provided in this section, this Act
8 26 takes effect January 1, 2007.

8 27 Sec. 13. TRANSITION PROVISIONS == APPLICABILITY.

8 28 1. The waiting list described in this Act is the waiting
8 29 list maintained by the Iowa utilities board for applications
8 30 for eligibility received prior to the effective date of this
8 31 Act.

8 32 2. As of the effective date of this Act, the section of
8 33 this Act amending section 476C.3, subsection 6, applies to all
8 34 facilities on the waiting list described by this Act
8 35 regardless of the date a facility applied for eligibility.

9 1 Sec. 14. PROPOSAL FOR TRANSMISSION STUDY. The utilities
9 2 board shall submit to the government oversight committee by
9 3 January 1, 2007, a proposal to conduct a study on the
9 4 transmission of electricity in Iowa. The proposal shall
9 5 include a description of the content to be studied which shall
9 6 include examining the reliability and limitations of the
9 7 primary grid system and the development of additional small
9 8 wind projects in all regions of the state. The content to be
9 9 studied shall also include issues related to the security of
9 10 Iowa's energy supply in the event of a national or local
9 11 emergency affecting the primary grid system. The proposal
9 12 shall include a description of the estimated time needed to
9 13 complete the study, an estimate of the cost to complete the
9 14 study, and any other information the board deems necessary.

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9 18 _____
9 19 JEFFREY M. LAMBERTI
9 20 President of the Senate

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9 22 _____
9 23 CHRISTOPHER C. RANTS
9 24 Speaker of the House
9 25

9 26 I hereby certify that this bill originated in the Senate and
9 27 is known as Senate File 2399, Eighty-first General Assembly.

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9 30 _____
9 31 MICHAEL E. MARSHALL
9 32 Secretary of the Senate

9 33 Approved _____, 2006

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10 2 THOMAS J. VILSACK
10 3 Governor