

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 874

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
AUTHORIZING CERTAIN HEDGING CONTRACTS FOR THE PURPOSE OF  
PROVIDING A LEVEL OF PREDICTABILITY OF OIL AND GAS REVENUES;  
MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1. CONTRACTS FOR THE HEDGING OF SEVERANCE TAX  
BONDING FUND AND GENERAL FUND REVENUES.--

A. As used in this section:

(1) "hedging contract" means a written  
agreement with a counterparty relating to a commodity price for  
crude oil and natural gas, including contracts commonly known  
as swap agreements, futures or options providing for payments  
to or from the counterparty based on levels of or changes in  
commodity prices, options, puts or calls to hedge price or

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1 similar exposure;

2 (2) "qualified counterparty" means a person  
3 whose long-term obligations are rated, at the time the hedging  
4 contract is executed, in one of the three top rating categories  
5 of a nationally recognized rating agency, without regard to any  
6 modification of the rating; and

7 (3) "state severance taxes" means the taxes  
8 levied on the severance of oil or natural gas under the Oil and  
9 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
10 the Oil and Gas Emergency School Tax Act and the Natural Gas  
11 Processors Tax Act.

12 B. The state board of finance, on behalf of the  
13 state, may enter into hedging contracts authorized in this  
14 section if the board finds that such a contract would be in the  
15 best interests of the state and determines that the contract  
16 results in a financial benefit to the state. The primary  
17 purpose of hedging contracts shall be to establish a desired  
18 level of predictability in tax receipts derived from part of  
19 the anticipated crude oil and natural gas production subject to  
20 state severance taxes, in accordance with the terms and  
21 conditions established by the state board of finance, and  
22 subject to the provisions of this section.

23 C. Hedging contracts shall be entered into only  
24 pursuant to the following criteria:

25 (1) the state board of finance may enter into

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underscoring material = new  
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1 a hedging contract only with a qualified counterparty selected  
2 by the board through negotiation or by competitive bid,  
3 provided that the board may require more stringent rating  
4 levels and may require collateralization of the qualified  
5 counterparty's obligations at the time of execution of the  
6 hedging contract or thereafter;

7 (2) no hedging contract shall have a duration  
8 of more than ten years; and

9 (3) the proposed contract shall be prepared  
10 with the review and assistance of a financial advisor to the  
11 state board of finance and legal counsel to the state board of  
12 finance. The financial advisor and legal counsel may be the  
13 financial advisor and the bond counsel under general contract  
14 to the state board of finance, or such other financial advisor  
15 or legal counsel, selected pursuant to the provisions of the  
16 Procurement Code, as the board deems appropriate.

17 D. The state board of finance may determine and  
18 designate the amount of severance tax bonding fund and general  
19 fund revenues derived from state severance taxes that shall be  
20 covered by hedging transactions; provided, however, that:

21 (1) the aggregate amount of severance tax  
22 bonding fund revenues for any fiscal year covered by hedging  
23 contracts at any one time may not exceed fifty percent of the  
24 total revenues derived from state severance taxes imposed on  
25 the production of oil and natural gas to be deposited in the

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1 severance tax bonding fund for that fiscal year, before giving  
2 effect to any hedging contract, as estimated by the state board  
3 of finance; and

4 (2) the aggregate amount of general fund  
5 revenues derived from state severance taxes and covered by  
6 hedging contracts at any one time may not exceed fifty percent  
7 of the total revenues derived from state severance taxes to be  
8 deposited in the general fund for that fiscal year, before  
9 giving effect to any hedging contract, as estimated by the  
10 state board of finance.

11 E. Any payments, net of payments received from and  
12 costs paid by the qualified counterparty, including any  
13 premiums, periodic payments, termination payments and costs  
14 associated with entering into and performing the contract,  
15 required to be made by the state under or in connection with a  
16 hedging contract may be made from money in the applicable fund  
17 with respect to which the contract was made, except that any  
18 net payments required to be made by the state pursuant to a  
19 hedging contract relating to the state severance taxes to be  
20 deposited in the general fund shall be payable only from the  
21 state severance taxes.

22 F. A contract entered into by the state board of  
23 finance pursuant to this section shall not impair the contract  
24 of the state with, or impair adversely, the owners of bonds  
25 issued by the state.

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1           G. The hedging contracts allowed by this section  
2 may only be made for the purpose of providing a level of  
3 predictability concerning anticipated revenues from state  
4 severance taxes, and not for speculation.

5           H. The net revenues derived by the state from  
6 hedging contracts shall be paid into the severance tax bonding  
7 fund or the general fund as applicable, as though they were the  
8 revenues actually derived from those severance taxes. The  
9 state board of finance shall treat the net revenue derived and  
10 to be derived from hedging contracts entered into under this  
11 section as the revenue actually derived from state severance  
12 taxes on the severance of oil and natural gas, as applicable,  
13 for purposes of:

14                   (1) complying with any statutory and  
15 constitutional requirements concerning deposits of state  
16 severance taxes in the applicable fund;

17                   (2) complying with any statutory and  
18 contractual requirements concerning tests applicable to the  
19 issuance of severance tax bonds and supplemental severance tax  
20 bonds; and

21                   (3) making determinations of projected  
22 revenues for purposes of bonding capacity and budgetary  
23 matters.

24           I. Any contractual obligation made by the state  
25 board of finance shall be valid and binding from the time when

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1 the contractual obligation is made; the revenues, money or  
2 property so obligated and thereafter received by the state  
3 shall immediately be subject to such hedging contract  
4 obligation without any physical delivery thereof or further  
5 act, and shall be valid and binding as against all parties  
6 having claims of any kind in tort, contract or otherwise  
7 against the state, irrespective of whether such parties have  
8 notice thereof. Neither the resolution nor any other  
9 instrument by which a hedging contract obligation is created  
10 need be recorded.

11 Section 2. APPROPRIATIONS.--

12 A. To the extent that any net payments required  
13 under Subsection E of Section 1 of this act are to be derived  
14 from state severance taxes to be deposited in the general fund,  
15 there is hereby appropriated to the state board of finance from  
16 state severance taxes revenues to be deposited in the general  
17 fund amounts necessary to make such net payments.

18 B. To the extent that any net payments required  
19 under Subsection E of Section 1 of this act are to be derived  
20 from state severance taxes to be deposited in the severance tax  
21 bonding fund, there is hereby appropriated to the state board  
22 of finance from state severance taxes revenues to be deposited  
23 in the severance tax bonding fund amounts necessary to make  
24 such net payments.

25 Section 3. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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