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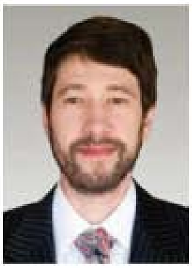

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North Dakota Passes Tax Compromise

BISMARCK, N.D.–In the waning days of the 2015 session, legislation to address the "large trigger" tax exemption and reduce the state's oil extraction tax (OET) was approved by the North Dakota Legislature and signed by Governor Jack Dalrymple, the North Dakota Petroleum Council reports.

Introduced April 17 as a delayed bill, HB 1476 initially would have eliminated the price-triggered tax exemption that could become effective June 1 while lowering the OET rate to 5.0 from 6.5 percent. Under current law, that trigger eliminates the OET for the first two years of production until oil prices have averaged more than $55.09 for five consecutive months (*AOGR* February 2015, pg. 34).

The original bill passed the House 57-32 on April 20. An amended version was approved by the Senate along a 32-15 party line vote April 23. The House passed the Senate version 66-26 the next day and Governor Dalrymple signed it April 29, NDPC confirms.

"It is a significant change," says NDPC President Ron Ness. "This law was put in place 35 years ago, and has been chipped at and chipped at over the years, but this is the first time the corpus has been changed. It sets a stable, predictable (tax) rate and gets us away from living and dying by a tax that swings wildly with the price.

"It is a compromise," concedes Ness. "But it's a good balance for the state and the industry. Waiting around on the trigger price to decide whether you should drill or complete a well is not good for a play such as the Bakken."

In its brisk transit through the legislature, Ness says, HB 1476 was amended to a 5.0 percent extraction tax and a "reverse trigger" was added that raises the tax to 6.0 percent if prices average more than $90 a barrel for 90 consecutive days. However, the trigger is removed from North Dakota tax policy on Dec. 31, and the OET goes to 5.0 percent thereafter.

The bill also removes an OET exemption given incremental production from Bakken wells utilizing carbon-dioxide-injection enhanced recovery, and limits the exemption to five years for wells in non-Bakken pools on CO_2 EOR. However, Ness notes the CO_2 exemption still was subject to change in the session's waning hours.

Reaching A Compromise

Objections to the original bill were raised by Senate Democrats and the chairman of the Three Affiliated Tribes. The state and tribe stand to lose up to $5 billion in revenue over the next decade under a tax rate that is 23 percent lower than currently levied, according an analysis presented by Democrats and reported by the state's news media.

For the next biennium, lost revenue is projected at nearly $300 million if the extraction tax is lowered to 5.0 percent, according to testimony by Senate Minority Leader Mac Schneider, D-Grand Forks. Later, as production and prices rise, the state could lose between $4 billion and $5 billion by 2025, he said.

Mark Fox, chairman of the Three Affiliated Tribes, also testified against the original bill at a Senate hearing. According to published reports, he said the tribe was opposed to the bill because "it will result in a significant loss of tax revenue in the long term."

If it had passed in its original form, the tribe would have considered withdrawing from the revenue-sharing agreement it reached with the state in the last session, Fox testified. The chairman later indicated he would not actively oppose the amended version of the bill, saying it was "better than doing nothing and letting the big trigger hit," according to Senate Majority Leader Rich Wardner, R-Dickinson.

Under the agreement signed in June 2013, the state agreed to evenly split tax revenues with the tribe in exchange for a tribal agreement not to impose additional taxes and fees on production within the reservation. Previously, tax revenue was divided 70 percent to the state and 30 percent to the tribe.

Additional amendments to HB 1476 revise the authority given to the governor to negotiate tax agreements with the tribe, permit the tribe to implement a tax sharing agreement on bulk sales of dyed and undyed special fuels, and call for a legislative study of the tribal tax agreement, including provisions covering distribution of property taxes on pipelines, NDPC summarizes.

Other Legislation

Earlier in April, a bill aimed at increasing oversight of gas and fluid gathering lines was approved after language specifying leak-detection technology was removed, NDPC reports. One of several bills directed at gathering lines that were introduced this session, HB 1358 was approved and signed by Governor Dalrymple on April 20.

According to an NDPC summary, the final version of the bill strikes language that would have required gathering lines include flowmeters, overpressure protection devices or other technology approved by the North Dakota Industrial Commission. Instead, the bill requires operators to file plans with the state and have lines tested within six months of startup. It also authorizes $1.5 million for a study of gathering line leak detection and prevention technology by the Energy and Environment Research Center, including the need for flowmeters and overpressure protection.

In one other development, a compromise on the state's formula for distributing tax revenues that sends a larger share to oil and gas producing areas in western North Dakota was approved and sent to the governor April 20.

Under current rules, NDPC explains, 75 percent of oil and gas revenue goes to the state and 25 percent to local governments. Originally, HB 1176 would have changed the formula to 60 percent to the state and 40 percent to cities, towns and local governments impacted by development.

The association says the final version of the bill sets the distribution formula at 70 percent for the state and 30 percent to local governments. According to a fiscal note attached to HB 1176, local governments will receive $630.8 million in the current biennium, nearly $133.0 million more than under the current law. ❒

MPA Satisfied With Montana Session

HELENA, MT.–As the 64th session of the Montana Legislature moved toward its scheduled conclusion May 1, bills supported by the state's oil and gas industry headed for approval while legislation to restrict or add expense was tabled, according to the Montana Petroleum Association.

Headlines in Helena were dominated by, among other things, an expansion of Medicaid, an anti-bullying bill, and a bill that would raise the highway speed limit to 80 miles an hour on rural interstates. Late in the session, published reports indicate, a battle flared over the state's $10.1 billion biennial budget bill when the House rejected amendments that included an additional $23.5 million in spending sent over by the Senate. The budget bill was sent to a conference committee.

Earlier, reports say, several infrastructure spending bills, including one sent by Democratic Governor Steve Bullock, were tabled, leaving SB 416 to funnel $150 million in cash, bonds and borrowing authority to local governments. The bill includes several triggers that would allocate additional infrastructure funding if state revenues rise.

Seen as a compromise bill, SB 416's sponsor, Republican Senator John Brenden, says in a published report, "This is a bill nobody really likes, but there is not much time left. Do we want something, or do we want nothing?"

Opposition Onslaught

As the 2015 session wound down, MPA Executive Director Dave Galt noted the association's success in beating back a number of bills aimed at restricting oil and gas operations in Montana. "It was tough, but all in all, I think we fared pretty well," he assesses.

But it was not for lack of trying by the opposition, Galt adds. He reports, "They brought four bills to revise the drilling incentive alone. Others bills would have revised regulations, increased setbacks, added water testing rules, required closed-loop drilling, prohibited earthen pits, added surface owner notifications, and increased taxes. We saw them all tabled. Some were along party lines, but we had bipartisan support on many votes."

Galt continues, "There was a bigger onslaught of bills aimed at the oil and gas industry in Montana than we have seen previously. These bills were written craftily to look harmless, but they would have devastated the industry. I am happy to say they all were stopped."

The MPA has "a record of success in blocking bad bills," observes Galt.

At least this session, he adds, the association had equal success in getting the bills it supported passed. Galt remarks, "I am proud of the work we put into the three bills we supported."

The first of those is SB 261, the Greater Sage Grouse Stewardship Act, Galt says. The legislation formalizes a conservation program created by Governor Bullock in 2014 and provides funding for the effort to head off a federal listing of the bird under the Endangered Species Act. The program was an early priority for Bullock when elected in 2012, Galt mentions.

Amended versions of the bill were heard in both the House and Senate, with the Senate voting 42-8 on April 20 to approve the conference committee report and the House following suit on an 89-11 vote two days later. The amendments added a state senator and a House member to the oversight committee, which will develop rules for grants, engage public and private partners, and support "free-market mechanisms for voluntary, incentive-based conservation measures," Galt reports.

A separate bill that would have prohibited hunting sage grouse was tabled in late March, according to published reports.

Tax Relief Bills

The Northern Oil & Gas Association was the primary proponent of a bill to raise the trigger price for stripper well tax exemptions to $54 a barrel from $38. HB 411 passed the House on March 11, and got through the Senate on April 18 following an unsuccessful attempt to push the tax trigger even higher, according to NOGA President Mac McDermott.

Marginal wells' profitability was the main impetus behind the legislation, he explains. "The reason we picked $54 is because North Dakota has a similar mechanism," McDermott reveals. "It does not solve the problem of low prices, but maybe it helps people weather the storm until prices firm.

"The point is not to avoid taxes," he adds. "We really have a problem with taxing things that are uneconomic."

Representative Tom Richmond, R-Billings, who sponsored HB 411, notes the tax relief trigger for marginal wells was last revised in 1999. Below the trigger price, wells producing three barrels a day or less are taxed at 0.5 percent, compared with 6.0 percent above the trigger price.

Patrick Montalban, president of Mountain View Energy and operator of 127 wells in Montana and North Dakota, testified at a hearing on HB 411 before the Senate Taxation Committee that many stripper wells were uneconomic at today's prices. "This is a jobs bill," published reports quote Montalban's testimony. "It takes as many people to operate a three bbl/d well in Montana as it does a 700 bbl/d well in North Dakota. When you consider the differential between (West Texas Intermediate) and the price we get at the wellhead, a large number of wells–and the jobs that go with them–will go away."

The third MPA-backed bill will create a tax benefit for installing pollution control equipment, which is an issue the association first proposed in 2013, says Galt. "It means a huge reduction in property taxes for MPA members," he attests.

Galt notes the previous version of HB 156 passed the legislature only to be vetoed by Governor Bullock.

"We worked with the governor's office in the interim," he reveals. "(Administration officials) have told us they are interested in seeing a bill. The discussions between the governor's office, the legislature and MPA were very productive."

In this year's bill, the exemption from property taxes includes any air and water pollution-control equipment installed or enhanced that provides an environmental benefit or complies with state or federal regulations. Equipment must be certified by the state to qualify for the exemption, Galt says. Equipment that provides carbon capture, transportation or sequestration likewise will be exempt from property taxes, he adds.

Amendments to the bill include a 10-year expiration of the property tax exemption and a 10-year sunset provision. HB 156 passed the Montana Senate 34-16 on April 20, and the House concurred with the Senate amendments on April 23.

"Overall, we are pleased with how things went this session," observes Galt. "The opposition will always be there. Our job is to show the importance of this industry and head off bills that could make things difficult as the industry struggles though a rough patch." ❒

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