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2 88th General Assembly

# A Bill

3 Regular Session, 2011

SENATE BILL 275

4

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

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## For An Act To Be Entitled

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*AN ACT TO DECREASE THE SALES AND USE TAX ON NATURAL*

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*GAS AND ELECTRICITY USED BY MANUFACTURERS; TO DECLARE*

12

*AN EMERGENCY; AND FOR OTHER PURPOSES.*

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## Subtitle

16

*TO DECREASE THE SALES AND USE TAX ON*

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*NATURAL GAS AND ELECTRICITY USED BY*

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*MANUFACTURERS AND TO DECLARE AN*

19

*EMERGENCY.*

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

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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 January 1, 2012, five and one-eighths*  
35 *percent (5.125%);*

36 *(B) Beginning January 1, 2013, four and one-eighths*

1 percent (4.125%); and

2 (C) Beginning January 1, 2014, two and five-eighths  
3 percent (2.625%).

4 (3)(A) The amount of tax savings described in subdivision  
5 (a)(4)(B)(i) of this section does not include any tax savings received by a  
6 manufacturer as defined in subdivision (b)(2) of this section.

7 (B) Manufacturers as defined in subdivision (b)(2) of  
8 this section are not subject to the dollar limitations on refunds and  
9 amended returns stated in subsection (a) of this section.

10 (4) The taxes levied in this subsection shall be  
11 distributed in the same manner as set out in subsection (a) of this  
12 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1                   (C)(i) Refund requests and amended returns filed with the  
2 director to claim the overpayment resulting from the reduced rate in  
3 subdivision (a)(3)(A) of this section will be processed in the order they are  
4 received by the director. A taxpayer that does not receive a refund after the  
5 refund and amended return process has ceased under subdivision (a)(3)(B) of  
6 this section shall be given priority to receive a refund during the  
7 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall  
8 be processed before any refund claims filed in the current fiscal year to  
9 claim the benefit of this section.

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

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

17                   (B)(i) The Director of the Department of Finance and  
18 Administration shall monitor the amount of tax savings received by all  
19 taxpayers as a result of the reduction in the tax rate from that levied in §§  
20 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this  
21 section.

22                   (ii) When the director determines that the amount of  
23 tax savings resulting from the determination described in subdivision  
24 (a)(4)(B)(i) of this section plus any gross receipts tax savings described in  
25 § 26-52-319(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000)  
26 during a fiscal year, the director shall not process any further refund  
27 claims through a refund process during the fiscal year for taxpayers seeking  
28 to claim the reduced tax rate provided by this section. The amount of twenty-  
29 seven million dollars (\$27,000,000) is intended to cover the accumulated but  
30 unclaimed reduction of sales and use tax on natural gas and electricity as  
31 provided by this section.

32                   (iii) If the director determines that discontinuing  
33 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is  
34 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
35 million dollars (\$27,000,000) during a fiscal year, the director may decline  
36 to accept any amended return filed by a taxpayer to claim an overpayment



1 resulting from the reduced tax rate provided by this section for a period  
2 other than the period for which a tax return is currently due.

3 (C)(i) Refund requests and amended returns filed with the  
4 director to claim the overpayment resulting from the reduced rate in  
5 subdivision (a)(4)(A) of this section will be processed in the order they are  
6 received by the director. A taxpayer that does not receive a refund after the  
7 refund and amended return process has ceased under subdivision (a)(4)(B) of  
8 this section shall be given priority to receive a refund during the  
9 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall  
10 be processed before any refund claims filed in the current fiscal year to  
11 claim the benefit of this section.

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

16 ~~(4)~~ (5) The taxes levied in this subsection ~~(a)~~ of ~~this section~~  
17 shall be distributed as follows:

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

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

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

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

30 (B) Natural gas and electricity purchased for any other  
31 purpose shall be subject to the full compensating use tax levied under §§ 26-  
32 53-106 and 26-53-107~~(a)-(d)~~.

33 ~~(6)~~ (7) The excise tax levied in this section shall be  
34 collected, reported, and paid in the same manner and at the same time as is  
35 prescribed by law for the collection, reporting, and payment of all other  
36 Arkansas compensating use taxes.

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

2 (1) Manufacturer classified within sectors 31 through 33 of the  
3 North American Industry Classification System, as in effect on ~~January 1,~~  
4 ~~2007,~~ January 1, 2011; or

5 (2) Generator of electric power classified within sector 22 of  
6 the North American Industry Classification System, as in effect on January 1,  
7 2011, that uses natural gas to operate a new or existing generating facility  
8 that uses combined-cycle gas turbine technology.

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

12 (2) In lieu of the tax rate under subsection (a) of this  
13 section, the excise tax rate levied on the sales price of natural gas and  
14 electricity purchased by a manufacturer as defined in subdivision (b)(2) of  
15 this section to operate a new or existing facility that uses combined-cycle  
16 gas turbine technology is as follows:

17 (A) Beginning January 1, 2012, five and one-eighths  
18 percent (5.125%);

19 (B) Beginning January 1, 2013, four and one-eighths  
20 percent (4.125%); and

21 (C) Beginning January 1, 2014, two and five-eighths  
22 percent (2.625%).

23 (3)(A) The amount of tax savings described in subdivision  
24 (a)(4)(B)(i) of this section does not include any tax savings received by a  
25 manufacturer as defined in subdivision (b)(2) of this section.

26 (B) Manufacturers as defined in subdivision (b)(2) of  
27 this section are not subject to the dollar limitations on refunds and  
28 amended returns stated in subsection (a) of this section.

29 (4) The taxes levied in this subsection shall be  
30 distributed in the same manner as set out in subsection (a) of this  
31 section.

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

1 ~~(d)~~ (e) ~~Prior to~~ Before purchasing any natural gas or electricity at  
2 the reduced excise tax rate levied in this section, the director may require  
3 any seller of natural gas or electricity to obtain a certificate from the  
4 consumer, in the form prescribed by the director, certifying that the  
5 manufacturer is eligible to purchase natural gas and electricity at the  
6 reduced excise tax rate.

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

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

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

13 (2) All municipal and county compensating use taxes.  
14

15 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
16 General Assembly of the State of Arkansas that the cost of manufacturing  
17 continues to climb; that the Arkansas unemployment rate is extremely high;  
18 that the economy has dramatically affected manufacturers and resulted in  
19 layoffs; that decreasing the sales and use tax on natural gas and electricity  
20 used by manufacturers would provide manufacturers with a way to increase the  
21 number of employees and that this, in turn, would increase production and  
22 provide lucrative employment for Arkansans. Therefore, an emergency is  
23 declared to exist and this act being necessary for the preservation of the  
24 public peace, health, and safety shall become effective on July 1, 2011.

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27 /s/B. Sample  
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