

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. _____

Electrical generation tax.

Sponsored by: Senator(s) Schiffer

A BILL

for

1 AN ACT relating to taxation and revenue; imposing an excise
2 tax upon the production and sale of electricity as
3 specified; providing a rate; providing a credit; providing
4 rulemaking authority; providing a penalty; providing for
5 distribution; providing application; and providing for an
6 effective date.

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

9

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

12

13

CHAPTER 22

14

TAX UPON PRODUCTION AND SALE OF ELECTRICITY

1

2 **39-22-101. Definitions.**

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

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7 **39-22-102. Administration.**

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

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14 **39-22-103. Imposition.**

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16 There is levied an excise tax upon the privilege of
17 producing and selling electricity in this state. The tax
18 shall be imposed upon the production and sale of any
19 electricity generated for sale or trade. The tax shall be
20 imposed on each kilowatt as it leaves the generation
21 facility and prior to entering the interstate transmission
22 system.

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1 **39-22-104. Taxation rate.**

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3 The tax rate shall be twenty-five one-hundredths of one
4 cent (\$.0025) upon each kilowatt hour, or portion thereof,
5 which is produced and sold.

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7 **39-22-105. Exemptions.**

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9 No tax shall be imposed upon electricity which is produced
10 from any electrical generating facility owned or operated
11 by the federal government, state of Wyoming or by any
12 county or municipality in this state. No tax shall be
13 imposed upon electricity which is produced for the personal
14 consumption of the producer, including any excess
15 production of electricity that does not exceed five hundred
16 (500) kilowatt hours in any twenty-four (24) hour period.

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18 **39-22-106. Licensing; permits.**

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

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23 **39-22-107. Compliance; collection procedures.**

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2 (a) Returns and reports. Any person producing and
3 selling electricity in this state shall report the amount
4 of kilowatt hours produced and sold in this state on or
5 before February 1 of the calendar year immediately
6 following the year in which the electricity was produced
7 and sold.

8

9 (b) Payment. Any person owing a tax under this
10 chapter shall pay the tax once each year on or before May 1
11 of the calendar year immediately following the year in
12 which the electricity was produced and sold. The tax shall
13 be collected by the department of revenue.

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

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18 **39-22-108. Enforcement.**

19

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

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

14

15 (c) Penalties. The following shall apply:

16

17 (i) If any person fails to make or file a return
18 or remit the tax as required by W.S. 39-22-107 the
19 department shall impose a penalty of five percent (5%) of
20 the taxes due for each thirty (30) day period, or fraction
21 thereof, elapsing between the due date of the return and
22 the date filed, unless the person for good cause obtains
23 from the department an extension of time for filing prior

1 to the due date for filing. In no event shall the total
2 penalty imposed by this subsection exceed twenty-five
3 percent (25%) of the tax due. The department, for good
4 cause, may waive a penalty imposed for failure to file a
5 return for any one (1) calendar year, provided that:

6

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

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

14

15 (ii) If any part of a tax deficiency is due to
16 negligence or intentional disregard of rules and
17 regulations there shall be added a penalty of five percent
18 (5%) of the amount of the deficiency plus interest as
19 provided by subsection (b) of this section. The taxes,
20 penalty and interest shall be paid by the taxpayer within
21 ten (10) days after receipt of notice and demand by the
22 department;

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

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

8
9 (d) Liens. Any delinquent tax is a lien upon the
10 property of any owner from and after the time the tax is
11 due until the tax is paid. The tax lien shall have
12 preference over all liens except any valid mortgage or
13 other liens of record filed or recorded prior to the date
14 the tax became due.

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

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19 **39-22-109. Taxpayer remedies.**

20
21 (a) Credits. Any person producing and selling
22 electricity in this state using in the production process
23 any mineral which has been taxed and paid under the

1 provisions of W.S. 39-14-101 et seq. shall be entitled to a
2 tax credit of eighty-seven one-thousandths of one cent
3 (\$.00087) for each kilowatt hour, or portion thereof, of
4 electricity produced and sold in this state.

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6 **39-22-110. Statute of limitations.**

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

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11 **39-22-111. Distribution.**

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

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17 (i) Ten percent (10%) shall be deposited into
18 the Wyoming wildlife and natural resource trust income
19 account created by W.S. 9-15-103. Notwithstanding W.S. 9-
20 15-103(d), the money shall be expended by the Wyoming
21 wildlife and natural resource trust account board for the
22 purposes of conservation finance and to mitigate endangered
23 species concerns;

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***** STAFF COMMENTS *****

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Should we limit the wind turbine towers to a certain commercial electrical generating capacity to limit the small turbines that only serve 1 home?

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(ii) Ten percent (10%) shall be distributed to the counties in this state wherein wind turbine towers are located. The amount shall be proportionately distributed to each county based upon the percentage of total wind turbine towers located in the county compared to the total amount of wind turbine towers located in this state. Any wind turbine for which a tax credit has been granted under W.S. 39-22-109 shall not be used in this calculation;

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(iii) Forty percent (40%) shall be deposited in the general fund; and

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(iv) Forty percent (40%) shall be deposited in the budget reserve account.

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Section 2. This act shall apply to electricity produced on or after January 1, 2011.

1 **Section 3.** This act is effective July 1, 2010.

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(END)