New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

25-0533.0

HB 696, *exempting electricity generators from the utility property tax and including them under the statewide education property tax, and relative to communications services tax revenues.*

Science Technology and Energy

This bill adds an exemption for the state education property tax for certain electric generating facility property subject to a payment in lieu of taxes as a renewable generation facility. The bill also transfers 50 percent of the annual communications services tax revenues to the education trust fund.

Under current law, some properties used for purposes of generating electricity are subject to Utility Property Tax (UPT) under RSA Chapter 83-F and are excluded from state education tax (SWEPT) under RSA Chapter 76.

Section 2 of the proposed legislation enacts new subparagraph RSA 83-F:1, V(g), which excludes from the definition of "utility property", property used for the purposes of generating electricity owned by entities defined in RSA 362:4-c, I (exempt wholesale generators, and certificated energy facilities and bulk power supply facilities)[1], effectively making them subject to SWEPT pursuant to RSA 83-F:9 as of July 1, 2027.

Section 1 of the proposed legislation enacts new section RSA 72:74-b, stating that an electric generating facility that is exempt from UPT and thus subject to SWEPT under the proposed new subparagraph created by Section 2, shall not be subject to SWEPT if it is making payments in lieu of taxes under an agreement with a municipality (PILOT) that was in effect as of January 1, 2027 until such time as the PILOT expires or until January 1, 2031, whichever is earlier. Section 1 also provides that thereafter, the SWEPT may be included in a new PILOT, or may be paid in addition to a PILOT if the underlying agreement has not expired or been reopened and renegotiated. Should the SWEPT be paid separately from a PILOT, Section 1 clarifies that the SWEPT owed by the facility shall be determined by using the imputed value of the facility that is calculated and used by the DRA for purposes of equalization under RSA 21-J:3, XIII.

Section 3 of the proposed legislation creates new subsection, RSA 83-F:5, V(c), which requires electric generating facilities that are exempt from UPT to file a form with DRA that identifies utility and non-utility property and to maintain an inventory of assets that are and are not subject to UPT.

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[1] This LSR contains a different statutory definition of entities than LSR #25-0432.0. It is assumed by DRA despite the different statutory references that the same group of companies is being identified in both LSRs.

Section 4 of the proposed legislation amends RSA 83-F:9 of the UPT statute (which exempts UPT payers from SWEPT) to add a reference to the new section created by Section 1.

Under Section 5, this proposed legislation shall take effect July 1, 2027. DRA interprets this to mean that this proposed legislation will first apply to property assessed on April 1, 2028 (Tax Year 2028 running from April 1, 2028 through March 31, 2029), but to make this more explicit and avoid confusion, DRA would suggest adding language so that Section 4 reads, "This act shall take effect July 1, 2027, and shall apply to tax periods beginning on or after April 1, 2028."

In addition, current RSA 83-F:5, IV requires utility property owners to remit estimated tax payments to be assessed as of April 1 in the current taxable period, based on the tax assessed for the preceding taxable year. Because tax assessed for the preceding taxable year, prior to the effective date of this proposed legislation, would include properties employed in the generation of electricity, the DRA suggests that additional language be provided to allow utilities that may be implicated by this proposed legislation to exclude the estimated UPT on properties employed in the generation of electricity in their first year of this exclusion.

The DRA would be responsible for updating all necessary tax forms and electronic management systems related to this proposed legislation, which would not result in any additional administrative costs that could not be absorbed in the DRA operating budget.

The fiscal impact on Utility Property Tax (UPT) due to the exclusion of properties used for the purposes of generating electricity is an indeterminable decrease to the ETF starting in FY2028. The DRA is unable to calculate exact future impact because the DRA is unable to predict the future valuation of such property. However, using UPT revenue from a prior fiscal year, the DRA can calculate the fiscal impact had this legislation been in place in that prior year.

The taxable period for UPT runs from April 1 and ends March 31 of the following year. Utility property owners are to submit estimated tax payments to be assessed as of April 1 in the current taxable period, based on the tax assessed for the preceding taxable year, on April 15, June 15, September 15, and December 15. Any remaining tax due shall be paid by January 15 of the following year.

For Tax Year 2024, the properties employed in the generation of electricity were valued at approximately $1.93 billion. Applying the UPT tax rate of $6.60 on each $1,000 of such value resulted in the UPT revenue on properties employed in the generation of electricity of $12.72 million. The ETF in FY2028 would reduce by $5.36 million (half of the $12.72 million). The ETF for FY2029 and onwards would reduce by $12.72 million each fiscal year.

The SWEPT revenue would remain at the statutorily determined amount of at least $363 million. However, the inclusion of property employed in the generation of electricity would result in a change to the overall statewide 2028 equalized valuation and SWEPT rate. DRA is unable to predict future equalized value due to the movement of the market prices of property. However, an increase in the property base to be equalized would generally increase the statewide equalized value, which is the denominator in the calculation of the statewide SWEPT rate, and, therefore, reduces the statewide SWEPT rate. Any resulting effect from this would be reflected in the SWEPT warrant for Tax Year 2028 (FY 2029).