

# WIND ENERGY TAXATION AND REVENUE DISTRIBUTION STUDY - BACKGROUND MEMORANDUM

## STUDY OVERVIEW

Section 34 of 2017 House Bill No. 1015 ([Appendix A](#)), provides for a Legislative Management study of the taxation of wind energy and the distribution of tax collections related to wind energy. The study must include consideration of the various methods of taxing wind energy, including production taxes, the parity of wind energy taxation in comparison to the taxation of other energy sources, and the current and historical distribution formulas related to wind energy taxes. The study must also include consideration of the appropriate level of distributions to the taxing districts and the state, the estimated fiscal impact of any proposed changes to the distributions, and other local revenue sources, including local tax revenue and state funding provided to the local taxing districts.

## PRIOR STUDY

During the 2015-16 interim, the Energy Development and Transmission Committee considered a bill draft relating to sales and use tax exemptions for materials used in the construction of wind turbines. The committee considered the bill draft as a part of its study of a comprehensive energy policy.

The committee received information from the Tax Department regarding the estimated fiscal impact of the bill draft and received a cost-benefit analysis from the Department of Commerce. The committee also received comments in support of the bill draft from the Lignite Energy Council and the electrical generation industry.

The Energy Development and Transmission Committee recommended House Bill No. 1028; however, the 2017 Legislative Assembly did not approve the bill.

## WIND ENERGY TAXATION

### Property Tax

North Dakota Century Code Section 57-06-14.1, as amended by 2015 Senate Bill No. 2037, provides for the centrally assessed taxation of wind turbine electrical generation units with a nameplate generation capacity of 100 kilowatts or more. Wind turbines completed before January 1, 2015, and less than 20 years from the date of first assessment are subject to property tax. Wind turbines are valued at 3 percent of assessed value to determine taxable valuation of the property, unless the wind turbines qualify for a lower valuation of 1.5 percent. Wind turbines are valued at 1.5 percent of assessed value if the following criteria are met:

- Completed before April 30, 2005, and before July 1, 2006, with a purchased power agreement executed after April 30, 2005, and before January 1, 2006.
- Completed after June 30, 2006, and before January 1, 2015.

The property taxes are paid to the county, and the county treasurer distributes the collections to the taxing districts based on the location of the turbines.

### Electric Generation Tax

Section 57-33.2-04 provides for an electric generation tax on wind turbines, including wind farms and associated collector systems. The electric generation tax consists of a tax of \$2.50 per kilowatt times the rated capacity of the wind turbine and a tax of .5 mill per kilowatt-hour of electricity generated by the wind turbine during the taxable period. The electric generation tax on wind turbines is a payment in lieu of property tax, as identified in Section 57-33.2-05. Based on testimony related to 2015 Senate Bill No. 2037 the payments in lieu of property tax are estimated to be the equivalent of valuing the wind turbines at 4.5 percent of the assessed value. The electric generation taxes collected under Section 57-33.2-04 are deposited in the electric generation, distribution, and transmission tax fund.

### Sales and Use Tax Exemptions

Sections 57-39.2-04.2 and 57-40.2-04.2 provide a sales tax exemption and a use tax exemption for materials used in the construction of wind turbines. The sales and use tax exemptions expired on December 31, 2016.

### Income Tax Credit

Section 57-38-01.8 provides for an income tax credit for geothermal, solar, wind, or biomass energy devices. Wind energy devices under construction before January 1, 2015, and installed before January 1, 2017, were eligible for the tax credit. The tax credit equaled 3 percent per year for five years of the actual cost of acquisition and installation of the device. The tax credit reduced the taxpayer's income tax liability.

**ELECTRIC GENERATION, DISTRIBUTION, AND TRANSMISSION TAX FUND****Tax Deposits**

The schedule below provides information on the electric generation, distribution, and transmission tax collections for calendar years 2012 through 2015, as reported by the Tax Department. The tax collections reflect taxes levied by the State Board of Equalization in August of the prior year. For example, the tax collections in calendar year 2012 were levied in by the State Board of Equalization in August 2011.

	<b>Calendar Year 2012</b>	<b>Calendar Year 2013</b>	<b>Calendar Year 2014</b>	<b>Calendar Year 2015</b>
Electric distribution tax	\$5,902,159	\$6,517,262	\$5,958,264	\$7,051,447
Electric transmission tax	\$1,340,856	\$1,360,977	\$1,415,425	\$1,454,001
Electric generation tax from wind	\$104,056	\$215,853	\$877,162	\$1,126,934
Electric generation tax from sources other than wind and coal	\$17,169	\$17,201	\$150,617	\$228,612

**Allocations**

Revenues deposited in the electrical generation, distribution, and transmission tax fund are distributed by the State Treasurer to counties on or before April 1 of each year. Pursuant to Section 57-33.2-19, revenues from the electric generation taxes collected under Section 57-33.2-04 are distributed to the county in which the wind turbine or wind farm is located. If the wind turbines in a wind farm are located in multiple counties, the State Treasurer proportionally distributes the tax collections to the counties based on the rated capacity and the electrical output in each county. The county treasurer then distributes the tax collections to the taxing districts in proportion to the most recent applicable property tax mill rates.

**STUDY PLAN**

The following is a proposed study plan for the committee's consideration of its study of wind energy taxation and revenue distributions:

1. Receive information regarding wind energy taxation and comparisons to the taxation of other energy sources.
2. Receive information regarding the distribution of tax collections related to wind energy, including current and historical distribution formulas.
3. Receive information from the local taxing districts that receive wind energy tax collection distributions regarding their local taxing and revenue levels.
4. Receive information regarding the estimated fiscal impact of any potential changes to the distribution of wind energy tax collections.
5. Receive testimony from interested persons regarding the study.
6. Develop recommendations and any bill drafts necessary to implement the recommendations.
7. Prepare a final report for submission to the Legislative Management.

ATTACH:1