

**Bill No.:** HB0101

**Drafter:** MQ

**LSO No.:** 10LSO-0320

**Effective Date:** 1/1/2011

**Enrolled Act No.:** HEA0018

**Chapter No.:** 49

**Prime Sponsor:** Representative Anderson, R.

**Catch Title:** Electricity generated from wind-taxation.

**Subject:** Imposes a tax upon the production of electricity from wind resources.

**Summary/Major Elements:**

- Imposes an excise tax upon the privilege of producing electricity from wind resources.
- Tax of \$1 per megawatt hour or portion thereof is imposed.
- Tax becomes effective 3 years after the turbine first produces electricity.
- Tax is distributed 60% to the counties where the generating facility is located; and 40% to the general fund.

**Comments:**

- Effective January 1, 2012.

ORIGINAL HOUSE

BILL NO. 0101

ENROLLED ACT NO. 18, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING

2010 BUDGET SESSION

AN ACT relating to taxation and revenue; imposing a tax upon the production of electricity from wind resources as specified; providing for administration, imposition, enforcement and distribution as specified; providing applicability; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 39-22-101 through 39-22-111 are created to read:

CHAPTER 22

TAX UPON PRODUCTION OF ELECTRICITY FROM WIND RESOURCES

**39-22-101. Definitions.**

There are no specific applicable provisions for definitions for this chapter.

**39-22-102. Administration.**

The department of revenue shall enforce the provisions of this chapter. The department shall promulgate rules and regulations necessary for the implementation and enforcement of this chapter.

**39-22-103. Imposition.**

There is levied an excise tax upon the privilege of producing electricity from wind resources in this state. The tax shall be imposed upon the production of any electricity produced from wind resources for sale or trade on or after January 1, 2012, and shall be paid by the person producing such electricity. The tax shall be imposed on each megawatt hour of electricity produced from wind resources at the point of interconnection with an electric transmission line.

**39-22-104. Taxation rate.**

The tax rate shall be one dollar (\$1.00) on each megawatt hour, or portion thereof, which is produced in this state.

**39-22-105. Exemptions.**

(a) No tax shall be imposed upon electricity which is produced from any generating facility owned or operated by the federal government, state of Wyoming or by any county or municipality in this state. No tax shall be imposed

upon electricity which is produced for the personal consumption of the producer, including any excess production of electricity that does not exceed five hundred (500) kilowatt hours in any twenty-four (24) hour period. (b) Electricity produced from a wind turbine shall not be subject to the tax imposed under this chapter until the date three (3) years after the turbine first produced electricity for sale. After such date the production shall be subject to the tax, as provided by W.S. 39-22-103, regardless of whether production first commenced prior to or after January 1, 2012.

**39-22-106. Licensing; permits.**

There are no specific applicable provisions for licenses and permits for this chapter.

**39-22-107. Compliance; collection procedures.**

(a) Returns and reports. Any person producing electricity from wind resources within this state which is subject to the tax imposed by this chapter shall report the amount of megawatt hours produced in this state on or before February 1 of the year immediately following the year in which the electricity was produced.

(b) Payment. Any person owing a tax under this chapter shall pay the tax once each year on or before February 1 of the year immediately following the year in which the electricity was produced. The tax shall be collected by the department of revenue.

(c) Timelines. There are no specific applicable provisions for timelines for this chapter.

**39-22-108. Enforcement.**

(a) Audits. There are no specific applicable provisions for audits for this chapter.

(b) Interest. Interest at an annual rate equal to the average prime interest as determined by the state treasurer during the preceding fiscal year, plus four percent (4%), shall be added to all delinquent taxes under this chapter. To determine the average prime interest rate, the state treasurer shall average the prime interest for at least seventy-five percent (75%) of the thirty (30) largest banks in the United States. The interest rate on delinquent taxes shall be adjusted on January 1 of each year following the year in which the taxes first became delinquent. In no instance shall the delinquent interest rate be less than twelve percent (12%) nor greater than eighteen percent (18%).

(c) Penalties. The following shall apply:

(i) If any person fails to make or file a return and remit the tax as required by W.S. 39-22-107, the department shall impose a penalty of five percent (5%) of

the taxes due for each thirty (30) day period, or fraction thereof, elapsing between the due date of the return and the date filed, unless the person for good cause obtains from the department an extension of time for filing prior to the due date for filing. In the event of an extension, the person shall pay the interest due on delinquent payments set forth in subsection (b) of this section. In no event shall the total penalty imposed by this subsection exceed twenty-five percent (25%) of the tax due. The department, for good cause, may waive a penalty imposed for failure to file a return for any one (1) calendar year, provided that:

(A) The return was filed within five (5) business days following the due date, including an approved extension period; and

(B) The taxpayer requests the waiver in writing within fifteen (15) days after the return was filed, setting forth the reasons for the late filing.

(ii) If any part of a tax deficiency is due to the negligence or intentional disregard of rules and regulations there shall be added a penalty of five percent (5%) of the amount of the deficiency plus interest as provided by subsection (b) of this section. The taxes, penalty and interest shall be paid by the taxpayer within ten (10) days after receipt of notice and demand by the department;

(iii) Taxes due together with interest, penalties and costs shall be collectible by the department by appropriate judicial proceedings;

(iv) The department may credit or waive penalties imposed by this section as part of a settlement or for any other good cause.

(d) Liens. Any delinquent tax is a lien upon the property of any owner from and after the time the tax is due until the tax is paid. The tax lien shall have preference over all liens except any valid mortgage or other liens of record filed or recorded prior to the date the tax became due.

(e) Tax sales. There are no specific applicable provisions for tax sales for this chapter.

### **39-22-109. Taxpayer remedies.**

There are no specific applicable provisions for taxpayer remedies for this chapter.

### **39-22-110. Statute of limitations.**

There are no specific applicable provisions for a statute of limitations for this chapter.

### **39-22-111. Distribution.**

(a) The proceeds from the tax imposed by this chapter shall be transferred to the state treasurer to be distributed as follows:

(i) Sixty percent (60%) shall be distributed to the counties in this state where the generating facility is located. The amount shall be proportionately distributed

to each county based upon the percentage of the assessed value of the generating facilities located within the county as compared to the total assessed value of generating facilities located within the state;

(ii) Forty percent (40%) shall be deposited in the state general fund.

**Section 2.** This act is effective January 1, 2011.

(END)

Speaker of the House President of the Senate

Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

Chief Clerk