

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 337

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO PUBLIC UTILITIES AND THE SALES AND USE TAX ON EQUIPMENT USED  
2 IN ALTERNATIVE METHODS OF GENERATION OF ELECTRICITY; PROVIDING LEG-  
3 ISLATIVE FINDINGS AND INTENT; AMENDING CHAPTER 5, TITLE 61, IDAHO  
4 CODE, BY THE ADDITION OF A NEW SECTION 61-543, IDAHO CODE, TO DEFINE  
5 TERMS AND PROVIDE THE AUTHORITY OF THE PUBLIC UTILITIES COMMISSION AND  
6 ITS JURISDICTION OVER THE AVOIDED COST RATES PAID TO PURPA QUALIFYING  
7 FACILITIES; AMENDING SECTION 63-3622QQ, IDAHO CODE, TO REVISE REQUIRE-  
8 MENTS REGARDING THE SALES TAX REBATE FOR EQUIPMENT USED IN ALTERNATIVE  
9 METHODS OF GENERATION OF ELECTRICITY; AMENDING SECTION 2, CHAPTER 355,  
10 LAWS OF 2005, TO EXTEND THE SUNSET DATE; PROVIDING SEVERABILITY; AND  
11 DECLARING AN EMERGENCY.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. LEGISLATIVE INTENT. It is the finding of the Legislature in  
15 enacting this act that the sales tax rebate for renewable energy has been  
16 partially fulfilled and that a single one-time extension for the rebate is  
17 appropriate. It is legislative intent that the rebate will not be extended  
18 beyond the sunset date contained in this act.

19 SECTION 2. That Chapter 5, Title 61, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 61-543, Idaho Code, and to read as follows:

22 61-543. ELIGIBILITY FOR PUBLISHED OR STANDARD AVOIDED COST RATES FOR  
23 PURPA QUALIFYING FACILITY PURCHASES. (1) As used in this section:

24 (a) "PURPA" means the public utility regulatory policies act of 1978,  
25 16 U.S.C. section 824-a-3.

26 (b) "Qualifying facility" means a qualifying facility energy resource  
27 pursuant to PURPA, and shall have the meaning as defined in 18 CFR  
28 section 292.201 et seq., or in its successor or similar federal regula-  
29 tions.

30 (c) "Public utility" means a public utility as defined in section  
31 61-129, Idaho Code.

32 (d) "Standard avoided cost rates" or "published avoided cost rates"  
33 shall have the same meaning as "standard rates for purchases" as set  
34 forth in 18 CFR section 292.304(c).

35 (2) The public utilities commission is hereby directed to implement  
36 rules that establish and place into effect standard, or published, avoided  
37 cost rates for a public utility's purchase of electricity from PURPA wind  
38 and solar qualifying facilities with a design capacity of one hundred (100)  
39 kilowatts or less. Only PURPA wind and solar qualifying facilities whose  
40 total maximum design capacity is one hundred (100) kilowatts or less shall be  
41 eligible to receive the standard, or published, avoided cost rates in a power

1 purchase agreement with a public utility. This section only applies to power  
 2 purchase agreements for PURPA wind and solar projects filed with the public  
 3 utilities commission on or after the effective date of this section.

4 SECTION 3. That Section 63-3622QQ, Idaho Code, be, and the same is  
 5 hereby amended to read as follows:

6 63-3622QQ. EQUIPMENT USED IN ALTERNATIVE METHOD OF GENERATION OF  
 7 ELECTRICITY. (1) Purchasers of qualifying machinery and equipment used di-  
 8 rectly in generating electricity using fuel cells, low impact hydro, wind,  
 9 geothermal resources, biomass, cogeneration, sun or landfill gas as the  
 10 principal source of power may qualify for a rebate of sales or use taxes paid  
 11 on such purchases but only if the purchaser achieves commercial operation  
 12 of an electrical generating facility by December 31, 2014, and develops  
 13 with such qualifying machinery, equipment, and tangible personal property a  
 14 facility capable of generating not less than twenty-five (25) kilowatts of  
 15 electricity.

16 (2) For purposes of this section:

17 (a) "Landfill gas" means biomass fuel of the type qualified for fed-  
 18 eral tax credits under 26 U.S.C. section 29 collected from a landfill.

19 "Landfill" means a landfill as defined in section 39-7403, Idaho Code;

20 (b) "Qualifying mMachinery and equipment" means industrial fixtures,  
 21 devices, and support facilities that are integral and necessary to the  
 22 generation of electricity using fuel cells, low impact hydro, wind,  
 23 geothermal resources, biomass, cogeneration, sun, or landfill gas as  
 24 the principal source of power. "Qualifying mMachinery and equipment"  
 25 includes all operating property as described in section 63-3501(h),  
 26 Idaho Code;

27 (c) Notwithstanding subsection (2) (b) of this section, "qualifying ma-  
 28 chinery and equipment" does not include:

29 (i) Hand-powered tools;

30 (ii) Property with a useful life of less than one (1) year;

31 (iii) Repair parts required to restore machinery and equipment to  
 32 normal working order;

33 (iv) Replacement parts that do not increase productivity, improve  
 34 efficiency, or extend the useful life of machinery and equipment;

35 (v) Buildings; or

36 (vi) Building fixtures that are not integral and necessary to the  
 37 generation of electricity that are permanently affixed to and be-  
 38 come a physical part of a building;

39 (d) Qualifying mMachinery and equipment is "used directly" in gener-  
 40 ating electricity with fuel cells or by low impact hydro, wind energy,  
 41 geothermal resources, biomass, cogeneration, solar energy or landfill  
 42 gas power if it provides any part of the process that captures the en-  
 43 ergy of the fuel cells, low impact hydro, wind, geothermal resources,  
 44 biomass, cogeneration, sun, or landfill gas, converts that energy to  
 45 electricity, and stores, transforms or transmits that electricity for  
 46 entry into or operation in parallel with electric transmission and dis-  
 47 tribution systems;

1 (e) "Fuel cell" means an electrochemical reaction that generates elec-  
2 tricity by combining atoms of hydrogen and oxygen in the presence of a  
3 catalyst;

4 (f) "Low impact hydro" means an electric generating facility utilizing  
5 water for the generation of electricity, housed in existing canals or  
6 existing reservoirs and having a power production capacity twenty-five  
7 (25) kilowatts or greater.

8 (3) To qualify for the rebate, the taxpayer ~~and his contractors~~ must:

9 ~~(a) pay sales and use tax on their purchases of property. Once Obtain~~  
10 ~~a certification from a public utility, a cooperative, a municipality~~  
11 ~~or the public utilities commission certifies that the project will gen-~~  
12 ~~erate at least twenty-five (25) kilowatts of electricity, the taxpayer~~  
13 ~~may file a refund request with the state tax commission.;~~

14 ~~(b) The refund request shall state that the taxpayer will construct or~~  
15 ~~has constructed On or before December 31, 2014, achieve commercial op-~~  
16 ~~eration of a project that will generate sufficient kilowatts of elec-~~  
17 ~~tricity at the project site to be eligible for the rebate and that the~~  
18 ~~taxpayer is entitled to receive a rebate;~~

19 ~~(c) Pay sales and use tax on purchases of property and file a refund re-~~  
20 ~~quest of all sales and use taxes paid that qualifies for the rebate cre-~~  
21 ~~ated by this section; and~~

22 ~~(d) For those taxpayers selling electricity generated from a wind or~~  
23 ~~solar qualifying facility to a utility regulated by the Idaho public~~  
24 ~~utilities commission at standard rates as defined in section 61-543,~~  
25 ~~Idaho Code, obtain by October 31, 2011, approval from the Idaho public~~  
26 ~~utilities commission of a power purchase agreement.~~

27 (4) Upon filing of a written refund claim by the taxpayer entitled to  
28 the rebate, and subject to such reasonable documentation and verification as  
29 the state tax commission may require, the rebate shall be paid by the state  
30 tax commission as a refund allowable under section 63-3626, Idaho Code. A  
31 claim for rebate under this section must be filed on or before the last day  
32 of the third calendar year following the year in which the taxes sought to be  
33 rebated were paid or the right to the rebate is lost.

34 (5) Any rebate paid shall be subject to recapture by the state tax com-  
35 mission. In the event the property is not used, stored or otherwise consumed  
36 in the process of generating electricity for a period of sixty (60) months,  
37 the state tax commission may recapture the tax paid in the same proportion as  
38 an amount of credit required to be recaptured under section 63-3029B, Idaho  
39 Code.

40 (6) Any recapture amount due under this section shall be a deficiency  
41 in tax for the period in which the disqualification first occurs for pur-  
42 poses of section 63-3629, Idaho Code, and may be enforced and collected in  
43 the manner provided by the Idaho sales tax act, provided however, that in  
44 lieu of the provisions of section 63-3633, Idaho Code, the period of time  
45 within which the commission may issue a notice under section 63-3629, Idaho  
46 Code, in regard to an amount subject to recapture shall be the later of five  
47 (5) years after the end of the taxable year, for income tax purposes, in which  
48 the project period ends.

49 SECTION 4. That Section 2, Chapter 355, Laws of 2005, be, and the same is  
50 hereby amended to read as follows:

1           SECTION 2. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval, and shall be null, void and of no force and effect on  
4 and after ~~July 1, 2011~~ December 31, 2014.

5           SECTION 5. SEVERABILITY. The provisions of this act are hereby declared  
6 to be severable and if any provision of this act or the application of such  
7 provision to any person or circumstance is declared invalid for any reason,  
8 such declaration shall not affect the validity of the remaining portions of  
9 this act.

10           SECTION 6. An emergency existing therefor, which emergency is hereby  
11 declared to exist, this act shall be in full force and effect on and after its  
12 passage and approval.