

SUMMARY *of* PROCEEDINGS



JOINT REVENUE COMMITTEE

COMMITTEE MEETING INFORMATION

June 30-July 1, 2010
Fire Department Training Center, 701 Larch Street
Gillette, Wyoming

COMMITTEE MEMBERS PRESENT

Senator John Schiffer, Co-chair
Representative Rodney "Pete" Anderson, Co-chair
Senator Cale Case
Senator Grant Larson
Senator Marty Martin
Senator Drew Perkins
Representative Ken Esquibel
Representative Patrick Goggles
Representative Mike Madden
Representative David Miller
Representative Owen Petersen
Representative Mark Semlek
Representative Sue Wallis

COMMITTEE MEMBERS NOT PRESENT

Representative Amy Edmonds

LEGISLATIVE SERVICE OFFICE STAFF

Mark Quiner, Assistant Director
Dean Temte, Senior Legislative Analyst
Matt Sackett, Research
Lily Sharpe, Staff Attorney

OTHERS PRESENT AT MEETING

Please refer to Appendix 1 to review the Committee Sign-in Sheet
for a list of other individuals who attended the meeting.

The Committee Meeting Summary of Proceedings (meeting minutes) is prepared by the Legislative Service Office (LSO) and is the official record of the proceedings of a legislative committee meeting. This document does not represent a transcript of the meeting; it is a digest of the meeting and provides a record of official actions taken by the Committee. All meeting materials and handouts provided to the Committee by the Legislative Service Office, public officials, lobbyists, and the public are on file at the Legislative Service Office and are part of the official record of the meeting. An index of these materials is provided at the end of this document and these materials are on file at the Legislative Service Office. For more information or to review meeting materials, please contact the Legislative Service Office at (307) 777-7881 or by e-mail at lso@state.wy.us. The Summary of Proceedings for each legislative committee meeting can be found on the Wyoming Legislature's website at <http://legisweb.state.wy.us>.

EXECUTIVE SUMMARY

The Committee focused its two-day meeting in Gillette on the taxation of wind energy. The Department of Revenue reviewed the current status of wind taxation and Laura Ladd from the Governor's Office presented a wind energy cost model developed for the state of Wyoming. In addition to wind energy, the Committee received information and public comment on the taxation of oil and gas field services, the taxation of special events, and an update to the Tax Reform 2000 report.

CALL TO ORDER (JUNE 30, 2010)

Co-chair Anderson called the meeting to order at 8:40 a.m. The following sections summarize the Committee proceedings by topic. Please refer to Appendix 2 to review the Committee Meeting Agenda.

REVENUE PROJECTIONS FOR 2011

Bill Mai, LSO, explained state revenue by income source and discretionary appropriations. He presented a handout illustrating the major revenue sources, their growth since 1991, and revenue projections for 2011 (see Appendix 3 for a copy of the handout). The handout reflects the substantial increase in minerals revenue. It shows that much of the state's revenue is designated for earmarked and statutory expenditures. The remaining funds available for discretionary spending are heavily dependent on mineral income. Mr. Mai also presented the April 2010 Revenue Update (see Appendix 4 for a copy of the handout).

OVERVIEW, WIND ISSUES

Dan Noble, Department of Revenue, addressed the Committee on the current structure of wind energy taxation. The Department has implemented the 2009 tax exemption on the sale of equipment used to generate electricity from renewable resources. The exemption is scheduled to sunset entirely after June 2012. Mr. Noble also discussed wind taxation from a property tax perspective. He advised the Committee that it is anticipated there will be 961 wind towers in the state by the end of 2010 and showed a chart reflecting the increase in wind company valuations from 2002 to 2010 (see Appendix 5 for a copy of the handout.). He stated that the 2010 legislation imposing a \$1 generation excise tax per megawatt hour is expected to yield approximately \$5 million in taxes based on current capacity. The tax is scheduled to begin in 2012.

David Picard, Wyoming Power Producers Coalition (WPPC), provided the Committee with a comparison of the current tax structure in Wyoming to surrounding states (see Appendix 6 for a copy of the handout). The comparison uses a twenty-year projection model. Mr. Picard emphasized the hardship that the upfront 6% sales tax places on the developer. He supplied the Committee with a memorandum (see Appendix 7 for a copy of the handout) detailing Colorado corporate income tax on wind. The memorandum concludes that even considering Colorado's corporate income tax, Wyoming still imposes a high tax burden on wind energy.

Delette Olberg, Edison International, stressed that Edison International is heavily invested in Wyoming and wants to ensure Wyoming remains competitive. The company has entered into 25-year agreements, so any future adjustments in the tax burden will be passed on to the customers.

Rick McPherson, Edison Mission Energy-Mountain Wind Power, confirmed his company locates wind projects where the wind production will be most beneficial, but added that it also considers the tax burden of the state.

Dave Picard, Wyoming Power Producers Coalition, indicated that the burden shared by Wyoming residents is dependent on decisions made by the Public Service Commission.

Larry Wolfe, Duke Energy, urged the Committee to distinguish power producers from regulated companies when imposing a tax.

Audra Hartman, Next Era Energy, added that taxes are a very important factor in determining where wind energy projects should be located.

Scott Zimmerman, Rocky Mountain Farmers Union/Interwest Energy Alliance, responded to a question concerning the safety of turbines. Mr. Zimmerman believes that that OSHA inspects wind towers for safety.

Blair Leist, WindWorks Energy, elaborated that the foundations of the turbines are inspected, but the electrical system is not inspected.

Larry Wolfe, Duke Energy, posited that until customers exist in California and Arizona, the wind industry in Wyoming will stall. Demand from California will lead to the construction of transmission facilities. Mr. Wolfe shared a power point presentation outlining recommendations of the Wind Energy Tax Force (see Appendix 8 for a copy of the handout). Mr. Wolfe described the three types of taxes on wind: 1) sales and use tax on the purchase and installation of wind turbines, 2) property tax on industrial equipment, and 3) generation tax (currently \$1 per megawatt hour starting 2012). He continued that sales tax offers various taxation options, while limited options exist for structuring property taxes because property taxes must be uniform. Although a generation tax is a form of sales tax, it also offers various taxation possibilities. He warned that a tax on generators negatively impacts the industry because long term contracts are currently in place. Grandfathering current generators may avoid the detrimental impact on existing long term agreements.

Mark Tallman and Matt Grant, PacificCorp/Rocky Mountain Power, presented a power point on their wind energy projects (see Appendix 9 for a copy of the handout). They recommended that the Committee work with the Department of Revenue on how any new tax will be assessed. They further encouraged the Committee to consult with counties concerning how funds will flow down to them. Rocky Mountain Power locates wind energy projects in Wyoming because of production potential, the sales tax exemption, and construction and operation costs. The greatest obstacle for wind generation in Wyoming is transmission and customers in Wyoming have to pay for part of the transmission costs.

In response to a question, Mr. Tallman answered that the federal tax incentives are important. The credit is about \$20 per megawatt hour.

Cindy Delancey, Wyoming County Commissioners Association, implored the Committee to provide funding for counties to meet the financial burdens counties incur with the development of wind energy. Wyoming has a competitive tax structure and wind energy should be required to pay for the services the counties provide.

Ed Werner, Converse County Commission, noted that wind energy development affects many interests, including residents who live near the projects who only suffer the disadvantages. He stressed that counties do not have the right or the power to impose an impact fee.

Jerry Paxton, Carbon County Commission, lamented that wind energy projects create a boom and bust cycle. There is a minimal amount of gain. The industrial impact funds are based on an increase in sales, but sales have decreased.

Roy Edwards, Campbell County Commission, conveyed that the biggest impact for the counties is roads. With no generation tax or sales tax, residents must pay to maintain the roads.

Mark Harris, Wyoming Association of Municipalities (WAM), explained that when an industrial siting permit is issued, there is no change in the sales and use tax revenue because of the sales tax exemption on the sale of equipment used to generate electricity.

Steve Golnar, Rawlins City Manager, provided a written summary of his presentation regarding the financial impact of wind development on the city of Rawlins (see Appendix 10 for a copy of the handout).

Dan Neal, Equality State Policy Center, spoke in favor of a generation tax.

UPDATE ON TAX REFORM 2000

Ed Schmidt and Dan Noble, Department of Revenue, provided the Committee with the report prepared by the Tax Reform 2000 Committee. They reviewed the 1999 findings and recommendations of the tax reform Committee (see Appendix 11 for a copy of the handout). Mr. Schmidt provided an update on actions taken in subsequent years (see Appendix 12 for a copy of the handout).

MANUFACTURING EXCISE TAX EXEMPTION

Mr. Noble, Department of Revenue, discussed the sales and use tax exemption for manufacturing machinery imposed by W.S. 39-15-105(a)(viii)(O). The Department of Revenue is required to annually report the effects of the sales and use tax exemption. The Department, however, experiences difficulty in obtaining the information necessary for the report because manufacturers are not required to provide the information to the Department. Mr. Noble provided the 2009 report (see Appendix 13 for a copy of the handout) and a summary of sales and use tax exemptions the Department of Revenue administers (see Appendix 14 for a copy of the handout).

Jim Clickeman, L & H Industrial, Inc., spoke in favor continuing the manufacturing sales tax exemption and provided written comments (see Appendix 15 for a copy of the handout).

Jim Neiman, Neiman Enterprises, Inc., concurred the exemption should continue and provided written comments (see Appendix 16 for a copy of the handout).

Scott Sutherland, Cheyenne Leads, similarly encouraged the Committee to continue the exemption noting that it is critical to courting business in the manufacturing sector. It has allowed Wyoming to compete with other states and diversify the economy. From 1998 to 2008, the manufacturing sector increased by almost 4%. He encouraged the Committee to sponsor a bill extending the December 31, 2010 sunset provision or making the exemption permanent.

Steve Elledge, Wyoming Business Council, stated approximately 38 states do not have a sales tax on manufacturing machinery and the exemption offers an excellent tool to attract businesses to the state.

Marion Loomis, Wyoming Mining Association, supplied a handout detailing the economic impact from taxes in the trona industry (see Appendix 17 for a copy of the handout) and reiterated the need to continue the exemption.

Rusty Bayles, General Chemical, concurred that the trona industry benefits from the exemption.

Bruce Hinchey, Petroleum Association of Wyoming (PAW), expressed PAW's support for continuing the exemption.

Dan Neal, Equality State Policy Center, questioned exempting one type of business from taxation, while not exempting other areas. He would like to see better data on the actual benefit derived by the state from the exemption (see Appendix 18 for copy of the Equality State Policy Center handout).

Senator Case questioned whether data existed to document the cumulative number of jobs that have been created since the exemption's enactment. Co-chair Schiffer similarly questioned how many jobs have been created and the actual benefit gained from the exemption. Senator Case noted that the Wyoming Department of Employment only shows 300 manufacturing jobs added, when the exemption is costing the state a substantial amount in lost revenue.

The Committee directed LSO to draft a bill, using the NAICS code, which requires the Department of Employment to collect data documenting the number of jobs created in manufacturing machinery and which extends the exemption's sunset date five years.

MEETING RECESS

The Committee recessed at 5:10 pm.

CALL TO ORDER (7/1/2010)

Co-Chair Schiffer called the meeting to order at 8:35 am.

TAX EFFECT AND TAX MODEL

Matt Grant and Mark Tallman, Rocky Mountain Power, delineated the energy mix of their company's power production from coal, hydro, natural gas, wind and other sources.

Laura Ladd, Governor's Office, presented a power point presentation of the Wind Costing Model (see Appendix 19 and Appendix 20 for a copy of the power point presentation). The model was created for the state of Wyoming by Energy and Environmental Economics, Inc., a resource, planning and economic modeling business. The goal was to develop a model which took into account a levelized cost of energy, state taxes, federal and state incentives, and delivery costs.

The company concluded that there are three primary drivers in the difference of state wind resource costs: capacity factors (regional differences in wind speed), capital costs (regional differences in the cost of land, labor and materials) and state tax treatments. Federal tax policy is also a major driving factor.

Ms. Ladd explained the assumptions taken into account in developing the model, including state tax assumptions and federal tax incentives. She noted that the federal investment tax credit and the production tax credit will expire in 2012, but are expected to be renewed. Wyoming's excise tax of \$1 per megawatt hour was also considered.

Ms. Ladd advised the Committee that Wyoming is generally competitive. However, it does compete with Montana and New Mexico. She explained six scenarios investigated and concluded that the major difference in the competitiveness is based on wind capacity, state taxes and transmission costs. Ms. Ladd

pointed out that having a state income tax actually benefits other states because of the tax effect of accelerated depreciation (Modified Accelerated Cost Recovery System (MACRS)).

The Committee agreed to form a subcommittee to develop wind energy legislation. The legislation should reflect the consensus of the Committee to generate revenue and assist local governments, but not create a disincentive to the development of wind energy. The Committee members will include Senators Schiffer, Perkins and Case, and Representatives Anderson, Miller, Semlek and Goggles.

The subcommittee will include a representative from the independent power producers, regulated and non-regulated utilities, local governments, the Department of Revenue, and Laura Ladd. The meeting will most likely be held in Casper.

Co-chair Schiffer advised that comments concerning revenue generation for wind energy power may also be submitted through the Legislative Service Office website. He added, however, that requests for the wind cost model should be directed to the Governor's Office rather than LSO.

Ms. Ladd stated the Governor would have to determine whether to release the model, but she believes it will be made available without the ability to change the model's assumptions. A partner from Energy and Environment Economics, Inc. will also answer any questions from the Committee about the model at no extra charge. LSO will post the power point on its website.

TAXATION OF OIL AND GAS FIELD SERVICES

Dan Noble, Department of Revenue, apprised the Committee concerning the status of the excise tax on services rendered to real or personal property within an oil or gas well site. Since 1967, the Department has taxed the services rendered and considered the materials utilized in rendering the services as incidental to the services. Recently an issue has arisen as to whether the contractors should be responsible for paying taxes on the materials. The issue has arisen because of the application of state contractor law and the interpretation of W.S. 39-15-103(a)(i)(K). Mr. Noble asked the Committee to clarify that the intent of the legislature and the Department is that the work done on a well site is taxable, and the products or material utilized are incidental to the services rendered. The services and the material are consequently taxable as a retail sale event. The Department has language it would like to share with LSO.

The Committee directed LSO to draft a bill clarifying the intent of W.S. 39-15-403(a)(i)(K) for the next Committee meeting.

EXCISE TAX ON SPECIAL EVENTS

Dan Noble also addressed the collection of tax on special events. Usually the Department does not encounter problems when Department officials distribute tax returns at the events. Gun shows, however, have caused difficulty because of the animosity shown towards the Department personnel when handing out tax returns. Colorado and other states hold the event sponsor responsible for distributing the tax returns and remitting the taxes. Mr. Noble would like to work with the representatives of these functions to reach a solution. The Committee agreed that Mr. Noble should talk with the gun associations to resolve the issue.

MEETING ADJOURNMENT

The Committee agreed to meet again on December 16 – 17, 2010.

There being no further business, Co-Chair Schiffer adjourned the meeting at 11:40 a.m.

Respectfully submitted,

Senator Schiffer, Co-chair

Representative Anderson, Co-chair

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Committee

Meeting Materials

	Appendix Topic	Appendix Description	Appendix Provider
1	Committee sign-in sheet	Lists meeting attendees	Legislative Service Office
2	Committee meeting agenda	Provides an outline of the topics the Committee planned to address at meeting	Legislative Service Office
3	Revenue projections	State revenue by source	Legislative Service Office
4	Revenue projections	Revenue update April 2010	Legislative Service Office
5	Wind energy	Wind energy company valuations	Department of Revenue
6	Wind energy	Wind tax comparison	Wyoming Power Producers Coalition
7	Wind energy	Colorado corporate tax	Wyoming Power Producers Coalition
8	Wind energy	Wyoming wind tax	Duke Energy
9	Wind energy	Generation tax	Rocky Mountain Power
10	Wind energy	Comment on wind tax	City of Rawlins
11	Tax reform	Tax reform 2000 report	Department of Revenue
12	Tax reform	Tax reform 2000 update	Department of Revenue
13	Manufacturing excise exemption	2009 excise tax exemption report	Department of Revenue
14	Manufacturing excise tax exemption	Sales and use tax exemptions	Department of Revenue
15	Manufacturing excise tax exemption	Comment on excise tax exemption	L & H Industrial, Inc.

16	Manufacturing excise tax exemption	Comment on excise tax exemption	Neiman Enterprises, Inc.
17	Manufacturing excise tax exemption	Trona Industry tax impact	Wyoming Mining Association
18	Taxation	Comment on tax proposals	Equality State Policy Center
19	Tax Model	Wind costing model power point	Governor's Office
20	Tax Model	Power point enlargement	Governor's Office