

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SPECIAL SESSION

LEGISLATIVE BILL 35

Introduced by Brewer, 43; Halloran, 33; Murman, 38.

Read first time July 26, 2024

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-6203, Revised Statutes Cumulative Supplement, 2022; to adjust the
- 3 nameplate capacity tax for inflation as prescribed; and to repeal
- 4 the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-6203, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 77-6203 (1) The owner of a renewable energy generation facility
4 annually shall pay a nameplate capacity tax equal to the total nameplate
5 capacity of the commissioned renewable energy generation facility
6 multiplied by a tax rate of three thousand five hundred eighteen dollars
7 per megawatt. On January 1, 2025, and on each January 1 thereafter, the
8 Department of Revenue shall adjust the tax rate by the percentage change
9 in the Consumer Price Index for All Urban Consumers, as prepared by the
10 United States Department of Labor, Bureau of Labor Statistics, for the
11 twelve-month period ending on August 31 of the previous calendar year. If
12 the adjusted tax rate is not a whole dollar amount, it shall be rounded
13 to the nearest whole dollar amount.

14 (2) No tax shall be imposed on a renewable energy generation
15 facility:

16 (a) Owned or operated by the federal government, the State of
17 Nebraska, a public power district, a public power and irrigation
18 district, an individual municipality, a registered group of
19 municipalities, an electric membership association, or a cooperative; or

20 (b) That is a customer-generator as defined in section 70-2002.

21 (3) No tax levied pursuant to this section shall be construed to
22 constitute restricted funds as defined in section 13-518 for the first
23 five years after the renewable energy generation facility is
24 commissioned.

25 (4) The presence of one or more renewable energy generation
26 facilities or supporting infrastructure shall not be a factor in the
27 assessment, determination of actual value, or classification under
28 section 77-201 of the real property underlying or adjacent to such
29 facilities or infrastructure.

30 (5)(a) The Department of Revenue shall collect the tax due under
31 this section.

1 (b) The tax shall be imposed beginning the first calendar year the
2 renewable energy generation facility is commissioned. A renewable energy
3 generation facility that uses wind as the fuel source which was
4 commissioned prior to July 15, 2010, shall be subject to the tax levied
5 pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The
6 amount of property tax on depreciable tangible personal property
7 previously paid on a renewable energy generation facility that uses wind
8 as the fuel source which was commissioned prior to July 15, 2010, which
9 is greater than the amount that would have been paid pursuant to sections
10 77-6201 to 77-6204 from the date of commissioning until January 1, 2010,
11 shall be credited against any tax due under Chapter 77, and any amount so
12 credited that is unused in any tax year shall be carried over to
13 subsequent tax years until fully utilized.

14 (c)(i) The tax for the first calendar year shall be prorated based
15 upon the number of days remaining in the calendar year after the
16 renewable energy generation facility is commissioned.

17 (ii) In the first year in which a renewable energy generation
18 facility is taxed or in any year in which additional commissioned
19 nameplate capacity is added to a renewable energy generation facility,
20 the taxes on the initial or additional nameplate capacity shall be
21 prorated for the number of days remaining in the calendar year.

22 (iii) When a renewable energy generation facility is decommissioned
23 or made nonoperational by a change in law during a tax year, the taxes
24 shall be prorated for the number of days during which the renewable
25 energy generation facility was not decommissioned or was operational.

26 (iv) When the capacity of a renewable energy generation facility to
27 produce electricity is reduced but the renewable energy generation
28 facility is not decommissioned, the nameplate capacity of the renewable
29 energy generation facility is deemed to be unchanged.

30 (6)(a) On March 1 of each year, the owner of a renewable energy
31 generation facility shall file with the Department of Revenue a report on

1 the nameplate capacity of the facility for the previous year from January
2 1 through December 31. All taxes shall be due on April 1 and shall be
3 delinquent if not paid on a quarterly basis on April 1 and each quarter
4 thereafter. Delinquent quarterly payments shall draw interest at the rate
5 provided for in section 45-104.02, as such rate may from time to time be
6 adjusted.

7 (b) The owner of a renewable energy generation facility is liable
8 for the taxes under this section with respect to the facility, whether or
9 not the owner of the facility is the owner of the land on which the
10 facility is situated.

11 (7) Failure to file a report required by subsection (6) of this
12 section, filing such report late, failure to pay taxes due, or
13 underpayment of such taxes shall result in a penalty of five percent of
14 the amount due being imposed for each quarter the report is overdue or
15 the payment is delinquent, except that the penalty shall not exceed ten
16 thousand dollars.

17 (8) The Department of Revenue shall enforce the provisions of this
18 section. The department may adopt and promulgate rules and regulations
19 necessary for the implementation and enforcement of this section.

20 (9) The Department of Revenue shall separately identify the proceeds
21 from the tax imposed by this section and shall pay all such proceeds over
22 to the county treasurer of the county where the renewable energy
23 generation facility is located within thirty days after receipt of such
24 proceeds.

25 Sec. 2. Original section 77-6203, Revised Statutes Cumulative
26 Supplement, 2022, is repealed.