

1 State of Arkansas  
2 88th General Assembly  
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4

As Engrossed: S2/15/11 S2/17/11

# 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, J. Hutchinson, Luker

7 By: Representative Jean  
8

## For An Act To Be Entitled

9  
10 *AN ACT TO DECREASE THE SALES AND USE TAX ON NATURAL*  
11 *GAS AND ELECTRICITY USED BY MANUFACTURERS; TO DECLARE*  
12 *AN EMERGENCY; AND FOR OTHER PURPOSES.*  
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14

### Subtitle

15  
16 *TO DECREASE THE SALES AND USE TAX ON*  
17 *NATURAL GAS AND ELECTRICITY USED BY*  
18 *MANUFACTURERS AND TO DECLARE AN*  
19 *EMERGENCY.*  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 *SECTION 1. DO NOT CODIFY. The General Assembly finds that:*

25 *(1) The cost of manufacturing continues to climb;*

26 *(2) The state unemployment rate is extremely high, and the*  
27 *economy has dramatically affected manufacturers, which has resulted in*  
28 *numerous layoffs;*

29 *(3) Decreasing the sales and use tax rate on natural gas and*  
30 *electricity used by manufacturers would increase employment and production,*  
31 *which, in turn, would provide more lucrative employment opportunities for*  
32 *Arkansans;*

33 *(4) There is a need for additional electrical generation in the*  
34 *state to supply the utilities that serve state individuals and industry;*

35 *(5) Natural gas-fired, combined-cycle generation is the cleanest*  
36 *and most efficient energy produced from fossil fuel used to generate*



1 electricity, and it is in the best interest of the state to encourage the use  
2 of this technology for generating electricity;

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

8 (7) The state has an abundant supply of natural gas to power  
9 high-efficiency, combined-cycle technology electric power generators, and the  
10 disadvantage of the high tax should be removed as an incentive to utilities  
11 and private industry to construct and operate high-efficiency generating  
12 facilities; and

13 (8) Other manufacturers in the state enjoy a tax reduction on  
14 natural gas used in manufacturing, and these high-efficiency, combined-cycle  
15 technology electric power generators that manufacture electricity for resale  
16 on the wholesale market should be granted the same exemption as other  
17 manufacturers.

18  
19 SECTION 2. Arkansas Code § 26-52-319 is amended to read as follows:

20 (a)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross  
21 proceeds tax levied in §§ 26-52-301 and 26-52-302(a)-(d), there is levied an  
22 excise tax on the gross receipts or gross proceeds derived from the sale of  
23 natural gas and electricity to a manufacturer for use directly in the actual  
24 manufacturing process at the rate of four and three-eighths percent (4.375%).

25 (2) Beginning July 1, 2008, the tax rate levied in subdivision  
26 (a)(1) of this section shall be imposed at the rate of three and seven-  
27 eighths percent (3.875%).

28 (3)(A) Beginning July 1, 2009, the tax rate levied in  
29 subdivision (a)(1) of this section shall be imposed at the rate of three and  
30 one-eighth percent (3.125%).

31 (B)(i) The Director of the Department of Finance and  
32 Administration shall monitor the amount of tax savings received by all  
33 taxpayers as a result of the reduction in the tax rate from that levied in §§  
34 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this  
35 section.

36 (ii) When the director determines that the amount of

1 tax savings resulting from the determination described in subdivision  
2 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-  
3 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a  
4 fiscal year, the director shall not process any further refund claims through  
5 a refund process during the fiscal year for taxpayers seeking to claim the  
6 reduced tax rate provided by this section. The amount of twenty-seven million  
7 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed  
8 reduction of sales and use tax on natural gas and electricity as provided by  
9 Acts 2007, No. 185, as well as the additional reduction provided by Acts  
10 2009, No. 695.

11 (iii) If the director determines that discontinuing  
12 refund payments as provided in subdivision (a)(3)(B)(ii) of this section is  
13 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
14 million dollars (\$27,000,000) during a fiscal year, the director may decline  
15 to accept any amended return filed by a taxpayer to claim an overpayment  
16 resulting from the reduced tax rate provided by this section for a period  
17 other than the period for which a tax return is currently due.

18 (C)(i) Refund requests and amended returns filed with the  
19 director to claim the overpayment resulting from the reduced rate in  
20 subdivision (a)(3)(A) of this section shall be processed in the order they  
21 are received by the director. A taxpayer that does not receive a refund after  
22 the refund and amended return process has ceased under subdivision (a)(3)(B)  
23 of this section shall be given priority to receive a refund during the  
24 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall  
25 be processed before any refund claims filed in the current fiscal year to  
26 claim the benefit of this section.

27 (ii) The statute of limitations for refunds and  
28 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to  
29 allow the payment of a refund under the process provided in subdivision  
30 (a)(3)(C)(i) of this section.

31 (4)(A) Beginning July 1, 2011, the tax rate levied in  
32 subdivision (a)(1) of this section shall be imposed at the rate of two and  
33 five-eighths percent (2.625%).

34 (B)(i) The Director of the Department of Finance and  
35 Administration shall monitor the amount of tax savings received by all  
36 taxpayers as a result of the reduction in the tax rate from that levied in §§

1 26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(A) of this  
2 section.

3 (ii) When the director determines that the amount of  
4 tax savings resulting from the determination described in subdivision  
5 (a)(4)(B)(i) of this section plus any use tax savings described in § 26-53-  
6 148(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000) during a  
7 fiscal year, the director shall not process any further refund claims through  
8 a refund process during the fiscal year for taxpayers seeking to claim the  
9 reduced tax rate provided by this section. The amount of twenty-seven million  
10 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed  
11 reduction of sales and use tax on natural gas and electricity as provided by  
12 this section.

13 (iii) If the director determines that discontinuing  
14 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is  
15 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
16 million dollars (\$27,000,000) during a fiscal year, the director may decline  
17 to accept any amended return filed by a taxpayer to claim an overpayment  
18 resulting from the reduced tax rate provided by this section for a period  
19 other than the period for which a tax return is currently due.

20 (C)(i) Refund requests and amended returns filed with the  
21 director to claim the overpayment resulting from the reduced rate in  
22 subdivision (a)(4)(A) of this section shall be processed in the order they  
23 are received by the director. A taxpayer that does not receive a refund after  
24 the refund and amended return process has ceased under subdivision (a)(4)(B)  
25 of this section shall be given priority to receive a refund during the  
26 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall  
27 be processed before any refund claims filed in the current fiscal year to  
28 claim the benefit of this section.

29 (ii) The statute of limitations for refunds and  
30 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to  
31 allow the payment of a refund under the process provided in subdivision  
32 (a)(4)(C)(i) of this section.

33 ~~(4)~~ (5) The taxes levied in this subsection ~~(a)~~ shall be  
34 distributed as follows:

35 (A) Seventy-six and six-tenths percent (76.6%) of the tax,  
36 interest, penalties, and costs received by the director shall be deposited as

1 *general revenues;*

2 *(B) Eight and five-tenths percent (8.5%) of the tax,*  
3 *interest, penalties, and costs received by the director shall be deposited*  
4 *into the Property Tax Relief Trust Fund; and*

5 *(C) Fourteen and nine-tenths percent (14.9%) of the tax,*  
6 *interest, penalties, and costs received by the director shall be deposited*  
7 *into the Educational Adequacy Fund.*

8 ~~*(5)(A) (6)(A) The excise tax levied in this section applies only*~~  
9 ~~*to natural gas and electricity sold for use directly in the actual*~~  
10 ~~*manufacturing process.*~~

11 *(B) Natural gas and electricity sold for any other purpose*  
12 *shall be subject to the full gross receipts or gross proceeds tax levied*  
13 *under §§ 26-52-301 and 26-52-302(a)-(d).*

14 ~~*(6) (7) The excise tax levied in this section shall be*~~  
15 ~~*collected, reported, and paid in the same manner and at the same time as is*~~  
16 ~~*prescribed by law for the collection, reporting, and payment of all other*~~  
17 ~~*Arkansas gross receipts taxes.*~~

18 *(b) As used in this section, "manufacturer" means a ~~manufacturer:~~*

19 *(1) Manufacturer classified within sectors 31 through 33 of the*  
20 *North American Industry Classification System, as in effect on ~~January 1,~~*  
21 *~~2007,~~ January 1, 2011; or*

22 *(2) Generator of electric power classified within sector 22 of*  
23 *the North American Industry Classification System, as in effect on January 1,*  
24 *2011, that uses natural gas to operate a new or existing generating facility*  
25 *that uses combined-cycle gas turbine technology.*

26 *(c)(1) Except as provided in subdivision (c)(2)(C) of this section,*  
27 *the tax rate under subsection (a) of this section does not apply to a*  
28 *manufacturer as defined in subdivision (b)(2) of this section.*

29 *(2) In lieu of the tax rate under subsection (a) of this*  
30 *section, the excise tax rate levied on the gross receipts or gross proceeds*  
31 *derived from the sale of natural gas and electricity to a manufacturer as*  
32 *defined in subdivision (b)(2) of this section to operate a new or existing*  
33 *facility that uses combined-cycle gas turbine technology is as follows:*

34 *(A) Beginning July 1, 2011, five and one-eighth percent*  
35 *(5.125%);*

36 *(B) Beginning July 1, 2012, four and one-eighth percent*

1 (4.125%); and

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

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

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

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

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

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

22 (2) All municipal and county gross receipts taxes.

23 ~~(g)~~ (h) All existing exemptions from the gross receipts tax levied by  
 24 this chapter and the compensating use tax levied by the Arkansas Compensating  
 25 Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in  
 26 manufacturing or for other purposes that are otherwise provided by law shall  
 27 continue in effect.

28  
 29 SECTION 3. Arkansas Code § 26-53-148 is amended to read as follows:

30 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-  
 31 106 and 26-53-107~~(a)-(d)~~, there is levied an excise tax on the sales price of  
 32 natural gas and electricity purchased by a manufacturer for use directly in  
 33 the actual manufacturing process at the rate of four and three-eighths  
 34 percent (4.375%).

35 (2) Beginning July 1, 2008, the tax rate levied in subdivision  
 36 (a)(1) of this section shall be imposed at the rate of three and seven-

1 *eighths percent (3.875%).*

2 *(3)(A) Beginning July 1, 2009, the tax rate levied in*  
3 *subdivision (a)(1) of this section shall be imposed at the rate of three and*  
4 *one-eighth percent (3.125%).*

5 *(B)(i) The Director of the Department of Finance and*  
6 *Administration shall monitor the amount of tax savings received by all*  
7 *taxpayers as a result of the reduction in the tax rate from that levied in §§*  
8 *26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this*  
9 *section.*

10 *(ii) When the director determines that the amount of*  
11 *tax savings resulting from the determination described in subdivision*  
12 *(a)(3)(B)(i) of this section plus any gross receipts tax savings described in*  
13 *§ 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)*  
14 *during a fiscal year, the director shall not process any further refund*  
15 *claims through a refund process during the fiscal year for taxpayers seeking*  
16 *to claim the reduced tax rate provided by this section. The amount of twenty-*  
17 *seven million dollars (\$27,000,000) is intended to cover the accumulated but*  
18 *unclaimed reduction of sales and use tax on natural gas and electricity as*  
19 *provided by Acts 2007, No. 185, as well as the additional reduction provided*  
20 *by Acts 2009, No. 695.*

21 *(iii) If the director determines that discontinuing*  
22 *refund payments as provided in subdivision (a)(3)(B)(ii) of this section is*  
23 *insufficient to prevent the amount of tax savings from exceeding twenty-seven*  
24 *million dollars (\$27,000,000) during a fiscal year, the director may decline*  
25 *to accept any amended return filed by a taxpayer to claim an overpayment*  
26 *resulting from the reduced tax rate provided by this section for a period*  
27 *other than the period for which a tax return is currently due.*

28 *(C)(i) Refund requests and amended returns filed with the*  
29 *director to claim the overpayment resulting from the reduced rate in*  
30 *subdivision (a)(3)(A) of this section will be processed in the order they are*  
31 *received by the director. A taxpayer that does not receive a refund after the*  
32 *refund and amended return process has ceased under subdivision (a)(3)(B) of*  
33 *this section shall be given priority to receive a refund during the*  
34 *subsequent fiscal year. The unpaid refunds from the prior fiscal year shall*  
35 *be processed before any refund claims filed in the current fiscal year to*  
36 *claim the benefit of this section.*

1                   (ii) *The statute of limitations for refunds and*  
2 *amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to*  
3 *allow the payment of a refund under the process provided in subdivision*  
4 *(a)(3)(C)(i) of this section.*

5                   (4)(A) Beginning July 1, 2011, the tax rate levied in  
6 subdivision (a)(1) of this section shall be imposed at the rate of two and  
7 five-eighths percent (2.625%).

8                   (B)(i) The Director of the Department of Finance and  
9 Administration shall monitor the amount of tax savings received by all  
10 taxpayers as a result of the reduction in the tax rate from that levied in §§  
11 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this  
12 section.

13                   (ii) When the director determines that the amount of  
14 tax savings resulting from the determination described in subdivision  
15 (a)(4)(B)(i) of this section plus any gross receipts tax savings described in  
16 § 26-52-319(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000)  
17 during a fiscal year, the director shall not process any further refund  
18 claims through a refund process during the fiscal year for taxpayers seeking  
19 to claim the reduced tax rate provided by this section. The amount of twenty-  
20 seven million dollars (\$27,000,000) is intended to cover the accumulated but  
21 unclaimed reduction of sales and use tax on natural gas and electricity as  
22 provided by this section.

23                   (iii) If the director determines that discontinuing  
24 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is  
25 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
26 million dollars (\$27,000,000) during a fiscal year, the director may decline  
27 to accept any amended return filed by a taxpayer to claim an overpayment  
28 resulting from the reduced tax rate provided by this section for a period  
29 other than the period for which a tax return is currently due.

30                   (C)(i) Refund requests and amended returns filed with the  
31 director to claim the overpayment resulting from the reduced rate in  
32 subdivision (a)(4)(A) of this section will be processed in the order they are  
33 received by the director. A taxpayer that does not receive a refund after the  
34 refund and amended return process has ceased under subdivision (a)(4)(B) of  
35 this section shall be given priority to receive a refund during the  
36 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall



1 be processed before any refund claims filed in the current fiscal year to  
 2 claim the benefit of this section.

3 (ii) The statute of limitations for refunds and  
 4 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to  
 5 allow the payment of a refund under the process provided in subdivision  
 6 (a)(4)(C)(i) of this section.

7 ~~(4) (5)~~ The taxes levied in this subsection ~~(a) of this section~~  
 8 shall be distributed as follows:

9 (A) Seventy-six and six-tenths percent (76.6%) of the tax,  
 10 interest, penalties, and costs received by the director shall be deposited as  
 11 general revenues;

12 (B) Eight and five-tenths percent (8.5%) of the tax,  
 13 interest, penalties, and costs received by the director shall be deposited  
 14 into the Property Tax Relief Trust Fund; and

15 (C) Fourteen and nine-tenths percent (14.9%) of the tax,  
 16 interest, penalties, and costs received by the director shall be deposited  
 17 into the Educational Adequacy Fund.

18 ~~(5)(A)~~ (6)(A) The excise tax levied in this section applies only  
 19 to natural gas and electricity purchased for use directly in the actual  
 20 manufacturing process.

21 (B) Natural gas and electricity purchased for any other  
 22 purpose shall be subject to the full compensating use tax levied under §§ 26-  
 23 53-106 and 26-53-107~~(a)-(d)~~.

24 ~~(6)~~ (7) The excise tax levied in this section shall be  
 25 collected, reported, and paid in the same manner and at the same time as is  
 26 prescribed by law for the collection, reporting, and payment of all other  
 27 Arkansas compensating use taxes.

28 (b) As used in this section, "manufacturer" means a ~~manufacturer:~~

29 (1) Manufacturer classified within sectors 31 through 33 of the  
 30 North American Industry Classification System, as in effect on ~~January 1,~~  
 31 ~~2007,~~ January 1, 2011; or

32 (2) Generator of electric power classified within sector 22 of  
 33 the North American Industry Classification System, as in effect on January 1,  
 34 2011, that uses natural gas to operate a new or existing generating facility  
 35 that uses combined-cycle gas turbine technology.

36 (c)(1) Except as provided in subdivision (c)(2)(C) of this section,

1 the tax rate under subsection (a) of this section does not apply to a  
2 manufacturer as defined in subdivision (b)(2) of this section.

3 (2) In lieu of the tax rate under subsection (a) of this  
4 section, the excise tax rate levied on the gross receipts or gross proceeds  
5 derived from the sale of natural gas and electricity to a manufacturer as  
6 defined in subdivision (b)(2) of this section to operate a new or existing  
7 facility that uses combined-cycle gas turbine technology is as follows:

8 (A) Beginning July 1, 2011, five and one-eighth percent  
9 (5.125%);

10 (B) Beginning July 1, 2012, four and one-eighth percent  
11 (4.125%); and

12 (C) Beginning July 1, 2013, the rate under subsection (a)  
13 of this section.

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

19 ~~(d)~~ (e) ~~Prior to~~ Before purchasing any natural gas or electricity at  
20 the reduced excise tax rate levied in this section, the director may require  
21 any seller of natural gas or electricity to obtain a certificate from the  
22 consumer, in the form prescribed by the director, certifying that the  
23 manufacturer is eligible to purchase natural gas and electricity at the  
24 reduced excise tax rate.

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

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

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

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

32  
33 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
34 General Assembly of the State of Arkansas that the cost of manufacturing  
35 continues to climb; that the Arkansas unemployment rate is extremely high;  
36 that the economy has dramatically affected manufacturers and resulted in

1 layoffs; that decreasing the sales and use tax on natural gas and electricity  
2 used by manufacturers would provide manufacturers with a way to increase the  
3 number of employees and that this, in turn, would increase production and  
4 provide lucrative employment for Arkansans. Therefore, an emergency is  
5 declared to exist and this act being necessary for the preservation of the  
6 public peace, health, and safety shall become effective on July 1, 2011.

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9 /s/B. Sample  
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