

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 801

By Senators Phillips, Smith, and Tarr

[Introduced February 15, 2024; referred
to the Committee on Economic Development; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §11-29-1, §11-29-2, §11-29-3, §11-29-4, §11-29-5, and §11-29-6, establishing
 3 a tax on the production of electricity from wind and solar collection, setting the rate of the
 4 tax, and providing collection procedures, establishing how to distribute the collected taxes
 5 to volunteer fire departments through the counties, listing requirements to qualify to
 6 receive funds from these collected taxes, providing for enforcement and penalties, listing
 7 exemptions, and establishing fines and accumulation of interest on late payment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. WIND AND SOLAR ENERGY COLLECTION TAX.

§11-29-1. Creation of wind and solar energy tax.

1 There is levied an excise tax upon the privilege of producing electricity from wind resources
 2 in this state. The tax shall be imposed upon the production of any electricity produced from wind or
 3 solar resources for sale or trade on or after January 1, 2025, and shall be paid by the person
 4 producing such electricity. The tax shall be imposed on each megawatt hour of electricity produced
 5 from wind resources at the point of interconnection with an electric transmission line.

§11-29-2. Taxation Rate.

1 The tax rate shall be \$3 on each megawatt hour, or portion thereof, which is produced in
 2 this state.

§11-29-3. Exemptions.

1 (a) No tax shall be imposed upon electricity which is produced from any generating facility
 2 owned or operated by the federal government, the state of West Virginia, or by any county or
 3 municipality in this state. No tax shall be imposed upon electricity which is produced for the
 4 personal consumption of the producer, including any excess production of electricity that does not
 5 exceed 500 kilowatt hours in any 24-hour period.

6 (b) Electricity produced from a wind turbine shall not be subject to the tax imposed under
 7 this chapter until the date three years after the turbine or solar panels first produced electricity for

8 sale. After such date the production shall be subject to the tax, as provided by this article,
9 regardless of whether production first commenced prior to or after January 1, 2025.

§11-29-4. Compliance; collection procedures.

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

5 (b) Payment. Any person owing a tax under this article shall pay the tax once each year on
6 or before February 1 of the year immediately following the year in which the electricity was
7 produced. The tax shall be collected by the West Virginia State Tax Division.

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

§11-29-5. Enforcement.

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

8 (b) If any person fails to make or file a return and remit the tax as required by this chapter,
9 the department shall impose a penalty of five percent of the taxes due for each 30-day period, or
10 fraction thereof, elapsing between the due date of the return and the date filed, unless the person
11 for good cause obtains from the department an extension of time for filing prior to the due date for
12 filing. In the event of an extension, the person shall pay the interest due on delinquent payments
13 set forth in subsection (a) of this section. In no event shall the total penalty imposed by this
14 subsection exceed 25% of the tax due. The department, for good cause, may waive a penalty

15 imposed for failure to file a return for any one calendar year, *Provided that*:

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

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

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

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

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

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

§11-29-6. Distribution.

1 (a) The proceeds from the tax imposed by this article shall be distributed shall be
2 distributed to all 55 counties in this state based upon the number of volunteer fire departments in
3 that county that were compliance with the Open Checkbook policy for the tax year that the taxes
4 were collected from the wind and solar energy producers.

5 (b) The counties shall distribute the taxes collected under this article to all volunteer fire
6 departments that were in compliance with the Open Checkbook policy for the tax year that the
7 taxes were collected by the state from the wind and solar energy producers.

NOTE: The purpose of this bill is to establish a tax on the production of electricity from wind and solar collection for distribution to the counties to be distributed to the volunteer fire departments in that county.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.