

## RÉSUMÉ DIGEST

HB 29

2020 Second Extraordinary Session

DeVillier

Present law requires the treasurer to certify to the secretary of the Dept. of Revenue the date on which the balance of the Oilfield Site Restoration Fund equals or exceeds \$14,000,000. Proposed law would have changed the required amount from \$14,000,000 to \$25,000,000.

Present law imposes a tax on natural resources severed from the soil or water based upon quantity or value of the products or resources severed.

Present law establishes a severance tax on oil at a rate of 12.5% of its value at the time and place of severance. The value is the higher of: (1) gross receipts received from the first purchaser, less charges for trucking, barging and pipeline fees, or (2) the posted field price.

Proposed law would have established an exemption for oil produced from any orphaned, newly drilled, or newly completed well that was undergoing or had undergone well enhancements that required a Dept. of Natural Resources permit such as re-entries, workovers or plug backs, when production occurred on or after Jan. 1, 2021, and on or before Dec. 31, 2023.

Proposed law would have provided that the exemption for wells having undergone well enhancements lasted for a period of six months or until payout was achieved, whichever occurred first.

Proposed law would have provided that the exemption for new wells lasted for a period of 12 months or until payout was achieved, whichever occurred first.

Proposed law would have provided that the exemption for orphaned wells lasted for a period of 24 months or until payout was achieved, whichever occurred first.

Proposed law would have provided the exemption period began the first day of the month after the operator notified the Dept. of Revenue that new or post enhancement production had commenced. Proposed law would have also provided that there could be no more than one exemption per wellhead.

Proposed law would have required, no later than March 1, 2023, the Dept. of Revenue to report the number and cost of exemptions claimed by well category and the Dept. of Natural Resources to report the number of orphan wells plugged and the cost of reimbursement to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law would have prohibited operators in violation of Statewide Order 29-B from being eligible for the exemption provided the office of conservation was authorized to withhold a permit application from the operator pursuant to present law.

Proposed law would have defined "well costs" as the cost of completing the well to the commencement of production or the cost of well enhancements, as determined by the Dept. of Natural Resources.

Proposed law would have defined "operating costs" as costs directly attributable to the operation of the exempt well, including but not limited to direct materials, supplies, fuel, direct labor, contract labor or services, repairs, maintenance, property taxes, insurance, depreciation, and any other costs that could be directly attributed to the well.

Proposed law would have provided that the calculation of operating costs began from the date that the Dept. of Natural Resources permitted operation or the date the enhancement was completed and production was established. Operating costs would have excluded costs included in the well cost.

Proposed law would have required the interest on a refund of severance tax to an operator whose well qualified for this exemption to be paid in accordance with present law (R.S. 47:1624(A)(2)).

Proposed law would have provided that for orphaned wells unable to produce in paying quantities, the operator may have been eligible for reimbursement of costs paid or incurred to plug and abandon the well from the Oilfield Site Restoration Fund with the approval of the secretary of the Dept. of Natural Resources following certification by the office of conservation.

Proposed law would have authorized the secretary of the Dept. of Revenue to approve or deny the reimbursement in whole or in part.

Proposed law would have required the Dept. of Natural Resources, in consultation with the Oilfield Site Restoration Commission, to promulgate rules determining rates of reimbursement and procedures for notification. Rates of reimbursement would have been in accordance with present law.

(Proposed to amend R.S. 30:86(C); proposed to add R.S. 47:633(7)(e))

### **VETO MESSAGE:**

"House Bill 29 purports to create a new severance tax exemption on oil produced from certain oil wells but contains a number of practical shortcomings:

1. The exemption would apply to an "orphaned, newly drilled, or newly completed well that is undergoing or has undergone well enhancements." However, newly completed wells do not typically undergo an enhancement, because, as the technical name suggests, the well is newly completed and generally not in need of an enhancement. Recompleted wells, on the other hand, are the result of enhancements but would not qualify for this exemption, although it appears the legislative intent was to include recompleted wells.
2. Historically, oil severance exemptions commence with production from the well. In a departure from longstanding standards, House Bill 29 was amended to establish the exemption commencement date as the first day of the month after the operator notifies the Department of Revenue that new or post enhancement production has commenced. Because there is no requirement that the notice be provided within a certain time frame after production actually commences, the calculation of any payout is rendered administratively impracticable because ( 1) there will be at least one month in which taxable production occurs prior to the implementation of the exemption and (2) there exists an indeterminable delay in the start of the exemption at the discretion of the operator.
3. In attempting to ensure regulatory compliance, House Bill 29 provides that an operator is ineligible for the exemption if the operator violates Statewide Order 29-B. However, this provision raises uncertainties as to whether the exemption is revoked if a violation occurs during the exemption period and as to the effect of a violation that is later corrected. If the exemption is revoked for a violation, can the exemption be reinstated and how does that impact the calculation of payout and the maximum exemption period?

Well-vetted tax legislation would have foreseen and addressed these types of technical issues; instead, House Bill 29 creates compliance uncertainty for operators and administrative burdens for the departments of state government.

During a legislative session wrought with limited access for the public to meaningfully comment on bills, proponents of this new exemption averred that the exemption would increase oil production and create jobs. Yet no legitimate evidence or testimony supports this assertion, other than the testimony of those with a vested interest through enactment of a new

exemption. In fact, according to research by the LSU Center for Energy Studies, production is relatively unresponsive to price changes. As stated in committee hearings, the bill's author explained that his intent was to "put people back to work," but there exists no requirement that the drilling operator certify that it employed Louisiana residents to the extent possible in production activities, unlike the New Discovery Well statutes enacted in the mid-1990s. Further, any potential benefits of this legislation must be balanced against the resulting \$38 million dollar hole left in the State's budget for the current and next four fiscal years.

Lastly, this bill was one of several bills introduced in this most recent session unrelated to the ostensible and claimed reason for the session - COVID-19 response and hurricane recovery. There will be a fiscal session of the Legislature in the Spring of 2021 where this plan and other tax measures can be fully debated and considered. I look forward to continuing discussions with industry representatives about ways that we can continue to make Louisiana competitive for our oil and gas partners."