

House File 538 - Introduced

HOUSE FILE _____
BY FREVERT and MAY

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

A BILL FOR

1 An Act modifying wind energy production tax credit eligibility
2 requirements, providing for a refund of sales and use taxes,
3 and including effective and retroactive applicability date
4 provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 2440HH 83
7 rn/mg:sc/14

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1 1 Section 1. Section 476B.1, subsection 4, paragraph d, Code
2 2009, is amended to read as follows:

1 3 d. For applications filed on or after March 1, 2008,
1 4 consists of one or more wind turbines connected to a common
1 5 gathering line which have a combined nameplate capacity of no
1 6 less than two megawatts ~~and no more than thirty megawatts.~~

1 7 Sec. 2. Section 476B.4, Code 2009, is amended to read as
1 8 follows:

1 9 476B.4 ~~LIMITATIONS~~ LIMITATION.

~~1 10 1. The wind energy production tax credit shall not be
1 11 allowed for any kilowatt-hour of electricity produced on wind
1 12 energy conversion property for which the owner has claimed or
1 13 otherwise received for that property the benefit of special
1 14 valuation under section 427B.26 or section 441.21, subsection
1 15 8, or the exemption from retail sales tax under section
1 16 422.45, subsection 48, Code Supplement 2003, or section 423.3,
1 17 subsection 54, as applicable.~~

1 18 2. The wind energy production tax credit shall not be
1 19 allowed for any kilowatt-hour of electricity that is sold to a
1 20 related person. For ~~purpose~~ purposes of this ~~subsection~~
1 21 ~~section~~, persons shall be treated as related to each other if
1 22 such persons would be treated as a single employer under the
1 23 regulations prescribed under section 52(b) of the Internal
1 24 Revenue Code. In the case of a corporation that is a member
1 25 of an affiliated group of corporations filing a consolidated
1 26 return, such corporation shall be treated as selling
1 27 electricity to an unrelated person if such electricity is sold
1 28 to such a person by another member of such group.

1 29 Sec. 3. Section 476B.6, subsection 1, Code 2009, is
1 30 amended to read as follows:

~~1 31 1. a. If a city or a county in which a qualified facility
1 32 is located has enacted an ordinance under section 427B.26 and
1 33 an owner has filed for and received special valuation pursuant
1 34 to that ordinance, the owner is not required to obtain
1 35 approval from the city council or county board of supervisors
2 1 to apply for the wind energy production tax credit pursuant to
2 2 subsection 2.~~

~~2 3 a. b. (1) To be eligible to receive the wind energy
2 4 production tax credit, if neither a city nor a county in which
2 5 a qualified facility is located has enacted an ordinance under
2 6 section 427B.26, or a qualified facility is not eligible for
2 7 special valuation pursuant to an ordinance adopted by a city
2 8 or a county under section 427B.26, the owner must first
2 9 receive approval of the applicable city council or county
2 10 board of supervisors of the city or county in which the
2 11 qualified facility is located in order to be eligible to
2 12 receive the wind energy production tax credit. The
2 13 application for approval may be submitted prior to
2 14 commencement of the construction of the qualified facility but
2 15 shall be submitted no later than the close of the owner's
2 16 first taxable year for which the credit is to be applied for.
2 17 The application must contain the owner's name and address, the
2 18 address of the qualified facility, and the dates of the~~

2 19 owner's first and last taxable years for which the credit will
2 20 be applied for. Within forty-five days of the receipt of the
2 21 application for approval, the city council or county board of
2 22 supervisors, as applicable, shall either approve or disapprove
2 23 the application. After the forty-five-day limit time period
2 24 has expired, the application is deemed to be approved.

2 25 ~~b-~~ (2) Upon approval of ~~the~~ an application submitted
2 26 pursuant to subparagraph (1), the owner may apply for the tax
2 27 credit as provided in subsection 2. In addition, approval of
2 28 the application submitted pursuant to subparagraph (1) is
2 29 acceptance by the applicant for the assessment of the
2 30 qualified facility for property tax purposes for a period of
2 31 twelve years and approval by the city council or county board
2 32 of supervisors, as applicable, for the payment of the property
2 33 taxes levied on the qualified property to the state. For
2 34 purposes of property taxation, the qualified facility
2 35 receiving approval of an application submitted pursuant to

3 1 subparagraph (1) shall be centrally assessed and shall be
3 2 exempt from any replacement tax under section 437A.6 for the
3 3 period during which the facility is subject to property
3 4 taxation. The property taxes to be paid to the state are
3 5 those property taxes which make up the consolidated tax levied
3 6 on the qualified facility and which are due and payable in the
3 7 twelve-year period beginning with the first fiscal year
3 8 beginning on or after the end of the owner's first taxable
3 9 year for which the credit is applied for. Upon approval of
3 10 the application, the city council or county board of
3 11 supervisors, as applicable, shall notify the county treasurer
3 12 to state designate on the tax statement which lists the taxes
3 13 on the qualified facility ~~that~~ the amount of the property
3 14 taxes ~~shall to~~ be paid to the department. Payment of the
3 15 designated property taxes to the department shall be in the
3 16 same manner as required for the payment of regular property
3 17 taxes and failure to pay designated property taxes to the
3 18 department shall be treated the same as failure to pay
3 19 property taxes to the county treasurer.

3 20 c. Once the owner of the qualified facility receives
3 21 approval under paragraph "a" "b", subsequent approval under
3 22 paragraph "a" "b" is not required for the same qualified
3 23 facility for subsequent taxable years.

3 24 Sec. 4. REFUNDS. Refunds of taxes, interest, or penalties
3 25 which may arise from claims resulting from the amendment of
3 26 section 476B.4 in this Act, for the exemption of sales of wind
3 27 energy conversion property as provided in section 423.3,
3 28 subsection 54, occurring between January 1, 2008, and the
3 29 effective date of this Act, shall be limited to one hundred
3 30 thousand dollars in the aggregate and shall not be allowed
3 31 unless refund claims are filed prior to October 1, 2009,
3 32 notwithstanding any other provision of law. If the amount of
3 33 claims totals more than one hundred thousand dollars in the
3 34 aggregate, the department of revenue shall prorate the one
3 35 hundred thousand dollars among all claimants in relation to
4 1 the amounts of the claimants' valid claims. Claimants shall
4 2 not be entitled to interest on any refunds.

4 3 Sec. 5. EFFECTIVE AND APPLICABILITY DATES. This Act,
4 4 being deemed of immediate importance, takes effect upon
4 5 enactment and applies retroactively to January 1, 2008, for
4 6 tax years beginning on or after that date.

4 7 EXPLANATION

4 8 This bill modifies eligibility requirements applicable to
4 9 the wind energy production tax credit established in Code
4 10 chapter 476B.

4 11 The bill provides for a maximum combined nameplate capacity
4 12 restriction of no more than 30 megawatts for wind energy
4 13 production facilities applying for the wind energy production
4 14 tax credit.

4 15 The bill deletes a provision which had prevented
4 16 eligibility for the wind energy production tax credit for any
4 17 kilowatt-hour of electricity produced on wind energy
4 18 conversion property for which the owner had claimed or
4 19 received specified special property tax valuation or sales tax
4 20 exemptions, thus preserving credit availability for owners
4 21 having received special valuation or having claimed the sales
4 22 tax exemptions. Because of the retroactivity of the
4 23 elimination of the restriction of the receipt of the tax
4 24 credit to those who have not received the sales tax exemption,
4 25 a provision for refund of sales tax paid, subject to aggregate
4 26 maximums, is included in the bill.

4 27 The bill takes effect upon enactment and applies
4 28 retroactively to January 1, 2008, for tax years beginning on
4 29 or after that date.

4 30 LSB 2440HH 83
4 31 rn/mg:sc/14.1