

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 255

49th Legislature, 2nd Session, 2010

Tracking Number: .180992.1

Short Title: Oil & Gas Tax Changes for Emergency Fund

Sponsor(s): Senators Cynthia Nava and Mary Jane M. García

Analyst: Eilani Gerstner

Date: February 11, 2010

Bill Summary:

SB 255 amends the *Tax Administration Act*, the *Oil and Gas Severance Tax Act*, and the *Oil and Gas Emergency School Tax Act* as follows.

Tax Administration Act

Among its provisions, SB 255 adds three sections to the *Tax Administration Act* to:

- distribute 1.875 percent of the taxable value attributable to the oil and gas emergency school tax to the Public School Fund, provided those dollars shall not revert to the General Fund;
- reduce the distribution to the Public School Fund by the amount transferred to the Severance Tax Bonding Fund in the event that the State Board of Finance certifies that a distribution to the Severance Tax Bonding Fund is necessary to meet debt service obligations on outstanding severance tax bonds; and
- require the Secretary of Taxation and Revenue Department (TRD) to adjust by rule incentive tax rates in the *Oil and Gas Severance Tax Act* and the *Oil and Gas Emergency School Tax Act* so that the total amount of those taxes collected does not change.

SB 255 repeals these sections effective July 1, 2013.

Oil and Gas Severance Tax Act

SB 255 also decreases the basic oil and gas severance tax rate to 1.875 percent (from 3.75 percent) for FY 11 through FY 13.

Oil and Gas Emergency School Tax Act

For FY 11 through FY 13, SB 255 also:

- decreases the basic oil and gas emergency school tax on oil to 1.025 percent (from 3.15 percent); and

- increases the basic oil and gas emergency school tax rate:
 - on natural gas to 5.875 percent (from 4.0 percent); and
 - on carbon dioxide, helium, and non-hydrocarbon gases to 5.025 percent (from 3.15 percent).

Temporary Provision

Finally, SB 255 contains a temporary provision specifying how average taxes will be determined for advance payments.

Fiscal Impact:

According to the TRD analysis, SB 255 would have the following impacts on the General Fund, Public School Fund, and Severance Tax Bonding Fund in FY 11 through FY 13:

FY 11	FY 12	FY 13	FY 11-13 total	Fund(s) Affected
(161,718)	(167,216)	(172,413)	(501,347)	General Fund
176,399	180,923	185,325	542,647	Public School Fund
(176,327)	(180,851)	(185,251)	(542,429)	Severance Tax Bonding Fund
(161,646)	(167,144)	(172,339)	(501,129)	Total

In thousands of dollars. Parentheses () indicate a revenue loss.

Fiscal Issues:

TRD cites the following fiscal and economic issues:

“This bill creates a disparity between the taxation of oil and carbon dioxide, helium and non-hydrocarbon gases and increases the disparity between the taxation of oil and natural gas at a time when oil producers are receiving relatively high prices for their product and natural gas producers are receiving relatively low prices, incurring higher production costs and facing increasing competition. The higher tax rates on natural gas are likely to result in more wells being shut-in, less revenue to the General Fund and Severance Tax Bonding Fund than forecast and injury to the economy in the San Juan Basin.”

Technical Issues:

The TRD analysis cites a technical issue with regard to the determination of average tax for purposes of making advance payments as provided for in Section 8 of the bill. According to TRD, the advance payment and related distribution cannot be determined based upon tax rates established with an effective date of July 2010 sales.

To address these issues, TRD recommends changing Section 8A to read as follows:

- (1) the average tax pursuant to those sections for the 12 months ending March 31, 2011 shall be determined recognizing tax rates in effect for that 12 month period; and

- (2) the average tax pursuant to those sections for the 12 months ending March 31, 2014 shall be determined recognizing the tax rates in effect for that 12 month period.

Background:

Dollars in the Public School Fund are distributed to school districts and state-chartered charter schools for the following purposes:

- (1) the state equalization guarantee distribution (also called the Public School Funding Formula);
- (2) the transportation distribution; and
- (3) supplemental distributions for:
 - (a) out-of-state tuition to school districts;
 - (b) emergency support; and
 - (c) program enrichment.

The balance remaining in the Public School Fund at the end of each fiscal year reverts to the General Fund, unless otherwise provided by law.

Related Bills:

SB 90 *Corporate Income Tax Reporting & Distribution* (Identical to HB 62)

SB 208 *Oil & Gas Tax Changes for Emergency Fund*

HB 62 *Corporate Income Tax Reporting & Distribution* (Identical to SB 90)