

1 SENATE BILL 255

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

3 INTRODUCED BY

4 Cynthia Nava

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10 AN ACT

11 RELATING TO TAXATION; TEMPORARILY DECREASING OIL AND GAS
12 SEVERANCE TAX RATES; TEMPORARILY INCREASING TAX RATES IMPOSED
13 PURSUANT TO THE OIL AND GAS EMERGENCY SCHOOL TAX ACT;
14 PROTECTING HOLDERS OF SEVERANCE TAX BONDS FROM IMPAIRMENT;
15 DISTRIBUTING A PORTION OF THE REVENUE FROM THE OIL AND GAS
16 EMERGENCY SCHOOL TAX TO THE PUBLIC SCHOOL FUND.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 7-1-6.20 NMSA 1978 (being Laws 1985,
20 Chapter 65, Section 6, as amended) is amended to read:

21 "7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES
22 SUSPENSE FUND--DISTRIBUTION.--

23 A. Except as provided in Subsection B of this
24 section, after the necessary disbursements have been made from
25 the extraction taxes suspense fund, the money remaining in the

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1 suspense fund as of the last day of the month shall be
2 identified by tax source and distributed or transferred in
3 accordance with the provisions of Sections 7-1-6.21 through
4 7-1-6.23, 7-1-6.60 and 7-1-6.61 NMSA 1978. After the necessary
5 distributions and transfers, any balance, except for
6 remittances unidentified as to source or disposition, shall be
7 transferred to the general fund.

8 B. Payments on assessments issued by the department
9 pursuant to the Oil and Gas Conservation Tax Act, the Oil and
10 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem
11 Production Tax Act and the Oil and Gas Severance Tax Act shall
12 be held in the extraction taxes suspense fund until the
13 secretary determines that there is no substantial risk of
14 protest or other litigation, whereupon after the necessary
15 disbursements have been made from the extraction taxes suspense
16 fund, the money remaining in the suspense fund as of the last
17 day of the month attributed to these payments shall be
18 identified by tax source and distributed or transferred in
19 accordance with the provisions of Sections 7-1-6.21 through
20 7-1-6.23, 7-1-6.60 and 7-1-6.61 NMSA 1978. After the necessary
21 distributions and transfers, any balance, except for remittance
22 unidentified as to source or disposition, shall be transferred
23 to the general fund."

24 Section 2. A new section of the Tax Administration Act,
25 Section 7-1-6.60 NMSA 1978, is enacted to read:

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1 "7-1-6.60. [NEW MATERIAL] DISTRIBUTION TO SEVERANCE TAX
2 BONDING FUND OF OIL AND GAS EMERGENCY SCHOOL TAX RECEIPTS.--
3 Upon the certification of the state board of finance to the
4 secretary that a distribution is necessary to meet debt service
5 obligations on outstanding severance tax bonds and supplemental
6 severance tax bonds, a distribution pursuant to Section
7 7-1-6.20 NMSA 1978 shall be made to the severance tax bonding
8 fund of the net receipts attributable to the taxes and advance
9 payment imposed pursuant to the Oil and Gas Emergency School
10 Tax Act in the amount certified by the state board of finance;
11 provided that no distribution pursuant to this section shall
12 exceed an amount equal to one and seven-eighths percent
13 multiplied by the taxable value of products reported pursuant
14 to the Oil and Gas Emergency School Tax Act for the month in
15 which the distribution is made."

16 Section 3. A new section of the Tax Administration Act,
17 Section 7-1-6.61 NMSA 1978, is enacted to read:

18 "7-1-6.61 [NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL
19 FUND.--

20 A. Subject to the provisions of Subsection B of
21 this section, a distribution pursuant to Section 7-1-6.20 NMSA
22 1978 shall be made to the public school fund in an amount equal
23 to one and seven-eighths percent multiplied by the taxable
24 value of products reported pursuant to the Oil and Gas
25 Emergency School Tax Act. Amounts distributed to the public

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1 school fund pursuant to this section shall not revert to the
2 general fund.

3 B. If a distribution to the severance tax bonding
4 fund is made pursuant to Section 7-1-6.60 NMSA 1978, the
5 distribution pursuant to this section shall be reduced by the
6 amount of the distribution pursuant to Section 7-1-6.60 NMSA
7 1978."

8 Section 4. A new section of the Tax Administration Act is
9 enacted to read:

10 "[NEW MATERIAL] PURPOSE--AUTHORITY TO ADJUST OIL AND GAS
11 TAX RATES.--The purpose of this 2010 act is to temporarily
12 decrease tax rates under the Oil and Gas Severance Tax Act and
13 to temporarily increase tax rates under the Oil and Gas
14 Emergency School Tax Act. This 2010 act is not intended to
15 affect the total combined taxes due under those acts. In order
16 to ensure that the total amount paid pursuant to the Oil and
17 Gas Severance Tax Act and the Oil and Gas Emergency School Tax
18 Act is not affected by the change in tax rates pursuant to this
19 2010 act, the secretary shall, by rule, adjust tax rates under
20 those acts if, because of oil or gas prices, one or more of the
21 following provisions is applicable:

22 A. Paragraph (3), (4), (5), (6), (7), (8) or (9) of
23 Subsection A of Section 7-29-4 NMSA 1978;

24 B. Subsection B of Section 7-29-4 NMSA 1978; or

25 C. Paragraph (4), (5), (6) or (7) of Subsection A

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1 of Section 7-31-4 NMSA 1978."

2 Section 5. Section 7-27-14 NMSA 1978 (being Laws 1961,
3 Chapter 5, Section 11, as amended) is amended to read:

4 "7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

5 A. The legislature shall provide for the continued
6 assessment, levy, collection and deposit into the severance tax
7 bonding fund of the tax or taxes upon natural resource products
8 severed and saved from the soil of the state that, together
9 with such other income as may be deposited to the fund, will be
10 sufficient to produce an amount that is at least the amount
11 necessary to meet annual debt service charges on all
12 outstanding severance tax bonds and supplemental severance tax
13 bonds.

14 B. Except as otherwise specifically provided by
15 law, the state board of finance shall issue no severance tax
16 bonds unless the aggregate amount of severance tax bonds
17 outstanding, and including the issue proposed, can be serviced
18 with not more than fifty percent of the annual deposits into
19 the severance tax bonding fund, as determined by the deposits
20 during the preceding fiscal year.

21 C. The state board of finance shall issue no
22 supplemental severance tax bonds with a term that extends
23 beyond the fiscal year in which the bonds are issued unless the
24 aggregate amount of severance tax bonds and supplemental
25 severance tax bonds outstanding, and including the issue

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1 proposed, can be serviced with not more than sixty-two and
2 one-half percent of the annual deposits into the severance tax
3 bonding fund, as determined by the deposits during the
4 preceding fiscal year.

5 D. Except as otherwise specifically provided by
6 law, the state board of finance may issue supplemental
7 severance tax bonds with a term that does not extend beyond the
8 fiscal year in which they are issued if the debt service on
9 such supplemental severance tax bonds when added to the debt
10 service previously paid or scheduled to be paid during that
11 fiscal year on severance tax bonds and supplemental severance
12 tax bonds does not exceed ninety-five percent of the deposits
13 into the severance tax bonding fund during the preceding fiscal
14 year.

15 E. The state board of finance shall issue no
16 severance tax bonds or supplemental severance tax bonds with
17 the expectation that a distribution pursuant to Section
18 7-1-6.60 NMSA 1978 of oil and gas emergency school tax receipts
19 will be used to satisfy any portion of the debt service due on
20 either the bonds to be issued or any outstanding severance tax
21 bonds or supplemental severance tax bonds.

22 F. For the purposes of Subsections B, C and D of
23 this section, in determining the deposits into the severance
24 tax bonding fund during the preceding fiscal year:

25 (1) in lieu of the actual deposits into the

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1 fund in fiscal year 2010, the amount used to calculate bonding
2 capacity for fiscal year 2011 shall equal the amount
3 distributed to the fund in fiscal year 2010 pursuant to Section
4 7-1-6.23 NMSA 1978 less an amount equal to one and seven-
5 eighths percent multiplied by the taxable value of products
6 reported pursuant to the Oil and Gas Severance Tax Act for
7 fiscal year 2010;

8 (2) in lieu of the actual deposits into the
9 fund in fiscal year 2013, the amount used to calculate bonding
10 capacity for fiscal year 2014 shall equal the amount
11 distributed to the fund in fiscal year 2013 pursuant to Section
12 7-1-6.23 NMSA 1978 plus an amount equal to one and seven-
13 eighths percent multiplied by the taxable value of products
14 reported pursuant to the Oil and Gas Severance Tax Act for
15 fiscal year 2013; and

16 (3) any distributions of oil and gas emergency
17 school tax receipts pursuant to Section 7-1-6.60 NMSA 1978
18 shall not be considered.

19 ~~[E.]~~ G. The provisions of this section shall not be
20 modified by the terms of any severance tax bonds or
21 supplemental severance tax bonds hereafter issued."

22 Section 6. Section 7-29-4 NMSA 1978 (being Laws 1980,
23 Chapter 62, Section 5, as amended) is amended to read:

24 "7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED--
25 COLLECTION--INTEREST OWNER'S LIABILITY TO STATE--INDIAN

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1 LIABILITY.--

2 A. There is imposed and shall be collected by the
3 department a tax on all products that are severed and sold,
4 except as provided in Subsection B of this section. The
5 measure of the tax and the rates are:

6 (1) on natural gas severed and sold, except as
7 provided in Paragraphs (4), (6), [~~and~~] (7) and (10) of this
8 subsection, three and three-fourths percent of the taxable
9 value determined pursuant to Section 7-29-4.1 NMSA 1978;

10 (2) on oil and on other liquid hydrocarbons
11 removed from natural gas at or near the wellhead, except as
12 provided in Paragraphs (3), (5), (8), [~~and~~] (9) and (11) of
13 this subsection, three and three-fourths percent of taxable
14 value determined pursuant to Section 7-29-4.1 NMSA 1978;

15 (3) on oil and on other liquid hydrocarbons
16 removed from natural gas at or near the wellhead produced from
17 a qualified enhanced recovery project, one and seven-eighths
18 percent of the taxable value determined pursuant to Section
19 7-29-4.1 NMSA 1978, provided that the annual average price of
20 west Texas intermediate crude oil, determined by the department
21 by averaging the posted prices in effect on the last day of
22 each month of the twelve-month period ending on May 31 prior to
23 the fiscal year in which the tax rate is to be imposed, was
24 less than twenty-eight dollars (\$28.00) per barrel;

25 (4) on the natural gas from a well workover

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1 project that is certified by the oil conservation division of
2 the energy, minerals and natural resources department in its
3 approval of the well workover project, two and forty-five
4 hundredths percent of the taxable value determined pursuant to
5 Section 7-29-4.1 NMSA 1978, provided that the annual average
6 price of west Texas intermediate crude oil, determined by the
7 department by averaging the posted prices in effect on the last
8 day of each month of the twelve-month period ending on May 31
9 prior to the fiscal year in which the tax rate is to be
10 imposed, was less than twenty-four dollars (\$24.00) per barrel;

11 (5) on the oil and on other liquid
12 hydrocarbons removed from natural gas at or near the wellhead
13 from a well workover project that is certified by the oil
14 conservation division of the energy, minerals and natural
15 resources department in its approval of the well workover
16 project, two and forty-five hundredths percent of the taxable
17 value determined pursuant to Section 7-29-4.1 NMSA 1978,
18 provided that the annual average price of west Texas
19 intermediate crude oil, determined by the department by
20 averaging the posted prices in effect on the last day of each
21 month of the twelve-month period ending on May 31 prior to the
22 fiscal year in which the tax rate is to be imposed, was less
23 than twenty-four dollars (\$24.00) per barrel;

24 (6) on the natural gas from a stripper well
25 property, one and seven-eighths percent of the taxable value

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1 determined pursuant to Section 7-29-4.1 NMSA 1978, provided
2 the average annual taxable value of natural gas was equal to or
3 less than one dollar fifteen cents (\$1.15) per thousand cubic
4 feet in the calendar year preceding July 1 of the fiscal year
5 in which the tax rate is to be imposed;

6 (7) on the natural gas from a stripper well
7 property, two and thirteen-sixteenths percent of the taxable
8 value determined pursuant to Section 7-29-4.1 NMSA 1978,
9 provided that the average annual taxable value of natural gas
10 was greater than one dollar fifteen cents (\$1.15) per thousand
11 cubic feet but not more than one dollar thirty-five cents
12 (\$1.35) per thousand cubic feet in the calendar year preceding
13 July 1 of the fiscal year in which the tax rate is to be
14 imposed;

15 (8) on the oil and on other liquid
16 hydrocarbons removed from natural gas at or near the wellhead
17 from a stripper well property, one and seven-eighths percent of
18 the taxable value determined pursuant to Section 7-29-4.1 NMSA
19 1978, provided that the average annual taxable value of oil was
20 equal to or less than fifteen dollars (\$15.00) per barrel in
21 the calendar year preceding July 1 of the fiscal year in which
22 the tax rate is to be imposed;

23 (9) on the oil and on other liquid
24 hydrocarbons removed from natural gas at or near the wellhead
25 from a stripper well property, two and thirteen-sixteenths

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1 percent of the taxable value determined pursuant to Section
2 7-29-4.1 NMSA 1978, provided that the average annual taxable
3 value of oil was greater than fifteen dollars (\$15.00) per
4 barrel but not more than eighteen dollars (\$18.00) per barrel
5 in the calendar year preceding July 1 of the fiscal year in
6 which the tax rate is to be imposed; ~~and~~

7 (10) from July 1, 2010 through June 30, 2013,
8 on natural gas severed and sold, except as provided in
9 Paragraphs (4), (6) and (7) of this subsection, one and seven-
10 eighths percent of the taxable value determined pursuant to
11 Section 7-29-4.1 NMSA 1978;

12 (11) from July 1, 2010 through June 30, 2013,
13 on oil and on other liquid hydrocarbons removed from natural
14 gas at or near the wellhead, except as provided in Paragraphs
15 (3), (5), (8) and (9) of this subsection, one and seven-eighths
16 percent of the taxable value determined pursuant to Section
17 7-29-4.1 NMSA 1978;

18 ~~(10)~~ (12) on carbon dioxide, helium and non-
19 hydrocarbon gases, except as provided in Paragraph (13) of this
20 subsection, three and three-fourths percent of the taxable
21 value determined pursuant to Section 7-29-4.1 NMSA 1978; and

22 (13) from July 1, 2010 through June 30, 2013,
23 on carbon dioxide, helium and non-hydrocarbon gases, one and
24 seven-eighths percent of the taxable value determined pursuant
25 to Section 7-29-4.1 NMSA 1978.

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1 B. The tax imposed in Subsection A of this section
2 shall not be imposed on:

3 (1) natural gas severed and sold from a
4 production restoration project during the first ten years of
5 production following the restoration of production, provided
6 that the annual average price of west Texas intermediate crude
7 oil, determined by the department by averaging the posted
8 prices in effect on the last day of each month of the twelve-
9 month period ending on May 31 prior to each fiscal year in
10 which the tax exemption is to be effective, was less than
11 twenty-four dollars (\$24.00) per barrel; and

12 (2) oil and other liquid hydrocarbons removed
13 from natural gas at or near the wellhead from a production
14 restoration project during the first ten years of production
15 following the restoration of production, provided that the
16 annual average price of west Texas intermediate crude oil,
17 determined by the department by averaging the posted prices in
18 effect on the last day of each month of the twelve-month period
19 ending on May 31 prior to each fiscal year in which the tax
20 exemption is to be effective, was less than twenty-four dollars
21 (\$24.00) per barrel.

22 C. Every interest owner shall be liable for the tax
23 to the extent of ~~[his]~~ the interest owner's interest in such
24 products. Any Indian tribe, Indian pueblo or Indian shall be
25 liable for the tax to the extent authorized or permitted by

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1 law.

2 D. The tax imposed by this section may be referred
3 to as the "oil and gas severance tax".

4 Section 7. Section 7-31-4 NMSA 1978 (being Laws 1959,
5 Chapter 54, Section 4, as amended) is amended to read:

6 "7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY
7 DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN
8 LIABILITY.--

9 A. There is levied and shall be collected by the
10 department a privilege tax on the business of every person
11 severing products in this state. The measure of the tax shall
12 be:

13 (1) on oil and on oil and other liquid
14 hydrocarbons removed from natural gas at or near the wellhead,
15 except as provided in Paragraphs (4), [~~and~~] (5) and (8) of this
16 subsection, three and fifteen hundredths percent of the taxable
17 value determined pursuant to Section 7-31-5 NMSA 1978;

18 (2) on carbon dioxide, helium and non-
19 hydrocarbon gases, except as provided in Paragraph (10) of this
20 subsection, three and fifteen hundredths percent of the taxable
21 value determined pursuant to Section 7-31-5 NMSA 1978;

22 (3) on natural gas, except as provided in
23 Paragraphs (6), [~~and~~] (7) and (9) of this subsection, four
24 percent of the taxable value determined pursuant to Section
25 7-31-5 NMSA 1978;

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1 (4) on the oil and on other liquid
2 hydrocarbons removed from natural gas at or near the wellhead
3 from a stripper well property, one and fifty-eight hundredths
4 percent of the taxable value determined pursuant to Section
5 7-31-5 NMSA 1978, provided that the average annual taxable
6 value of oil was equal to or less than fifteen dollars (\$15.00)
7 per barrel in the calendar year preceding July 1 of the fiscal
8 year in which the tax rate is to be imposed;

9 (5) on the oil and on other liquid
10 hydrocarbons removed from natural gas at or near the wellhead
11 from a stripper well property, two and thirty-six hundredths
12 percent of the taxable value determined pursuant to Section
13 7-31-5 NMSA 1978, provided that the average annual taxable
14 value of oil was greater than fifteen dollars (\$15.00) per
15 barrel but not more than eighteen dollars (\$18.00) per barrel
16 in the calendar year preceding July 1 of the fiscal year in
17 which the tax rate is to be imposed;

18 (6) on the natural gas removed from a stripper
19 well property, two percent of the taxable value determined
20 pursuant to Section 7-31-5 NMSA 1978, provided that the average
21 annual taxable value of natural gas was equal to or less than
22 one dollar fifteen cents (\$1.15) per thousand cubic feet in the
23 calendar year preceding July 1 of the fiscal year in which the
24 tax rate is to be imposed; [and]

25 (7) on the natural gas removed from a stripper

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1 well property, three percent of the taxable value determined
2 pursuant to Section 7-31-5 NMSA 1978, provided that the average
3 annual taxable value of natural gas was greater than one dollar
4 fifteen cents (\$1.15) per thousand cubic feet but not more than
5 one dollar thirty-five cents (\$1.35) per thousand cubic feet in
6 the calendar year preceding July 1 of the fiscal year in which
7 the tax rate is to be imposed;

8 (8) from July 1, 2010 through June 30, 2013,
9 on oil and on other liquid hydrocarbons removed from natural
10 gas at or near the wellhead, except as provided in Paragraphs
11 (4) and (5) of this subsection, one and twenty-five thousandths
12 percent of the taxable value determined pursuant to Section
13 7-31-5 NMSA 1978;

14 (9) from July 1, 2010 through June 30, 2013,
15 on natural gas, except as provided in Paragraphs (6) and (7) of
16 this subsection, five and seven-eighths percent of the taxable
17 value determined pursuant to Section 7-31-5 NMSA 1978; and

18 (10) from July 1, 2010 through June 30, 2013,
19 on carbon dioxide, helium and non-hydrocarbon gases, five and
20 twenty-five thousandths percent of the taxable value determined
21 pursuant to Section 7-31-5 NMSA 1978.

22 B. Every interest owner, for the purpose of levying
23 this tax, is deemed to be in the business of severing products
24 and is liable for this tax to the extent of [his] the owner's
25 interest in the value of the products or to the extent of [his]

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1 the owner's interest as may be measured by the value of the
2 products.

3 C. Any Indian tribe, Indian pueblo or Indian is
4 liable for this tax to the extent authorized or permitted by
5 law."

6 Section 8. TEMPORARY PROVISION--DETERMINATION OF AVERAGE
7 TAX FOR PURPOSES OF MAKING ADVANCE PAYMENTS.--

8 A. Notwithstanding provisions to the contrary in
9 Section 7-29-23 or 7-31-26 NMSA 1978:

10 (1) the average tax pursuant to those sections
11 for the twelve months ending March 31, 2010 shall be determined
12 as if the tax rates scheduled in this act for fiscal year 2011
13 were in effect for those twelve months; and

14 (2) the average tax pursuant to those sections
15 for the twelve months ending March 31, 2013 shall be determined
16 as if the tax rates scheduled in this act for fiscal year 2014
17 were in effect for those twelve months.

18 B. The secretary of taxation and revenue shall
19 promulgate such rules as are necessary to implement the
20 provisions of this section.

21 Section 9. DELAYED REPEAL.--Effective July 1, 2013,
22 Section 7-1-6.60 NMSA 1978, as enacted by Section 2 of this
23 act, Section 7-1-6.61 NMSA 1978, as enacted by Section 3 of
24 this act, and Section 4 of this act are repealed.

25 Section 10. APPLICABILITY.--The distribution pursuant to
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1 Section 3 of this act applies to receipts from the oil and gas
2 emergency school tax that are attributable to sales on or after
3 July 1, 2010 and prior to July 1, 2013.

4 Section 11. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2010.

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