

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 360**

Introduced by Cornett, 45.

Read first time January 13, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-105, 77-202, and 77-6203, Revised Statutes Cumulative  
3 Supplement, 2010; to redefine a term; to change a  
4 property tax exemption; to eliminate provisions relating  
5 to a tax credit relative to wind energy generating  
6 facilities; to provide an operative date; to provide  
7 severability; to repeal the original sections; and to  
8 declare an emergency.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-105, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           77-105 The term tangible personal property includes all  
4 personal property possessing a physical existence, excluding money.  
5 The term tangible personal property also includes trade fixtures,  
6 which means machinery and equipment, regardless of the degree of  
7 attachment to real property, used directly in commercial,  
8 manufacturing, or processing activities conducted on real property,  
9 regardless of whether the real property is owned or leased. ~~and all~~  
10 ~~property used in the generation of electricity using wind as the fuel~~  
11 ~~source, including, but not limited to, that listed in subsection (9)~~  
12 ~~of section 77-202.~~ The term intangible personal property includes all  
13 other personal property, including money.

14           Sec. 2. Section 77-202, Revised Statutes Cumulative  
15 Supplement, 2010, is amended to read:

16           77-202 (1) The following property shall be exempt from  
17 property taxes:

18           (a) Property of the state and its governmental  
19 subdivisions to the extent used or being developed for use by the  
20 state or governmental subdivision for a public purpose. For purposes  
21 of this subdivision, public purpose means use of the property (i) to  
22 provide public services with or without cost to the recipient,  
23 including the general operation of government, public education,  
24 public safety, transportation, public works, civil and criminal  
25 justice, public health and welfare, developments by a public housing

1 authority, parks, culture, recreation, community development, and  
2 cemetery purposes, or (ii) to carry out the duties and  
3 responsibilities conferred by law with or without consideration.  
4 Public purpose does not include leasing of property to a private  
5 party unless the lease of the property is at fair market value for a  
6 public purpose. Leases of property by a public housing authority to  
7 low-income individuals as a place of residence are for the  
8 authority's public purpose;

9 (b) Unleased property of the state or its governmental  
10 subdivisions which is not being used or developed for use for a  
11 public purpose but upon which a payment in lieu of taxes is paid for  
12 public safety, rescue, and emergency services and road or street  
13 construction or maintenance services to all governmental units  
14 providing such services to the property. Except as provided in  
15 Article VIII, section 11, of the Constitution of Nebraska, the  
16 payment in lieu of taxes shall be based on the proportionate share of  
17 the cost of providing public safety, rescue, or emergency services  
18 and road or street construction or maintenance services unless a  
19 general policy is adopted by the governing body of the governmental  
20 subdivision providing such services which provides for a different  
21 method of determining the amount of the payment in lieu of taxes. The  
22 governing body may adopt a general policy by ordinance or resolution  
23 for determining the amount of payment in lieu of taxes by majority  
24 vote after a hearing on the ordinance or resolution. Such ordinance  
25 or resolution shall nevertheless result in an equitable contribution

1 for the cost of providing such services to the exempt property;

2 (c) Property owned by and used exclusively for  
3 agricultural and horticultural societies;

4 (d) Property owned by educational, religious, charitable,  
5 or cemetery organizations, or any organization for the exclusive  
6 benefit of any such educational, religious, charitable, or cemetery  
7 organization, and used exclusively for educational, religious,  
8 charitable, or cemetery purposes, when such property is not (i) owned  
9 or used for financial gain or profit to either the owner or user,  
10 (ii) used for the sale of alcoholic liquors for more than twenty  
11 hours per week, or (iii) owned or used by an organization which  
12 discriminates in membership or employment based on race, color, or  
13 national origin. For purposes of this subdivision, educational  
14 organization means (A) an institution operated exclusively for the  
15 purpose of offering regular courses with systematic instruction in  
16 academic, vocational, or technical subjects or assisting students  
17 through services relating to the origination, processing, or  
18 guarantying of federally reinsured student loans for higher education  
19 or (B) a museum or historical society operated exclusively for the  
20 benefit and education of the public. For purposes of this  
21 subdivision, charitable organization means an organization operated  
22 exclusively for the purpose of the mental, social, or physical  
23 benefit of the public or an indefinite number of persons; and

24 (e) Household goods and personal effects not owned or  
25 used for financial gain or profit to either the owner or user.

1           (2) The increased value of land by reason of shade and  
2     ornamental trees planted along the highway shall not be taken into  
3     account in the valuation of land.

4           (3) Tangible personal property which is not depreciable  
5     tangible personal property as defined in section 77-119 shall be  
6     exempt from property tax.

7           (4) Motor vehicles required to be registered for  
8     operation on the highways of this state shall be exempt from payment  
9     of property taxes.

10          (5) Business and agricultural inventory shall be exempt  
11     from the personal property tax. For purposes of this subsection,  
12     business inventory includes personal property owned for purposes of  
13     leasing or renting such property to others for financial gain only if  
14     the personal property is of a type which in the ordinary course of  
15     business is leased or rented thirty days or less and may be returned  
16     at the option of the lessee or renter at any time and the personal  
17     property is of a type which would be considered household goods or  
18     personal effects if owned by an individual. All other personal  
19     property owned for purposes of leasing or renting such property to  
20     others for financial gain shall not be considered business inventory.

21          (6) Any personal property exempt pursuant to subsection  
22     (2) of section 77-4105 or section 77-5209.02 shall be exempt from the  
23     personal property tax.

24          (7) Livestock shall be exempt from the personal property  
25     tax.

1                   (8) Any personal property exempt pursuant to the Nebraska  
2 Advantage Act shall be exempt from the personal property tax.

3                   (9) Any depreciable tangible personal property used  
4 directly in the generation of electricity using wind as the fuel  
5 source shall be exempt from the property tax levied on depreciable  
6 tangible personal property. ~~Personal property used directly in the~~  
7 ~~generation of electricity using wind as the fuel source includes, but~~  
8 ~~is not limited to, wind turbines, rotors and blades, towers,~~  
9 ~~trackers, generating equipment, transmission components, substations,~~  
10 ~~supporting structures or racks, inverters, and other system~~  
11 ~~components such as wiring, control systems, switchgears, and~~  
12 ~~generator step up transformers.~~

13                   Sec. 3. Section 77-6203, Revised Statutes Cumulative  
14 Supplement, 2010, is amended to read:

15                   77-6203 (1) The owner of a wind energy generation  
16 facility annually shall pay a nameplate capacity tax equal to the  
17 total nameplate capacity of the commissioned wind turbine of the wind  
18 energy generation facility multiplied by a tax rate of three thousand  
19 five hundred eighteen dollars per megawatt.

20                   (2) No tax shall be imposed on a wind energy generation  
21 facility:

22                   (a) Owned or operated by the federal government, the  
23 State of Nebraska, a public power district, a public power and  
24 irrigation district, an individual municipality, a registered group  
25 of municipalities, an electric membership association, or a

1 cooperative; or

2 (b) That is a customer-generator as defined in section  
3 70-2002.

4 (3) No tax levied pursuant to this section shall be  
5 construed to constitute restricted funds as defined in section 13-518  
6 for the first five years after the wind energy generation facility is  
7 commissioned.

8 (4) The presence of one or more wind energy generation  
9 facilities or supporting infrastructure shall not be a factor in the  
10 assessment, determination of actual value, or classification under  
11 section 77-201 of the real property underlying or adjacent to such  
12 facilities or infrastructure.

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

15 (b) The tax shall be imposed beginning the first calendar  
16 year the wind turbine is commissioned. A wind energy generation  
17 facility commissioned prior to July 15, 2010, shall be subject to the  
18 tax levied pursuant to sections 77-6201 to 77-6204 on and after  
19 January 1, 2010. ~~The amount of property tax previously paid on a wind  
20 energy generation facility commissioned prior to July 15, 2010, which  
21 is greater than the amount that would have been paid pursuant to  
22 sections 77-6201 to 77-6204 from the date of commissioning until  
23 January 1, 2010, shall be credited against any tax due under Chapter  
24 77, and any amount so credited that is unused in any tax year shall  
25 be carried over to subsequent tax years until fully utilized.~~

1           (c)(i) The tax for the first calendar year shall be  
2 prorated based upon the number of days remaining in the calendar year  
3 after the wind turbine is commissioned.

4           (ii) In the first year in which a wind energy generation  
5 facility is taxed or in any year in which additional commissioned  
6 nameplate capacity is added to a wind energy generation facility, the  
7 taxes on the initial or additional nameplate capacity shall be  
8 prorated for the number of days remaining in the calendar year.

9           (iii) When a wind turbine is decommissioned or made  
10 nonoperational by a change in law or decertification from its status  
11 as a certified renewable export facility during a tax year, the taxes  
12 shall be prorated for the number of days during which the wind  
13 turbine was not decommissioned or was operational.

14           (iv) When the capacity of a wind turbine to produce  
15 electricity is reduced but the wind turbine is not decommissioned,  
16 the nameplate capacity of the wind turbine is deemed to be unchanged.

17           (6)(a) On March 1 of each year, the owner of a wind  
18 energy generation facility shall file with the Department of Revenue  
19 a report on the nameplate capacity of the facility for the previous  
20 year from January 1 through December 31. All taxes shall be due on  
21 April 1 and shall be delinquent if not paid on a quarterly basis on  
22 April 1 and each quarter thereafter. Delinquent quarterly payments  
23 shall draw interest at the rate provided for in section 45-104.02, as  
24 such rate may from time to time be adjusted.

25           (b) The owner of a wind energy generation facility is

1 liable for the taxes under this section with respect to the facility,  
2 whether or not the owner of the facility is the owner of the land on  
3 which the facility is situated.

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

10 (8) The Department of Revenue shall enforce the  
11 provisions of this section. The department shall adopt and promulgate  
12 rules and regulations necessary for the implementation and  
13 enforcement of this section.

14 (9) The Department of Revenue shall separately identify  
15 the proceeds from the tax imposed by this section and shall pay all  
16 such proceeds over to the county treasurer of the county where the  
17 wind energy generation facility is located within thirty days after  
18 receipt of such proceeds.

19 Sec. 4. This act becomes operative on January 1, 2010.

20 Sec. 5. If any section in this act or any part of any  
21 section is declared invalid or unconstitutional, the declaration  
22 shall not affect the validity or constitutionality of the remaining  
23 portions.

24 Sec. 6. Original sections 77-105, 77-202, and 77-6203,  
25 Revised Statutes Cumulative Supplement, 2010, are repealed.

1                   Sec. 7. Since an emergency exists, this act takes effect  
2   when passed and approved according to law.