

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB360

Hearing Date: Wednesday February 23, 2011
Committee On: Revenue
Introducer: Cornett
One Liner: Change provisions governing wind energy tax credits and property taxation

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 8 Senators Adams, Cornett, Fischer, Hadley, Louden, Pankonin, Pirsch, Utter
Nay:
Absent:
Present Not Voting:

Proponents:
Sen. Abbie Cornett
David Levy

Representing:
Introducer
Midwest Wind Energy

Opponents:
Andy Pollock
Darrell Hayek

Representing:
NE Wind Energy Export Assoc.
Saline Co. Wind Association

Neutral:
David Domina

Representing:
Self

Summary of purpose and/or changes:

LB 360 would clarify and change taxation of wind energy electrical generation facilities in Nebraska. The main focus of the bill is clarifying the property tax treatment of such facilities, but it also addresses a credit against the nameplate capacity tax for certain property taxes previously paid on a wind energy generation facility commissioned before July 15, 2010. That credit was enacted by Laws 2010, LB 1048, section 14, which was codified as part of Neb. Rev. Stat. section 77-6203(5)(b).

LB 360 would strike the language added by Laws 2010, LB 1048, section 10, which redefines "trade fixtures" to include "all property used in the generation of electricity using wind as the fuel source, including, but not limited to, that listed in subsection (9) of section 77-202." [LB 360, section 1, amending Neb. Rev. Stat. section 77-105 (emphasis added).]

LB 360 would clarify that the property tax exemption enacted by Laws 2010, LB 1048, section 11, applies only to "depreciable tangible personal property" and not to real property too. LB 360 also strikes the sentence in that same section which lists some, but necessarily all, types of personal property used directly in the generation of electricity using wind as the fuel source which LB 1048 purportedly exempted from property taxation, including "wind turbines, rotors and blades, towers, . . . supporting structures or racks, . . . and generator step-up transformers." [LB 360, section 2, amending Neb. Rev. Stat. section 77-202(9).]

LB 360 would also eliminate the credit against the nameplate capacity tax for certain property taxes previously paid on a wind energy generation facility commissioned before July 15, 2010. That credit was enacted by Laws 2010, LB 1048, section 14, which was codified as part of Neb. Rev. Stat. section 77-6203(5)(b). Specifically, LB 360 would strike the following sentence which was added by Laws 2010, LB 1048, section 14:

"The amount of property tax previously paid on a wind energy generation facility commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized." [LB 360, section 3, amending Neb. Rev. Stat. section 77-6203(5)(b).]

LB 360 would provide a retroactive operative date of January 1, 2010, and it contains a severability clause. [LB 360, sections 4 and 5.]

Finally, LB 360 would repeal the original version of the statutes that it amends and it contains the emergency clause. [LB 360, sections 6 and 7.]

Explanation of amendments:

AM 369 rewrites LB 360 so the bill's legislative intent is perfectly clear.

AM 369 reinstates much of the language stricken in the introduced version of LB 360 by clarifying that the property tax exemption applies only to "depreciable tangible personal property" and that the credit against the nameplate capacity tax applies only to "depreciable tangible personal property taxes" previously paid on a wind energy generation facility commissioned before July 15, 2010.

AM 369 also reinstates the stricken "trade fixture" language, the itemized list of personal property that may qualify as depreciable tangible personal property for purposes of the property tax exemption, and the credit against the nameplate capacity tax, all for the purpose of clarifying that "depreciable tangible personal property" is the subject of the bill's property tax exemption and its credit against the nameplate capacity tax.

AM 369 also provides for a retroactive operative date of January 1, 2010, and it contains a severability clause as well as the emergency clause.

Abbie Cornett, Chairperson