

AMENDED IN SENATE MAY 7, 2013
AMENDED IN SENATE APRIL 24, 2013

SENATE BILL

No. 241

**Introduced by Senator Evans
(Principal coauthor: Senator Jackson)
(Coauthors: Senators Beall, Block, DeSaulnier, Hancock, Leno,
Liu, and Wolk)**

February 12, 2013

An act to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 241, as amended, Evans. Oil Severance Tax Law.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an oil and gas severance tax upon any operator, as defined, for the privilege of severing oil or gas from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at the specified ~~notes~~ rates, calculated as provided. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the board to deposit all tax revenues, penalties, and interest collected pursuant to these provisions into the California Higher Education Fund, a continuously appropriated fund created by this bill, for allocation to the Regents of the University of California, the Trustees of the California State

University, the Board of Governors of the California Community Colleges, and the Department of Parks and Recreation, *and to a reserve account*, as provided.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Part 21 (commencing with Section 42001) is
 2 added to Division 2 of the Revenue and Taxation Code, to read:

3

4 PART 21. OIL SEVERANCE TAX LAW

5

6 42001. This part shall be known and may be cited as the Oil
 7 Severance Tax Law.

8 42002. For purposes of this part, the following definitions shall
 9 apply:

10 (a) "Barrel of oil" means 42 United States gallons of 231 cubic
 11 inches per gallon computed at a temperature of 60 degrees
 12 Fahrenheit.

13 (b) "California Higher Education Fund" or "CHEF" means the
 14 fund that is created by Section 42147.

15 (c) "Gas" means all natural gas, including casing head gas, and
 16 all other hydrocarbons not defined as oil in subdivision (f).

17 (d) "Division" means the Division of Oil, Gas, and Geothermal
 18 Resources in the Department of Conservation.

19 (e) "In this state" means within the exterior limits of the State
 20 of California and includes all territory within these limits owned

1 by or ceded to the United States of America. “In this state” includes
2 the mean high tide line to three nautical miles offshore.

3 (f) “Oil” means petroleum, or other crude oil, condensate, casing
4 head gasoline, or other mineral oil that is mined, produced, or
5 withdrawn from below the surface of the soil or water.

6 (g) “Operator” means a person that, by virtue of ownership, or
7 under the authority of a lease or any other agreement, has the right
8 to drill, operate, maintain, or control an oil or gas well in the earth
9 or water in this state, including any person that takes oil or gas
10 from the earth or water in this state in any manner, any person that
11 owns, controls, manages, or leases any oil or gas well in the earth
12 or water of this state, and any person that produces or extracts in
13 any manner any oil or gas by taking it from the earth or water in
14 this state; and includes the first person that acquires either the legal
15 title or beneficial title to oil or gas taken from the earth or water
16 in this state by the federal government or a federal instrumentality.

17 (h) “Political subdivision of the state” includes any local public
18 entity, as defined in Section 900.4 of the Government Code.

19 (i) “Severed” or “severing” means the extraction or withdrawing
20 from below the surface of the earth or water of any oil or gas,
21 regardless of whether the extraction or withdrawal shall be by
22 natural flow, mechanical flow, forced flow, pumping, or any other
23 means employed to get the oil or gas from below the surface of
24 the earth or water, and shall include the extraction or withdrawal
25 by any means whatsoever of oil or gas upon which the tax has not
26 been paid, from any surface reservoir, natural or artificial, or from
27 a water surface.

28 (j) ~~Stripper~~ “Stripper well” means a well that has been certified
29 by the division as an oil well incapable of producing an average
30 of more than 10 barrels of oil per day during the entire calendar
31 month or a gas well that is incapable of producing more than
32 60,000 cubic feet of gas per day. Once a well has been certified
33 as a stripper well, that stripper well shall remain certified as a
34 stripper well until the well produces an average of more than 10
35 barrels of oil per day during an entire calendar month.

36 (k) “Unit of gas” means 1,000 cubic feet (mcf) measured at a
37 base pressure of 15.025 pounds per square inch absolute and at a
38 temperature base of 60 degrees Fahrenheit.

39 42010. (a) (1) An oil and gas severance tax is hereby imposed
40 upon any operator for the privilege of severing oil or gas from the

1 earth or water in this state at the rate of ~~9.5%~~ *9.5 percent* of the
2 average price per barrel of California oil or ~~_____%~~ *3.5 percent* of
3 the average price per unit of gas, as calculated pursuant to this
4 section.

5 (2) (A) On or before December 1, 2013, and June 1, 2014, and
6 on or before those dates of each year thereafter, the division shall
7 determine the average price per barrel of California oil for the
8 six-month period ending on the preceding October 31 and April
9 30, respectively. The price of California oil shall be based on the
10 first purchase price for California Midway-Sunset crude oil as
11 determined by the United States Energy Information
12 Administration's (EIA) First Purchase Report. In the event the
13 EIA First Purchase Report is delayed or discontinued, the division
14 may base its determination on other sources of first purchase prices
15 of California oil.

16 (B) On or before December 1, 2013, and June 1, 2014, and on
17 or before those dates of each year thereafter, the division shall
18 determine the average price per unit of gas for the six-month period
19 ending on the preceding October 31 and April 30, respectively.
20 The price of gas shall be based on California's price for gas as
21 determined by the United States Energy Information
22 Administration's (EIA) Report. In the event the EIA Report is
23 delayed or discontinued, the division may base its determination
24 on other sources of city gate prices of California gas.

25 (C) The division shall notify the board of its determinations
26 pursuant to subparagraphs (A) and (B), on or before December 1,
27 2013, and June 1, 2014, and on or before those dates on each year
28 thereafter.

29 (b) Any person that owns an interest, including a royalty interest,
30 in oil or its value, is liable for the tax until it has been paid to the
31 board.

32 42012. The tax imposed by this part shall be in addition to any
33 other taxes imposed by law, including, without limitation, any ad
34 valorem taxes imposed by the state, or any political subdivision
35 of the state, or any local business license taxes that may be incurred
36 for the privilege of severing oil or gas from the earth or water or
37 doing business in that locality. There shall be no exemption from
38 the payment of an ad valorem tax related to equipment, material,
39 or other property by reason of the payment of the severance tax
40 pursuant to this part.

1 ~~42013. (a) The tax imposed by this part shall not be passed~~
2 ~~through to consumers by way of higher prices for oil, natural gas,~~
3 ~~gasoline, diesel, or other oil or gas consumable byproducts, such~~
4 ~~as propane and heating oil. The board shall monitor and, if~~
5 ~~necessary, investigate any instance where operators or purchasers~~
6 ~~of the oil or gas have attempted to gouge consumers by using the~~
7 ~~tax as a pretext to materially raise the price of oil, natural gas,~~
8 ~~gasoline, diesel, or other oil or gas consumable byproducts, such~~
9 ~~as propane and heating oil.~~

10 ~~(b) The board may prescribe, adopt, and enforce rules and~~
11 ~~regulations relating to the administration and enforcement of this~~
12 ~~section.~~

13 ~~(c) Any operator that fails to comply with this section shall pay~~
14 ~~a penalty in an amount specified by the board not to exceed _____~~
15 ~~dollars (\$_____) for each instance the operator violates this section,~~
16 ~~as defined by the board in the regulatory process.~~

17 ~~(d) This section applies when not superseded by federal law.~~

18 42014. Two or more operators that are owned or controlled
19 directly or indirectly, as defined in Section 25105, by the same
20 interests shall be considered as a single operator for purposes of
21 application of the tax prescribed in this part.

22 42015. (a) There shall be exempted from the imposition of
23 the oil and gas severance tax imposed pursuant to this part, the
24 severance of oil or gas produced by a stripper well when, as
25 determined pursuant to Section 42010, the average price per barrel
26 of California oil is _____ dollars (\$_____) or less, or when the
27 average price per unit of gas is _____ dollars (\$_____) or less *well,*
28 *unless the well produces more than five barrels per month.*

29 (b) The division shall notify the board of all wells that have
30 been certified as stripper wells.

31 42016. There shall be exempted from the imposition of the tax
32 imposed pursuant to this part all oil, gas, or both oil and gas owned
33 or produced by the state or any political subdivision of the state,
34 including such public entity's proprietary share of oil or gas
35 produced under any unit, cooperative, or other pooling agreement.

36 42019. Each operator shall prepare and file with the board a
37 return in the form prescribed by the board containing information
38 as the board deems necessary or appropriate for the proper
39 administration of this part. The return shall be filed on or before
40 the last day of the calendar month following the calendar quarter

1 to which it relates, together with a remittance payable to the board
2 for the amount of tax due for that period.

3 42145. (a) The board shall administer and collect the tax
4 imposed by this part pursuant to the Fee Collection Procedures
5 Law (Part 30 (commencing with Section 55001)). For purposes
6 of this part, the references in the Fee Collection Procedures Law
7 to “fee” shall include the tax imposed by this part and references
8 to “feepayer” shall include any person liable for the payment of
9 the tax imposed by this part.

10 (b) The board may prescribe, adopt, and enforce regulations
11 relating to the administration and enforcement of this part,
12 including, but not limited to, provisions governing collections,
13 reporting, refunds, and appeals.

14 (c) The board may prescribe, adopt, and enforce emergency
15 regulations relating to the administration and enforcement of this
16 part. Any emergency regulations prescribed, adopted, or enforced
17 pursuant to this section shall be adopted in accordance with Chapter
18 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
19 Title 2 of the Government Code, and, for purposes of that chapter,
20 including Section 11349.6 of the Government Code, the adoption
21 of these regulation is an emergency and shall be considered by the
22 Office of Administrative Law as necessary for the immediate
23 preservation of the public peace, health and safety, and general
24 welfare.

25 42147. (a) All taxes, interest, penalties, and other amounts
26 collected pursuant to this part, less refunds and costs of
27 administration, shall be deposited *first into the General Fund and*
28 *then* into the California Higher Education Fund, which is hereby
29 created in the State Treasury. Notwithstanding Section 13340 of
30 the Government Code, moneys in the fund are continuously
31 appropriated, without regard to fiscal year, as follows:

32 (1) ~~Ninety-three~~ *Ninety* percent of the moneys in the fund, in
33 equal shares, to the Regents of the University of California, the
34 Trustees of the California State University, and the Board of
35 Governors of the California Community Colleges for the general
36 support of those institutions.

37 (2) ~~Seven~~ *Five* percent of the moneys in the fund to the
38 Department of Parks and Recreation for the maintenance and
39 improvement of state parks.

1 (3) *Five percent of the moneys in the fund to a reserve account*
2 *in the fund which shall only be used in a disaster as proclaimed*
3 *by the Governor.*

4 (b) Revenues, less refunds, derived pursuant to Section 42013
5 for deposit in the California Higher Education Fund pursuant to
6 this section shall be deemed “General Fund revenues,” “General
7 Fund proceeds of taxes,” and “moneys to be applied by the State
8 for the support of school districts and community college districts”
9 for purposes of Section 8 of Article XVI.

10 (c) *Any local property tax reductions that may result from the*
11 *imposition of the tax by this part shall be reimbursed from the*
12 *revenues received from the imposition of the tax.*

13 42148. *Funds allocated pursuant to this part shall supplement,*
14 *and not supplant, existing funding sources and amounts.*

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.