Senate File 456 - Introduced

SENATE FILE ______
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 216)
(SUCCESSOR TO SF 79)

Passed Senate, Date ____________ Passed House, Date ____________
Vote: Ayes ______ Nays _______ Vote: Ayes ______ Nays ________
Approved ____________________________

A BILL FOR

An Act modifying provisions applicable to facilities qualifying for wind energy production and renewable energy tax credits and including effective and retroactive applicability date provisions.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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Section 1. Section 476B.1, subsection 4, paragraph d, Code 2009, is amended to read as follows:

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

(2) For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, or public hospital as defined in section 249J.3, for the applicant's own use of qualified electricity, consists of wind turbines with a combined nameplate capacity of three=fourths of a megawatt or greater.

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

476B.4 ~~LIMITATIONS~~ LIMITATION.

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

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

Sec. 3. Section 476B.5, subsection 4, Code 2009, is amended to read as follows:

4. The maximum amount of nameplate generating capacity of all qualified facilities the board may find eligible under this chapter shall not exceed ~~four~~ one hundred fifty megawatts of nameplate generating capacity.

Sec. 4. Section 476B.6, subsection 1, Code 2009, is amended to read as follows:

1. a. If a city or a county in which a qualified facility is located has enacted an ordinance under section 427B.26 and an owner has filed for and received special valuation pursuant to that ordinance, the owner is not required to obtain approval from the city council or county board of supervisors

to apply for the wind energy production tax credit pursuant to subsection 2.

~~a.~~ b. (1) ~~To be eligible to receive the wind energy production tax credit,~~ If neither a city nor a county in which a qualified facility is located has enacted an ordinance under section 427B.26, or a qualified facility is not eligible for special valuation pursuant to an ordinance adopted by a city or a county under section 427B.26, the owner must ~~first~~ receive approval of the applicable city council or county board of supervisors of the city or county in which the qualified facility is located in order to be eligible to receive the wind energy production tax credit. The application for approval may be submitted prior to commencement of the construction of the qualified facility but shall be submitted no later than the close of the owner's first taxable year for which the credit is to be applied for. The application must contain the owner's name and address, the address of the qualified facility, and the dates of the owner's first and last taxable years for which the credit will be applied for. Within forty=five days of the receipt of the application for approval, the city council or county board of supervisors, as applicable, shall either approve or disapprove the application. After the forty=five=day ~~limit~~ time period has expired, the application is deemed to be approved.

~~b.~~ (2) Upon approval of ~~the~~ an application submitted pursuant to subparagraph (1), the owner may apply for the tax credit as provided in subsection 2. In addition, approval of the application submitted pursuant to subparagraph (1) is acceptance by the applicant for the assessment of the qualified facility for property tax purposes for a period of twelve years and approval by the city council or county board of supervisors, as applicable, for the payment of the property taxes levied on the qualified property to the state. For purposes of property taxation, the qualified facility receiving approval of an application submitted pursuant to subparagraph (1) shall be centrally assessed and shall be exempt from any replacement tax under section 437A.6 for the period during which the facility is subject to property taxation. The property taxes to be paid to the state are those property taxes which make up the consolidated tax levied on the qualified facility and which are due and payable in the twelve=year period beginning with the first fiscal year beginning on or after the end of the owner's first taxable year for which the credit is applied for. Upon approval of the application, the city council or county board of supervisors, as applicable, shall notify the county treasurer to ~~state~~ designate on the tax statement which lists the taxes on the qualified facility ~~that~~ the amount of the property taxes ~~shall~~ to be paid to the department. Payment of the designated property taxes to the department shall be in the same manner as required for the payment of regular property taxes and failure to pay designated property taxes to the department shall be treated the same as failure to pay property taxes to the county treasurer.

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

Sec. 5. Section 476C.3, subsection 3, Code 2009, is amended to read as follows:

3. A facility that is not operational within thirty months after issuance of an approval for the facility by the board shall cease to be an eligible renewable energy facility. However, a wind energy conversion facility that is approved as eligible under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional ~~twelve~~ twenty=four months to become operational. A facility that is granted and thereafter loses approval may reapply to the board for a new determination.

Sec. 6. Section 476C.3, subsection 4, Code 2009, is amended to read as follows:

4. The maximum amount of nameplate generating capacity of all wind energy conversion facilities the board may find eligible under this chapter shall not exceed ~~one~~ three hundred ~~eighty~~ thirty megawatts of nameplate generating capacity. The maximum amount of energy production capacity equivalent of all other facilities the board may find eligible under this chapter shall not exceed a combined output of twenty megawatts of nameplate generating capacity and one hundred sixty=seven billion British thermal units of heat for a commercial

purpose. Of the maximum amount of energy production capacity equivalent of all other facilities found eligible under this chapter, fifty=five billion British thermal units of heat for a commercial purpose shall be reserved for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area. The maximum amount of energy production capacity the board may find eligible for a single refuse conversion facility is fifty=five billion British thermal units of heat for a commercial purpose.

Sec. 7. REFUNDS. Refunds of taxes, interest, or penalties which may arise from claims resulting from the amendment of section 476B.4 in this Act, for the exemption of sales of wind energy conversion property as provided in section 423.3, subsection 54, occurring between January 1, 2008, and the effective date of this Act, shall be limited to one hundred thousand dollars in the aggregate and shall not be allowed unless refund claims are filed prior to October 1, 2009, notwithstanding any other provision of law. If the amount of claims totals more than one hundred thousand dollars in the aggregate, the department of revenue shall prorate the one hundred thousand dollars among all claimants in relation to the amounts of the claimants' valid claims. Claimants shall not be entitled to interest on any refunds.

Sec. 8. RENEWABLE ENERGY TAX CREDIT ELIGIBILITY STUDY. The utilities board of the utilities division of the department of commerce shall conduct a study to evaluate whether procedures applicable to eligible renewable energy facilities which have been approved for the renewable energy tax credit but are not yet operational pursuant to section 476C.3, subsection 3, and eligible renewable energy facilities which have been placed on a waiting list for approval pursuant to section 476C.3, subsection 5, are in need of modification. The study shall include a survey of each facility which has been approved to determine the extent to which progress has been made toward achieving operational status. The study shall also include a survey of each facility which has been determined eligible and is awaiting approval, to ascertain whether the facility continues to seek approval and is committed to becoming operational once approval is obtained. Based on the results of the surveys, the board shall submit recommendations to the general assembly by January 1, 2010, regarding whether statutory or procedural modifications are necessary to ensure that facilities are being effectively and efficiently maintained in an approved or eligible status.

Sec. 9. EFFECTIVE AND APPLICABILITY DATES. The sections of this Act enacting section 476B.1, subsection 4, paragraph "d", subparagraph (1), and amending sections 476B.4 and 476B.6, being deemed of immediate importance, take effect upon enactment and apply retroactively to January 1, 2008, for tax years beginning on or after that date.

EXPLANATION

This bill modifies eligibility requirements applicable to the wind energy production tax credit established in Code chapter 476B and the renewable energy tax credit established in Code chapter 476C.

With regard to the wind energy production tax credit, the bill provides for a maximum combined nameplate capacity restriction of no more than 30 megawatts for applicants for the credit. The bill also adds to the definition of "qualified facility", for applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, or public hospital as defined in Code section 249J.3, for the applicant's own use of qualified electricity a wind turbine with a combined nameplate capacity of three=fourths of a megawatt or greater.

The bill deletes a provision which had prevented eligibility for the wind energy production tax credit for any kilowatt=hour of electricity produced on wind energy conversion property for which the owner had claimed or received specified special property tax valuation or sales tax exemptions, thus preserving credit availability for owners having received special valuation or having claimed the sales tax exemptions. Because of the retroactivity of the elimination of the restriction of the receipt of the tax credit to those who have not received the sales tax exemption, a provision for refund of sales tax paid is included in the bill. These provisions and the provision regarding a maximum combined nameplate capacity restriction take effect upon enactment and apply retroactively to January 1, 2008, for tax years beginning on or after that date.

The bill changes a provision specifying the maximum amount of nameplate generating capacity of all qualifying facilities under Code chapter 476B, currently at 450 megawatts of nameplate generating capacity, to 150 megawatts.

With regard to the renewable energy tax credit, the bill provides for an extension of time for a wind energy conversion facility to become operational following issuance of an approval from the current period of 12 additional months to 24 additional months.

The bill changes a provision specifying the maximum amount of nameplate generating capacity for all eligible wind energy conversion facilities under Code chapter 476C, currently at 180 megawatts of nameplate generating capacity, to 330 megawatts.

Additionally, the bill directs the utilities board of the utilities division of the department of commerce to conduct a study to evaluate whether procedures applicable to eligible renewable energy facilities which have been approved for the renewable energy tax credit under Code chapter 476C but are not yet operational, and facilities which have been placed on a waiting list for approval, are in need of modification. The board is required to submit recommendations to the general assembly by January 1, 2010, regarding whether statutory or procedural modifications appear necessary.

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