

Senate File 390 - Enrolled

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SENATE FILE 390

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1 2
1 3 AN ACT
1 4 RELATING TO THE GENERATION AND PURCHASE OF RENEWABLE ENERGY
1 5 INCLUDING ESTABLISHING A RENEWABLE ENERGY TAX CREDIT
1 6 PROGRAM ADMINISTERED BY THE UTILITIES DIVISION OF THE
1 7 DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF REVENUE, AND
1 8 PROVIDING AN EFFECTIVE DATE.
1 9
1 10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 11
1 12 Section 1. Section 422.11J, Code 2005, is amended to read
1 13 as follows:
1 14 ~~422.11J WIND ENERGY PRODUCTION TAX CREDIT CREDITS FOR WIND~~
1 15 ~~ENERGY PRODUCTION AND RENEWABLE ENERGY.~~
1 16 The taxes imposed under this division, less the credits
1 17 allowed under sections 422.12 and 422.12B, shall be reduced by
1 18 ~~a wind energy production tax credit credits for wind energy~~
1 19 ~~production~~ allowed under chapter 476B ~~and for renewable energy~~
1 20 ~~allowed under chapter 476C.~~
1 21 Sec. 2. Section 422.33, subsection 16, Code 2005, is
1 22 amended to read as follows:
1 23 16. The taxes imposed under this division shall be reduced
1 24 ~~by a wind energy production tax credit credits for wind energy~~
1 25 ~~production~~ allowed under chapter 476B ~~and for renewable energy~~
1 26 ~~allowed under chapter 476C.~~
1 27 Sec. 3. Section 422.60, subsection 8, Code 2005, is
1 28 amended to read as follows:
1 29 8. The taxes imposed under this division shall be reduced
1 30 ~~by a wind energy production tax credit credits for wind energy~~
1 31 ~~production~~ allowed under chapter 476B ~~and for renewable energy~~
1 32 ~~allowed under chapter 476C.~~
1 33 Sec. 4. Section 423.4, Code 2005, is amended by adding the
1 34 following new subsection:
1 35 NEW SUBSECTION. 4. A person in possession of a renewable
2 1 energy tax credit certificate issued pursuant to chapter 476C
2 2 may apply to the director for refund of the amount of sales or
2 3 use tax imposed and paid upon purchases made by the applicant.
2 4 a. The refunds may be obtained only in the following
2 5 manner and under the following conditions:
2 6 (1) On forms furnished by the department and filed by
2 7 January 31 after the end of the calendar year in which the tax
2 8 credit certificate is to be applied, the applicant shall
2 9 report to the department the total amount of sales and use tax
2 10 paid during the reporting period on purchases made by the
2 11 applicant.
2 12 (2) The applicant shall separately list the amounts of
2 13 sales and use tax paid during the reporting period.
2 14 (3) If required by the department, the applicant shall
2 15 prove that the person making the sales has included the amount
2 16 thereof in the computation of the sales price of such person
2 17 and that such person has paid the tax levied by this
2 18 subchapter or subchapter III, based upon such computation of
2 19 the sales price.
2 20 (4) The applicant shall provide the tax credit
2 21 certificates issued pursuant to chapter 476C to the department
2 22 with the forms required by this paragraph "a".
2 23 b. If satisfied that the foregoing conditions and
2 24 requirements have been complied with, the director shall
2 25 refund the amount claimed by the applicant for an amount not
2 26 greater than the amount of tax credits issued in tax credit
2 27 certificates pursuant to chapter 476C.
2 28 Sec. 5. Section 432.12E, Code 2005, is amended to read as
2 29 follows:
2 30 ~~432.12E WIND ENERGY PRODUCTION TAX CREDIT CREDITS FOR WIND~~
2 31 ~~ENERGY PRODUCTION AND RENEWABLE ENERGY.~~
2 32 The taxes imposed under this chapter shall be reduced by ~~a~~
2 33 ~~wind energy production tax credit credits for wind energy~~
2 34 ~~production~~ allowed under chapter 476B ~~and for renewable energy~~
2 35 ~~allowed under chapter 476C.~~
3 1 Sec. 6. NEW SECTION. 437A.17B REIMBURSEMENT FOR
3 2 RENEWABLE ENERGY.
3 3 A person in possession of a renewable energy tax credit
3 4 certificate issued pursuant to chapter 476C may apply to the
3 5 director for a reimbursement of the amount of taxes imposed

3 6 and paid by the person pursuant to this chapter in an amount
3 7 not more than the person received in renewable energy tax
3 8 credit certificates pursuant to chapter 476C. To obtain the
3 9 reimbursement, the person shall attach to the return required
3 10 under section 437A.8 the renewable energy tax credit
3 11 certificates issued to the person pursuant to chapter 476C,
3 12 and provide any other information the director may require.
3 13 The director shall direct a warrant to be issued to the person
3 14 for an amount equal to the tax imposed and paid by the person
3 15 pursuant to this chapter but for not more than the amount of
3 16 the renewable energy tax credit certificates attached to the
3 17 return.

3 18 Sec. 7. NEW SECTION. 476C.1 DEFINITIONS.

3 19 For purposes of this chapter, unless the context otherwise
3 20 requires:

3 21 1. "Anaerobic digester system" means a system of
3 22 components that processes plant or animal materials based on
3 23 the absence of oxygen and produces methane or other biogas
3 24 used to generate electricity, hydrogen fuel, or heat for a
3 25 commercial purpose.

3 26 2. "Biogas recovery facility" means an anaerobic digester
3 27 system that is located in this state.

3 28 3. "Biomass conversion facility" means a facility in this
3 29 state that converts plant-derived organic matter including,
3 30 but not limited to, agricultural food and feed crops, crop
3 31 wastes and residues, wood wastes and residues, or aquatic
3 32 plants to generate electricity, hydrogen fuel, or heat for a
3 33 commercial purpose.

3 34 4. "Board" means the utilities board within the utilities
3 35 division of the department of commerce.

4 1 5. "Department" means the department of revenue.

4 2 6. "Eligible renewable energy facility" means a wind
4 3 energy conversion facility, a biogas recovery facility, a
4 4 biomass conversion facility, a methane gas recovery facility,
4 5 or a solar energy conversion facility that meets all of the
4 6 following requirements:

4 7 a. Is located in this state.

4 8 b. Is at least fifty-one percent owned by one or more of
4 9 any combination of the following:

4 10 (1) A resident of this state.

4 11 (2) Any of the following as defined in section 9H.1:

4 12 (a) An authorized farm corporation.

4 13 (b) An authorized limited liability company.

4 14 (c) An authorized trust.

4 15 (d) A family farm corporation.

4 16 (e) A family farm limited liability company.

4 17 (f) A family trust.

4 18 (g) A revocable trust.

4 19 (h) A testamentary trust.

4 20 (3) A small business as defined in section 15.102.

4 21 (4) An electric cooperative association organized pursuant
4 22 to chapter 499 that sells electricity to end users located in
4 23 this state.

4 24 (5) An electric cooperative association that has one or
4 25 more members organized pursuant to chapter 499.

4 26 (6) A cooperative corporation organized pursuant to
4 27 chapter 497 or a limited liability corporation organized
4 28 pursuant to chapter 490A whose shares and membership are held
4 29 by an entity that is not prohibited from owning agricultural
4 30 land under chapter 9H.

4 31 (7) A school district located in this state.

4 32 c. Has at least one owner that meets the requirements of
4 33 paragraph "b" for each two and one-half megawatts of nameplate
4 34 generating capacity or the energy production capacity
4 35 equivalent for hydrogen fuel or heat for a commercial purpose
5 1 of the otherwise eligible renewable energy facility.

5 2 d. Was initially placed into service on or after July 1,
5 3 2005, and before January 1, 2011.

5 4 7. "Energy production capacity equivalent" means the
5 5 amount of energy in a standard cubic foot of hydrogen gas or
5 6 the number of British thermal units that are equal to the
5 7 energy in a kilowatt-hour of electricity. For the purposes of
5 8 this chapter, one kilowatt-hour shall be deemed equivalent to
5 9 three thousand three hundred thirty-three British thermal
5 10 units of heat or ten and forty-five one hundredths of standard
5 11 cubic feet of hydrogen gas.

5 12 8. "Heat for a commercial purpose" means the heat in
5 13 British thermal unit equivalents from methane or other biogas
5 14 produced in this state sold to a purchaser of renewable energy
5 15 for use for a commercial purpose.

5 16 9. "Hydrogen fuel" means hydrogen produced in this state

5 17 from a renewable source that is used in a fuel cell or
5 18 hydrogen-powered internal combustion engine.
5 19 10. "Methane gas recovery facility" means a facility in
5 20 this state which is used in connection with a sanitary
5 21 landfill or which uses wastes that would otherwise be
5 22 deposited in a sanitary landfill, that collects methane gas or
5 23 other gases and converts the gas into energy to generate
5 24 electricity, hydrogen fuel, or heat for a commercial purpose.
5 25 11. "Producer of renewable energy" means a person who owns
5 26 an eligible renewable energy facility.
5 27 12. "Purchaser of renewable energy" means a person who
5 28 buys electric energy, hydrogen fuel, methane gas or other
5 29 biogas used to generate electricity, or heat for a commercial
5 30 purpose from an eligible renewable energy facility.
5 31 13. "Solar energy conversion facility" means a solar
5 32 energy facility in this state that collects and converts
5 33 incident solar radiation into energy to generate electricity.
5 34 14. "Wind energy conversion facility" means a wind energy
5 35 conversion system in this state that collects and converts
6 1 wind into energy to generate electricity.

6 2 Sec. 8. NEW SECTION. 476C.2 TAX CREDIT AMOUNT ==
6 3 LIMITATIONS.

6 4 1. A producer or purchaser of renewable energy may receive
6 5 renewable energy tax credits under this chapter in an amount
6 6 equal to one and one-half cents per kilowatt-hour of
6 7 electricity, or four dollars and fifty cents per million
6 8 British thermal units of heat for a commercial purpose, or
6 9 four dollars and fifty cents per million British thermal units
6 10 of methane gas or other biogas used to generate electricity,
6 11 or one dollar and forty-four cents per one thousand standard
6 12 cubic feet of hydrogen fuel generated by and purchased from an
6 13 eligible renewable energy facility.

6 14 2. The renewable energy tax credit shall not be allowed
6 15 for any kilowatt-hour of electricity, British thermal unit of
6 16 heat for a commercial purpose, British thermal unit of methane
6 17 gas or other biogas used to generate electricity, or standard
6 18 cubic foot of hydrogen fuel that is purchased from an eligible
6 19 renewable energy facility by a related person. For purposes
6 20 of this subsection, persons shall be treated as related to
6 21 each other if either person owns an eighty percent or more
6 22 equity interest in the other person.

6 23 Sec. 9. NEW SECTION. 476C.3 DETERMINATION OF
6 24 ELIGIBILITY.

6 25 1. A producer or purchaser of renewable energy may apply
6 26 to the board for a written determination regarding whether a
6 27 facility is an eligible renewable energy facility by
6 28 submitting to the board a written application containing all
6 29 of the following:

6 30 a. Information regarding the ownership of the facility
6 31 including the percentage of equity interest held by each
6 32 owner.

6 33 b. The nameplate generating capacity of the facility or
6 34 energy production capacity equivalent.

6 35 c. Information regarding the facility's initial placement
7 1 in service.

7 2 d. Information regarding the type of facility and what
7 3 type of renewable energy the facility will produce.

7 4 e. A copy of the power purchase agreement or other
7 5 agreement to purchase electricity, hydrogen fuel, methane or
7 6 other biogas, or heat for a commercial purpose which shall
7 7 designate either the producer or purchaser of renewable energy
7 8 as eligible to apply for the renewable energy tax credit.

7 9 f. Any other information the board may require.

7 10 2. The board shall review the application and supporting
7 11 information and shall make a preliminary determination
7 12 regarding whether the facility is an eligible renewable energy
7 13 facility. The board shall notify the applicant of the
7 14 approval or denial of the application within thirty days of
7 15 receipt of the application and information required. If the
7 16 board fails to notify the applicant of the approval or denial
7 17 within thirty days, the application shall be deemed denied.
7 18 An applicant who receives a determination denying an
7 19 application may file an appeal with the board within thirty
7 20 days from the date of the denial pursuant to the provisions of
7 21 chapter 17A. In the absence of a timely appeal, the
7 22 preliminary determination shall be final. If the application
7 23 is incomplete, the board may grant an extension of time for
7 24 the provision of additional information.

7 25 3. A facility that is not operational within eighteen
7 26 months after issuance of an approval for the facility by the
7 27 board shall cease to be an eligible renewable energy facility.

7 28 A facility that is granted and thereafter loses approval may
7 29 reapply to the board for a new determination.

7 30 4. The maximum amount of nameplate generating capacity of
7 31 all wind energy conversion facilities the board may find
7 32 eligible under this chapter shall not exceed ninety megawatts
7 33 of nameplate generating capacity. The maximum amount of
7 34 energy production capacity equivalent of all other facilities
7 35 the board may find eligible under this chapter shall not
8 1 exceed a combined output of ten megawatts of nameplate
8 2 generating capacity.

8 3 5. An owner meeting the requirements of section 476C.1,
8 4 subsection 6, paragraph "b" shall not be an owner of more than
8 5 two eligible renewable energy facilities.

8 6 Sec. 10. NEW SECTION. 476C.4 TAX CREDIT CERTIFICATE
8 7 PROCEDURE.

8 8 1. A producer or purchaser of renewable energy may apply
8 9 to the board for the renewable energy tax credit by submitting
8 10 to the board all of the following:

8 11 a. A completed application in a form prescribed by the
8 12 board.

8 13 b. A copy of the determination granting approval of the
8 14 facility as an eligible renewable energy facility by the
8 15 board.

8 16 c. A copy of a signed power purchase agreement or other
8 17 agreement to purchase electricity, hydrogen fuel, methane or
8 18 other biogas, or heat for a commercial purpose from an
8 19 eligible renewable energy facility which shall designate
8 20 either the producer or purchaser of renewable energy as
8 21 eligible to apply for the renewable energy tax credit.

8 22 d. Sufficient documentation that the electricity, heat for
8 23 a commercial purpose, methane gas or other biogas, or hydrogen
8 24 fuel has been generated by the eligible renewable energy
8 25 facility and sold to the purchaser of renewable energy.

8 26 e. Any other information the board deems necessary.

8 27 2. The board shall notify the department of the amount of
8 28 kilowatt=hours, British thermal units of heat for a commercial
8 29 purpose, British thermal units of methane gas or other biogas
8 30 used to generate electricity, or standard cubic feet of
8 31 hydrogen fuel generated and purchased from an eligible
8 32 renewable energy facility. The department shall calculate the
8 33 amount of the tax credit for which the applicant is eligible
8 34 and shall issue the tax credit certificate for that amount or
8 35 notify the applicant in writing of its refusal to do so. An
9 1 applicant whose application is denied may file an appeal with
9 2 the department within sixty days from the date of the denial
9 3 pursuant to the provisions of chapter 17A.

9 4 3. Each tax credit certificate shall contain the person's
9 5 name, address, and tax identification number, the amount of
9 6 tax credits, the first taxable year the certificate may be
9 7 used, the type of tax to which the tax credits shall be
9 8 applied, and any other information required by the department.
9 9 The tax credit certificate shall only list one type of tax to
9 10 which the amount of the tax credit may be applied. Once
9 11 issued by the department, the tax credit certificate shall not
9 12 be terminated or rescinded.

9 13 4. If the tax credit application is filed by a
9 14 partnership, limited liability company, S corporation, estate,
9 15 trust, or other reporting entity all of the income of which is
9 16 taxed directly to its equity holders or beneficiaries, for the
9 17 taxes imposed under chapter 422, division II or III, the tax
9 18 credit certificate shall be issued directly to equity holders
9 19 or beneficiaries of the applicant in proportion to their pro
9 20 rata share of the income of such entity. The applicant shall,
9 21 in the application made under this section, identify its
9 22 equity holders or beneficiaries, and the percentage of such
9 23 entity's income that is allocable to each equity holder or
9 24 beneficiary. If the tax credit application is filed by a
9 25 partnership, limited liability company, S corporation, estate,
9 26 trust, or other reporting entity, all of whose income is taxed
9 27 directly to its equity holders or beneficiaries for the taxes
9 28 imposed under chapter 422, division V, or under chapter 423,
9 29 432, or 437A, the tax credit certificate shall be issued
9 30 directly to the partnership, limited liability company, S
9 31 corporation, estate, trust, or other reporting entity.

9 32 5. The department shall not issue a tax credit certificate
9 33 if the facility approved by the board as an eligible renewable
9 34 energy facility is not operational within eighteen months
9 35 after the approval is issued.

10 1 6. The department shall not issue a tax credit certificate
10 2 to any person who has received a tax credit pursuant to
10 3 chapter 476B.

10 4 7. Once a tax credit certificate is issued pursuant to
10 5 this section, the tax credit may only be claimed against the
10 6 type of tax reflected on the certificate.

10 7 Sec. 11. NEW SECTION. 476C.5 CERTIFICATE ISSUANCE
10 8 PERIOD.

10 9 A producer or purchaser of renewable energy may receive
10 10 renewable energy tax credit certificates for a ten-year period
10 11 for each eligible renewable energy facility under this
10 12 chapter. The ten-year period for issuance of the tax credit
10 13 certificates begins with the date the purchaser of renewable
10 14 energy first purchases electricity, hydrogen fuel, methane gas
10 15 or other biogas used to generate electricity, or heat for
10 16 commercial purposes from the eligible renewable energy
10 17 facility for which a tax credit is issued under this chapter.
10 18 Renewable energy tax credit certificates shall not be issued
10 19 for renewable energy purchased after December 31, 2020.

10 20 Sec. 12. NEW SECTION. 476C.6 TRANSFERABILITY AND USE OF
10 21 TAX CREDIT CERTIFICATES == REGISTRATION.

10 22 1. Renewable energy tax credit certificates issued under
10 23 this chapter may be transferred to any person. A tax credit
10 24 certificate shall only be transferred once. However, for
10 25 purposes of this transfer provision, a decision between a
10 26 producer and purchaser of renewable energy regarding who
10 27 claims the tax credit issued pursuant to this chapter shall
10 28 not be considered a transfer and must be set forth in the
10 29 application for the tax credit pursuant to section 476C.4.
10 30 Within thirty days of transfer, the transferee must submit the
10 31 transferred tax credit certificate to the department along
10 32 with a statement containing the transferee's name, tax
10 33 identification number, and address, and the denomination that
10 34 each new certificate is to carry and any other information
10 35 required by the department. Within thirty days of receiving
11 1 the transferred tax credit certificate and the transferee's
11 2 statement, the department shall issue one or more replacement
11 3 tax credit certificates to the transferee. Each replacement
11 4 tax credit certificate must contain the information required
11 5 under section 476C.4, subsection 3, and must have the same
11 6 effective taxable year and the same expiration date that
11 7 appeared in the transferred tax credit certificate. Tax
11 8 credit certificate amounts of less than the minimum amount
11 9 established by rule shall not be transferable. A tax credit
11 10 shall not be claimed by a transferee under this chapter until
11 11 a replacement tax credit certificate identifying the
11 12 transferee as the proper holder has been issued. The
11 13 replacement tax credit certificate may reflect a different
11 14 type of tax than the type of tax noted on the original tax
11 15 credit certificate.

11 16 The transferee may use the amount of the tax credit
11 17 transferred against taxes imposed under chapter 422, divisions
11 18 II, III, and V, and chapter 432 for any tax year the original
11 19 transferor could have claimed the tax credit. The transferee
11 20 may claim a refund under chapter 423 or 437A for any tax year
11 21 within the time period set forth in section 423.47 or 437A.14
11 22 for which the original transferor could have claimed the
11 23 refund. Any consideration received for the transfer of the
11 24 tax credit shall not be included as income under chapter 422,
11 25 divisions II, III, and V. Any consideration paid for the
11 26 transfer of the tax credit shall not be deducted from income
11 27 under chapter 422, divisions II, III, and V.

11 28 2. To claim a renewable energy tax credit under this
11 29 chapter, a taxpayer must attach one or more tax credit
11 30 certificates to the taxpayer's tax return, or if used against
11 31 taxes imposed under chapter 423, the taxpayer shall comply
11 32 with section 423.4, subsection 4, or if used against taxes
11 33 imposed under chapter 437A, the taxpayer shall comply with
11 34 section 437A.17B. A tax credit certificate shall not be used
11 35 or attached to a return filed for a taxable year beginning
12 1 prior to July 1, 2006. The tax credit certificate or
12 2 certificates attached to the taxpayer's tax return shall be
12 3 issued in the taxpayer's name, expire on or after the last day
12 4 of the taxable year for which the taxpayer is claiming the tax
12 5 credit, and show a tax credit amount equal to or greater than
12 6 the tax credit claimed on the taxpayer's tax return. Any tax
12 7 credit in excess of the taxpayer's tax liability for the
12 8 taxable year may be credited to the taxpayer's tax liability
12 9 for the following seven tax years or until the credit is
12 10 depleted, whichever is earlier. If the tax credit is applied
12 11 against the taxes imposed under chapter 423 or 437A, any
12 12 credit in excess of the taxpayer's tax liability is carried
12 13 over and can be filed with the refund claim for the following
12 14 seven tax years or until depleted, whichever is earlier.

12 15 However, the certificate shall not be used to reduce tax
12 16 liability for a tax period ending after the expiration date of
12 17 the certificate.

12 18 3. The department shall develop a system for the
12 19 registration of the renewable energy tax credit certificates
12 20 issued or transferred under this chapter and a system that
12 21 permits verification that any tax credit claimed on a tax
12 22 return is valid and that transfers of the tax credit
12 23 certificates are made in accordance with the requirements of
12 24 this chapter. The tax credit certificates issued under this
12 25 chapter shall not be classified as a security pursuant to
12 26 chapter 502.

12 27 Sec. 13. NEW SECTION. 476C.7 RULES.

12 28 The department and the board may adopt rules pursuant to
12 29 chapter 17A for the administration and enforcement of this
12 30 chapter.

12 31 Sec. 14. EFFECTIVE DATE. This Act, being deemed of
12 32 immediate importance, takes effect upon enactment.

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12 35

13 1 _____
13 2 JOHN P. KIBBIE
13 3 President of the Senate

13 4
13 5 _____
13 6 CHRISTOPHER C. RANTS
13 7 Speaker of the House

13 8
13 9 I hereby certify that this bill originated in the Senate and
13 10 is known as Senate File 390, Eighty-first General Assembly.

13 11
13 12
13 13 _____
13 14 MICHAEL E. MARSHALL
13 15 Secretary of the Senate

13 16 Approved _____, 2005

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13 19 _____
13 20 THOMAS J. VILSACK
13 21 Governor