

HOUSE BILL NO. HB0200

Electricity generation-equity and consumer protection.

Sponsored by: Representative(s) Burkhardt, Conrad, Harshman,
Heiner, Larsen, L, Walters and Wylie and
Senator(s) Cooper and Driskill

A BILL

for

1 AN ACT relating to taxation and revenue; providing for an
2 electricity generation tax as specified; specifying
3 applicability, conditions and requirements for the
4 electricity generation tax; specifying distribution;
5 requiring rulemaking; providing confidentiality
6 requirements; specifying penalties; providing a sales and
7 use tax exemption on electricity as specified; making
8 conforming amendments; repealing generation taxes on wind
9 and nuclear energy; and providing for an effective date.

10

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

12

13 **Section 1.** W.S. 39-24-101 through 39-24-111 are
14 created to read:

15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CHAPTER 24

TAX UPON PRODUCTION OF ELECTRICITY

39-24-101. Definitions.

(a) As used in this chapter:

(i) "Electric generation facility" means any facility or unit that generates electricity from any fuel, source or resource;

(ii) "Electric public utility" means:

(A) A public utility or person that provides electricity to customers in Wyoming; or

(B) A generator, supplier or provider that provides electricity to customers.

(iii) "Purchaser sales price" means the actual price of electricity that a purchaser pays for the electricity, including all fees, taxes and assessments,

1 plus any state policy tax imposed on, assessed to and paid
2 by a Wyoming purchaser or customer;

3

4 (iv) "State policy tax" means any tax, fee or
5 assessment imposed by any state on the basis of the fuel
6 source or fuel content that is used in the generation of
7 electricity that an electric public utility assesses or
8 imposes on Wyoming purchasers or customers and that is paid
9 by Wyoming purchasers or customers.

10

11 **39-24-102. Administration; confidentiality.**

12

13 (a) The department shall enforce the provisions of
14 this chapter. The department shall promulgate rules and
15 regulations necessary for the implementation and
16 enforcement of this chapter. In implementing and enforcing
17 this chapter, the department may consult with the public
18 service commission and any other relevant state agency.

19

20 (b) All taxpayer returns and return information shall
21 be confidential and, except as otherwise authorized in this
22 section, no current or former official, officer, employee
23 or agent of the state of Wyoming or any political

1 subdivision thereof shall disclose any information obtained
2 by him in connection with his service as an officer or
3 employee.

4

5 (c) As used in this section, "taxpayer returns and
6 return information" shall include, but is not limited to,
7 all statements, reports, summaries and all other data and
8 documents under audit or provided by the taxpayer in
9 accordance with this chapter and any rules of the
10 department promulgated under this chapter.

11

12 (d) Without written authorization from the taxpayer,
13 no current or former official, officer, employee or agent
14 of the state of Wyoming or any political subdivision
15 thereof shall release taxpayer returns and return
16 information pertaining to taxes imposed by this article,
17 except:

18

19 (i) Information may be released to the governor
20 or his designee, members of the board, to employees of the
21 department of audit, the department of revenue, the
22 consensus revenue estimating group and to the attorney
23 general;

1

2 (ii) Upon prior notice to the taxpayer,
3 information may be released by the department, upon written
4 application, to any other governmental entity if the
5 governmental entity shows sufficient reason to obtain the
6 information for official business;

7

8 (iii) Information is admissible in court or
9 administrative proceedings related to the tax required
10 under this chapter.

11

12 (e) Any person receiving information pursuant to
13 subsection (d) of this section shall sign an agreement with
14 the department to keep the information confidential.

15

16 (f) Any person who negligently violates subsections
17 (b) through (e) of this section is guilty of a misdemeanor
18 and upon conviction shall be fined not more than one
19 thousand dollars (\$1,000.00). Any person who intentionally
20 violates subsections (b) through (e) of this section is
21 guilty of a misdemeanor and upon conviction shall be fined
22 not less than one thousand dollars (\$1,000.00), but not

1 more than five thousand dollars (\$5,000.00) and imprisoned
2 for not more than one (1) year.

3

4 **39-24-103. Imposition.**

5

6 (a) Taxable event. The following shall apply:

7

8 (i) Except as provided by W.S. 39-24-105, there
9 is levied an excise tax upon:

10

11 (A) The purchaser sales price of all
12 electricity generated in the state from any fuel, source or
13 resource;

14

15 (B) The purchaser sales price from the sale
16 of electricity sold or generated in this state, regardless
17 of the site of generation or the fuel, source or resource
18 used to generate the electricity; or

19

20 (C) The price of electricity that an
21 electric public utility located in Wyoming is paid to
22 accept and take for electricity that is imported into
23 Wyoming.

1

2 (ii) Except as otherwise provided in this
3 subsection, the tax shall be imposed on the purchaser sales
4 price of the electricity in accordance with the following:

5

6 (A) For electricity taxed under
7 subparagraph (i)(A) of this subsection, the tax shall be
8 imposed at the point of interconnection with an electric
9 transmission line;

10

11 (B) For electricity taxed under
12 subparagraph (i)(B) of this subsection, the tax shall be
13 imposed at the point where the electricity is transmitted
14 through the meter of the purchaser purchasing the
15 electricity;

16

17 (C) For electricity taxed under
18 subparagraph (i)(C) of this subsection, the tax shall be
19 imposed at the first point of interconnection after the
20 electricity enters the state of Wyoming.

21

22 (iii) For electricity that is imported into the
23 state and for which the electric public utility is paid to

1 take or accept, the tax under this chapter shall be paid by
2 the electric public utility, unless the electricity
3 imported into this state is sold to customers or purchasers
4 in this state.

5

6 (b) Basis of tax. Except as provided by W.S.
7 39-24-105, there is levied and shall be paid by the
8 purchaser of electricity an excise tax upon all events as
9 provided by subsection (a) of this section.

10

11 (c) Taxpayer. The following shall apply:

12

13 (i) Except as otherwise provided, each electric
14 public utility shall collect the tax imposed by this
15 chapter and is liable for the entire amount of taxes
16 imposed;

17

18 (ii) Every person purchasing electricity taxed
19 by this chapter is liable for the taxes and shall pay any
20 tax owed to the department unless the taxes have been paid
21 to an electric public utility;

22

1 (iii) Any tax due under this chapter constitutes
2 a debt to the state from the persons who are party to the
3 sale of electricity, other than any electric public utility
4 that is prohibited or not authorized by law to collect any
5 tax under this chapter, and is a lien from the date the tax
6 is due on all the real and personal property of those
7 persons, subject to W.S. 39-24-108(d);

8
9 (iv) An electric public utility shall file a
10 return within thirty (30) days after ceasing the sale of
11 electricity in this state or after the closure or
12 retirement of any electric generation of the utility
13 located in this state. Any successor shall withhold
14 sufficient funds to pay the taxes, penalties and interest
15 due on the outstanding amount of all credit, installment
16 and conditional sales upon which the tax required by this
17 chapter has not been paid until the time the former owner
18 of the public utility produces a receipt from the
19 department showing that all taxes have been paid or a
20 certificate that no taxes are due. The original electric
21 public utility and successor are liable for the payment of
22 any unpaid taxes, penalties and interest.

23

1 **39-24-104. Taxation rate.**

2

3 Except as provided by W.S. 39-24-105, there is levied and
4 shall be paid by the customer or purchaser an excise tax of
5 two and twenty-five hundredths percent (2.25%) upon the
6 purchaser sales price or other specified price of all
7 events as provided by W.S. 39-24-103(a).

8

9 **39-24-105. Exemptions.**

10

11 (a) No tax shall be imposed under this chapter upon
12 electricity that is produced from any generating facility
13 owned or operated by the federal government or a state,
14 city or county in or outside of Wyoming.

15

16 (b) No tax shall be imposed under this chapter upon
17 electricity that is produced for the personal consumption
18 of the producer. For purposes of this subsection,
19 "electricity produced for the personal consumption of the
20 producer" shall include only excess production of
21 electricity that does not exceed five hundred (500)
22 kilowatt hours in any twenty-four (24) hour period.

23

1 **39-24-106. Licensing, permits.**

2

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

5

6 **39-24-107. Compliance; collection procedures.**

7

8 (a) Returns, reports and preservation of records. The
9 following shall apply:

10

11 (i) Each electric public utility subject to
12 taxes under this chapter shall, on or before the last day
13 of each month, file a true return showing the preceding
14 month's sales or electricity production and remit all taxes
15 to the department. The returns shall contain such
16 information and be made in the manner as the department by
17 regulation prescribes. The department may provide an option
18 for the return to be submitted and for any taxes to be
19 remitted electronically. The department may allow
20 extensions for filing returns and paying the taxes by
21 regulation, but no extension may be for more than ninety
22 (90) days. If the total tax to be remitted during any month
23 is less than one hundred fifty dollars (\$150.00), a

1 quarterly or annual return as authorized by the department,
2 and remittance in lieu of the monthly return may be made on
3 or before the last day of the month following the end of
4 the quarter or year for which the tax is collected. If the
5 accounting methods regularly used by a utility would impose
6 unnecessary hardships in the reporting of sales or
7 production from a calendar month, the department after
8 receiving a formal request filed by the electric public
9 utility may accept reports at intervals that would be more
10 convenient to the utility;

11

12 (ii) Each electric public utility shall preserve
13 for three (3) years at its principal place of business,
14 suitable records and books as necessary to determine the
15 amount of tax for which the utility is liable under this
16 chapter, together with all invoices and books showing the
17 electricity generated or sold in this state. All records,
18 books and invoices shall be available for examination by
19 the department during regular business hours except as
20 arranged by mutual consent;

21

22 (iii) If any electric public utility or person
23 liable for the payment of tax under this chapter fails to

1 comply with paragraph (ii) of this subsection, the utility
2 or person shall bear the burden of proof as to the
3 correctness of any assessment of taxes imposed by the
4 department for the period for which records were not
5 preserved in any court action or proceeding;

6

7 (iv) If an electric public utility fails to file
8 a return as required by this chapter, the department shall
9 give written notice by mail to the utility to file a return
10 on or before the last day of the month following the notice
11 of delinquency. If the utility then fails to file a return,
12 the department shall make a return from the best
13 information available. The return shall be prima facie
14 correct and the tax due therein is a deficiency and subject
15 to penalties and interest as provided by this chapter;

16

17 (v) The department shall preserve returns and
18 reports for three (3) years;

19

20 (vi) The electric public utility shall file a
21 return within thirty (30) days after discontinuing or
22 selling the business or after retirement of an electric
23 generation facility of the utility;

1

2 (vii) As soon as practicable after the return is
3 filed, the department shall examine the return. If it
4 appears from the information on the return that the tax to
5 be remitted is incorrect, the tax shall be recomputed. If
6 the amount remitted exceeds that which is due from the
7 recomputed return, the excess shall be refunded or credited
8 as provided in W.S. 39-24-109.

9

10 (b) Payment. The following shall apply:

11

12 (i) The taxes due under this chapter are due and
13 payable on the last day of the month following the month in
14 which they were collected or as required by the department
15 as specified by this chapter;

16

17 (ii) If a sale of electricity is made on credit,
18 contract or conditional basis and the electricity does not
19 pass until a future date, there shall be paid upon each
20 payment that portion of the total tax which the amount paid
21 bears to the purchase price. If an electric public utility
22 discontinues its business, the tax shall be computed and

1 paid on the outstanding amount of all credit, installment
2 and conditional sales;

3

4 (iii) If any electric public utility collects a
5 tax in excess of that imposed by this chapter, the tax
6 shall be remitted to the department after making reasonable
7 attempts to identify and refund the excess tax to the
8 taxpayer that originally paid the tax;

9

10 (iv) When the department has reason to believe
11 the collection of any tax, penalty or interest will be
12 jeopardized by delay, the department shall immediately levy
13 a jeopardy assessment and the amount assessed shall be
14 immediately due and payable. Notice of the assessment shall
15 be given to the electric public utility personally or by
16 mail. If the jeopardy assessment is not paid within ten
17 (10) days after the service of notice upon the electric
18 public utility, the deficiency penalty and interest
19 provided in W.S. 39-24-108 shall attach to the amount of
20 the jeopardy assessment;

21

22 (v) The department may enter into contracts with
23 collection agencies for required collection services on

1 deficiencies of tax occurring under this chapter. Any taxes
2 recovered by the collection agencies and remitted to the
3 department shall be distributed in accordance with W.S.
4 39-24-111. Any person owing a tax submitted to a collection
5 agency may be assessed a fee in an amount necessary to
6 cover the cost of collection, not to exceed twenty percent
7 (20%) of the tax owed, as provided in W.S. 9-1-415(a). The
8 collection agency shall collect the fee with the tax that
9 is submitted for collection and the amount collected as a
10 fee may be deducted from funds remitted to the department.
11 The contracts entered into under this paragraph shall not
12 be for a term of more than two (2) years and shall be
13 awarded only after competition.

14

15 (c) Timelines. Except as otherwise specifically
16 provided, there are no general applicable provisions for
17 timelines in this chapter.

18

19 **39-24-108. Enforcement.**

20

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

23

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

14

15 (c) Penalties. The following shall apply:

16

17 (i) If any person fails to make or file a return
18 and remit the tax as required by W.S. 39-24-107, 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 the event of an extension,
2 the person shall pay the interest due on delinquent
3 payments set forth in subsection (b) of this section. In
4 no event shall the total penalty imposed by this subsection
5 exceed twenty-five percent (25%) of the tax due. The
6 department, for good cause, may waive a penalty imposed for
7 failure to file a return for any one (1) calendar year,
8 provided that:

9

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

13

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

17

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

1 ten (10) days after receipt of notice and demand by the
2 department;

3

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

7

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

11

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

18

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

21

22 **39-24-109. Taxpayer remedies.**

23

1 (a) Subject to subsection (b) of this section, there
2 are no specific applicable provisions for taxpayer remedies
3 for this chapter.

4

5 (b) No credit or refund shall be given to an electric
6 public utility that produces for sale or sells electricity
7 for zero dollars (\$0.00) or for a negative cost.

8

9 (c) Nothing in this chapter shall be construed to
10 exempt an electric public utility from any sales or use tax
11 levied on the purchase of electrical equipment or other
12 equipment necessary for the production of electricity.

13

14 **39-24-110. Statute of limitations.**

15

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

18

19 **39-24-111. Distribution.**

20

21 (a) Revenues earned under W.S. 39-24-104 during each
22 fiscal year shall be recognized as revenue during that
23 fiscal year for accounting purposes. The department shall:

1

2 (i) Credit sixty-nine percent (69%) to the state
3 general fund for deposit by the state treasurer;

4

5 (ii) Deduct one percent (1%) from the remaining
6 share to cover all administrative expenses and costs
7 attributable to the remaining share and credit for deposit
8 by the state treasurer into the general fund for that
9 amount;

10

11 (iii) Distribute the remainder to each county in
12 the proportion that the total population of the county
13 bears to the total population of the state for distribution
14 under this paragraph. The amount specified in this
15 paragraph shall be paid monthly to the treasurers of the
16 counties, cities and towns for payment into their
17 respective general funds. The percentage of the balance
18 shall be distributed within each county as follows:

19

20 (A) To each county in the proportion that
21 the population of the county situated outside the corporate
22 limits of its cities and towns bears to the total
23 population of the county including cities and towns;

1

2 (B) To each city and town within the county
3 in the proportion the population of the city or town bears
4 to the population of the county.

5

6 **Section 2.** W.S. 39-11-101(a)(xviii),
7 39-15-101(a)(ix), 39-15-103(a)(i)(E), 39-15-105(a) by
8 creating a new paragraph (xi), 39-16-101(a)(vi) and
9 39-16-105(a) by creating a new paragraph (xi) are amended
10 to read:

11

12 **39-11-101. Definitions.**

13

14 (a) As used in this act unless otherwise specifically
15 provided:

16

17 (xviii) "This act" means W.S. 39-11-101 through
18 ~~39-23-111~~ 39-24-111.

19

20 **39-15-101. Definitions.**

21

22 (a) As used in this article:

23

1 (ix) "Tangible personal property" means all
2 personal property that can be seen, weighed, measured, felt
3 or touched, or that is in any other manner perceptible to
4 the senses. "Tangible personal property" includes
5 ~~electricity,~~ water, gas, steam and prewritten computer
6 software; and includes any controlled substances as defined
7 by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a
8 written prescription of or through a licensed practitioner
9 as defined by W.S. 35-7-1002(a)(xx);

10

11 **39-15-103. Imposition.**

12

13 (a) Taxable event. The following shall apply:

14

15 (i) Except as provided by W.S. 39-15-105, there
16 is levied an excise tax upon:

17

18 (E) The sales price paid to public
19 utilities as defined in W.S. 37-1-101 through 37-3-114 and
20 to persons furnishing gas, ~~electricity~~ or heat for
21 domestic, industrial or commercial consumption;

22

23 **39-15-105. Exemptions.**

1

2 (a) The following sales or leases are exempt from the
3 excise tax imposed by this article:

4

5 (xi) Sales of electricity subject to the
6 generation tax imposed under chapter 24 of this title.

7

8 **39-16-101. Definitions.**

9

10 (a) As used in this article:

11

12 (vi) "Tangible personal property" means all
13 personal property that can be seen, weighed, measured, felt
14 or touched, or that is in any other manner perceptible to
15 the senses. "Tangible personal property" includes
16 ~~electricity,~~ water, gas, steam and prewritten computer
17 software and includes any controlled substance as defined
18 by W.S. 35-7-1002(a)(iv) which is not sold pursuant to a
19 written prescription of or through a licensed practitioner
20 as defined by W.S. 35-7-1002(a)(xx);

21

22 **39-16-105. Exemptions.**

23

1 (a) The following purchases or leases are exempt from
2 the excise tax imposed by this article:

3

4 (xi) Purchases of electricity subject to the
5 generation tax imposed under chapter 24 of this title.

6

7 **Section 3.** W.S. 39-22-101 through 39-23-111 are
8 repealed.

9

10 **Section 4.** This act is effective January 1, 2025.

11

12

(END)