

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 763

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO REVENUE; AUTHORIZING CERTAIN HEDGING CONTRACTS FOR THE PURPOSE OF PROVIDING A LEVEL OF PREDICTABILITY OF OIL AND GAS REVENUES; MAKING APPROPRIATIONS.

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, forward rate transactions, cap transactions, floor transactions, collar transactions, options, puts or calls

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 to hedge price or similar exposure;

2 (2) "net payment" means a payment required
3 under a hedging contract minus any payments received from the
4 qualified counterparty or costs paid by the qualified
5 counterparty;

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

11 (4) "state severance taxes" means the taxes
12 levied on the severance of oil or natural gas by the Oil and
13 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
14 the Oil and Gas Emergency School Tax Act and the Natural Gas
15 Processors Tax Act.

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

.164671.6

underscored material = new
[bracketed material] = delete

1 subject to the provisions of this section.

2 C. Hedging contracts shall be entered into only
3 pursuant to rules of the state board of finance. The rules of
4 the state board of finance shall include the following
5 criteria:

6 (1) the state board of finance may enter into
7 a hedging contract only with a qualified counterparty selected
8 by the board through a competitive selection process or by
9 competitive bid, provided that the state board of finance may
10 require more stringent rating levels and may require
11 collateralization of the qualified counterparty's obligations
12 at the time of execution of the hedging contract or thereafter;

13 (2) a hedging contract shall not have a
14 duration of more than five years;

15 (3) a hedging contract shall be tied to an
16 established publicly traded index, including the Henry Hub
17 natural gas contract traded on the New York mercantile exchange
18 and the west Texas intermediate crude oil contract traded on
19 the New York mercantile exchange; and

20 (4) a proposed hedging contract shall be
21 prepared with the review and assistance of a financial advisor
22 to the state board of finance and legal counsel to the state
23 board of finance. The financial advisor and legal counsel may
24 be the financial advisor and the bond counsel under general
25 contract to the state board of finance, or another financial

.164671.6

underscored material = new
[bracketed material] = delete

1 advisor or legal counsel, selected pursuant to the provisions
2 of the Procurement Code, as the state board of finance deems
3 appropriate.

4 D. The state board of finance may determine and
5 designate the volume of natural gas and oil production that
6 shall be covered by hedging transactions; provided, however,
7 that before giving effect to a hedging contract:

8 (1) the aggregate production volume of oil and
9 natural gas subject to severance taxes to be deposited in the
10 severance tax bonding fund for a fiscal year covered by hedging
11 contracts at one time shall not exceed the lesser of:

12 (a) ten percent of the total production
13 volume of oil and natural gas subject to severance taxes to be
14 deposited in the severance tax bonding fund for that fiscal
15 year, as estimated by the consensus revenue estimate group; or

16 (b) ten percent of the total production
17 volume of oil and natural gas subject to severance taxes
18 deposited in the severance tax bonding fund in the preceding
19 fiscal year; and

20 (2) the aggregate production volume of oil and
21 natural gas subject to severance taxes to be deposited in the
22 general fund and covered by hedging contracts at one time shall
23 not exceed the lesser of:

24 (a) ten percent of the total production
25 volume of oil and natural gas subject to state severance taxes

.164671.6

underscored material = new
[bracketed material] = delete

1 to be deposited in the general fund for that fiscal year, as
2 estimated by the consensus revenue estimate group; or

3 (b) ten percent of the total production
4 volume of oil and natural gas subject to state severance taxes
5 deposited in the general fund in the preceding fiscal year.

6 E. The net payments, including premiums, periodic
7 payments, termination payments and costs associated with
8 entering into and performing the hedging contract, required to
9 be made by the state under or in connection with a hedging
10 contract shall be made from money in the fund that is subject
11 to the hedging contract, except that net payments required to
12 be made by the state pursuant to a hedging contract relating to
13 the state severance taxes to be deposited in the general fund
14 shall be payable only from the state severance tax revenue
15 deposited in the general fund.

16 F. A contract entered into by the state board of
17 finance pursuant to this section shall not impair the contract
18 of the state with, or impair adversely, the owners of bonds
19 issued by the state.

20 G. The hedging contracts allowed by this section
21 shall only be made for the purpose of providing a level of
22 predictability concerning anticipated revenues from state
23 severance taxes, and not for speculation.

24 H. The net revenues derived by the state from
25 hedging contracts shall be paid into the severance tax bonding

.164671.6

underscoring material = new
[bracketed material] = delete

1 fund or the general fund as applicable, as though they were the
2 revenues actually derived from those severance taxes. The
3 state board of finance shall treat the net revenue derived and
4 to be derived from hedging contracts entered into under this
5 section as the revenue actually derived from state severance
6 taxes on the severance of oil and natural gas, as applicable,
7 for purposes of:

8 (1) complying with statutory and
9 constitutional requirements concerning deposits of state
10 severance taxes in the applicable fund;

11 (2) complying with statutory and contractual
12 requirements concerning tests applicable to the issuance of
13 severance tax bonds and supplemental severance tax bonds; and

14 (3) making determinations of projected
15 revenues for purposes of bonding capacity and budgetary
16 matters.

17 I. Any obligation made by the state board of
18 finance pursuant to a hedging contract shall be valid and
19 binding from the time when that hedging contract is signed by
20 all necessary parties; the revenues, money or property promised
21 to the state pursuant to a hedging contract shall immediately
22 be subject to obligation in accordance with the hedging
23 contract, without physical delivery of the revenue, money or
24 property or further act. A hedging contract shall be valid and
25 binding as against all parties having claims of any kind in

.164671.6

underscoring material = new
[bracketed material] = delete

1 tort, contract or otherwise against the state, irrespective of
2 whether the parties have notice of the hedging contract.

3 Neither the resolution nor any other instrument by which a
4 hedging contract obligation is created need be recorded.

5 Section 2. REPORTING.--The status of a hedging contract
6 entered into by the state board of finance shall be reported to
7 that board monthly with an annual report provided to the
8 legislature.

9 Section 3. APPROPRIATIONS.--

10 A. To the extent that net payments required to be
11 made by the state pursuant to obligations identified in
12 Subsection E of Section 1 of this act are to be derived from
13 state severance taxes to be deposited in the general fund,
14 there is hereby appropriated to the state board of finance from
15 state severance tax revenues to be deposited in the general
16 fund amounts necessary to make those net payments.

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