

AN ACT

1 Authorizing the imposition of an electricity wind resources
2 impact tax; providing for administration and for enforcement;
3 establishing the Electricity Wind Resources Fund; providing
4 for distribution of funds, for use of funds and imposing
5 administrative penalties.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Electricity
10 Wind Resources Impact Tax Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Commission." The Pennsylvania Public Utility Commission.

16 "Department." The Department of Environmental Protection of
17 the Commonwealth.

18 "Fund." The Electricity Wind Resources Fund as established
19 under section 12.

1 "Impact tax." The electricity wind resources impact tax on a
2 wind turbine within a county as specified under section 3.

3 "Producer." A person, or the person's subsidiary, affiliate
4 or holding company, that holds a permit or other authorization
5 to engage in the business of producing electricity from wind
6 resources for sale, profit or commercial use in this
7 Commonwealth.

8 "Wind turbine." A device that converts the wind's kinetic
9 energy into electrical energy.

10 Section 3. Electricity wind resources fee.

11 (a) Imposition.--The governing body of a county that has a
12 wind turbine located within the county's borders may impose an
13 electricity wind resources impact tax upon the privilege of
14 producing electricity from wind resources in the county. The
15 impact tax shall be imposed upon the production of electricity
16 produced from wind resources for sale, profit or commercial use
17 on or after January 1, 2019. The impact tax shall be paid by the
18 producer at the point of interconnection with an electric
19 transmission line. Electricity from wind resources produced
20 before the impact tax is imposed shall be considered to be
21 produced in the calendar year prior to the imposition of the
22 impact tax.

23 (b) Fee rate.--The impact tax rate shall be \$1 on each
24 megawatt hour, or a portion of each megawatt hour, which is
25 produced in the county.

26 (c) Payment.--The impact tax shall be due on the same day
27 the report is due under subsection (d). The impact tax shall
28 become delinquent if not remitted to the commission on the
29 reporting date.

30 (d) Report.--By June 15, 2019, and June 15 of each year

1 thereafter, a producer subject to the impact tax shall submit
2 payment of the impact tax to the commission and a report on a
3 form prescribed by the commission for the imposition period.

4 (e) Exemptions.--No impact tax shall be imposed upon
5 electricity from wind resources which are produced from any
6 generating facility owned or operated by the Federal Government,
7 the Commonwealth or any political subdivision. No impact tax
8 shall be imposed upon electricity from wind resources which are
9 produced for the personal consumption of the producer, including
10 any excess production of electricity that does not exceed 500
11 kilowatt hours in any 24-hour period.

12 (f) Administration.--The impact tax shall be administered
13 and enforced in the same manner as the unconventional gas well
14 fee under 58 Pa.C.S. Ch. 23 (relating to unconventional gas well
15 fee).

16 Section 4. Ordinance imposing electricity wind resources impact
17 tax.

18 (a) Adoption.--Within 60 days after the effective date of
19 this section, the governing body of the county that has a wind
20 turbine located within the county's borders may adopt an
21 ordinance to impose the impact tax. The governing body of the
22 county must notify the commission and give public notice of the
23 governing body's intent to adopt an ordinance under this
24 subsection prior to the adoption of the ordinance.

25 (b) County ordinance.--The ordinance imposing the impact tax
26 under subsection (a) shall be clear and in language that is
27 readily understandable by a layperson and shall be in the
28 following form:

29 The county of (insert name of county) hereby imposes an
30 electricity wind resources impact tax on each wind

1 turbine in this county.

2 (c) Prohibition.--The following apply:

3 (1) If the governing body of a county does not adopt an
4 ordinance imposing the impact tax within 60 days of the
5 effective date of this section, the county may not receive
6 funds under section 12(d) until the governing body of the
7 county adopts an ordinance imposing the impact tax. Upon
8 adopting an ordinance imposing the impact tax after 60 days
9 from the effective date of this section, the county may
10 receive funds under section 12(d) for the calendar year after
11 the adoption of the ordinance imposing the impact tax.

12 (2) (Reserved).

13 (d) Alternate imposition.--The following apply:

14 (1) If the governing body of a county does not adopt an
15 ordinance imposing the impact tax, the municipalities in the
16 county may compel the imposition of the impact tax by
17 adopting resolutions in accordance with this subsection.

18 (2) After 60 days but not more than 120 days after the
19 effective date of this section, if the governing bodies of no
20 less than 50% of the municipalities located in a county or
21 municipality representing no less than 50% of the population
22 of the county adopt resolutions to impose the impact tax, the
23 impact tax shall be imposed. If a resolution is adopted
24 under this paragraph, a copy of the resolution shall be
25 transmitted to the governing body of the county and the
26 commission. The governing body of a municipality that is
27 located in more than one county shall transmit a copy of a
28 resolution adopted under this paragraph to the governing body
29 of each county where the municipality is located. For the
30 purposes of this paragraph, the population of a municipality

1 that is located in more than one county shall be determined
2 separately for each county on the basis of the municipality's
3 population within each county.

4 (3) The transmittal of resolutions by governing bodies
5 of municipalities under paragraph (2) shall constitute an
6 imposition of the impact tax in the county.

7 (4) Resolutions adopted under this subsection must be
8 framed in the following form:

9 The municipality of (insert name of municipality) in
10 the county of (insert name of county) hereby resolves
11 to have the county impose an electricity wind
12 resources impact tax on each wind turbine in the
13 county.

14 (5) A municipality which is located in a county that
15 does not adopt an ordinance imposing the impact tax and which
16 does not adopt a resolution under this subsection to impose
17 the impact tax under this subsection shall be prohibited from
18 receiving funds under section 12(d).

19 Section 5. Administration.

20 (a) Impact tax due date.--The impact tax shall become
21 delinquent if not remitted to the commission on the reporting
22 date under section 3(d).

23 (b) Costs of commission.--The commission may impose an
24 annual administrative charge not to exceed \$50 per wind turbine
25 on each producer to pay for the actual costs of the commission
26 to administer and enforce this act.

27 Section 6. Commission.

28 (a) Powers.--The commission may make all inquiries and
29 determinations necessary to calculate and collect the impact
30 tax, administrative charges or assessments imposed under this

1 act, including, if applicable, interest and penalties.

2 (b) Notice.--If the commission determines that the impact
3 tax has not been paid in full, the commission may issue a notice
4 of the amount due and demand for payment to the producer and
5 shall set forth the basis for the determination in the notice.
6 The commission shall issue a notice under this subsection via
7 certified mail.

8 (c) Time period.--Except as set forth in subsection (d), the
9 commission may challenge the amount of the impact tax paid
10 within three years after the date when the report under section
11 3(d) is submitted.

12 (d) Intent.--If no report is filed under section 3(d) or a
13 producer files a false or fraudulent report with the intent to
14 evade the impact tax, an assessment of the amount owed may be
15 made at any time by the commission.

16 Section 7. Enforcement.

17 (a) Assessment.--The commission shall assess interest on any
18 delinquent impact tax amount at the rate determined under
19 section 6(a).

20 (b) Penalty.--In addition to the assessed interest under
21 subsection (a), if a producer fails to make timely payment of
22 the impact tax, a penalty shall be added to the amount of the
23 impact tax as follows:

24 (1) Five percent of the amount of the impact tax, if
25 failure to make a timely payment is for not more than one
26 month.

27 (2) An additional 5% penalty for each additional month
28 after the first month of failing to make a timely payment,
29 not exceeding a 25% penalty in the aggregate.

30 (c) Timely payment.--If the commission determines that a

1 producer has not made a timely payment of the impact tax, the
2 commission shall send written notice of the amount of the
3 deficiency to the producer within 30 days from the date of
4 determining the deficiency. The commission shall notify the
5 department that the producer has failed to pay the impact tax.
6 If the producer does not have a pending appeal relating to
7 payment of the impact tax in process, the department shall
8 suspend the applicable permit of the producer until the impact
9 tax has been paid.

10 (d) Remedies.--The remedies provided under this act are in
11 addition to any other remedies provided by law or in equity.

12 (e) Lien.--Fines, fees, interest and penalties for a
13 delinquent impact tax amount shall be collectible as authorized
14 by law for the collection of debts. If the producer liable to
15 pay a delinquent impact tax amount neglects or refuses to pay
16 the amount after demand, the amount shall be a judgment in favor
17 of the Commonwealth upon the property of the producer after the
18 judgment has been entered, docketed and recorded by the
19 prothonotary of the county where the property is situated. The
20 Commonwealth shall transmit a certified copy of a judgment under
21 this subsection to the prothonotary of the county. The
22 prothonotary of the county shall enter, docket and record the
23 judgment under this subsection in the prothonotary's office and
24 index the judgment at no cost.

25 Section 8. Enforcement orders.

26 (a) Issuance.--The commission may issue an order as
27 necessary to enforce this act. An order issued under this
28 section shall take effect upon notice, unless the order
29 specifies otherwise. A person aggrieved by an order under this
30 section may appeal to the Commonwealth Court under 42 Pa.C.S. §

1 763 (relating to direct appeals from government agencies).

2 (b) Compliance.--A producer shall comply with an order
3 issued under subsection (a). If a producer fails to proceed
4 diligently to comply with an order under subsection (a) within
5 the time required, the producer shall be guilty of contempt and
6 punished by the court in an appropriate manner. In matters
7 relating to contempt, the commission shall apply to the
8 Commonwealth Court.

9 Section 9. Administrative penalties.

10 (a) Civil penalties.--In addition to any other proceeding
11 authorized by law, the commission may assess a civil penalty not
12 to exceed \$2,500 upon a producer for each violation of this act.
13 In determining the amount of the penalty, the commission shall
14 consider the willfulness of the violation and other relevant
15 factors.

16 (b) Separate offense.--Each violation for each separate day
17 and each violation of this act shall constitute a separate
18 offense.

19 (c) Limitation of actions.--Notwithstanding any limitation
20 in 42 Pa.C.S. Ch. 55 Subch. B (relating to civil actions and
21 proceedings), an action under this section must be brought
22 within three years of the violation of this act.

23 (d) Procedure.--A penalty under act shall be subject to 66
24 Pa.C.S. Ch. 3 Subch. B (relating to investigations and
25 hearings).

26 Section 10. Recordkeeping.

27 A producer liable for the impact tax shall keep records, make
28 reports and comply with regulations of the commission. The
29 commission may require a producer to make reports, render
30 statements or keep records as the commission deems sufficient to

1 determine liability for the impact tax.

2 Section 11. Examinations.

3 (a) Access.--The commission or the commission's authorized
4 agents or representatives shall:

5 (1) Have access to the relevant books, papers and
6 records of any producer in order to verify the accuracy and
7 completeness of a report filed or impact tax paid under this
8 act.

9 (2) Require the preservation of all relevant books,
10 papers and records for an appropriate period not to exceed
11 three years from the end of the calendar year to which the
12 records relate.

13 (3) Examine any employee of a producer under oath
14 concerning the production of electricity from wind resources
15 or any matter relating to the enforcement of this act.

16 (4) Compel the production of relevant books, papers and
17 records and the attendance of all individuals who the
18 commission believes to have knowledge of relevant matters in
19 accordance with 66 Pa.C.S. (relating to public utilities).

20 (b) Unauthorized disclosure.--Any information obtained by
21 the commission as a result of any report, examination,
22 investigation or hearing under this act shall be confidential
23 and shall not be disclosed, except for official purposes, in
24 accordance with a judicial order or as otherwise provided by
25 law. A commissioner or an employee of the commission who without
26 lawful authorization divulges confidential information shall be
27 subject to disciplinary action by the commission.

28 Section 12. Distribution of funds.

29 (a) Establishment.--There is established a fund in the State
30 Treasury to be known as the Electricity Wind Resources Fund to

1 be administered by the commission.

2 (b) Deposit.--The impact tax imposed and collected under
3 this act shall be deposited into the fund for the purposes
4 specified under this section.

5 (c) Report.--A county or municipality receiving money under
6 subsection (d) shall submit a report by December 31, 2020, and
7 December 31 of each year thereafter, to the Secretary of the
8 Budget, the Appropriations Committee of the Senate and the
9 Appropriations Committee of the House of Representatives. The
10 report shall include an itemization and explanation of the use
11 of all funds received under subsection (d).

12 (d) Distribution.--From fees collected for 2019 and each
13 year thereafter, 60% of the revenue in the fund from fees
14 collected for the prior year shall be allocated to counties and
15 municipalities. Any remaining money shall be retained by the
16 commission and deposited in the General Fund.

17 Section 13. Use of funds.

18 A county or municipality receiving money under section 12(d)
19 shall use the money only for the following purposes associated
20 with electricity production from wind resources within the
21 county or municipality:

22 (1) Construction, reconstruction, maintenance and repair
23 of roadways, bridges and public infrastructure.

24 (2) Water, storm water and sewer systems, including
25 construction, reconstruction, maintenance and repair.

26 (3) Emergency preparedness and public safety, including
27 law enforcement and fire services, hazardous material
28 response, 911, equipment acquisition and other services.

29 (4) Tax reductions, including homestead exclusions.

30 (5) The delivery of social services.

1 (6) Judicial services.

2 (7) For deposit into the county or municipality's
3 capital reserve fund if the funds are used solely for a
4 purpose set forth under this section.

5 Section 14. Annual report by commission, counties or
6 municipalities.

7 (a) Commission.--The commission shall submit an annual
8 report regarding the money in the fund by December 30, 2020, and
9 September 30 of each year thereafter. The report shall include a
10 detailed listing of all deposits and expenditures of the fund
11 and be submitted to the chairperson and the minority chairperson
12 of the Appropriations Committee of the Senate and the
13 chairperson and the minority chairperson of the Appropriations
14 Committee of the House of Representatives.

15 (b) Counties or municipalities.--A county or municipality
16 receiving money from the fund under this section shall submit a
17 report to the commission on a form prepared by the commission
18 that sets forth the amount and use of the money received in the
19 prior calendar year. The report shall specify the manner in
20 which money received from the fund was committed to a specific
21 project or use as authorized under section 13. The report shall
22 be published annually on the county or municipality's publicly
23 accessible Internet website.

24 Section 15. Applicability.

25 This act shall apply to taxable years beginning on and after
26 January 1, 2019.

27 Section 16. Effective date.

28 This act shall take effect in 60 days.