

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 503

Introduced by Bosn, 25; Ballard, 21; Bostar, 29.

Read first time January 21, 2025

Committee:

- 1 A BILL FOR AN ACT relating to privately developed renewable energy
- 2 generation facilities; to amend section 77-6203, Revised Statutes
- 3 Cumulative Supplement, 2024; to authorize the designation of
- 4 American energy friendly counties as prescribed; to change
- 5 provisions relating to privately developed renewable energy
- 6 generation facilities and the nameplate capacity tax; and to repeal
- 7 the original section.
- 8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** (1) For purposes of this section:

2 (a) Department means the Department of Revenue;

3 (b) Electric energy storage resource means a resource capable of
4 receiving electric energy from the electrical grid, or from the
5 generation source with which it is associated, and storing it for later
6 injection of electric energy into the electrical grid. Electric energy
7 storage resource does not include devices or equipment intended solely to
8 inject or absorb reactive power, such as capacitors and synchronous
9 condensers, or equipment intended solely to provide power for electric
10 vehicles;

11 (c) Privately developed renewable energy generation facility has the
12 same meaning as in section 70-1001.01 and also includes any electric
13 energy storage resource;

14 (d) Solar energy system has the same meaning as in section 66-905;
15 and

16 (e) Wind energy conversion system has the same meaning as in section
17 66-909.02.

18 (2) To support rural economic development, broaden the local tax
19 base, and reduce residents' property taxes, each county in this state
20 shall have the option to become an American energy friendly county in
21 exchange for additional local tax revenue from the owners of privately
22 developed renewable energy generation facilities.

23 (3) A county board that determines to pursue designation as an
24 American energy friendly county shall, by resolution, state the county's
25 intention to either:

26 (a) Apply to the department for an American energy friendly county
27 designation; or

28 (b) Submit the question of whether to apply for an American energy
29 friendly county designation to a vote of the registered voters of the
30 county.

31 (4)(a) If the county board adopts a resolution pursuant to

1 subdivision (3)(b) of this section, the question may be submitted to the
2 voters at a special election or such question may be voted on at an
3 election held in conjunction with the statewide primary or statewide
4 general election.

5 (b) The resolution ordering the submission of the question to the
6 registered voters of the county shall contain the entire wording of the
7 ballot question, which shall state the question as follows: "Shall the
8 county of [name of the county] apply for an American energy friendly
9 county designation?".

10 (c) The county shall file a copy of the resolution with the election
11 commissioner or county clerk not later than the eighth Friday prior to a
12 special election that is not held in conjunction with the statewide
13 primary or general election, or not later than March 1 prior to a
14 statewide primary election or September 1 prior to a statewide general
15 election. The election shall be conducted in accordance with the Election
16 Act.

17 (5) If the resolution states the county's intention to apply for an
18 American energy friendly county designation pursuant to subdivision (3)
19 (a) of this section, or if a majority of those voting on the issue
20 pursuant to subsection (4) of this section vote in favor of the question,
21 the county board shall delegate authority for the county zoning
22 administrator or other authorized individual to apply on the county's
23 behalf. The county zoning administrator or other authorized individual
24 shall then apply to the department on a form prescribed by the
25 department. If the county meets the requirements of this section, the
26 department shall, within thirty days after receiving the application,
27 designate the county as an American energy friendly county and inform the
28 county board of such designation by written notice. The department shall
29 maintain a current and accurate list on its website of:

30 (a) The counties that have applied for an American energy friendly
31 county designation;

1 (b) The counties that have received an American energy friendly
2 county designation; and

3 (c) The total nameplate capacity tax levied under subsection (8) of
4 this section that each American energy friendly county has generated
5 annually during its designation.

6 (6) If after designation as an American energy friendly county a
7 county no longer meets the requirements of this section, such county
8 shall lose its American energy friendly county designation if it does not
9 cure the noncompliance within thirty days after receipt of written notice
10 from the department.

11 (7) To qualify for an American energy friendly county designation, a
12 county's regulations, including its zoning regulations, shall comply with
13 the following:

14 (a) The county shall permit privately developed renewable energy
15 generation facilities by right in all zoning areas that allow structures
16 of any type by right. The county shall not require a variance,
17 conditional use permit, special use permit, special permit, or other
18 discretionary zoning approval for the installation or operation of
19 privately developed renewable energy generation facilities. The county
20 may require the owner or installer of a privately developed renewable
21 energy generation facility to (i) apply for a building or zoning permit
22 for the facility, approval of which shall be ministerial and not
23 discretionary, (ii) submit the plans and specifications for the facility,
24 along with the stamped approval of an engineer licensed in Nebraska,
25 (iii) provide evidence, in the form of a certificate of insurance
26 reasonably satisfactory to the county, showing general liability
27 insurance coverage for the installation and operation of the facility,
28 and (iv) comply with the county's generally applicable zoning
29 regulations, if such regulations are consistent with this section;

30 (b) The county shall not require sound from privately developed
31 renewable energy generation facilities to be quieter, at any time, than

1 fifty decibels for a ten-minute average measured at any occupied
2 nonparticipating dwelling unit using the "A" scale at a ten-minute
3 continuous equivalent sound level over a twenty-four-hour period. The
4 county shall recognize a waiver of its sound restriction, if any, to the
5 extent the impacted landowner has executed a written waiver of the same;

6 (c)(i) The county shall not require setbacks to or from privately
7 developed renewable energy generation facilities, except that:

8 (A) The county may require a setback from nonparticipating
9 landowners' occupied dwelling units that is up to (I) three times a wind
10 turbine's total height for any wind turbine within a wind energy
11 conversion system and (II) three hundred feet for any solar energy system
12 or other form of privately developed renewable energy generation
13 facility; and

14 (B) The county may also require a setback from nonparticipating
15 landowners' property lines or public rights-of-way that is up to (I) one
16 and one-tenth times a wind turbine's total height for any wind turbine
17 within a wind energy conversion system and (II) one hundred feet for any
18 solar energy system or other form of privately developed renewable energy
19 generation facility.

20 (ii) The county shall measure such setbacks, if any, from the base
21 of the nearest wind turbine, solar panel, or other privately developed
22 renewable energy generation facility. The county shall recognize a waiver
23 of its setback distance, if any, to the extent the impacted landowner has
24 executed a written waiver of such setback distance;

25 (d) The county shall not impose a height limitation on any component
26 within a privately developed renewable energy generation facility;

27 (e) The county shall not require buffers or otherwise regulate the
28 visibility of privately developed renewable energy generation facilities,
29 except that the county may require screening of solar energy systems from
30 the view of surrounding streets and roads by garden walls, fences,
31 hedges, landscaping, or other means so long as such screening is

1 economically practicable for the system owner and would still afford
2 effective solar access on the lot in question. The county shall recognize
3 a waiver of its screening requirement, if any, to the extent the impacted
4 neighboring landowner has executed a written waiver of such screening
5 requirement; and

6 (f) The county shall impose no additional decommissioning
7 requirements for privately developed renewable energy generation
8 facilities beyond those required in subdivision (2)(a)(iii) of section
9 70-1014.02.

10 (8) The owner of a privately developed renewable energy generation
11 facility that commences commercial operation in an American energy
12 friendly county shall, so long as such facility continues commercial
13 operation in an American energy friendly county, pay a nameplate capacity
14 tax at one and one-half times the rate set for other privately developed
15 renewable energy generation facilities in subdivision (1)(a) of section
16 77-6203.

17 (9) The American Energy Friendly Counties Fund is created. The fund
18 shall be administered by the department and shall be used to award grants
19 pursuant to subsection (10) of this section to help qualifying counties
20 become American energy friendly counties. The fund shall consist of money
21 transferred by the Legislature and gifts, grants, or bequests from any
22 source, including money remitted to the fund from any other federal,
23 state, public, and private sources. Any money in the fund available for
24 investment shall be invested by the state investment officer pursuant to
25 the Nebraska Capital Expansion Act and the Nebraska State Funds
26 Investment Act.

27 (10) The department shall create and administer a grant program to
28 reimburse eligible expenses that qualifying counties incur in becoming
29 American energy friendly counties. Eligible expenses include fees for
30 consultants and attorneys to assist with revising the county's
31 regulations to conform to this section. Eligible expenses do not include

1 incentive payments to owners or installers of privately developed
2 renewable energy generation facilities.

3 (11) The department may adopt and promulgate rules and regulations
4 to carry out this section.

5 **Sec. 2.** Section 77-6203, Revised Statutes Cumulative Supplement,
6 2024, is amended to read:

7 77-6203 (1) The owner of a renewable energy generation facility
8 annually shall pay (a) a nameplate capacity tax equal to the total
9 nameplate capacity of the commissioned renewable energy generation
10 facility multiplied by a tax rate of three thousand five hundred eighteen
11 dollars per megawatt or (b) the nameplate capacity tax described in
12 subsection (8) of section 1 of this act, whichever is applicable.

13 (2) No tax shall be imposed on a renewable energy generation
14 facility:

15 (a) Owned or operated by the federal government, the State of
16 Nebraska, a public power district, a public power and irrigation
17 district, an individual municipality, a registered group of
18 municipalities, an electric membership association, or a cooperative; or

19 (b) That is a customer-generator as defined in section 70-2002.

20 (3) No tax levied pursuant to this section shall be construed to
21 constitute restricted funds as defined in section 13-518 for the first
22 five years after the renewable energy generation facility is
23 commissioned.

24 (4) The presence of one or more renewable energy generation
25 facilities or supporting infrastructure shall not be a factor in the
26 assessment, determination of actual value, or classification under
27 section 77-201 of the real property underlying or adjacent to such
28 facilities or infrastructure.

29 (5)(a) The Department of Revenue shall collect the tax due under
30 this section.

31 (b) The tax shall be imposed beginning the first calendar year the

1 renewable energy generation facility is commissioned. A renewable energy
2 generation facility that uses wind as the fuel source which was
3 commissioned prior to July 15, 2010, shall be subject to the tax levied
4 pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The
5 amount of property tax on depreciable tangible personal property
6 previously paid on a renewable energy generation facility that uses wind
7 as the fuel source which was commissioned prior to July 15, 2010, which
8 is greater than the amount that would have been paid pursuant to sections
9 77-6201 to 77-6204 from the date of commissioning until January 1, 2010,
10 shall be credited against any tax due under Chapter 77, and any amount so
11 credited that is unused in any tax year shall be carried over to
12 subsequent tax years until fully utilized.

13 (c)(i) The tax for the first calendar year shall be prorated based
14 upon the number of days remaining in the calendar year after the
15 renewable energy generation facility is commissioned.

16 (ii) In the first year in which a renewable energy generation
17 facility is taxed or in any year in which additional commissioned
18 nameplate capacity is added to a renewable energy generation facility,
19 the taxes on the initial or additional nameplate capacity shall be
20 prorated for the number of days remaining in the calendar year.

21 (iii) When a renewable energy generation facility is decommissioned
22 or made nonoperational by a change in law during a tax year, the taxes
23 shall be prorated for the number of days during which the renewable
24 energy generation facility was not decommissioned or was operational.

25 (iv) When the capacity of a renewable energy generation facility to
26 produce electricity is reduced but the renewable energy generation
27 facility is not decommissioned, the nameplate capacity of the renewable
28 energy generation facility is deemed to be unchanged.

29 (v) In the first year in which a county gains or loses its
30 designation as an American energy friendly county, the increased
31 nameplate capacity tax under subsection (8) of section 1 of this act on

1 owners of privately developed renewable energy generation facilities in
2 such county shall be prorated for the number of days the department
3 designated the county an American energy friendly county during such
4 year.

5 (6)(a) On March 1 of each year, the owner of a renewable energy
6 generation facility shall file with the Department of Revenue a report on
7 the nameplate capacity of the facility for the previous year from January
8 1 through December 31. All taxes shall be due on April 1 and shall be
9 delinquent if not paid on a quarterly basis on April 1 and each quarter
10 thereafter. Delinquent quarterly payments shall draw interest at the rate
11 provided for in section 45-104.02, as such rate may from time to time be
12 adjusted.

13 (b) The owner of a renewable energy generation facility is liable
14 for the taxes under this section with respect to the facility, whether or
15 not the owner of the facility is the owner of the land on which the
16 facility is situated.

17 (7) Failure to file a report required by subsection (6) of this
18 section, filing such report late, failure to pay taxes due, or
19 underpayment of such taxes shall result in a penalty of five percent of
20 the amount due being imposed for each quarter the report is overdue or
21 the payment is delinquent, except that the penalty shall not exceed ten
22 thousand dollars.

23 (8) The Department of Revenue shall enforce the provisions of this
24 section. The department may adopt and promulgate rules and regulations
25 necessary for the implementation and enforcement of this section.

26 (9) The Department of Revenue shall separately identify the proceeds
27 from the tax imposed by this section and shall pay all such proceeds over
28 to the county treasurer of the county where the renewable energy
29 generation facility is located within thirty days after receipt of such
30 proceeds.

31 **Sec. 3.** Original section 77-6203, Revised Statutes Cumulative

1 Supplement, 2024, is repealed.