

FILED FEB 14 1996

SENATE FILE 2188

BY LUNDBY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to alternate energy production and purchase,
2 requiring the purchase of eighty-nine megawatts of alternate
3 energy, requiring consideration of a reimbursement mechanism
4 for good faith investment, appropriating moneys from the
5 general fund of the state, and requiring the use of an
6 alternate energy promotional rate.

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

S.F. 2188

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1 Section 1. Section 476.1A, Code 1995, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 7. Purchase of electricity from alternate
4 energy production facilities as required in sections 476.41
5 through 476.45.

6 Sec. 2. Section 476.1A, unnumbered paragraph 3, Code 1995,
7 is amended to read as follows:

8 However, sections 476.20, 476.21, ~~476.41 through 476.44,~~
9 476.51, 476.56, 476.62, and 476.66 and chapters 476A and 478,
10 to the extent applicable, apply to such electric utilities.

11 Sec. 3. Section 476.1B, subsection 1, paragraph g, Code
12 1995, is amended by striking the paragraph and inserting in
13 lieu thereof the following:

14 g. Purchase of electricity from alternate energy
15 production as required in sections 476.41 through 476.45.

16 Sec. 4. Section 476.6, Code 1995, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 22. ALTERNATE ENERGY PROMOTIONAL RATES.
19 The board shall require that electric utilities offer to their
20 customers the opportunity to pay, on a voluntary basis, an
21 alternate energy promotional rate. This rate shall exceed the
22 rate for electricity otherwise payable and shall be designed
23 and encouraged by the electric utility to maximize voluntary
24 financial support for alternate energy production. The
25 alternate energy promotional rate shall be filed as a tariff
26 with the board pursuant to section 476.4. Retaining only
27 amounts approved by the board for its administrative and
28 marketing costs, the electric utility shall remit that portion
29 of the electric rate attributable to the alternate energy
30 promotional rate to the department of revenue and finance in
31 the same manner as sales tax is remitted under chapter 422.

32 Sec. 5. Section 476.41, Code 1995, is amended to read as
33 follows:

34 476.41 PURPOSE.

35 It is the policy of this state to encourage the development

1 of cost-effective alternate energy production facilities and
2 small hydro facilities ~~in-order-to-serve-our-finite-and~~
3 ~~expensive-energy-resources-and-to-provide-for-their-most~~
4 ~~efficient-use.~~

5 Sec. 6. Section 476.42, subsection 1, Code 1995, is
6 amended to read as follows:

7 1. "Alternate energy production facility" means any or all
8 of the following:

9 a. A solar, wind turbine, ~~waste-management,~~ resource,
10 methane recovery, ~~refuse-derived-fuel,~~ or agricultural crops
11 or residues, ~~or-woodburning~~ facility. Alternate energy
12 production facility includes a small hydro facility as defined
13 in subsection 4.

14 b. Land, systems, buildings, or improvements that are
15 located at the project site and are necessary or convenient to
16 the construction, completion, or operation of the facility.

17 c. Transmission or distribution facilities necessary to
18 conduct the energy produced by the facility to ~~users-located~~
19 ~~at-or-near-the-project-site~~ the electric utility purchasing
20 the electricity.

21 A facility which is a qualifying facility under 18 C.F.R.
22 part 292, subpart B is not precluded from being an alternate
23 energy production facility under this division. A facility
24 which is owned by an electric utility is considered to be an
25 alternate energy production facility for purposes of this
26 division.

27 Sec. 7. Section 476.42, subsection 3, Code 1995, is
28 amended by striking the subsection.

29 Sec. 8. Section 476.42, subsection 4, Code 1995, is
30 amended to read as follows:

31 4. "Small hydro facility" means any or all of the
32 following:

33 a. A hydroelectric facility at a dam, located within this
34 state.

35 b. Land, systems, buildings, or improvements that are

1 located at the project site and are necessary or convenient to
2 the construction, completion, or operation of the facility.

3 c. Transmission or distribution facilities necessary to
4 conduct the energy produced by the facility to ~~users-located~~
5 ~~at-or-near-the-project-site~~ the electric utility purchasing
6 the electricity.

7 A facility which is a qualifying facility under 18 C.F.R.
8 part 292, subpart B is not precluded from being a small hydro
9 facility under this division. A facility which is owned by an
10 electric utility is considered to be a small hydro facility
11 for purposes of this division.

12 Sec. 9. Section 476.43, Code 1995, is amended by striking
13 the section and inserting in lieu thereof the following:

14 476.43 ALTERNATE ENERGY PURCHASE REQUIREMENTS.

15 1. PURCHASE REQUIREMENT. The board shall require an
16 electric utility, within the state, to enter into contracts
17 for the purchase of the utility's allotted portion of eighty-
18 nine megawatts of electricity generated from alternate energy
19 production facilities located in the utility's service area
20 and subject to the terms and conditions established by the
21 board pursuant to this section.

22 2. ALLOCATION. By August 31, 1996, the board shall
23 allocate among the classes of alternate energy production
24 facilities, the amount of electricity to be purchased from
25 that class of facility. The board's action shall result in an
26 allotment of electricity purchases assigned each class of
27 alternate energy. Alternate energy classes include wind,
28 methane recovery, agricultural crops or residue recovery, and
29 hydro generated electricity.

30 3. COMPETITIVE BIDDING. Within each class of alternate
31 energy production facility, the board shall require
32 competitive bidding to be conducted by electric utilities for
33 the purchase of electricity assigned that class.

34 The board shall establish the required specifications for a
35 qualifying bid, and a schedule for the conduct of all rounds

1 of competitive bidding, including a detailed timeline for
2 facility construction and energy delivery, and any other
3 contract terms the board deems necessary and commercially
4 reasonable. In the conduct of competitive bidding, the board
5 shall require compliance with all applicable provisions of the
6 competitive bidding procedures of the department of general
7 services printing division as stated in 401 IAC ch. 5. The
8 first round of competitive bidding shall be completed not
9 later than December 31, 1996, and the last shall be completed
10 not later than December 31, 1997. If the first round of
11 competitive bidding is not fully successful in fulfilling the
12 allotments as specified by the board, the board shall require
13 the repeat of competitive bidding as necessary to fulfill the
14 allotments. Upon the completion of each round, the board
15 shall designate as successful the lowest responsible bid or
16 bids that meet all bidding specifications. The successful
17 proposals shall not exceed in the aggregate the amount of
18 electricity purchase supported by that portion of the
19 appropriation under section 476.44 which corresponds to the
20 allocation assigned to that particular class of facility. The
21 determination made by the board shall not be considered an
22 administrative rule within the meaning of the Iowa
23 administrative procedures Act.

24 4. PURCHASES. Upon designation of a successful proposal,
25 the board shall require the successful bidder and the electric
26 utility in whose service area the facility is to be located to
27 enter into a contract for the purchase of electricity from
28 that alternate energy production facility in the amount
29 specified by the board. The contract shall be executed within
30 ninety days after designation of the successful bidder. Any
31 item in dispute shall be submitted to the board for
32 resolution. The contract shall require the electric utility
33 to pay to the facility during the contract term the utility's
34 incremental cost of electricity as certified not later than
35 the bidding deadline by the board. For purposes of this

1 section, "incremental cost" means the cost to the electric
2 utility of the electricity which, but for the purchase from
3 the alternate energy production facility, the electric utility
4 would have generated or purchased from another source. The
5 board shall pay to the facility the balance of the purchase
6 price designated in the facility's successful bid.

7 5. PRIVATE CONTRACTS. Notwithstanding other provisions of
8 this section to the contrary, an electric utility and an
9 alternate energy production facility may enter into a long-
10 term contract and may agree to rates for purchase and sale
11 transactions. A contract entered into under this subsection
12 must be filed with the board in the manner provided for
13 tariffs under section 476.4.

14 6. ADDITIONAL FACILITIES AND BACKUP POWER. This section
15 does not require an electric utility to construct additional
16 facilities unless those facilities are paid for by the owner
17 or operator of the affected alternate energy production
18 facility. The electric utility shall provide for the
19 availability of supplemental or backup power to alternate
20 energy production facilities on a nondiscriminatory basis and
21 at just and reasonable rates.

22 Sec. 10. Section 476.44, Code 1995, is amended by striking
23 the subsection and inserting in lieu thereof the following:

24 476.44 ANNUAL APPROPRIATION.

25 There is appropriated from the general fund of the state to
26 the Iowa utilities board for the fiscal year beginning July 1,
27 1996, and for each subsequent fiscal year, the sum of ten
28 million dollars for payment to alternate energy production
29 facilities as provided in section 476.43.

30 Sec. 11. GOOD FAITH INVESTMENT -- REIMBURSEMENT MECHANISM.

31 It is the intent of the general assembly that persons who have
32 proceeded in good faith under the terms and conditions of
33 sections 476.43 and 476.44, Code 1995, prior to their
34 amendment in this Act, and who choose not to submit
35 competitive bids pursuant to section 476.43, not suffer

1 economic loss as a result of this Act. The Iowa utilities
2 board shall recommend a mechanism for reimbursement from the
3 general fund of the state for those reasonable good faith
4 development costs by those persons deemed by the board to have
5 been incurred in good faith. This recommendation shall be
6 made to the general assembly by December 31, 1996.

7 Sec. 12. EXISTING CONTRACTS. Notwithstanding the
8 amendments to section 476.43 and 476.44, as contained in this
9 Act, nothing in this Act shall be construed to modify the
10 terms of any contract entered into prior to December 31, 1995,
11 between an electric utility and an alternate energy production
12 facility or small hydro facility. The Iowa utilities board
13 shall continue to allow the recovery of costs incurred, until
14 the termination of such contracts.

15 EXPLANATION

16 This bill makes several changes to the existing alternate
17 energy production purchasing requirements. Currently, certain
18 rate-regulated electric utilities are required to purchase the
19 utilities' share of 105 megawatts of electricity generated
20 from alternate energy production facilities. In addition, the
21 utilities are required to enter into long-term contracts at a
22 rate set by the board. This rate has been determined by rule
23 to be 6.02 cents per kilowatt hour.

24 The bill amends sections 476.1A and 476.1B to require that
25 all electric utilities, including municipal utilities and
26 electric cooperative associations, are required to purchase
27 allotted shares of alternate energy. The bill amends section
28 476.42 to provide that the definition of alternate energy
29 production facility includes small hydro facilities and to
30 strike solar, waste management, refuse-derived fuel, and wood-
31 burning facilities from the definition of alternate energy
32 production facility. The bill also amends a provision that
33 includes within the definition of alternate energy production
34 facility and small hydro facility the transmission or
35 distribution facilities necessary to conduct the energy

1 produced by the facility to the users located at or near the
2 project site and instead includes the transmission or
3 distribution facilities necessary to conduct energy to the
4 electric utility purchasing the electricity. The definition
5 of alternate energy production facility and small hydro
6 facility is amended to include a facility owned by an electric
7 utility, thus allowing an electric utility to fulfill the
8 utility's purchase requirement with alternate energy produced
9 by the utility. The bill amends the definition of small hydro
10 facility by limiting it to facilities located at dams within
11 the state. The bill strikes section 476.42, subsection 3,
12 which defines the term "next generating plant".

13 The bill requires that electric utilities offer their
14 customers the opportunity to pay, on a voluntary basis, an
15 alternate energy promotional rate. The alternate energy
16 promotional rate is in addition to the electric rate otherwise
17 payable, and is to encourage voluntary financial support for
18 alternate energy production. An electric utility is required
19 to file the alternate energy promotional rate as a tariff, may
20 retain only those amounts approved by the board for its
21 administrative and marketing costs, and must remit that
22 portion attributable to the alternate energy promotional rate
23 to the department of revenue and finance in the same manner as
24 sales tax is remitted under chapter 422.

25 This bill amends the policy of the state in section 476.41
26 relating to alternate energy development by inserting the term
27 "cost-effective" so that the state is encouraging the
28 development of cost-effective alternate energy production
29 facilities and small hydro facilities and by striking out a
30 provision stating that alternate energy production is
31 encouraged in order to conserve our finite and expensive
32 energy resources and to provide for their most efficient use.

33 The bill strikes current section 476.43 which requires that
34 the board set rates for purchase of alternate energy and
35 replaces it with the following:

1 1. Purchase Requirement. The bill requires an electric
2 utility to enter into contracts for the purchase of
3 electricity from alternate energy production facilities
4 located in the utility's service area as required by the Iowa
5 utilities board, hereinafter "board" and subject to the terms
6 and conditions established by the board. The board must
7 require utilities within the state to purchase the utility's
8 allocated portion of 89 megawatts.

9 2. Allocation. By August 31, 1996, the board is required
10 to allocate among the classes of alternate energy production
11 facilities the amount of electricity to be purchased from that
12 class of facility. Alternate energy classes include wind,
13 methane recovery, agricultural crops or residue recovery, and
14 hydro generated electricity.

15 3. Competitive Bidding. Within each class of alternate
16 energy production facility, the board is to require
17 competitive bidding to be conducted by electric utilities for
18 the purchase of electricity assigned that class. The board is
19 required to establish specifications for a qualifying bid, and
20 a schedule for the conduct of all rounds of competitive
21 bidding, including a detailed timeline for facility
22 construction and energy delivery and any other contract terms
23 as the board deems necessary and commercially reasonable.
24 Competitive bidding is to be conducted in the same manner as
25 the department of general services printing division as stated
26 at 401 IAC ch. 5. The bill requires that the first round of
27 competitive bidding must be completed no later than December
28 31, 1996, and the last round completed no later than December
29 31, 1997. Upon the completion of each round, the board is to
30 designate as successful the lowest responsible bid or bids
31 which meet all bidding specifications. The successful
32 proposals may not exceed in the aggregate the amount of
33 electricity purchase supported by that portion of the standing
34 appropriation corresponding to the allocation assigned the
35 class of facility in question. The determination made by the

1 board shall not be considered to be an administrative rule
2 within the meaning of the Iowa administrative procedures Act.

3 4. Purchases. The board shall require that a contract be
4 executed within 90 days after designation of a successful
5 bidder. Any items in dispute must be submitted to the board
6 for resolution. The electric utility is required to pay only
7 the utility's incremental cost of electricity. "Incremental
8 cost" means the cost to the electric utility of the
9 electricity which, but for the purchase from the alternate
10 energy production facility, the electric utility would have
11 generated or purchased from another source. The board shall
12 pay to the facility from the moneys appropriated from the
13 general fund of the state, the balance of the purchase price
14 designated in the alternate energy production facility's
15 successful bid.

16 Finally, the bill retains current provisions allowing the
17 parties to enter into private contracts and providing that an
18 electric utility is not required to construct additional
19 facilities unless those facilities are paid for by the owner
20 or operator of the affected alternate energy production
21 facility.

22 The bill strikes current section 476.44 which required
23 purchase of 105 megawatts of alternate energy and replaces it
24 with an annual \$10,000,000 appropriation from the general fund
25 of the state beginning July 1, 1996, to the Iowa utilities
26 board for payment to alternate energy production facilities.
27 The board is to use the money to reimburse an alternate energy
28 production facility for that portion of the contract cost
29 which is greater than that which the electric utility is
30 required to pay to the alternate energy producer.

31 Finally, the bill requires the board to recommend to the
32 general assembly a reimbursement mechanism for persons who
33 have proceeded in good faith under the terms and conditions of
34 sections 476.43 and 476.44, prior to their amendment in this
35 Act, who have suffered economic loss as a result of this Act.

1 The bill mandates that existing contracts are valid until they
2 expire.

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