

1 SENATE INDIAN AND CULTURAL AFFAIRS COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 294

3 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

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10 AN ACT

11 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
12 CREATING A TEMPORARY TAX RATE DIFFERENTIAL FOR OIL PRODUCED  
13 FROM A QUALIFIED ENHANCED RECOVERY PROJECT THAT USES  
14 ANTHROPOGENIC CARBON DIOXIDE TO DISPLACE OIL; AMENDING SECTIONS  
15 OF THE OIL AND GAS SEVERANCE TAX ACT AND THE ENHANCED OIL  
16 RECOVERY ACT; DEFINING "POSTED PRICE" IN THE OIL AND GAS  
17 SEVERANCE TAX ACT; REQUIRING OPERATORS TO REPORT THE PERCENTAGE  
18 OF ANTHROPOGENIC CARBON DIOXIDE USED TO DISPLACE OIL.

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 7-29-2 NMSA 1978 (being Laws 1959,  
22 Chapter 52, Section 2, as amended) is amended to read:

23 "7-29-2. DEFINITIONS.--As used in the Oil and Gas  
24 Severance Tax Act:

25 A. "anthropogenic carbon dioxide" means carbon

.217459.1

underscored material = new  
[bracketed material] = delete

1 dioxide captured from an industrial source;

2           ~~[A.]~~ B. "commission", "department", "division" or  
3 "oil and gas accounting division" means the taxation and  
4 revenue department, the secretary of taxation and revenue or  
5 any employee of the department exercising authority lawfully  
6 delegated to that employee by the secretary;

7           ~~[B.]~~ C. "production unit" means a unit of property  
8 designated by the department from which products of common  
9 ownership are severed;

10           ~~[C.]~~ D. "severance" means the taking from the soil  
11 of any product in any manner whatsoever;

12           ~~[D.]~~ E. "value" means the actual price received for  
13 products at the production unit, except as otherwise provided  
14 in the Oil and Gas Severance Tax Act;

15           F. "posted price" means the price of west Texas  
16 intermediate crude oil as published by the United States energy  
17 information administration;

18           ~~[E.]~~ G. "product" or "products" means oil, natural  
19 gas or liquid hydrocarbon, individually or any combination  
20 thereof, carbon dioxide, helium or a non-hydrocarbon gas;

21           ~~[F.]~~ H. "operator" means any person:

22                   (1) engaged in the severance of products from  
23 a production unit; or

24                   (2) owning an interest in any product at the  
25 time of severance who receives a portion or all of such product

1 for ~~[his]~~ the person's interest;

2           ~~[G.]~~ I. "primary recovery" means the displacement  
3 of oil and of other liquid hydrocarbons removed from natural  
4 gas at or near the wellhead from an oil well or pool as  
5 classified by the oil conservation division of the energy,  
6 minerals and natural resources department pursuant to Paragraph  
7 (11) of Subsection B of Section 70-2-12 NMSA 1978 into the  
8 wellbore by means of the natural pressure of the oil well or  
9 pool, including but not limited to artificial lift;

10           ~~[H.]~~ J. "purchaser" means a person who is the first  
11 purchaser of a product after severance from a production unit,  
12 except as otherwise provided in the Oil and Gas Severance Tax  
13 Act;

14           ~~[I.]~~ K. "person" means any individual, estate,  
15 trust, receiver, business trust, corporation, firm, co-  
16 partnership, cooperative, joint venture, association or other  
17 group or combination acting as a unit, and the plural as well  
18 as the singular number;

19           ~~[J.]~~ L. "interest owner" means a person owning an  
20 entire or fractional interest of whatsoever kind or nature in  
21 the products at the time of severance from a production unit,  
22 or who has a right to a monetary payment that is determined by  
23 the value of such products;

24           ~~[K.]~~ M. "new production natural gas well" means a  
25 producing crude oil or natural gas well proration unit that

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1 begins its initial natural gas production on or after May 1,  
2 1987 as determined by the oil conservation division of the  
3 energy, minerals and natural resources department;

4 ~~[E-]~~ N. "qualified enhanced recovery project",  
5 prior to January 1, 1994, means the use or the expanded use of  
6 carbon dioxide, when approved by the oil conservation division  
7 of the energy, minerals and natural resources department  
8 pursuant to the Enhanced Oil Recovery Act, for the displacement  
9 of oil and of other liquid hydrocarbons removed from natural  
10 gas at or near the wellhead from an oil well or pool classified  
11 by the oil conservation division pursuant to Paragraph (11) of  
12 Subsection B of Section 70-2-12 NMSA 1978;

13 ~~[M-]~~ O. "qualified enhanced recovery project", on  
14 and after January 1, 1994, means the use or the expanded use of  
15 any process approved by the oil conservation division of the  
16 energy, minerals and natural resources department pursuant to  
17 the Enhanced Oil Recovery Act for the displacement of oil and  
18 of other liquid hydrocarbons removed from natural gas at or  
19 near the wellhead from an oil well or pool classified by the  
20 oil conservation division pursuant to Paragraph (11) of  
21 Subsection B of Section 70-2-12 NMSA 1978, other than a primary  
22 recovery process; the term includes but is not limited to the  
23 use of a pressure maintenance process, a water flooding process  
24 and immiscible, miscible, chemical, thermal or biological  
25 process or any other related process;

.217459.1

1           ~~[N.]~~ P. "production restoration project" means the  
2 use of any process for returning to production a natural gas or  
3 oil well that had thirty days or less of production in any  
4 period of twenty-four consecutive months beginning on or after  
5 January 1, 1993, as approved and certified by the oil  
6 conservation division of the energy, minerals and natural  
7 resources department pursuant to the Natural Gas and Crude Oil  
8 Production Incentive Act;

9           ~~[O.]~~ Q. "well workover project" means any procedure  
10 undertaken by the operator of a natural gas or crude oil well  
11 that is intended to increase the production from the well and  
12 that has been approved and certified by the oil conservation  
13 division of the energy, minerals and natural resources  
14 department pursuant to the Natural Gas and Crude Oil Production  
15 Incentive Act;

16           ~~[P.]~~ R. "stripper well property" means a crude oil  
17 or natural gas producing property that is assigned a single  
18 production unit number by the department and is certified by  
19 the oil conservation division of the energy, minerals and  
20 natural resources department pursuant to the Natural Gas and  
21 Crude Oil Production Incentive Act to have produced in the  
22 preceding calendar year:

23                   (1) if a crude oil producing property, an  
24 average daily production of less than ten barrels of oil per  
25 eligible well per day;

.217459.1

1 (2) if a natural gas producing property, an  
2 average daily production of less than sixty thousand cubic feet  
3 of natural gas per eligible well per day; or

4 (3) if a property with wells that produce both  
5 crude oil and natural gas, an average daily production of less  
6 than ten barrels of oil per eligible well per day, as  
7 determined by converting the volume of natural gas produced by  
8 the well to barrels of oil by using a ratio of six thousand  
9 cubic feet to one barrel of oil;

10 [~~Q.~~] S. "average annual taxable value" means as  
11 applicable:

12 (1) the average of the taxable value per one  
13 thousand cubic feet, determined pursuant to Section 7-31-5 NMSA  
14 1978, of all natural gas produced in New Mexico for the  
15 specified calendar year as determined by the department; or

16 (2) the average of the taxable value per  
17 barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all  
18 oil produced in New Mexico for the specified calendar year as  
19 determined by the department; and

20 [~~R.~~] T. "tax" means the oil and gas severance tax."

21 SECTION 2. Section 7-29-4 NMSA 1978 (being Laws 1980,  
22 Chapter 62, Section 5, as amended) is amended to read:

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

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

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)~~] (5), (7) and (8) of  
6 this 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)~~] (4), (6), (9)  
11 and (10) of this subsection, three and three-fourths percent of  
12 taxable value determined pursuant to Section 7-29-4.1 NMSA  
13 1978;

14 (3) except as provided in Paragraph (4) of  
15 this subsection, 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) beginning on July 1, 2020, and before July

.217459.1

1 1, 2026, on oil and on other liquid hydrocarbons removed from  
2 natural gas at or near the wellhead produced from a qualified  
3 enhanced recovery project that involves the injection of  
4 anthropogenic carbon dioxide in the process of displacing oil  
5 and other liquid hydrocarbons, the following percentage of the  
6 taxable value determined pursuant to Section 7-29-4.1 NMSA  
7 1978; provided that the annual average price of west Texas  
8 intermediate crude oil, determined by the department by  
9 averaging the posted prices in effect on the last day of each  
10 month of the twelve-month period ending on May 31 prior to the  
11 fiscal year in which the tax rate is to be imposed, was less  
12 than eighty dollars (\$80.00) per barrel:

13 (a) two and three-fourths percent if  
14 twenty-five to fifty percent of the total amount of carbon  
15 dioxide injected during the calendar month for which a report  
16 is required pursuant to Section 7-29-7 NMSA 1978 consists of  
17 anthropogenic carbon dioxide;

18 (b) one and three-fourths percent if  
19 more than fifty percent to ninety percent of the total amount  
20 of carbon dioxide injected during the calendar month for which  
21 a report is required pursuant to Section 7-29-7 NMSA 1978  
22 consists of anthropogenic carbon dioxide; and

23 (c) zero percent if more than ninety  
24 percent of the total amount of carbon dioxide injected during  
25 the calendar month for which a report is required pursuant to

.217459.1



1 Section 7-29-7 NMSA 1978 consists of anthropogenic carbon  
2 dioxide;

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

15           ~~(5)~~ (6) on the oil and on other liquid  
16 hydrocarbons removed from natural gas at or near the wellhead  
17 from a well workover project that is certified by the oil  
18 conservation division of the energy, minerals and natural  
19 resources department in its approval of the well workover  
20 project, two and forty-five hundredths percent of the taxable  
21 value determined pursuant to Section 7-29-4.1 NMSA 1978,  
22 provided that the annual average price of west Texas  
23 intermediate crude oil, determined by the department by  
24 averaging the posted prices in effect on the last day of each  
25 month of the twelve-month period ending on May 31 prior to the

.217459.1

1 fiscal year in which the tax rate is to be imposed, was less  
2 than twenty-four dollars (\$24.00) per barrel;

3 [~~(6)~~] (7) on the natural gas from a stripper  
4 well property, one and seven-eighths percent of the taxable  
5 value determined pursuant to Section 7-29-4.1 NMSA 1978,  
6 provided the average annual taxable value of natural gas was  
7 equal to or less than one dollar fifteen cents (\$1.15) per  
8 thousand cubic feet in the calendar year preceding July 1 of  
9 the fiscal year in which the tax rate is to be imposed;

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

19 [~~(8)~~] (9) on the oil and on other liquid  
20 hydrocarbons removed from natural gas at or near the wellhead  
21 from a stripper well property, one and seven-eighths percent of  
22 the taxable value determined pursuant to Section 7-29-4.1 NMSA  
23 1978, provided that the average annual taxable value of oil was  
24 equal to or less than fifteen dollars (\$15.00) per barrel in  
25 the calendar year preceding July 1 of the fiscal year in which

.217459.1

1 the tax rate is to be imposed;

2 [~~(9)~~] (10) on the oil and on other liquid  
3 hydrocarbons removed from natural gas at or near the wellhead  
4 from a stripper well property, two and thirteen-sixteenths  
5 percent of the taxable value determined pursuant to Section  
6 7-29-4.1 NMSA 1978, provided that the average annual taxable  
7 value of oil was greater than fifteen dollars (\$15.00) per  
8 barrel but not more than eighteen dollars (\$18.00) per barrel  
9 in the calendar year preceding July 1 of the fiscal year in  
10 which the tax rate is to be imposed; and

11 [~~(10)~~] (11) on carbon dioxide, helium and non-  
12 hydrocarbon gases, three and three-fourths percent of the  
13 taxable value determined pursuant to Section 7-29-4.1 NMSA  
14 1978.

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

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

.217459.1

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

11 C. Every interest owner shall be liable for the tax  
12 to the extent of [~~his~~] the interest owner's interest in such  
13 products. Any Indian tribe, Indian pueblo or Indian shall be  
14 liable for the tax to the extent authorized or permitted by  
15 law.

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

18 SECTION 3. Section 7-29-7 NMSA 1978 (being Laws 1959,  
19 Chapter 52, Section 10, as amended) is amended to read:

20 "7-29-7. OPERATOR'S REPORT--TAX REMITTANCE--ADDITIONAL  
21 INFORMATION.--Each operator shall, in the form and manner  
22 required by the [~~division~~] department, make a return to the  
23 [~~division~~] department showing the total value, volume and kind  
24 of products sold from each production unit for each calendar  
25 month. For operators using anthropogenic carbon dioxide in the

1 process of displacing oil and other liquid hydrocarbons, the  
 2 return shall include, in the form and manner required by the  
 3 department, the percentage of anthropogenic carbon dioxide used  
 4 in the process of displacing oil and other liquid hydrocarbons.

5 All taxes due or to be remitted by the operator shall accompany  
 6 this return. The return shall be filed on or before the  
 7 twenty-fifth day of the second month after the calendar month  
 8 for which the return is required. Any additional report or  
 9 information the [~~division~~] department may deem necessary for  
 10 the proper administration of the Oil and Gas Severance Tax Act  
 11 may be required."

12 **SECTION 4.** Section 7-29A-2 NMSA 1978 (being Laws 1992,  
 13 Chapter 38, Section 2) is amended to read:

14 "7-29A-2. DEFINITIONS.--As used in the Enhanced Oil  
 15 Recovery Act:

16 A. "crude oil" means oil and other liquid  
 17 hydrocarbons removed from natural gas at or near the wellhead;

18 B. "division" means the oil conservation division  
 19 of the energy, minerals and natural resources department;

20 C. "enhanced recovery project" means the use or the  
 21 expanded use of any process for the displacement of crude oil  
 22 from an oil well or pool classified by the division pursuant to  
 23 Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978  
 24 other than a primary recovery process, including but not  
 25 limited to the use of a pressure maintenance process, a water

.217459.1

1 flooding process, an immiscible, miscible, chemical, thermal or  
2 biological process or any other related process;

3 D. "expansion or expanded use" means a significant  
4 change or modification, as determined by the [~~oil conservation~~]  
5 division in:

6 (1) the technology or process used for the  
7 displacement of crude oil from an oil well or pool classified  
8 by the division pursuant to Paragraph (11) of Subsection B of  
9 Section 70-2-12 NMSA 1978; or

10 (2) the expansion, extension or increase in  
11 size of the geologic area or adjacent geologic area that could  
12 reasonably be determined to represent a new or unique area of  
13 activity;

14 E. "operator" means the person responsible for the  
15 actual physical operation of an enhanced recovery project;

16 F. "person" means any individual, estate, trust,  
17 receiver, business trust, corporation, firm, copartnership,  
18 cooperative, joint venture, association or other group or  
19 combination acting as a unit, and the plural as well as the  
20 singular number;

21 G. "positive production response" means that the  
22 rate of oil production from the wells or pools affected by an  
23 enhanced recovery project is greater than the rate that would  
24 have occurred without the project;

25 H. "primary recovery" means the displacement of

1 crude oil from an oil well or pool classified by the division  
2 pursuant to Paragraph (11) of Subsection B of Section 70-2-12  
3 NMSA 1978 into the well bore by means of the natural pressure  
4 of the oil well or pool, including but not limited to  
5 artificial lift;

6 I. "recovered oil tax rate" means that tax rate, as  
7 set forth in [~~Paragraph~~] Paragraphs (3) and (4) of Subsection A  
8 of Section 7-29-4 NMSA 1978, on crude oil produced from an  
9 enhanced recovery project;

10 J. "secondary recovery project" means an enhanced  
11 recovery project that:

12 (1) occurs subsequent to the completion of  
13 primary recovery and is not a tertiary recovery project;

14 (2) involves the application, in accordance  
15 with sound engineering principles, of carbon dioxide miscible  
16 fluid displacement, pressure maintenance, water flooding or any  
17 other secondary recovery method accepted and approved by the  
18 division pursuant to the provisions of Paragraph (14) of  
19 Subsection B of Section 70-2-12 NMSA 1978 that can reasonably  
20 be expected to result in an increase, determined in light of  
21 all facts and circumstances, in the amount of crude oil that  
22 may ultimately be recovered; and

23 (3) encompasses a pool or portion of a pool  
24 the boundaries of which can be adequately defined and  
25 controlled;

.217459.1

1           K. "severance" means the taking from the soil of  
2 any product in any manner whatsoever;

3           L. "termination" means the discontinuance of an  
4 enhanced recovery project by the operator; and

5           M. "tertiary recovery project" means an enhanced  
6 recovery project that:

7                   (1) occurs subsequent to the completion of a  
8 secondary recovery project;

9                   (2) involves the application, in accordance  
10 with sound engineering principles, of carbon dioxide miscible  
11 fluid displacement, pressure maintenance, water flooding or any  
12 other tertiary recovery method accepted and approved by the  
13 division pursuant to the provisions of Paragraph (14) of  
14 Subsection B of Section 70-2-12 NMSA 1978 that can reasonably  
15 be expected to result in an increase, determined in light of  
16 all facts and circumstances, in the amount of crude oil that  
17 may ultimately be recovered; and

18                   (3) encompasses a pool or portion of a pool  
19 the boundaries of which can be adequately defined and  
20 controlled."