

Senate Study Bill 1187

SENATE FILE _____
BY (PROPOSED COMMITTEE ON NATURAL
RESOURCES AND ENVIRONMENT BILL BY
CO=CHAIRPERSONS BLACK and HOUSER)

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

A BILL FOR

1 An Act relating to the purchase of renewable energy including
2 establishing a renewable energy purchase tax credit program
3 within the utilities board of the department of commerce, and
4 providing effective and retroactive applicability dates.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 2699SC 81
7 kk/sh/8

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1 1 Section 1. Section 422.11J, Code 2005, is amended to read
1 2 as follows:
1 3 422.11J ~~WIND ENERGY PRODUCTION TAX CREDIT CREDITS FOR WIND~~
1 4 ~~ENERGY PRODUCTION AND RENEWABLE ENERGY PURCHASES.~~

1 5 The taxes imposed under this division, less the credits
1 6 allowed under sections 422.12 and 422.12B, shall be reduced by
1 7 ~~a wind energy production tax credit credits for wind energy~~
1 8 ~~production~~ allowed under chapter 476B ~~and renewable energy~~
1 9 ~~purchases allowed under chapter 476C.~~

1 10 Sec. 2. Section 422.33, subsection 16, Code 2005, is
1 11 amended to read as follows:
1 12 16. The taxes imposed under this division shall be reduced
1 13 by ~~a wind energy production tax credit credits for wind energy~~
1 14 ~~production~~ allowed under chapter 476B ~~and renewable energy~~
1 15 ~~purchases allowed under chapter 476C.~~

1 16 Sec. 3. Section 422.60, subsection 8, Code 2005, is
1 17 amended to read as follows:
1 18 8. The taxes imposed under this division shall be reduced
1 19 by ~~a wind energy production tax credit credits for wind energy~~
1 20 ~~production~~ allowed under chapter 476B ~~and renewable energy~~
1 21 ~~purchases allowed under chapter 476C.~~

1 22 Sec. 4. Section 432.12E, Code 2005, is amended to read as
1 23 follows:
1 24 432.12E ~~WIND ENERGY PRODUCTION TAX CREDIT CREDITS FOR WIND~~
1 25 ~~ENERGY PRODUCTION AND RENEWABLE ENERGY PURCHASES.~~

1 26 The taxes imposed under this chapter shall be reduced by ~~a~~
1 27 ~~wind energy production tax credit credits for wind energy~~
1 28 ~~production~~ allowed under chapter 476B ~~and renewable energy~~
1 29 ~~purchases allowed under chapter 476C.~~

1 30 Sec. 5. NEW SECTION. 476C.1 DEFINITIONS.
1 31 For purposes of this chapter, unless the context otherwise
1 32 requires:

1 33 1. "Anaerobic digester system" means a system of
1 34 components that processes animal waste based on the absence of
1 35 oxygen and produces gas used to generate electricity.

2 1 2. "Biogas recovery facility" means an anaerobic digester
2 2 system that is located in this state at the site of an
2 3 agricultural operation.

2 4 3. "Biomass conversion facility" means a biomass
2 5 conversion facility in this state that converts plant-derived
2 6 organic matter including, but not limited to, agricultural
2 7 food and feed crops, crop wastes and residues, wood wastes and
2 8 residues, or aquatic plants to energy to generate electricity.

2 9 4. "Board" means the utilities board within the utilities
2 10 division of the department of commerce.

2 11 5. "Methane gas recovery facility" means a methane gas
2 12 recovery facility in this state, which is used in connection
2 13 with a sanitary landfill or which uses wastes that would
2 14 otherwise be deposited in a sanitary landfill, that collects

2 15 methane gas or other gases and converts the gas to energy to
2 16 generate electricity.

2 17 6. "Purchaser of renewable energy" means a person who buys
2 18 electric energy from a qualified renewable energy facility.

2 19 7. "Qualified renewable energy facility" means a wind
2 20 energy conversion facility, a biogas recovery facility, a
2 21 biomass conversion facility, a methane gas recovery facility,
2 22 or a solar energy conversion facility that is at least fifty=
2 23 one percent owned by one or more of any combination of the
2 24 following:

2 25 a. A resident of this state or an entity organized
2 26 pursuant to the laws of this state not prohibited from owning
2 27 agricultural land under section 9I.3.

2 28 b. A small business as defined in section 15.102.

2 29 c. A nonprofit organization organized or operating in this
2 30 state.

2 31 d. A school district located in this state.

2 32 e. A tribal council if the facility is located in this
2 33 state within the boundaries of the tribe's settlement or
2 34 reservation.

2 35 f. An electric cooperative association organized pursuant
3 1 to chapter 499 and located in this state.

3 2 g. A cooperative corporation organized pursuant to chapter
3 3 497 or a limited liability corporation organized pursuant to
3 4 chapter 490A whose shares and membership are held by an entity
3 5 that is not prohibited from owning agricultural land under
3 6 section 9I.3.

3 7 8. "Solar energy conversion facility" means a solar energy
3 8 facility in this state that collects and converts incident
3 9 solar radiation to energy to generate electricity.

3 10 9. "Wind energy conversion facility" means a wind energy
3 11 conversion system in this state that collects and converts
3 12 wind to energy to generate electricity.

3 13 Sec. 6. NEW SECTION. 476C.2 RENEWABLE ENERGY PURCHASE
3 14 TAX CREDIT == APPLICATION.

3 15 1. A purchaser of renewable energy is eligible for a
3 16 renewable energy purchase tax credit for any electricity
3 17 purchased pursuant to the provisions of this chapter.

3 18 2. A renewable energy purchase tax credit certificate may
3 19 only be issued upon receipt by the board of an application
3 20 that establishes that the applicant is eligible to receive the
3 21 tax credit and that satisfies other requirements the board
3 22 deems necessary. The application must be in a form and
3 23 submitted at a time the board establishes.

3 24 Sec. 7. NEW SECTION. 476C.3 PRODUCTION PERIOD.

3 25 Renewable energy purchase tax credit certificates may be
3 26 issued under this chapter only for electricity generated by a
3 27 qualified renewable energy facility on or after January 1,
3 28 2005, but before December 31, 2010.

3 29 Sec. 8. NEW SECTION. 476C.4 TAX CREDIT PAYMENT PERIOD.

3 30 A purchaser of renewable energy may receive renewable
3 31 energy purchase tax credits under this chapter for a ten-year
3 32 period. The period for issuance of the tax credits begins and
3 33 runs consecutively from the date the purchaser of renewable
3 34 energy first purchases electricity from a qualified renewable
3 35 energy facility. Renewable energy tax credits shall not be
4 1 issued for renewable energy purchased after December 31, 2020.

4 2 Sec. 9. NEW SECTION. 476C.5 TAX CREDIT AMOUNT ==
4 3 LIMITATIONS.

4 4 1. The amount of renewable energy purchase tax credits a
4 5 purchaser of renewable energy may receive shall be equal to
4 6 one and one-half cents per kilowatt-hour of electricity
4 7 purchased from a qualified renewable energy facility.

4 8 2. a. For a wind energy conversion system contracted for
4 9 and installed on or after January 1, 2005, the total size of
4 10 the wind energy conversion system must be determined according
4 11 to this paragraph. Unless a wind energy conversion system is
4 12 interconnected with a different distribution system, the
4 13 nameplate capacity of the wind energy conversion system must
4 14 be combined with the nameplate capacity of any other wind
4 15 energy conversion system that is all of the following:

4 16 (1) Located within five miles of the wind energy
4 17 conversion system.

4 18 (2) Constructed within the same calendar year as the wind
4 19 energy conversion system.

4 20 (3) Under common ownership or has a common interconnection
4 21 or transmission point.

4 22 b. In the case of a dispute, the board shall determine the
4 23 total size of the system, and shall draw all reasonable
4 24 inferences in favor of combining the systems.

4 25 c. In making a determination under this subsection, the

4 26 board may determine that two wind energy conversion systems
4 27 are under common ownership when the underlying ownership
4 28 structure contains similar persons or entities, even if the
4 29 ownership shares differ between the two systems. Wind energy
4 30 conversion systems are not under common ownership solely
4 31 because the same person or entity provided equity financing
4 32 for the systems.

4 33 3. The renewable energy purchase tax credit shall not be
4 34 allowed for any kilowatt-hour of electricity that is purchased
4 35 from a qualified renewable energy facility with common
5 1 ownership with the purchaser or from a related person. For
5 2 purposes of this subsection, persons shall be treated as
5 3 related to each other if such persons would be treated as a
5 4 single employer under the regulations prescribed under section
5 5 52(b) of the Internal Revenue Code. In the case of a
5 6 corporation that is a member of an affiliated group of
5 7 corporations filing a consolidated return, a person purchasing
5 8 electricity from another such corporation shall be treated as
5 9 an unrelated person if such electricity is purchased from
5 10 another member of such group. For purposes of this
5 11 subsection, an "owner" means any person with an equity
5 12 interest in the facility.

5 13 4. The total amount of electricity purchased from a wind
5 14 energy conversion system that is eligible for a renewable
5 15 energy purchase tax credit under this chapter shall not exceed
5 16 one hundred megawatts of nameplate generating capacity.

5 17 Sec. 10. NEW SECTION. 476C.6 OWNERSHIP.

5 18 For the purposes of section 476C.1, subsection 7, a
5 19 renewable energy facility that is owned by less than fifty-one
5 20 percent of the persons or entities listed in that subsection
5 21 qualifies if the facility is owned by an equity financing
5 22 partner that is qualified to receive a federal wind energy
5 23 production tax credit. However, upon the expiration of the
5 24 equity financing partner's eligibility for any federal wind
5 25 energy production tax credit, the renewable energy facility
5 26 must meet the fifty-one percent ownership requirement of
5 27 section 476C.1, subsection 7, to be qualified.

5 28 Sec. 11. NEW SECTION. 476C.7 ELIGIBILITY PROCEDURE.

5 29 1. A purchaser of renewable energy is eligible for the
5 30 renewable energy purchase tax credit on the date the board
5 31 receives all of the following:

5 32 a. An application for a renewable energy purchase tax
5 33 credit certificate.

5 34 b. One of the following:

5 35 (1) A copy of a signed power purchase agreement.

6 1 (2) A copy of a binding agreement other than a power
6 2 purchase agreement to purchase electricity generated by a
6 3 qualified renewable energy facility.

6 4 (3) If the facility developer or owner will sell
6 5 electricity to a purchaser who is its own member or customer,
6 6 a copy of the purchase order for equipment to construct the
6 7 facility with a delivery date and a copy of a signed receipt
6 8 for a nonrefundable deposit.

6 9 c. Any other information the board deems necessary to
6 10 determine whether the proposed facility qualifies under this
6 11 chapter.

6 12 2. The board shall determine whether a facility is
6 13 qualified and respond in writing to the applicant approving or
6 14 denying the application within fifteen working days of receipt
6 15 of the information required in this section and section
6 16 476C.2. A facility that is not operational within eighteen
6 17 months of issuance of a letter of approval is no longer
6 18 qualified under this chapter for that application. The board
6 19 shall notify an applicant of potential loss of approval not
6 20 less than sixty days prior to the end of the eighteen-month
6 21 period. Eligibility for a purchaser that loses approval may
6 22 be reestablished as of the date the board receives a new
6 23 completed application.

6 24 3. Each tax credit certificate shall contain the
6 25 purchaser's name, address, and tax identification number,
6 26 amount of tax credits, the first taxable year the certificates
6 27 may be used, which shall not be for a taxable year beginning
6 28 prior to January 1, 2005, and the expiration date of the tax
6 29 credit certificate, which shall be seven years from its date
6 30 of issuance and any other information required by the
6 31 department of revenue. Once issued by the board, the tax
6 32 credit certificate shall be binding on the board and the
6 33 department of revenue and shall not be modified, terminated,
6 34 or rescinded. The board shall notify the department and
6 35 identify the qualified renewable energy facility for which the
7 1 purchaser received tax credit certificates.

7 2 4. If the tax credit application is filed by a
7 3 partnership, limited liability company, S corporation, estate,
7 4 trust, or other reporting entity all of the income of which is
7 5 taxed directly to its equity holders or beneficiaries, the tax
7 6 credit certificate may, at the election of the purchaser, be
7 7 issued directly to equity holders or beneficiaries of the
7 8 purchaser in proportion to their pro rata share of the income
7 9 of such entity. If the purchaser elects to have the tax
7 10 credit certificate issued directly to its equity holders or
7 11 beneficiaries, the purchaser must, in the application made
7 12 under section 476C.2, identify its equity holders or
7 13 beneficiaries, and the amount of such entity's income that is
7 14 allocable to each equity holder or beneficiary.

7 15 Sec. 12. NEW SECTION. 476C.8 PURPOSE == RULES.
7 16 It is the policy of this state to encourage the development
7 17 of renewable energy facilities in order to reduce the
7 18 dependence of the state on energy imported from outside of the
7 19 state. The board shall reject an application from an
7 20 applicant that in the board's opinion is an entity structured
7 21 for the purpose of obtaining the tax credit, and is in fact
7 22 part of another entity that when viewed as a whole would not
7 23 meet the requirements of this chapter. The board may adopt
7 24 rules under chapter 17A to carry out the purposes of this
7 25 section.

7 26 Sec. 13. NEW SECTION. 476C.9 TRANSFERABILITY AND USE OF
7 27 TAX CREDIT CERTIFICATES == REGISTRATION.

7 28 1. Renewable energy purchase tax credit certificates
7 29 issued under this chapter may be transferred to any person or
7 30 entity. Within thirty days of transfer, the transferee must
7 31 submit the transferred tax credit certificate to the board
7 32 along with a statement containing the transferee's name, tax
7 33 identification number, and address, and the denomination that
7 34 each replacement tax credit certificate is to carry and any
7 35 other information required by the department of revenue.
8 1 Within thirty days of receiving the transferred tax credit
8 2 certificate and the transferee's statement, the board shall
8 3 issue one or more replacement tax credit certificates to the
8 4 transferee. Each replacement certificate must contain the
8 5 information required under section 476C.7 and must have the
8 6 same effective taxable year and the same expiration date that
8 7 appeared in the transferred tax credit certificate. Tax
8 8 credit certificate amounts of less than the minimum amount
8 9 established by rule of the board shall not be transferable. A
8 10 tax credit shall not be claimed by a transferee under this
8 11 chapter until a replacement tax credit certificate identifying
8 12 the transferee as the proper holder has been issued.

8 13 The tax credit shall only be transferred once. The
8 14 transferee may use the amount of the tax credit transferred
8 15 against the taxes imposed under chapter 422, divisions II,
8 16 III, and V, and chapter 432 for any tax year the original
8 17 transferor could have claimed the tax credit. Any
8 18 consideration received for the transfer of the tax credit
8 19 shall not be included as income under chapter 422, divisions
8 20 II, III, and V. Any consideration paid for the transfer of
8 21 the tax credit shall not be deducted from income under chapter
8 22 422, divisions II, III, and V.

8 23 2. To claim a renewable energy purchase tax credit under
8 24 this chapter, a taxpayer must attach one or more tax credit
8 25 certificates to the taxpayer's tax return. A tax credit
8 26 certificate shall not be used or attached to a return filed
8 27 for a taxable year beginning prior to July 1, 2006. The tax
8 28 credit certificate or certificates attached to the taxpayer's
8 29 tax return shall be issued in the taxpayer's name, expire on
8 30 or after the last day of the taxable year for which the
8 31 taxpayer is claiming the tax credit, and show a tax credit
8 32 amount equal to or greater than the tax credit claimed on the
8 33 taxpayer's tax return. Any tax credit in excess of the
8 34 taxpayer's tax liability for the taxable year may be credited
8 35 to the taxpayer's tax liability for the following seven
9 1 taxable years or until depleted, whichever is the earlier.

9 2 3. The board shall, in conjunction with the department of
9 3 revenue, develop a system for the registration of the
9 4 renewable energy purchase tax credit certificates issued or
9 5 transferred under this chapter and a system that permits
9 6 verification that any tax credit claimed on a tax return is
9 7 valid and that transfers of the tax credit certificates are
9 8 made in accordance with the requirements of this chapter. The
9 9 tax credit certificates issued under this chapter shall not be
9 10 classified as a security pursuant to chapter 502.

9 11 Sec. 14. EFFECTIVE DATE. This Act, being deemed of
9 12 immediate importance, takes effect upon enactment and applies

9 13 retroactively to taxable years beginning on or after January
9 14 1, 2005.

9 15 EXPLANATION

9 16 This bill establishes a renewable energy purchase tax
9 17 credit program. The utilities board of the department of
9 18 commerce shall administer the program. Tax credit
9 19 certificates for credits against personal and corporate income
9 20 taxes, franchise taxes, and insurance company taxes are
9 21 provided to purchasers of renewable energy from qualified
9 22 renewable energy facilities.

9 23 A qualified renewable energy facility includes a wind
9 24 energy conversion facility, a biogas recovery facility, a
9 25 biomass conversion facility, a methane gas recovery facility,
9 26 and a solar energy conversion facility that is at least fifty=
9 27 one percent owned by any of the following: one or more
9 28 residents of this state or an entity organized pursuant to the
9 29 laws of this state not prohibited from owning agricultural
9 30 land; a small business; a nonprofit organization organized or
9 31 operating in this state; a school district; a tribal council
9 32 if the facility is located in this state within the boundaries
9 33 of the tribe's settlement or reservation; an electric
9 34 cooperative association; or a cooperative corporation or a
9 35 limited liability corporation organized whose shares and
10 1 membership are held by an entity that is not prohibited from
10 2 owning agricultural land.

10 3 A wind energy conversion facility is a facility that
10 4 collects and converts wind to energy to generate electricity.
10 5 A biogas recovery facility is an anaerobic digester system
10 6 located on an agricultural operation. A biomass conversion
10 7 facility is a facility that converts plant-derived organic
10 8 matter to energy. A methane gas recovery facility is a
10 9 facility which uses waste that would otherwise be deposited in
10 10 a sanitary landfill that collects and converts methane gas to
10 11 energy. A solar energy conversion facility is a facility that
10 12 collects and converts solar radiation to energy.

10 13 A purchaser of renewable energy may receive tax credits for
10 14 the number of kilowatt-hours of electricity purchased from a
10 15 qualified renewable energy facility at the rate of one and
10 16 one-half cents per kilowatt-hour. A tax credit shall not be
10 17 issued for electricity purchased from a facility which has
10 18 common ownership with the purchaser or from a person related
10 19 to the purchaser. The capacity of wind energy conversion
10 20 facilities located within five miles of each other which are
10 21 constructed within the same calendar year and under common
10 22 ownership are combined for determining total capacity.

10 23 Applications for the tax credit must be submitted to the
10 24 utilities board along with a copy of a contract to purchase
10 25 electricity from a qualified renewable energy facility. The
10 26 board must give notice of approval or denial within 15 working
10 27 days. Tax credit certificates expire seven years after
10 28 issuance and are transferable. The board shall develop a
10 29 system of registration of renewable energy purchase tax credit
10 30 certificates issued.

10 31 The bill is effective upon enactment and applies
10 32 retroactively to taxable years beginning on or after January
10 33 1, 2005.

10 34 LSB 2699SC 81

10 35 kk:rj/sh/8