

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2817

By: Denney of the House

and

Mazzei of the Senate

AS INTRODUCED

An Act relating to revenue and taxation; ordering a legislative referendum pursuant to the Oklahoma Constitution; enacting the Zero-Emission Facility Power Production Tax Code; stating purpose of tax; defining terms; providing for imposition of tax levy on certain electric power; providing for increase in tax levy after expiration of certain period; providing certain initial term not to be extended under conditions related to inoperability of devices or processes; authorizing extension of certain initial term based upon reduction of power output; imposing maximum duration of extension; requiring books and records; requiring reports and returns; authorizing inspection of books and records; providing for rules to be adopted by the Oklahoma Tax Commission; providing for apportionment of revenues; creating Classroom Teacher Compensation Fund; providing for use of fund by State Superintendent of Public Instruction; requiring use of funds consistent with statement of purpose; providing for effective date based upon approval by voters; providing for codification; providing ballot title; and directing filing.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma
2 Constitution, there is hereby ordered the following legislative
3 referendum which shall be filed with the Secretary of State and
4 addressed to the Governor of the state, who shall submit the same to
5 the people for their approval or rejection at the next General
6 Election, to be held on November 8, 2016.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 7001 of Title 68, unless there
9 is created a duplication in numbering, reads as follows:

10 This act shall be known and may be cited as the "Zero-Emission
11 Facility Power Production Tax Code."

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 7002 of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

15 As required by Section 19 of Article X of the Oklahoma
16 Constitution, the purpose of the tax imposed pursuant to the
17 provisions of this act is to provide funding for common education,
18 including, but not limited to, compensation for certified teachers
19 in common school districts of the State of Oklahoma providing
20 instruction in grades kindergarten through grade twelve.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 7003 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

24 As used in this act:

1 1. "Electric power" means energy output at a zero-emission
2 facility whether measured in watts, kilowatts, megawatts or other
3 metric and produced from a zero-emission facility the assets of
4 which are located in this state and sold to a purchaser or
5 purchasers;

6 2. "Gross proceeds" means the total amount of consideration
7 received by the seller of the electric power from a zero-emission
8 facility pursuant to a contract or contracts;

9 3. "Solar power" means the production of electric energy
10 through the operation of any device or process by which any form of
11 light or electromagnetic radiation is converted to electric energy;

12 4. "Taxpayer" means any person, general partnership, limited
13 partnership, corporation, limited liability company, limited
14 liability limited partnership or any other lawfully recognized
15 business entity required to make payment of the tax authorized by
16 this act;

17 5. "Wind power" means the production of electric energy through
18 the operation of one or more wind turbines; and

19 6. "Zero-emission facility" means any asset or group of assets,
20 including tangible personal property and any real property or
21 interest in real property, owned or leased by a taxpayer and used in
22 the generation of electric power by means of:

- 23 a. wind power, or
- 24 b. solar power.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7004 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Effective January 1, 2017, there is hereby levied an excise
5 tax on the production of electric power by a zero-emission facility
6 the electric generating assets of which are first placed in service
7 in this state on or after January 1, 2017, in an amount equal to:

8 1. Two percent (2.0%) of the gross revenues received for the
9 sale of the electric power for the first thirty-six (36) months
10 during which electric power is produced and sold; and

11 2. Seven percent (7.0%) of the gross revenues received for the
12 sale of electric power for each month after the expiration of the
13 thirty-six month period described in paragraph 1 of this subsection.

14 B. If a device or process which would otherwise be used for the
15 production of electric power is inoperative, damaged, ceases
16 operation due to routine or emergency maintenance, or otherwise
17 ceases to be used for the production of electric power during the
18 thirty-six month period described in paragraph 1 of subsection A of
19 this section, such period of time shall be disregarded for purposes
20 of determining the point in time at which the levy imposed by
21 paragraph 2 of subsection A of this section would otherwise become
22 effective.

23 C. If a zero-emission facility is comprised of more than one
24 device used for the production of electric power and the taxpayer is

1 able to fulfill obligations imposed by contract without modification
2 of the terms of the contract, notwithstanding the inoperative status
3 of one or more of the devices or processes, then the thirty-six
4 month period shall not be extended and the rate of tax imposed
5 pursuant to paragraph 2 of subsection A of this section shall become
6 operative beginning with the first month after the expiration of the
7 initial thirty-six month period.

8 D. If a zero-emission facility is comprised of more than one
9 device used for the production of electric power and the taxpayer is
10 not able to fulfill obligations imposed by contract without
11 modification of the terms of the contract and the reduction in power
12 output resulting from such inoperable status is more than twenty
13 percent (20%) of the power which would otherwise be produced and
14 sold, then the thirty-six month period shall be extended for the
15 number of months during which such power reduction is equal to or
16 greater than twenty percent (20%).

17 E. Notwithstanding the provisions of subsection D of this
18 section, the total extension of the thirty-six month period shall
19 not exceed twenty-four (24) months total.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 7005 of Title 68, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The tax imposed pursuant to Section 5 of this act shall be
24 due and payable not later than the twenty-fifth day of the second

1 calendar month following the month during which the electric power
2 is generated and sold.

3 B. The tax shall be remitted in such manner and upon such forms
4 as may be prescribed by the Oklahoma Tax Commission.

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 7006 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Each zero-emission facility shall maintain books and records
9 regarding the electric power produced and sold from its facility.

10 B. The Tax Commission shall have the right to inspect such
11 books and records in order to ensure that the tax imposed pursuant
12 to Section 5 of this act is properly reported and paid.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 7007 of Title 68, unless there
15 is created a duplication in numbering, reads as follows:

16 The revenues derived from the tax imposed pursuant to Section 5
17 of this act shall be apportioned to the "Classroom Teacher
18 Compensation Fund" created by Section 10 of this act and shall only
19 be used for the purposes consistent with the requirements of Section
20 3 of this act.

21 SECTION 9. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 7008 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

1 The Oklahoma Tax Commission shall adopt such rules as may be
2 required in order to implement the provisions of this act.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6-106.4 of Title 70, unless
5 there is created a duplication in numbering, reads as follows:

6 There is hereby created in the State Treasury a revolving fund
7 for the State Superintendent of Public Instruction to be designated
8 the "Classroom Teacher Compensation Revolving Fund". The fund shall
9 be a continuing fund, not subject to fiscal year limitations, and
10 shall consist of all monies received by the State Superintendent of
11 Public Instruction from the proceeds of the tax levy imposed
12 pursuant to Section 5 of this act. All monies accruing to the
13 credit of said fund are hereby appropriated and may be budgeted and
14 expended by the State Superintendent of Public Instruction for the
15 purpose of providing compensation to classroom teachers providing
16 instruction in grades kindergarten through grade twelve.

17 Expenditures from said fund shall be made upon warrants issued by
18 the State Treasurer against claims filed as prescribed by law with
19 the Director of the Office of Management and Enterprise Services for
20 approval and payment.

21 SECTION 11. This act shall become effective January 1, 2017, if
22 approved by a vote of the people.

23 SECTION 12. The Ballot Title for the proposed act shall be in
24 the following form:

BALLOT TITLE

Legislative Referendum No. _____ State Question No. _____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure would enact a new tax on the production of electric power. The tax would apply to electric power produced by wind, solar, hydroelectric or geothermal energy. The tax would be imposed at a rate of two percent (2%) for the first thirty-six (36) months of electrical production. After that period, the tax would be imposed at the rate of seven percent (7%). The thirty-six months would be extended if the power output dropped below a certain level. The thirty-six month period could not be extended for more than two (2) years. Both tax rates would be applied to the revenue received by the business selling the electric power. The tax would apply to sale of electric power from assets placed in service on or after January 1, 2017. The tax would not apply to sale of electric power from assets placed in service before January 1, 2017. The tax revenue would be placed into a new fund called the "Classroom Teacher Compensation Fund". The fund would be controlled by the State Superintendent of Public Instruction. Money in the fund would be used for salaries for certified teachers providing instruction in Kindergarten through twelfth grade.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL — YES _____

1 AGAINST THE PROPOSAL - NO _____

2 SECTION 13. The Chief Clerk of the House of Representatives,
3 immediately after the passage of this act, shall prepare and file
4 one copy thereof, including the Ballot Title set forth in SECTION 12
5 hereof, with the Secretary of State and one copy with the Attorney
6 General.

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