


Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
FISCAL IMPACT

Drafting Number: LLS 12-0377

Date: January 27, 2012

Prime Sponsor(s): Rep. Becker

Bill Status: House Agriculture

Fiscal Analyst: Alex Schatz (303-866-4375)

TITLE: CONCERNING WIND ENERGY PROPERTY RIGHTS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue	See State Revenue section.	
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: August 7, 2012, if the General Assembly adjourns on May 9, 2012, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2012-2013: None required.		
Local Government Impact: Potentially significant costs and revenue loss. See Local Government Impact section.		

Summary of Legislation

The bill establishes that wind energy rights are not severable from the surface estate to real property in Colorado. Under the bill, development of wind energy rights is accomplished through a wind energy agreement, which may be styled as a lease, license, easement, or other grant or reservation, but must be evidenced in the real property records of the clerk and recorder in the county where the subject land is located. The bill also defines the procedure for release from a wind energy agreement that has terminated and for reversion of wind energy rights that have been undeveloped for a continuous period of ten years.

State and local taxation of wind energy rights and wind energy agreements is prohibited under the bill. Equipment and generated electricity are also not subject to taxation until wind energy production commences.

State Revenue

The State Board of Land Commissioners (SBLC) manages real property for public benefit in the state, including financial benefits from real property transactions involving state-owned lands. By better defining the marketability of wind energy rights, the bill may increase opportunities for the SBLC to benefit from wind energy development. The potential for increased revenue is not quantifiable at this time.

State Expenditures

Department of Local Affairs - Division of Property Taxation. The Division of Property Taxation (DPT) values wind energy facilities generating over 2 megawatts throughout Colorado as part of the DPT's responsibilities concerning state assessment of public utilities. The bill increases workload and costs to the DPT by requiring the valuation of exempt wind energy rights at all wind energy facilities. The DPT will be required to engage in this revaluation of the assessable value of wind energy facilities whether the value of wind energy rights is significant or not, but the value is presumed to be significant at any successful wind facility, requiring the DPT to work at length to determine values and communicate with affected property owners. The DPT will also experience increased workload and costs under the bill to support its position where valuations are appealed. In addition, the DPT will be required to update training materials and respond to a likely increase in inquiries related to the new exemption.

Department of Local Affairs - Board of Assessment Appeals. The Board of Assessment Appeals (BAA) hears property tax protests originating from across Colorado. By creating a new property tax exemption under Colorado law, the bill provides a new cause for disputing assessed values, even when a property has not been reassessed. Appraisal practices concerning wind rights are assumed to be poorly developed with no existing practice surrounding a similar exemption. It is therefore expected that both the number of newly-filed BAA cases and the complexity of those new cases will increase workload for the BAA. It is not possible to quantify the increase in costs to the BAA, but the new exemption will likely drive significant costs.

Judicial. Under Colorado law, property tax protests may result in a district court case. While litigation is the least-used route for property tax protests, an increase in property tax appeals under the bill is likely to result in new trial court workload. Trial courts plan on a one-week trial for property right disputes, resulting in a significant workload increase if protests concerning wind energy property rights reach trial.

School Finance. The deduction of the value of wind energy rights from real property assessments will reduce local property tax collections and accordingly require an increase in the state share of school costs in affected counties. As discussed in the Local Government Impact section below, reduced property tax values on both developed wind energy facilities and developable land could have a substantial impact on school district property tax revenue. It is not possible to quantify the total budget cost shifted to the state under the School Finance Act, but the statewide effect could be significant.

Local Government Impact

All property tax revenue in the state of Colorado is collected locally. To the extent that this bill reduces taxable value for both developed and developable real property, it will reduce the collections of local governments in counties that are an existing or potential source of wind power. For example, there will be a substantial reduction in property tax collected from wind energy facilities in the eastern part of the state. The effect on undeveloped land and the overall taxable

value of land in affected counties is indeterminate but could also be significant in its aggregate potential to reduce property tax revenue. Statewide, a reduction in property tax collections is likely to impact all types of local taxing jurisdictions, including counties, municipalities, special districts, and school districts.

The bill will increase costs for county assessors due to the need to reassess properties with wind energy value. County assessors must determine, and then deduct, the value of wind energy rights on both undeveloped property with wind development potential and developed facilities generating 2 megawatts or less. Increased workload from reassessment activities will vary by county depending on the wind resource as well as the sophistication of existing assessment data and tools, but this effort is likely to be substantial in some rural counties in the eastern part of the state.

As discussed relative to the state Board of Assessment Appeals in the State Expenditures section above, the assessment appeals process may see an increase in cases due to the new tax status of wind energy rights. Local assessors and boards of equalization will see an indeterminate but potentially significant increase in workload to process new appeals under the bill.

With the mandatory recording of wind energy agreements, county clerks and recorders may see a minimal increase in workload. Any increase in costs to county recording offices is assumed to be offset by new revenue from recording fees.

School District Impact

The bill reduces local school district property taxes, thereby increasing the state's potential contribution, which may not cover the loss. In the event that the negative factor in the school finance formula increases, all school districts in the state will get less money than under current law.

Departments Contacted

Property Taxation
Governor's Energy Office
Law
Transportation

Local Affairs
Governor
Regulatory Agencies
Corrections

Agriculture
Natural Resources
Personnel