SENATE BILL 684

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

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AN ACT

RELATING TO REVENUE; AUTHORIZING CERTAIN CONTRACTS FOR THE PURPOSE OF PROVIDING A LEVEL OF PREDICTABILITY OF OIL AND GAS REVENUES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. CONTRACTS FOR THE STABILIZATION OF SEVERANCE TAX BONDING FUND REVENUES.--

A. The state board of finance, on behalf of the state, may enter into hedging contracts authorized in this section if the board finds that such a contract would address information asymmetry and be in the best interests of the state and determines that the contract would result in a more stable and less volatile revenue stream to the state. The only purpose of hedging contracts shall be to establish a desired level of predictability and reduced volatility of tax receipts

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derived from part of the anticipated crude oil and natural gas production subject to state severance taxes, in accordance with the terms and conditions established by the state board of finance, and subject to the provisions of this section.

B. Hedging contracts shall be entered into only pursuant to rules of the state board of finance. The rules of the state board of finance shall include the following criteria:

(1) the state board of finance may enter into a hedging contract only with a qualified counterparty selected by the board through a competitive selection process or by competitive bid, provided that the state board of finance may require more stringent rating levels and may require collateralization of the qualified counterparty's obligations at the time of execution of the hedging contract or thereafter;

(2) a hedging contract shall not have a duration of more than three years;

(3) a hedging contract shall be tied to an established publicly traded index, including the Henry Hub natural gas contract traded on the New York mercantile exchange and the west Texas intermediate crude oil contract traded on the New York mercantile exchange; and

(4) a proposed hedging contract shall be prepared with the review and assistance of a financial advisor to the state board of finance and legal counsel to the state

board of finance and with review by the legislative finance committee. The financial advisor and legal counsel may be the financial advisor and the bond counsel under general contract to the state board of finance, or another financial advisor or legal counsel, selected pursuant to the provisions of the Procurement Code, as the state board of finance deems appropriate.

C. The state board of finance may hire one or more individuals who are experienced in hedging contracts to manage the hedging contract program provided for in this section.

D. The state board of finance may determine and designate the volume of natural gas and oil production that shall be covered by hedging contracts.

E. The net payments, including premiums, periodic payments, termination payments and costs associated with entering into and performing the hedging contract, required to be made by the state under or in connection with a hedging contract shall be made from money in the severance tax bonding fund.

F. A contract entered into by the state board of finance pursuant to this section shall not impair the contract of the state with, or impair adversely, the owners of bonds issued by the state.

G. The hedging contracts allowed by this section shall only be made for the purpose of providing a level of predictability concerning anticipated revenues from state severance taxes, and not for speculation.

H. The net revenues derived by the state from hedging contracts shall be paid into the severance tax bonding fund as though they were the revenues actually derived from those severance taxes. The state board of finance shall treat the net revenue derived and to be derived from hedging contracts entered into under this section as the revenue actually derived from state severance taxes on the severance of oil and natural gas, as applicable, for purposes of:

(1) complying with statutory and constitutional requirements concerning deposits of state severance taxes in the applicable fund;

(2) complying with statutory and contractual requirements concerning tests applicable to the issuance of severance tax bonds and supplemental severance tax bonds; and

(3) making determinations of projected revenues for purposes of bonding capacity and budgetary matters.

I. Any obligation made by the state board of finance pursuant to a hedging contract shall be valid and binding from the time when that hedging contract is signed by all necessary parties; the revenues, money or property promised to the state pursuant to a hedging contract shall immediately be subject to obligation in accordance with the hedging contract, without physical delivery of the revenue, money or property or further act. A hedging contract shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the state, irrespective of whether the parties have notice of the hedging contract. Neither the resolution nor any other instrument by which a hedging contract obligation is created need be recorded.

J. The status of all hedging contracts entered into by the state board of finance shall be reported to that board and the legislative finance committee monthly with an annual report provided to the legislature.

K. As used in this section:

(1) "hedging contract" means a written agreement with a qualified counterparty relating to a commodity price for crude oil or natural gas, including contracts commonly known as derivatives, futures or options providing for payments to or from the counterparty based on levels of or changes in commodity prices, forward rate transactions, cap transactions, floor transactions or collar transactions, to hedge price, reduce risks and address information asymmetry;

(2) "net payment" means a payment required under a hedging contract minus any payments received from the qualified counterparty or costs paid by the qualified counterparty;

(3) "qualified counterparty" means a person

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whose long-term obligations are rated, at the time the hedging contract is executed, in one of the three top rating categories of a nationally recognized rating agency, without regard to any modification of the rating; and

(4) "state severance taxes" means the taxes levied on the severance of oil or natural gas by the Oil and Gas Severance Tax Act.

Section 2. APPROPRIATION.--To the extent that net payments are required to be made by the state pursuant to obligations identified in Subsection E of Section 1 of this act, there is hereby appropriated to the state board of finance from state severance tax revenues to be deposited in the severance tax bonding fund amounts necessary to make those net payments.