

Bihar Electricity Duty Act, 1948

36 of 1948

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Bihar Electricity Duty Act, 1948

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PREAMBLE

An Act for the levy of a duty on the sales and consumption of Electrical Energy in the State of Bihar.

Whereas it is expedient to levy a duty on the sales and consumption of electrical energy in the State of Bihar;

It is hereby enacted as follows:-

1. Legislative papers-For Statement of Objects and Reasons, see the Bihar Gazette, Extraordinary, of the 10th May, 1948; for Report of the S.C., see the Bihar Gazette, 1948, Pt. V. pp. 721- 730; for proceedings in the Legislative Assembly, see the Bihar Legislative

Assembly Debates, 1948, Vol. V. No. 7, pp. 6-16, No. 9, p. 30, No. 12 pp 5-10; and for proceedings in the Legislative Council see the Bihar Legislative Council Debates, 1948, Vol. No. X, No. 5, pp. 72-70.

Local extent-The Act was applied to the partially excluded areas by Notification, No. 2589-F.R., dated the 1st October, 1948, see B.O.R.Q , Vol. I. Pt. I.)

1. Short title, extent and commencement :-

(1) This Act may be called the Bihar Electricity Duty Act, 1948.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force on such date ^[2] as the ^[1][State] Government may by notification, appoint.

1. Substituted by para 4(1) of the A.L.O for "Province".

2. The Act came into force on the 1st October, 1948, see Notification No. 2588 F, dated the 1st October, 1948, in B.O.R.O. Vol. I, Pt. VIII and published in Bihar Gazettee(ex. ord.) dated 1.10.1948

2. Definitions :-

¹[In this Act, unless there is anything repugnant in the subject or context:-

(a) Commissioner means the Commissioner of Commercial Taxes or Additional Commissioner of Commercial Taxes appointed under subsection (1) of ²[Section 9 of the Bihar Finance Act, 1981]

⁴["(a a) "Senior Joint Commissioner", "Joint Commissioner", "Deputy Commissioner", "Assistant Commissioner" and "Commercial Taxes Officer" means "Senior Joint Commissioner of Commercial Taxes" "Joint Commissioner of Commercial Taxes", "Deputy Commissioner of Commercial Taxes", "Assistant Commissioner of

Commercial Taxes" and "Commercial Taxes Officer" appointed under sub-section (i) of Section-9 of Bihar Finance Act, 1981 (Act 5, 1981)".]

(b) Consumer means any person who is supplied with energy by a licensee, but does not include either a licensee or the distributing licensee as described in clause 1(a) of clause IX of the Schedule to the [3] Indian Electricity Act, 1910 (9 of 1910), or a person who obtained sanction under Section 28 of the said Act;

(c) Energy means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message;

(d) Licensee means any person, including a company or a local authority licensed under Part II of the Indian Electricity Act, 1910 (IX of 1910) to supply energy, or any person including a company or a local authority who has obtained sanction under section 28 of the Act to engage in the business of supplying energy and includes the Bihar Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948);

(e) Tribunal means the Tribunal constituted under sub-section (I) of 5[section 8 of the Bihar Finance Act, 1981]

(f) Prescribed means prescribed by rules made under this Act."

1. Substituted by Finance Act 9 of 1966.
2. Substituted by Act 2 of 1990.
3. Printed in Central Acts. Vol. V., Ed. 1951, p. 523.
4. Inserted by Act 9 of 1966.
5. Substituted by Act of 1990.

3. Incidence of duty :-

(1) Subject to the provisions of sub-section (2), there shall be levied and paid to the State Government, on the units of energy consumed or sold, excluding losses of energy in transmission and transformation, a duty at the rate or rates specified in the Schedule.

(2.) No duty shall be leviable on units of energy-

(a) consumed by the Government of India, or sold to the Government of India, for consumption by that Government;

(b) consumed in the construction, maintenance, or operation of any railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway;

(c) consumed by the licensee in the construction, maintenance and operation of his electrical undertaking;

(d) consumed by or sold by any class of persons exempted from payment of duty under section 9;

(e) consumed by the Damodar Valley Corporation for the generation, transmission or distribution of electricity by that Corporation;

(f) consumed for any purpose which the State Government may, by notification, in this behalf declare to be a public purpose and such exemptions may be subject to such conditions and exemptions, if any, as may be mentioned in the said notification.

(3) When a licensee holds more than one license, duty shall be payable separately in respect of each license.

3A. Surcharge :-

(1) Subject to the provision of clauses (a), (b) and (e) of sub-section (2) of section 3, every licensee ¹ shall pay, in addition to the duty payable under sub-section (1) of section 3, surcharge at the rate of two paise per unit of energy consumed or sold;

(2) Notwithstanding anything to the contrary contained in this Act, no licensee, ¹ who is liable to pay surcharge, shall be entitled to collect the amount of this surcharge as such from the consumer;

(3) All provision of this Act and the Rules framed thereunder, relating to the payment, assessment, recovery and refund of the duty shall also apply to the payment, assessment, recovery and refund of the surcharge."

1. Substituted by Act 7 of 1988.

4. Payment of duty :-

(1) Every licensee shall pay every month to the ¹[State] Government at the time and in the manner prescribed the proper duty payable under section 3 on the units of energy consumed by him or sold by him to the consumer.

(2) Every licensee may recover from the consumer the amount which falls to be paid by the licensee as duty in respect of the energy sold to the consumer.

(3) The licensee may, for the purpose of sub-section 2, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Indian Electricity Act, 1910 (9 of 1910) for the recovery of any charge or sum due in respect of energy supplied by him.

²[(4) Every person including any department of the State Government, other than a licensee, who generates energy for his own use or for the use of his employees, or partly for such use and

partly for sale, shall pay every month at the time and in the manner prescribed the proper duty payable under section 3, on the units of energy consumed by him or his employees or sold by him."]

3[(4a) Every person other than a licensee who obtains, for sale or partly for his own use and partly for sale, bulk supply of energy generated by a licensee or other person shall pay every month to the State Government at the time and in the manner prescribed, the duty payable under section 3 on the units of energy, so obtained and sold or partly sold and partly consumed by him.]

(5) The licensee or other person who is liable to pay duty under this Act shall, subject to the prescribed conditions, be entitled to a rebate of such percentage as may be prescribed on the amount of duty paid by him within the prescribed time.

1. Substituted by para 4(1) of the A.L.O. for "provincial"

2. Substituted by Act IV of 1955.

3. Inserted by Bihar Finance Act, 1985.

5. Obligation to keep books of account and to submit returns :-

Every licensee, and every other person, who is liable to pay duty under sub-section (4) ¹[or (4a)] of section 4, shall-

(a) keep books of account in the prescribed forms; and

(b) submit returns in such form and at such times and to such officers as may be prescribed.

1. Inserted by Act 9 of 1953.

5A. Section 5A :-

1[(1) If any licensee or other person who is liable to pay duty and surcharge under the Act fails to furnish returns within the prescribed time the prescribed authority shall after giving such licensee or other person an opportunity of being heard impose a penalty not exceeding Rs.50 (Rupees fifty) for every day of default after the due date.

(2) If any licensee or other person liable to pay duty and or surcharge fails to make payment of the duty and or surcharge under sections 3, 3-A and 4 within the due date the prescribed authority shall after allowing such licensee or other person an opportunity of being heard impose a penalty which may extend to five percentum, but not less than two and half percentum of the amount of duty and surcharge for each of the first three months or part thereof following the due date and to ten percentum, but not less than five percentum for each subsequent month or part thereof."

1. Substituted by Act 2 of 1990.

6. Inspecting Officers :-

(1) The **1**[Government may, by notification, appoint Inspecting Officers to inspect the books of account required to be kept under clause (a) of section 5.

(2) Officers so appointed shall perform such duties and exercise such powers as may be prescribed for the purpose of carrying into effect the provision of this Act and the rules made thereunder.

(3) Every such officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, (Act 45 of 1860).

1. Substituted by para 4(1) of the A.L.O. for "Provincial".

7. Recovery of duty :-

¹[Any duty or penalty imposed under the Act, which remains unpaid shall without prejudice to any other mode of recovery be recoverable:-

(a) as if it were an arrear of land revenue; or

(b) on an application to any Magistrate, by such Magistrate as if it were a fine imposed by him; and

(c) in the case of a licensee also by deduction from amount payable by the State Government to the licensee."

1. Substituted by Bihar Finance Act IX of 1966.

7A. Special mode of recovery :-

¹[(1) Notwithstanding anything contained in the Act or any law or contract to the contrary, the authority prescribed for assessment and recovery of duty may, at any time by notice in writing (a copy of which shall also be given to the licensee or to the person liable to pay duty) under this Act direct-

(a) any person who holds or may subsequently hold any money for or on account of the licensee or the person liable to pay duty, or

(b) any person from whom any money is due or may become due to the licensee or the person liable to pay duty who has failed to pay upto the date fixed in the notice of demand the amount of duty or penalty or surcharge payable according to the said notice of demand served upon such licensee or person or in respect of which the date of payment has not been extended by any competent authority, to pay into the Government treasury, in the same manner as have been prescribed for payment of duty either forthwith or upon the money becoming due so much of the money as is sufficient to pay the amount due from the licensee or the person liable to pay duty.

(2) The authority issuing a notice under sub-section (1) may, at any time, amend or revoke any such notice or extend the time for making payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the licensee or the person concerned and the receipt from the Government treasury shall constitute a good and sufficient discharge of the liability of that person to the licensee or the person concerned to the extent of amount specified in the receipt.

(4) Any person if not discharging the liability after service of notice under subsection (1) on him shall be personally liable to the State Government for the amount of duty or penalty and surcharge.

(5) If amount for which any person becomes liable personally to the State Government under sub-section (4), remains unpaid, it shall be recoverable as an arrear of land revenue from him."

2[(6) if any person contravenes any of the provisions of sub-section (4) of this section the prescribed authority shall after giving an opportunity of being heard by an order in writing direct that such person shall pay by way of penalty a sum not exceeding twice the amount payable under sub-section (1)].

1. Inserted by Act 7 of 1988.

2. Inserted by Act 2 of 1990.

8. If any licensee, or other person who is liable to pay duty under this Act :-

(a) fails to keep books of account or to submit returns as required by section 5; or

(b) intentionally obstructs an Inspecting Officer, appointed under

section 6, in the performance of his duties or the exercise of his powers under this Act and the rules made thereunder:

he shall be punished with a fine which may extend to one thousand rupees.

8A. Compounding of offences :-

1[(1) The prescribed authority may either before or after the institution of proceedings under section 8, accept from a licensee or other persons charged with an offence under the said section or under any rule made under this Act, by way of composition of the offence, a sum not exceeding seven hundred and fifty rupees.

(2) On payment of such sum as may be determined by the prescribed authority under sub-section (1), no further proceeding shall be taken against the licensee or other person in respect of the same offence.]

1. Inserted by Act 4 of 1955.

9. Power of State Government to grant exemptions :-

The State Government shall have power to exempt any person or class of persons notified in this behalf from the duty payable under this Act and such exemptions, may be subject to such conditions and exemptions if any, as may be mentioned in the said notification.

9A. Appeal :-

1[(1) Any licensee or other person objecting to an order or assessment with or without penalty passed under this Act, or the rules made thereunder may, within the prescribed period and in the prescribed manner, appeal to the prescribed authority against such order of assessment or penalty or both :

Provided that no appeal shall be entertained by such authority unless it is satisfied that twenty per centum of the duty assessed or such amount of duty as the appellant may admit to be due from him, whichever is greater, has been paid.

2["Provided further that where the prescribed authority revises any order of its motion, no proceeding for such revision shall be initiated at any time except before the expiry of two years from the date of the said order."

(2) Subject to such rules as may be prescribed, the appellate authority may, in disposing of an appeal under sub-section (1)-

(a) confirm, reduce, enhance or annul the assessment or penalty, or both; or

(b) set aside the assessment or penalty, or both, and direct the assessing authority to make a fresh assessment after making such further inquiry as may be directed by the appellate authority.

(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing the prescribed authority may, upon application or of its own motion, revise any order passed under this Act or the rules made thereunder:

Provided that no order of assessment shall be revised upon application on the assessee, unless an order under sub-section (2) has been previously passed in respect of such order:

Provided further that where the prescribed authority revises any order of its own motion, no proceeding for such revision shall be initiated at any time before the expiry of two years from the date of the said order.

(4) Subject to such rules as may be prescribed, any order passed under this Act or the rules made thereunder may be reviewed by the authority passing it or by its successor-in-office.]

1. Inserted by (Amdt.) Act 4 of 1955.

2. Inserted by Bihar Electricity Duty (Amdt.) Act, 1988 (Act 7 of 1988).

9B. Bar of jurisdiction :-

1[Save as provided in Sections 9A and 9D no order passed under this Act or the rules made thereunder shall be called in question in any court.

1. "Sections 9B to 9D" Inserted by Finance Act, 1966.

9C. Bar of legal proceeding :-

(1) No prosecution shall lie against any officer or servant of the State Government for any act done or purported to be done by or under this Act without the previous sanction of the State Government.

(2) No officer or servant of the State Government shall be liable in respect of any act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

9D. Statement of case to High Court :-

(1) Within ninety days from passing by the Tribunal of any order under section 9A, the assessee in respect of whom the order has been passed, or the Commissioner, may, by application in writing, together with a fee of one hundred rupees, where such application is made by the assessee, require the Tribunal to refer to the High Court any question of law arising out of such order.

(2) If, for reasons to be recorded in writing, the Tribunal refuses to make such reference, the applicant may, within forty five days of such order, either-

(a) withdraw his application (and if the applicant who does so, is an assessee, the fee paid by him shall be refunded); or

(b) apply to the High Court against such refusal.

(3) If upon the receipt of an application under clause (b) of sub-section (2), the High Court is not satisfied that such refusal was justified, it may require the Tribunal to state a case and refer it to the High Court and on receipt of such requisition the Tribunal shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions there to or alterations therein as the Court may direct in that behalf.

(5) The High Court upon hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send to the Tribunal a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Tribunal shall, where necessary amend its order in conformity with such judgment.

(6) Where a reference is made to High Court under this section, the costs including the disposal of the fee referred to in sub-section (1), shall be, in the discretion of the Court.

(7) The payment of the amount of duty including penalty, if any, due in accordance with the order of the Tribunal in respect of which

an application has been made under this section shall not be stayed pending the disposal of such application or any reference made in consequence thereof.

(8) The Tribunal or the High Court, may admit an application under this section after the expiry of the period of limitation provided in this section, if it is satisfied that the applicant had sufficient cause for not presenting the application within that period."]

10. Power to make rules :-

(1) The ¹[State] Government may, subject to the condition of previous publication in the official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

²[(a) the assessment of persons liable to pay the duty levied under section 3, for the registration of such persons and for the time and manner of payment of duty under section 4;

(b) the percentage at which, and the conditions subject to which, a rebate under sub-section (5) of Section 4 shall be admissible and the time within which duty must be paid to earn such rebate;

(c) the forms of the books of account required to be kept under clause (a) of Section 5;

(d) the times at which, the forms in which, and the officers to whom the returns required by clause (b) of Section 5 shall be submitted;

(e) the duties and powers of Inspecting Officers appointed under section 6; and

(f) any other matter for which there is no provision or insufficient provision in this Act for which provision is, in the opinion of the ¹[State] Government, necessary for giving effect to the purposes of this Act.

(3) Any such rule may provide that a breach thereof, shall be, punishable with a fine which may extend to one thousand rupees.

1. Substituted by para 4(1) of the A.L.O. for "Provincial"

2. Substituted by S. 11 of the Bihar Finance Act, 1953 (Bihar Act 9 of 1953), for the original cl. (a).

SCHEDULE 1

Schedule A

1 [THE SCHEDULE [See Section 3]

Sr. No.	Premises	Rate of duty
1	2	3
1.	For agricultural, irrigation and industrial purposes save in respect of its premises used for residential or office purposes.	2 paise per unit of energy
2.	For domestic purposes in all premises not falling under serial no. 1.	8 paise per unit of energy,
3.	For mining purposes in all premises where total load does not exceed 100 BHP.	8 paise per unit of energy,
4.	For commercial purposes in all premises not falling under serial no. 1, 2 and 3.	12 paise per unit of energy,
5.	For mining purposes in all premises where total load exceed 100 BHP.	15 paise per unit of energy,
6.	In premises where supply of electricity is unmetered by Bihar Electricity Board.	10 percent of the energy charges.

The rates mentioned in this Schedule may be refixed by the State Government by an order published in the official gazette with the previous consent of the President of India."

THE SCHEDULE

(See Section 3.)

Rate of Duty.

A. For a mine or an Industrial undertaking save in respect of its premises used for residential or office purpose.	Such rate or rates not exceeding 2 naye paise per unit of Energy as may, from time to time, be fixed by the State Government with the previous consent of the President, by order in his behalf.
B. For other purposes- (1) In all premises not falling under article	Such rate not exceeding 7 naye paise per unit of energy as may, from time to time, be fixed by the State Government with the previous consent of the President, by order in this behalf.
(2) In all premises where the supply of energy is unmetered, for-	Such rate per mensem as may, from time to time, be fixed by the State Government with the previous consent of the President, by order in this behalf, not exceeding-

Sr.No. Premises		Rates of duty
1	2	3
		Naye Raise
	Every lamp of less than 30 watts.	32
	Every lamp of 30 watts or more but less than 40 watts.	47
	Every lamp of 40 watts or more but less than 60 watts.	63
	Every lamp of 60 watts or more but not exceeding 100 watts.	91
	Every additional 15 watts or fraction thereof in excess of 100 watts in any lamp	16
Explanation.--For the purposes of this Schedule-		
(i) The expression "industrial, and undertaking" means all buildings or premises wherein or within the precincts of which any manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948) is carried on;		
(ii) The expression "Lamp" includes any other contrivance by which energy is consumed.		
	2. In respect of all premises where the supply of energy by a licensee is unmetered for-	Such rate not exceeding annas for mensem as may, from time to time, be fixed by the [State] Government by notification in this behalf.
	Every lamp of less than 30 watts.	5
	Every lamp of 30 watts or more but less than 40.	7 1/2
	Every lamp of 40 watts or more but less than 60.	10
	Every lamp of 60 watts or more but not exceeding 100, and	15
	For every additional 15 watts or fraction thereof in excess of 100 in any lamp	2 1/2

Explanation.--For the purpose of the rates of duty, the word "lamp" includes any other contrivance by which energy is consumed. This explanation was added and deemed always to have been added to this "First Schedule" by Section 8 of the Bihar Finance Act, 1955 (Bihar Act IV of 1955) which came into force from 1st April, 1955.

The Second Schedule to the parent Act was repealed by Section 4 of the Bihar Electricity Duty (Amendment) Act, 1963 (Bihar Act XX of 1963) which came into force from the 1st January, 1964. This second Schedule read as follows:-

1. Substituted by Act 15 of 1993 dt. 22.8.1993.
2. Substituted by para 4(1) of A.L.O. for "Provincial".

SCHEDULE 2

Schedule B

THE SECOND SCHEDULE

(See the proviso to Section 3.)

Exemptions.

(1) A mine, save in respect of premises used for residential or office purposes.

(2) An Industrial undertaking, save in respect of premises used for residential or office purposes.

Explanation.--For the purposes of examination in clause (2), "Industrial undertaking" means all buildings or premises wherein or within the precincts of which any manufacturing process as defined in clause (g) of section 2 of the Factories, Act, 1934 (XXV of 1934)" is carried on.