

1 SENATE BILL 399

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO TAXATION; ENACTING THE WIND ENERGY PRODUCTION TAX  
12 ACT FOR PRODUCING ELECTRICITY FROM WIND FOR SALE OR TRADE  
13 OUTSIDE THIS STATE; DISTRIBUTING THE REVENUE FROM THE TAX TO  
14 THE TAX STABILIZATION RESERVE.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
18 through 4 of this act may be cited as the "Wind Energy  
19 Production Tax Act".

20 SECTION 2. [NEW MATERIAL] PRIVILEGE TAX LEVIED--COLLECTED  
21 BY THE TAXATION AND REVENUE DEPARTMENT--RATE--INTEREST OWNER'S  
22 LIABILITY TO STATE--INDIAN LIABILITY.--

23 A. There is levied and shall be collected by the  
24 taxation and revenue department a privilege tax for producing  
25 electricity from wind resources in this state for sale or trade

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1 outside this state.

2 B. The measure and rate of the tax shall be one  
3 dollar (\$1.00) on each megawatt hour, or portion thereof, that  
4 is produced in this state.

5 C. Every interest owner shall be liable for this  
6 tax to the extent of the owner's interest in the electricity  
7 produced. An Indian nation, tribe or pueblo shall be liable  
8 for this tax to the extent authorized or permitted by law.

9 D. The tax imposed by this section may be referred  
10 to as the "wind energy production tax".

11 SECTION 3. [NEW MATERIAL] EXEMPTION.--

12 A. Exempted from the wind energy production tax is  
13 electricity produced from wind resources by:

14 (1) the United States or any agency,  
15 department or instrumentality thereof;

16 (2) the state of New Mexico or any political  
17 subdivision thereof;

18 (3) any Indian nation, tribe or pueblo from  
19 activities or transactions occurring on its sovereign  
20 territory; or

21 (4) any foreign nation or agency,  
22 instrumentality or political subdivision thereof, but only when  
23 required by a treaty in force to which the United States is a  
24 party.

25 B. Exempted from the wind production tax is

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1 electricity produced from wind resources for the personal  
2 consumption of the producer, including any excess production of  
3 electricity not consumed by the producer that does not exceed  
4 five hundred kilowatt hours in a twenty-four-hour period.

5 SECTION 4. [NEW MATERIAL] DATE PAYMENT DUE.--The tax  
6 imposed by the Wind Energy Production Tax Act is to be paid on  
7 or before February 1 of the year immediately following the year  
8 in which the electricity was produced.

9 SECTION 5. Section 7-1-2 NMSA 1978 (being Laws 1965,  
10 Chapter 248, Section 2, as amended) is amended to read:

11 "7-1-2. APPLICABILITY.--The Tax Administration Act  
12 applies to and governs:

13 A. the administration and enforcement of the  
14 following taxes or tax acts as they now exist or may hereafter  
15 be amended:

- 16 (1) Income Tax Act;
- 17 (2) Withholding Tax Act;
- 18 (3) Venture Capital Investment Act;
- 19 (4) Gross Receipts and Compensating Tax Act
- 20 and any state gross receipts tax;
- 21 (5) Liquor Excise Tax Act;
- 22 (6) Local Liquor Excise Tax Act;
- 23 (7) any municipal local option gross receipts
- 24 tax;
- 25 (8) any county local option gross receipts

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1 tax;

2 (9) Special Fuels Supplier Tax Act;

3 (10) Gasoline Tax Act;

4 (11) petroleum products loading fee, which fee  
5 shall be considered a tax for the purpose of the Tax

6 Administration Act;

7 (12) Alternative Fuel Tax Act;

8 (13) Cigarette Tax Act;

9 (14) Estate Tax Act;

10 (15) Railroad Car Company Tax Act;

11 (16) Investment Credit Act, rural job tax  
12 credit, Laboratory Partnership with Small Business Tax Credit  
13 Act, Technology Jobs and Research and Development Tax Credit  
14 Act, Film Production Tax Credit Act, Affordable Housing Tax  
15 Credit Act and high-wage jobs tax credit;

16 (17) Corporate Income and Franchise Tax Act;

17 (18) Uniform Division of Income for Tax  
18 Purposes Act;

19 (19) Multistate Tax Compact;

20 (20) Tobacco Products Tax Act; ~~and~~

21 (21) the telecommunications relay service  
22 surcharge imposed by Section 63-9F-11 NMSA 1978, which  
23 surcharge shall be considered a tax for the purposes of the Tax  
24 Administration Act; and

25 (22) the Wind Energy Production Tax Act;

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1           B. the administration and enforcement of the  
2 following taxes, surtaxes, advanced payments or tax acts as  
3 they now exist or may hereafter be amended:

- 4                   (1) Resources Excise Tax Act;  
5                   (2) Severance Tax Act;  
6                   (3) any severance surtax;  
7                   (4) Oil and Gas Severance Tax Act;  
8                   (5) Oil and Gas Conservation Tax Act;  
9                   (6) Oil and Gas Emergency School Tax Act;  
10                  (7) Oil and Gas Ad Valorem Production Tax Act;  
11                  (8) Natural Gas Processors Tax Act;  
12                  (9) Oil and Gas Production Equipment Ad  
13 Valorem Tax Act;  
14                  (10) Copper Production Ad Valorem Tax Act;  
15                  (11) any advance payment required to be made  
16 by any act specified in this subsection, which advance payment  
17 shall be considered a tax for the purposes of the Tax  
18 Administration Act;  
19                  (12) Enhanced Oil Recovery Act;  
20                  (13) Natural Gas and Crude Oil Production  
21 Incentive Act; and  
22                  (14) intergovernmental production tax credit  
23 and intergovernmental production equipment tax credit;

24           C. the administration and enforcement of the  
25 following taxes, surcharges, fees or acts as they now exist or

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1 may hereafter be amended:

2 (1) Weight Distance Tax Act;

3 (2) the workers' compensation fee authorized  
4 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
5 tax for purposes of the Tax Administration Act;

6 (3) Uniform Unclaimed Property Act (1995);

7 (4) 911 emergency surcharge and the network  
8 and database surcharge, which surcharges shall be considered  
9 taxes for purposes of the Tax Administration Act;

10 (5) the solid waste assessment fee authorized  
11 by the Solid Waste Act, which fee shall be considered a tax for  
12 purposes of the Tax Administration Act;

13 (6) the water conservation fee imposed by  
14 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
15 for the purposes of the Tax Administration Act; and

16 (7) the gaming tax imposed pursuant to the  
17 Gaming Control Act; and

18 D. the administration and enforcement of all other  
19 laws, with respect to which the department is charged with  
20 responsibilities pursuant to the Tax Administration Act, but  
21 only to the extent that the other laws do not conflict with the  
22 Tax Administration Act."

23 SECTION 6. A new section of the Tax Administration Act is  
24 enacted to read:

25 "[NEW MATERIAL] DISTRIBUTION--WIND ENERGY PRODUCTION

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1 TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978  
2 shall be made to the tax stabilization reserve in an amount  
3 equal to the net receipts attributable to the wind energy  
4 production tax."

5 SECTION 7. APPLICABILITY.--The provisions of this act  
6 apply to the production of electricity from wind resources  
7 beginning on and after January 1, 2020.

8 SECTION 8. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is January 1, 2020.