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SENATE BILL 100

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

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

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

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

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

A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from 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, 7-1-6.61 and 7-1-6.62 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, 7-1-6.61 and 7-1-6.62 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 7-1-6.61 NMSA 1978, is enacted to read:

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1           "7-1-6.61. [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 or is necessary to maintain a reserve fund  
7 for future debt obligations in order to protect the interest of  
8 bondholders, a distribution pursuant to Section 7-1-6.20 NMSA  
9 1978 shall be made to the severance tax bonding fund of the net  
10 receipts attributable to the taxes and advance payment imposed  
11 pursuant to the Oil and Gas Emergency School Tax Act in the  
12 amount certified by the state board of finance; provided that  
13 no distribution pursuant to this section shall exceed an amount  
14 equal to one percent multiplied by the taxable value of  
15 products reported pursuant to the Oil and Gas Emergency School  
16 Tax Act for the month in which the distribution is made."

17           **SECTION 3.** A new section of the Tax Administration Act,  
18 Section 7-1-6.62 NMSA 1978, is enacted to read:

19           "7-1-6.62. [NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL  
20 FUND.--

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

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

3 B. If a distribution to the severance tax bonding  
4 fund is made pursuant to Section 7-1-6.61 NMSA 1978, the  
5 distribution pursuant to this section shall be reduced by the  
6 amount of the distribution pursuant to Section 7-1-6.61 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 2011 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 2011 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 2011 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 7-1-6.61 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 2011, the amount used to calculate bonding  
2 capacity for fiscal year 2012 shall equal the amount  
3 distributed to the fund in fiscal year 2011 pursuant to Section  
4 7-1-6.23 NMSA 1978 less an amount equal to one percent  
5 multiplied by the taxable value of products reported pursuant  
6 to the Oil and Gas Severance Tax Act for fiscal year 2011;

7 (2) in lieu of the actual deposits into the  
8 fund in fiscal year 2014, the amount used to calculate bonding  
9 capacity for fiscal year 2015 shall equal the amount  
10 distributed to the fund in fiscal year 2014 pursuant to Section  
11 7-1-6.23 NMSA 1978 plus an amount equal to one percent  
12 multiplied by the taxable value of products reported pursuant  
13 to the Oil and Gas Severance Tax Act for fiscal year 2014; and

14 (3) any distributions of oil and gas emergency  
15 school tax receipts pursuant to Section 7-1-6.61 NMSA 1978  
16 shall not be considered.

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

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

22 "7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED--  
23 COLLECTION--INTEREST OWNER'S LIABILITY TO STATE--INDIAN  
24 LIABILITY.--

25 A. There is imposed and shall be collected by the

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1 department a tax on all products that are severed and sold,  
2 except as provided in Subsection B of this section. The  
3 measure of the tax and the rates are:

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

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

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

23 (4) on the natural gas from a well workover  
24 project that is certified by the oil conservation division of  
25 the energy, minerals and natural resources department in its

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

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

22 (6) on the natural gas from a stripper well  
23 property, one and seven-eighths percent of the taxable value  
24 determined pursuant to Section 7-29-4.1 NMSA 1978, provided  
25 the average annual taxable value of natural gas was equal to or

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1 less than one dollar fifteen cents (\$1.15) per thousand cubic  
2 feet in the calendar year preceding July 1 of the fiscal year  
3 in which the tax rate is to be imposed;

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

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

21 (9) on the oil and on other liquid  
22 hydrocarbons removed from natural gas at or near the wellhead  
23 from a stripper well property, two and thirteen-sixteenths  
24 percent of the taxable value determined pursuant to Section  
25 7-29-4.1 NMSA 1978, provided that the average annual taxable

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1 value of oil was greater than fifteen dollars (\$15.00) per  
2 barrel but not more than eighteen dollars (\$18.00) per barrel  
3 in the calendar year preceding July 1 of the fiscal year in  
4 which the tax rate is to be imposed; ~~and~~

5 (10) from July 1, 2011 through June 30, 2014,  
6 on natural gas severed and sold, except as provided in  
7 Paragraphs (4), (6) and (7) of this subsection, two and three-  
8 fourths percent of the taxable value determined pursuant to  
9 Section 7-29-4.1 NMSA 1978;

10 (11) from July 1, 2011 through June 30, 2014,  
11 on oil and on other liquid hydrocarbons removed from natural  
12 gas at or near the wellhead, except as provided in Paragraphs  
13 (3), (5), (8) and (9) of this subsection, two and three-fourths  
14 percent of the taxable value determined pursuant to Section  
15 7-29-4.1 NMSA 1978;

16 ~~(10)~~ (12) on carbon dioxide, helium and non-  
17 hydrocarbon gases, except as provided in Paragraph (13) of this  
18 subsection, three and three-fourths percent of the taxable  
19 value determined pursuant to Section 7-29-4.1 NMSA 1978; and

20 (13) from July 1, 2011 through June 30, 2014,  
21 on carbon dioxide, helium and non-hydrocarbon gases, two and  
22 three-fourths percent of the taxable value determined pursuant  
23 to Section 7-29-4.1 NMSA 1978.

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

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

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

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

25 D. The tax imposed by this section may be referred

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1 to as the "oil and gas severance tax"."

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

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

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

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

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

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

24 (4) on the oil and on other liquid  
25 hydrocarbons removed from natural gas at or near the wellhead

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

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

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

23 (7) on the natural gas removed from a stripper  
24 well property, three percent of the taxable value determined  
25 pursuant to Section 7-31-5 NMSA 1978, provided that the average

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1 annual taxable value of natural gas was greater than one dollar  
2 fifteen cents (\$1.15) per thousand cubic feet but not more than  
3 one dollar thirty-five cents (\$1.35) per thousand cubic feet in  
4 the calendar year preceding July 1 of the fiscal year in which  
5 the tax rate is to be imposed;

6 (8) from July 1, 2011 through June 30, 2014,  
7 on oil and on other liquid hydrocarbons removed from natural  
8 gas at or near the wellhead, except as provided in Paragraphs  
9 (4) and (5) of this subsection, four and fifteen-hundredths  
10 percent of the taxable value determined pursuant to Section  
11 7-31-5 NMSA 1978;

12 (9) from July 1, 2011 through June 30, 2014,  
13 on natural gas, except as provided in Paragraphs (6) and (7) of  
14 this subsection, five percent of the taxable value determined  
15 pursuant to Section 7-31-5 NMSA 1978; and

16 (10) from July 1, 2011 through June 30, 2014,  
17 on carbon dioxide, helium and non-hydrocarbon gases, four and  
18 fifteen-hundredths percent of the taxable value determined  
19 pursuant to Section 7-31-5 NMSA 1978.

20 B. Every interest owner, for the purpose of levying  
21 this tax, is deemed to be in the business of severing products  
22 and is liable for this tax to the extent of ~~his~~ the owner's  
23 interest in the value of the products or to the extent of ~~his~~  
24 the owner's interest as may be measured by the value of the  
25 products.

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

4                   **SECTION 8. DELAYED REPEAL.**--Effective July 1, 2014,  
5 Section 7-1-6.61 NMSA 1978, as enacted by Section 2 of this  
6 act, Section 7-1-6.62 NMSA 1978, as enacted by Section 3 of  
7 this act, and Section 4 of this act are repealed.

8                   **SECTION 9. APPLICABILITY.**--The distribution pursuant to  
9 Section 3 of this act applies to receipts from the oil and gas  
10 emergency school tax that are attributable to sales on or after  
11 July 1, 2011 and prior to July 1, 2014.

12                   **SECTION 10. EFFECTIVE DATE.**--The effective date of the  
13 provisions of this act is July 1, 2011.

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