

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

SENATE BILL 275

5 By: Senators B. Sample, G. Baker, Burnett, J. Dismang, Files, Fletcher, G. Jeffress, J. Jeffress, M.  
6 Lamoureux, Rapert, J. Taylor, Teague  
7

## For An Act To Be Entitled

9 AN ACT TO PROVIDE AN INCENTIVE TO ENCOURAGE THE  
10 BUILDING AND OPERATING OF HIGH-EFFICIENCY ELECTRIC  
11 POWER GENERATORS BY REVISING THE DEFINITION OF  
12 "MANUFACTURER" FOR THE PURPOSE OF REDUCING THE EXCISE  
13 TAX RATE ON NATURAL GAS AND ELECTRICITY USED IN  
14 MANUFACTURING SUBJECT TO A PHASE-IN OF THE REDUCED  
15 RATE OF TAX; TO DECLARE AN EMERGENCY; AND FOR OTHER  
16 PURPOSES.  
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## Subtitle

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20 TO ENCOURAGE THE BUILDING AND OPERATING  
21 OF HIGH-EFFICIENCY ELECTRIC POWER  
22 GENERATORS BY REVISING THE DEFINITION OF  
23 "MANUFACTURER" TO REDUCE THE TAX ON  
24 NATURAL GAS AND ELECTRICITY USED IN  
25 MANUFACTURING; TO DECLARE AN EMERGENCY.  
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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30 SECTION 1. DO NOT CODIFY. The General Assembly finds that:

31 (1) There will be a need for additional electrical generation in  
32 the state to supply the utilities that serve state individuals and industry;

33 (2) Natural gas for electrical generation is the cleanest and  
34 most efficient energy produced from fossil fuel used to generate electricity,  
35 and it is in the best interest of the state to encourage the use of this  
36 technology for generating electricity;



1           (3) The state is at a competitive disadvantage compared to the  
 2 surrounding states to attract the building and operating of high-efficiency  
 3 electric power generators because the state imposes a six percent (6%) sales  
 4 tax on the purchase of natural gas used to generate the electricity;

5           (4) The state has an abundant supply of natural gas at low cost  
 6 to power high-efficiency electric power generators, and the disadvantage of  
 7 the high tax should be removed as an incentive to utilities and private  
 8 industry to construct and operate high-efficiency generating facilities; and

9           (5) Other manufacturers in the state enjoy a tax reduction on  
 10 energy used in manufacturing, and these high-efficiency electric power  
 11 generators that manufacture electricity for resale on the wholesale market  
 12 should be granted the same exemption as other manufacturers.

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 14           SECTION 2. Arkansas Code § 26-52-319(b)-(f), concerning the sales tax  
 15 on natural gas and electricity used by manufacturers, is amended to read as  
 16 follows:

17           (b) As used in this section, “manufacturer” means a ~~manufacturer~~:

18           (1) Manufacturer classified within sectors 31 through 33 of the  
 19 North American Industry Classification System, as in effect on January 1,  
 20 2007-~~;~~ and

21           (2) Generator of electric power classified within sector 22 of  
 22 the North American Industry Classification System, as in effect on January 1,  
 23 2011, that uses natural gas to operate a generating facility that uses  
 24 emission-reduction technology that emits nitrogen oxides less than three and  
 25 five-tenths parts per million (3.5 ppm) on average annually for all operating  
 26 hours.

27           (c) In lieu of the tax rate under subsection (a) of this section, the  
 28 excise tax rate levied on the gross receipts or gross proceeds derived from  
 29 the sale of natural gas and electricity to a manufacturer as defined in  
 30 subdivision (b)(2) of this section is as follows:

31           (1) Beginning July 1, 2011, five and one-fourth percent (5  
 32 1/4%);

33           (2) Beginning July 1, 2012, four and one-fourth percent (4  
 34 1/4%); and

35           (3) Beginning July 1, 2013, the rate under subsection (a) of  
 36 this section.

1       ~~(e)~~ (d) Natural gas and electricity subject to the reduced tax rate  
 2 levied in this section shall be separately metered from natural gas and  
 3 electricity used for any other purpose by the manufacturer or otherwise  
 4 established ~~in accordance with the rules issued~~ under subsection ~~(e)~~ (f) of  
 5 this section.

6       ~~(d)~~ (e) ~~Prior to~~ Before the sale of natural gas or electricity at the  
 7 reduced excise tax rate levied in this section, the director may require any  
 8 seller of natural gas or electricity to obtain a certificate from the  
 9 consumer, in the form prescribed by the director, certifying that the  
 10 manufacturer is eligible to purchase natural gas and electricity at the  
 11 reduced excise tax rate.

12       ~~(e)~~ (f) The director shall ~~have and be invested with full power and~~  
 13 ~~authority to~~ promulgate rules for the proper administration of this section.

14       ~~(f)~~ (g) The gross receipts or gross proceeds derived from the sale of  
 15 natural gas and electricity to a manufacturer shall continue to be subject  
 16 to:

- 17               (1) The excise tax levied under the Arkansas Constitution,
- 18 Amendment 75, § 2; and
- 19               (2) All municipal and county gross receipts taxes.

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 21       SECTION 3. Arkansas Code § 26-53-148(b)-(f), concerning the  
 22 compensating use tax on natural gas and electricity used by manufacturers, is  
 23 amended to read as follows:

24       (b) As used in this section, “manufacturer” means a ~~manufacturer:~~

25               (1) Manufacturer classified within sectors 31 through 33 of the  
 26 North American Industry Classification System, as in effect on January 1,  
 27 2007; and

28               (2) Generator of electric power classified within sector 22 of  
 29 the North American Industry Classification System, as in effect on January 1,  
 30 2011, that uses natural gas to operate a generating facility that uses  
 31 emission-reduction technology that emits nitrogen oxides less than three and  
 32 five-tenths parts per million (3.5 ppm) on average annually for all operating  
 33 hours.

34       (c) In lieu of the tax rate under subsection (a) of this section, the  
 35 excise tax rate levied on the gross receipts or gross proceeds derived from  
 36 the sale of natural gas and electricity to a manufacturer as defined in

1 subdivision (b)(2) of this section is as follows:

2 (1) Beginning July 1, 2011, five and one-fourth percent (5  
 3 1/4%);

4 (2) Beginning July 1, 2012, four and one-fourth percent (4  
 5 1/4%); and

6 (3) Beginning July 1, 2013, the rate under subsection (a) of  
 7 this section.

8 ~~(e)~~ (d) Natural gas and electricity subject to the reduced tax rate  
 9 levied in this section shall be separately metered from natural gas and  
 10 electricity used for any other purpose by the manufacturer or otherwise  
 11 established ~~in accordance with the rules issued~~ under subsection ~~(e)~~ (f) of  
 12 this section.

13 ~~(d)~~ (e) ~~Prior to~~ Before purchasing any natural gas or electricity at  
 14 the reduced excise tax rate levied in this section, the director may require  
 15 any seller of natural gas or electricity to obtain a certificate from the  
 16 consumer, in the form prescribed by the director, certifying that the  
 17 manufacturer is eligible to purchase natural gas and electricity at the  
 18 reduced excise tax rate.

19 ~~(e)~~ (f) The director shall ~~have and be invested with full power and~~  
 20 ~~authority to~~ promulgate rules for the proper administration of this section.

21 ~~(f)~~ (g) The purchase of natural gas and electricity by a manufacturer  
 22 shall continue to be subject to:

23 (1) The excise tax levied under the Arkansas Constitution,  
 24 Amendment 75, § 2; and

25 (2) All municipal and county compensating use taxes.

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 27 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
 28 General Assembly of the State of Arkansas that there will be a need for  
 29 additional electric generating capacity in the state; that the state should  
 30 provide an incentive for the construction and operation of high-efficiency  
 31 electric generating facilities to fill that need; that the sales and use  
 32 taxes that the state imposes on natural gas used in high-efficiency electric  
 33 generating facilities far exceed the taxes imposed by most surrounding  
 34 states; that electric power generation has historically been treated as  
 35 manufacturing for sales and use tax purposes in the state; that the state has  
 36 an interest in encouraging the use of clean and efficient generating

1 technologies pending the development of alternate energy technologies; that  
2 the price of natural gas has been subject to substantial increases in the  
3 marketplace resulting in a dramatic increase in the cost of electricity that  
4 has been compounded by the sales and use tax on natural gas used as fuel, and  
5 this trend is likely to continue; and that including high-efficiency power  
6 generation in the definition of "manufacturing" for purposes of the reduced  
7 sales and use tax on natural gas will stabilize the tax burden, preserve the  
8 funding source, and encourage the use of natural gas in high-efficiency power  
9 generating facilities in the state. Therefore, an emergency is declared to  
10 exist and this act being necessary for the preservation of the public peace,  
11 health, and safety shall become effective on May 1, 2011.

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