F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 02/05/10
SPONSOR HTRC **LAST UPDATED** 02/08/10 **HB** 208/HTRCS

SHORT TITLE Oil & Gas Tax to Reclamation Fund **SB**

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
$218.0	$2,112.0	$2,154.0	Recurring	Oil & Gas Reclamation Fund
$3.0	($91.0)	($65.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

The House Taxation and Revenue Committee substitute for House Bill 208 increases the rate of the Oil and Gas Conservation Tax on **oil** from a maximum of 0.19 percent to a rate of 0.24 percent when the average price of West Texas Intermediate crude in the previous quarter exceeds $70 per barrel. The Oil and Gas Reclamation fund would be distributed 19.7 percent of net revenue from the tax. The Reclamation Fund could accept donations. Money in the Reclamation Fund could be used to remediate facilities used for transportation, storage or disposal of waste from oil and gas operations.

Because no effective date is provided in the bill, its provisions will become effective ninety (90) days after the 2010 legislative session adjourns.

FISCAL IMPLICATIONS

Fiscal impacts are based on the December 2009 forecast assumptions for oil and gas prices, volumes and deductions. Calculations are illustrated in the following table.

		FY10	FY11	FY12	FY13	FY14
Gas:						
Price ($/mcf)		$4.30	$5.40	$5.65	$5.90	$6.10
Volume (bill. Cu. Ft.)		1,325.0	1,270.0	1,220.0	1,190.0	1,160.0
Deductions		25.0%	24.0%	24.0%	24.0%	24.0%
Taxable value ($ millions)		$4,273.1	$5,212.1	$5,238.7	$5,336.0	$5,377.8
Oil:						
Price ($/ barrel)		$70.00	$75.00	$79.00	$83.00	$87.00
Volume (million bbls)		61.3	60.2	59.1	58.0	57.0
Deductions		10.5%	10.5%	10.5%	10.5%	10.5%
Taxable value ($ millions)		$3,840.4	$4,040.9	$4,178.7	$4,308.5	$4,438.3
Coal Taxable Value		$578.9	$578.9	$578.9	$578.9	$578.9
Total TV ($ million)		**$8,692.5**	**$9,832.0**	**$9,996.3**	**$10,223.4**	**$10,395.0**
Present Law OG Cons Tax	0.19%	$16.52	$18.68	$18.99	$19.42	$19.75
OG Reclamation Fund	10.53%	$1.74	$1.97	$2.00	$2.04	$2.08
General Fund		$14.78	$16.71	$16.99	$17.38	$17.67
Proposed Law OG Cons Tax	0.24%	$18.44	$20.70	$21.08	$21.58	$21.97
OG Reclamation Fund	19.70%	$3.63	$4.08	$4.15	$4.25	$4.33
General Fund		$14.80	$16.62	$16.93	$17.33	$17.64
Change: ($ millions)						
Total		$1.920	$2.020	$2.089	$2.154	$2.219
OG Reclamation Fund		$1.893	$2.112	$2.154	$2.206	$2.249
General Fund		$0.027	-$0.091	-$0.065	-$0.052	-$0.030

NOTE: In this table, FY10 assumes the entire fiscal year, the fiscal impact on page one is adjusted for the bill taking effect 90 days after the 2010 legislative session adjourns.

ADMINISTRATIVE IMPLICATIONS

TRD:

1. Taxation and Revenue Department would need to develop a process of tracking "West Texas Intermediate" price or prices on a monthly basis.
2. Taxation and Revenue Department would have to send notice mailings to taxpayers every quarter if Conservation Tax Rate changed.
3. Oil and Gas Taxpayers would need to maintain their systems to recognize different Conservation Tax rates on a quarterly basis and at a product kind level. This may have a significant cost impact on them and they possible could not meet the May or even July implementation date.
4. Because contractors would be subject to the oil and gas taxes, additional TRD efforts would be required to track these product sells and to enforce the subject laws and collect the taxes.

TECHNICAL ISSUES

The bill does not contain an effective date. It would simplify accounting procedures if the changes were made effective July 1, 2010.

TRD:

The bill permits a contractor of the Oil Conservation Division to sell product removed from a remediation site and "to deduct the proceeds of the sale from the costs of plugging, restoring or remediating." "Costs" in line 11, page 7, is not clear. If the bill intends to allow the contractor to sell product and reduce the amount that OCD pays the contractor, it would be clearer to say that the proceeds would be deducted from the amount due from OCD to the contractor. Furthermore, the product may be owned by someone other than the abandoned well site owner. There could be some Fifth Amendment takings issue raised by this provision.

Page 2, line 8 and other places where the term "oil" is used needs to be expanded to read: "on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead". This then incorporates the common wording throughout other oil and gas statutes.

Page 7, lines 8 and 9 reference that contractors can "sell product". If a contractor does sell product then contractor is responsible for oil and gas production taxes under current laws in the month that the sell occurs.

Since the changes to Section 70-2-38 NMSA 1978 remove the restriction to the right of indemnification for plugging only wells that were drilled on federal land and removes language that the equipment and material is to be sold for salvage, the language, "on federal land" and "for salvage" should be removed from the statute's title. The language on line 23 on page 5 of the bill is incorrect. It should read "against the operator or the owner of the minerals under the tract, or both, in the district".

OTHER SUBSTANTIVE ISSUES

LFC recently reviewed New Mexico's oil and gas production taxes compared with those of nearby oil and gas producing states. New Mexico's combined rate of tax is relatively high, exceeding that of neighboring states. The proposal would increase that rate by a relatively modest amount, but it would push the rate even farther above that of neighboring states.

BLG/mew:svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc