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SENATE BILL 468

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

John T. L. Grubestic

AN ACT

RELATING TO ENERGY; IMPOSING AN OIL AND GAS SEVERANCE SURTAX
UNDER CERTAIN CONDITIONS; CREATING THE COMMUNITY ENERGY
SECURITY FUND; PROVIDING FOR GRANTS FROM THE FUND TO LOCAL
GOVERNMENTS AND INSTITUTIONS OF HIGHER EDUCATION FOR THE
PURPOSE OF ENERGY CONSERVATION; MAKING AN APPROPRIATION.

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

Section 1. Section 7-1-6.23 NMSA 1978 (being Laws 1985,
Chapter 65, Section 9, as amended) is amended to read:

"7-1-6.23. DISTRIBUTION TO SEVERANCE TAX BONDING FUND AND
COMMUNITY ENERGY SECURITY FUND.--

A. Except as provided in Subsection B of this
section, a distribution pursuant to Section 7-1-6.20 NMSA 1978
shall be made to the severance tax bonding fund of the net
receipts attributable to the taxes and advance payment imposed

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1 pursuant to the Severance Tax Act and the Oil and Gas Severance
2 Tax Act.

3 B. A distribution pursuant to Section 7-1-6.20 NMSA
4 1978 shall be made to the community energy security fund of the
5 net receipts attributable to the oil and gas severance surtax
6 imposed pursuant to Section 7-29-24 NMSA 1978 and any advance
7 payment of the oil and gas severance surtax."

8 Section 2. Section 7-27-2 NMSA 1978 (being Laws 1961,
9 Chapter 5, Section 3, as amended) is amended to read:

10 "7-27-2. SEVERANCE TAX BONDING FUND CREATED.--There is
11 created the "severance tax bonding fund" into which shall be
12 distributed, in accordance with the Tax Administration Act, the
13 net receipts from taxes levied upon natural resource products
14 severed and saved from the soil in accordance with the
15 provisions of the Severance Tax Act and, excluding net receipts
16 attributable to the oil and gas severance surtax, and the Oil
17 and Gas Severance Tax Act and into which shall be deposited
18 such other money as the legislature may from time to time
19 determine."

20 Section 3. A new section of the Oil and Gas Severance Tax
21 Act, Section 7-29-24 NMSA 1978, is enacted to read:

22 "7-29-24. [NEW MATERIAL] OIL AND GAS SEVERANCE SURTAX
23 IMPOSED--RATES--COLLECTION.--

24 A. In addition to the tax imposed pursuant to
25 Section 7-29-4 NMSA 1978, there is imposed and shall be

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1 collected by the department a tax on all products that are
2 severed and sold. The measure of the tax and the rates are:

3 (1) on natural gas severed and sold:

4 (a) if the average annual taxable value
5 of natural gas in the calendar year preceding July 1 of the
6 fiscal year in which the tax rate is to be imposed was less
7 than two dollars seventy cents (\$2.70) per thousand cubic feet,
8 there is no tax imposed pursuant to this paragraph;

9 (b) one percent of the taxable value
10 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
11 average annual taxable value of natural gas in the calendar
12 year preceding July 1 of the fiscal year in which the tax rate
13 is to be imposed was equal to or more than two dollars seventy
14 cents (\$2.70) per thousand cubic feet and less than four
15 dollars twenty cents (\$4.20) per thousand cubic feet;

16 (c) two percent of the taxable value
17 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
18 average annual taxable value of natural gas in the calendar
19 year preceding July 1 of the fiscal year in which the tax rate
20 is to be imposed was equal to or more than four dollars twenty
21 cents (\$4.20) per thousand cubic feet and less than five
22 dollars seventy cents (\$5.70) per thousand cubic feet;

23 (d) three percent of the taxable value
24 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
25 average annual taxable value of natural gas in the calendar

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1 year preceding July 1 of the fiscal year in which the tax rate
2 is to be imposed was equal to or more than five dollars seventy
3 cents (\$5.70) per thousand cubic feet and less than seven
4 dollars twenty cents (\$7.20) per thousand cubic feet;

5 (e) four percent of the taxable value
6 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
7 average annual taxable value of natural gas in the calendar
8 year preceding July 1 of the fiscal year in which the tax rate
9 is to be imposed was equal to or more than seven dollars twenty
10 cents (\$7.20) per thousand cubic feet and less than eight
11 dollars seventy cents (\$8.70) per thousand cubic feet;

12 (f) five percent of the taxable value
13 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
14 average annual taxable value of natural gas in the calendar
15 year preceding July 1 of the fiscal year in which the tax rate
16 is to be imposed was equal to or more than eight dollars
17 seventy cents (\$8.70) per thousand cubic feet and less than ten
18 dollars twenty cents (\$10.20) per thousand cubic feet;

19 (g) six percent of the taxable value
20 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
21 average annual taxable value of natural gas in the calendar
22 year preceding July 1 of the fiscal year in which the tax rate
23 is to be imposed was equal to or more than ten dollars twenty
24 cents (\$10.20) per thousand cubic feet and less than eleven
25 dollars seventy cents (\$11.70) per thousand cubic feet; and

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1 (h) seven percent of the taxable value
2 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
3 average annual taxable value of natural gas in the calendar
4 year preceding July 1 of the fiscal year in which the tax rate
5 is to be imposed was equal to or more than eleven dollars
6 seventy cents (\$11.70) per thousand cubic feet; and

7 (2) on oil and on other liquid hydrocarbons
8 removed from natural gas at or near the wellhead:

9 (a) if the average annual taxable value
10 of oil in the calendar year preceding July 1 of the fiscal year
11 in which the tax rate is to be imposed was less than twenty-two
12 dollars (\$22.00) per barrel, there is no tax imposed pursuant
13 to this paragraph;

14 (b) one percent of the taxable value
15 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
16 average annual taxable value of oil in the calendar year
17 preceding July 1 of the fiscal year in which the tax rate is to
18 be imposed was equal to or more than twenty-two dollars
19 (\$22.00) per barrel and less than twenty-seven dollars (\$27.00)
20 per barrel;

21 (c) two percent of the taxable value
22 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
23 average annual taxable value of oil in the calendar year
24 preceding July 1 of the fiscal year in which the tax rate is to
25 be imposed was equal to or more than twenty-seven dollars

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1 (\$27.00) per barrel and less than thirty-two dollars (\$32.00)
2 per barrel;

3 (d) three percent of the taxable value
4 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
5 average annual taxable value of oil in the calendar year
6 preceding July 1 of the fiscal year in which the tax rate is to
7 be imposed was equal to or more than thirty-two dollars
8 (\$32.00) per barrel and less than thirty-seven dollars (\$37.00)
9 per barrel;

10 (e) four percent of the taxable value
11 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
12 average annual taxable value of oil in the calendar year
13 preceding July 1 of the fiscal year in which the tax rate is to
14 be imposed was equal to or more than thirty-seven dollars
15 (\$37.00) per barrel and less than forty-two dollars (\$42.00)
16 per barrel;

17 (f) five percent of the taxable value
18 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
19 average annual taxable value of oil in the calendar year
20 preceding July 1 of the fiscal year in which the tax rate is to
21 be imposed was equal to or more than forty-two dollars (\$42.00)
22 per barrel and less than forty-seven dollars (\$47.00) per
23 barrel;

24 (g) six percent of the taxable value
25 determined pursuant to Section 7-29-4.1 NMSA 1978 if the

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1 average annual taxable value of oil in the calendar year
2 preceding July 1 of the fiscal year in which the tax rate is to
3 be imposed was equal to or more than forty-seven dollars
4 (\$47.00) per barrel and less than fifty-two dollars (\$52.00)
5 per barrel; and

6 (h) seven percent of the taxable value
7 determined pursuant to Section 7-29-4.1 NMSA 1978 if the
8 average annual taxable value of oil in the calendar year
9 preceding July 1 of the fiscal year in which the tax rate is to
10 be imposed was equal to or more than fifty-two dollars
11 (\$52.00).

12 B. Every interest owner shall be liable for the tax
13 to the extent of the owner's interest in such products. An
14 Indian tribe, Indian pueblo or Indian shall be liable for the
15 tax to the extent authorized or permitted by law.

16 C. The tax imposed by this section may be referred
17 to as the "oil and gas severance surtax"; provided that, except
18 as provided in Section 7-29-4 NMSA 1978 and in this section,
19 any reference in the NMSA 1978 to the "oil and gas severance
20 tax" shall be deemed to include both the oil and gas severance
21 tax imposed pursuant to Section 7-29-4 NMSA 1978 and the oil
22 and gas severance surtax."

23 Section 4. Section 7-29A-2 NMSA 1978 (being Laws 1992,
24 Chapter 38, Section 2) is amended to read:

25 "7-29A-2. DEFINITIONS.--As used in the Enhanced Oil

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1 Recovery Act:

2 A. "crude oil" means oil and other liquid
3 hydrocarbons removed from natural gas at or near the wellhead;

4 B. "division" means the oil conservation division
5 of the energy, minerals and natural resources department;

6 C. "enhanced recovery project" means the use or the
7 expanded use of any process for the displacement of crude oil
8 from an oil well or pool classified by the division pursuant to
9 Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978
10 other than a primary recovery process, including but not
11 limited to the use of a pressure maintenance process, a water
12 flooding process, an immiscible, miscible, chemical, thermal or
13 biological process or any other related process;

14 D. "expansion or expanded use" means a significant
15 change or modification, as determined by the [~~oil conservation~~]
16 division in:

17 (1) the technology or process used for the
18 displacement of crude oil from an oil well or pool classified
19 by the division pursuant to Paragraph (11) of Subsection B of
20 Section 70-2-12 NMSA 1978; or

21 (2) the expansion, extension or increase in
22 size of the geologic area or adjacent geologic area that could
23 reasonably be determined to represent a new or unique area of
24 activity;

25 E. "operator" means the person responsible for the

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1 actual physical operation of an enhanced recovery project;

2 F. "person" means any individual, estate, trust,
3 receiver, business trust, corporation, firm, copartnership,
4 cooperative, joint venture, association or other group or
5 combination acting as a unit, and the plural as well as the
6 singular number;

7 G. "positive production response" means that the
8 rate of oil production from the wells or pools affected by an
9 enhanced recovery project is greater than the rate that would
10 have occurred without the project;

11 H. "primary recovery" means the displacement of
12 crude oil from an oil well or pool classified by the division
13 pursuant to Paragraph (11) of Subsection B of Section 70-2-12
14 NMSA 1978 into the well bore by means of the natural pressure
15 of the oil well or pool, including but not limited to
16 artificial lift;

17 I. "recovered oil tax rate" means ~~[that]~~ the sum of
18 the tax rate, [as] set forth in Paragraph (3) of Subsection A
19 of Section 7-29-4 NMSA 1978, on crude oil produced from an
20 enhanced recovery project plus the applicable oil and gas
21 severance surtax rate imposed pursuant to Section 7-29-24 NMSA
22 1978;

23 J. "secondary recovery project" means an enhanced
24 recovery project that:

25 (1) occurs subsequent to the completion of

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1 primary recovery and is not a tertiary recovery project;

2 (2) involves the application, in accordance
3 with sound engineering principles, of carbon dioxide miscible
4 fluid displacement, pressure maintenance, water flooding or any
5 other secondary recovery method accepted and approved by the
6 division pursuant to the provisions of Paragraph (14) of
7 Subsection B of Section 70-2-12 NMSA 1978 that can reasonably
8 be expected to result in an increase, determined in light of
9 all facts and circumstances, in the amount of crude oil that
10 may ultimately be recovered; and

11 (3) encompasses a pool or portion of a pool
12 the boundaries of which can be adequately defined and
13 controlled;

14 K. "severance" means the taking from the soil of
15 any product in any manner whatsoever;

16 L. "termination" means the discontinuance of an
17 enhanced recovery project by the operator; and

18 M. "tertiary recovery project" means an enhanced
19 recovery project that:

20 (1) occurs subsequent to the completion of a
21 secondary recovery project;

22 (2) involves the application, in accordance
23 with sound engineering principles, of carbon dioxide miscible
24 fluid displacement, pressure maintenance, water flooding or any
25 other tertiary recovery method accepted and approved by the

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1 division pursuant to the provisions of Paragraph (14) of
2 Subsection B of Section 70-2-12 NMSA 1978 that can reasonably
3 be expected to result in an increase, determined in light of
4 all facts and circumstances, in the amount of crude oil that
5 may ultimately be recovered; and

6 (3) encompasses a pool or portion of a pool
7 the boundaries of which can be adequately defined and
8 controlled."

9 Section 5. Section 7-29B-2 NMSA 1978 (being Laws 1995,
10 Chapter 15, Section 2, as amended by Laws 1999, Chapter 7,
11 Section 2 and as further amended by Laws 1999, Chapter 256,
12 Section 3) is amended to read:

13 "7-29B-2. DEFINITIONS.--As used in the Natural Gas and
14 Crude Oil Production Incentive Act:

15 A. "average annual taxable value" means the average
16 of the taxable value per barrel, determined pursuant to Section
17 7-31-5 NMSA 1978, of all oil produced in New Mexico for the
18 specified calendar year as determined by the department;

19 B. "average daily production" means, for any crude
20 oil or natural gas property assigned a single production number
21 by the department, the number derived by dividing the total
22 volume of crude oil or natural gas production from the property
23 reported to the division during a calendar year by the sum of
24 the number of days each eligible well within the property
25 produced or injected during that calendar year;

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1 C. "department" means the taxation and revenue
2 department;

3 D. "division" means the oil conservation division
4 of the energy, minerals and natural resources department;

5 E. "eligible well" means a crude oil or natural gas
6 well that produces or an injection well that injects and is
7 integral to production for any period of time during the
8 preceding calendar year;

9 F. "natural gas" means any combustible vapor
10 composed chiefly of hydrocarbons occurring naturally;

11 G. "operator" means the person responsible for the
12 actual physical operation of a natural gas or oil well;

13 H. "person" means any individual or other legal
14 entity, including any group or combination of individuals or
15 other legal entities acting as a unit;

16 I. "production restoration incentive tax exemption"
17 means the tax exemption set forth in Subsection B of Section
18 7-29-4 NMSA 1978 for natural gas or oil produced from a
19 production restoration project;

20 J. "production restoration project" means the use
21 of any process for returning to production a natural gas or oil
22 well that had thirty days or less of production in any period
23 of twenty-four consecutive months beginning on or after January
24 1, 1993 as approved and certified by the division;

25 K. "severance" means the taking from the soil of

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1 any product in any manner whatsoever;

2 L. "stripper well property" means a crude oil or
3 natural gas producing property that is assigned a single
4 production unit number by the department and:

5 (1) if a crude oil producing property,
6 produced an average daily production of less than ten barrels
7 of oil per eligible well per day for the preceding calendar
8 year;

9 (2) if a natural gas producing property,
10 produced an average daily production of less than sixty
11 thousand cubic feet of natural gas per eligible well per day
12 during the preceding calendar year; or

13 (3) if a property with wells that produce both
14 crude oil and natural gas, produced an average daily production
15 of less than ten barrels of oil per eligible well per day for
16 the preceding calendar year, as determined by converting the
17 volume of natural gas produced by the well to barrels of oil by
18 using a ratio of six thousand cubic feet to one barrel of oil;

19 M. "stripper well incentive tax rates" means the
20 tax rates set forth in Paragraphs (6) through (9) of Subsection
21 A of Section 7-29-4 NMSA 1978 and in Paragraphs (4) through (7)
22 of Subsection A of Section 7-31-4 NMSA 1978 for natural gas or
23 oil produced from a well within a stripper well property;

24 N. "well workover incentive tax rate" means the sum
25 of the tax rate set forth in Paragraphs (4) and (5) of

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1 Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or
2 oil produced from a well workover project plus the applicable
3 oil and gas severance surtax rate imposed pursuant to Section
4 7-29-24 NMSA 1978; and

5 O. "well workover project" means any procedure
6 undertaken by the operator of a natural gas or oil well that is
7 intended to increase the production from the well and that has
8 been approved and certified by the division."

9 Section 6. [NEW MATERIAL] COMMUNITY ENERGY SECURITY
10 FUND--GRANTS TO COUNTIES, MUNICIPALITIES AND INSTITUTIONS OF
11 HIGHER EDUCATION.--

12 A. The "community energy security fund" is created
13 in the state treasury and shall be administered by the
14 department of finance and administration. The fund shall
15 consist of tax distributions to the fund, money appropriated
16 and transferred to the fund and gifts, grants, donations and
17 bequests. Earnings from investment of the fund shall be
18 credited to the fund. Money in the fund is appropriated to the
19 department for the purpose of carrying out the provisions of
20 this section; provided that no more than an amount equal to one
21 percent of the total grants made from the fund during a fiscal
22 year shall be used for administrative costs. Any unexpended or
23 unencumbered balance remaining at the end of a fiscal year
24 shall not revert.

25 B. Upon application to the department and

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1 contingent upon the availability of fund balances, money in the
2 community energy security fund shall be used to make grants to
3 municipalities, counties and public institutions of higher
4 education to conduct studies on the economic impact of high
5 energy costs.

6 (1) For a municipality or county, an economic
7 impact study shall include:

8 (a) a determination of the number of
9 households within the municipality or the unincorporated area
10 of the county that have total energy costs exceeding six
11 percent of the household income;

12 (b) a characterization of the type and
13 number of locally owned businesses within the municipality or
14 the unincorporated area of the county, including those
15 businesses involved with agriculture, that are most vulnerable
16 to rising energy costs, including sample calculations of energy
17 cost burden as a percentage of revenues;

18 (c) a description of the total energy
19 costs to the municipality or county, including the costs for
20 using public buildings, operating public utilities,
21 transportation costs and other energy loads for which the
22 municipality or county is responsible; and

23 (d) a determination of the impact of
24 energy costs on the local economy.

25 (2) For an institution of higher education, an

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1 economic impact study shall include data that characterizes the
2 total energy costs for buildings, transportation and other
3 energy loads for which the institution is responsible.

4 C. Contingent upon the availability of fund
5 balances and upon the completion and submission of an economic
6 impact study and a further application to the department, money
7 in the community energy security fund shall be used to make
8 implementation grants:

9 (1) to a municipality or county for the
10 purpose of installing and utilizing energy conservation
11 measures that will lower the energy costs of:

12 (a) those households identified in the
13 economic impact study as those having a high energy burden;

14 (b) those locally owned businesses
15 identified in the economic impact study as those being most
16 vulnerable to high energy costs; and

17 (c) the municipality or county; and

18 (2) to an institution of higher education for
19 the purpose of installing and utilizing energy conservation
20 measures that will lower the energy costs to the institution.

21 D. The department shall promulgate such rules as
22 are necessary to carry out the provisions of this section,
23 including requirements for grant applications; procedures for
24 accepting, reviewing and prioritizing the grant applications;
25 and requirements for monitoring program results. The

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1 department shall coordinate activities conducted pursuant to
2 this section with those conducted under the low-income home
3 energy assistance program and those conducted pursuant to the
4 Public Facility Energy Efficiency and Water Conservation Act.

5 E. As used in this section:

6 (1) "department" means the department of
7 finance and administration; and

8 (2) "energy conservation measure" means a
9 training program or a modification to a facility, including
10 buildings, systems or vehicles, that is designed to reduce
11 energy consumption or conservation-related operating costs and
12 may include:

13 (a) insulation of the building structure
14 or systems within the building;

15 (b) storm windows or doors, caulking or
16 weatherstripping, multiglazed windows or doors, heat-absorbing
17 or heat-reflective glazed and coated window or door systems,
18 additional glazing, reductions in glass area or other window
19 and door system modifications that reduce energy consumption;

20 (c) automated or computerized energy
21 control systems;

22 (d) heating, ventilating or air
23 conditioning system modifications or replacements;

24 (e) replacement or modification of
25 lighting fixtures to increase the energy efficiency of the

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1 lighting system without increasing the overall illumination of
2 a facility, unless an increase in illumination is necessary to
3 conform to the applicable state or local building code or
4 nationally accepted standards for the lighting system after the
5 proposed modifications are made;

6 (f) energy recovery systems;

7 (g) solar heating and cooling systems or
8 other high efficiency sustainable energy systems;

9 (h) cogeneration or combined heat and
10 power systems that produce steam, chilled water or forms of
11 energy such as heat, as well as electricity, for use primarily
12 within a building or complex of buildings;

13 (i) energy conservation measures that
14 provide long-term operating cost reductions;

15 (j) maintenance and operation management
16 systems that provide long-term operating cost reductions;

17 (k) traffic control systems; or

18 (l) alternative fuel options or
19 accessories for vehicles.

20 Section 7. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is February 1, 2007.

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