

AMENDED IN SENATE APRIL 24, 2013

**SENATE BILL**

**No. 241**

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

February 12, 2013

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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 *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 ~~on and after January 1, 2014~~, upon any ~~producer~~ *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 rate of 9.9% of the gross value of each barrel of oil severed *the specified notes, calculated as provided*. The tax would be administered by the ~~Department of Conservation~~ *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 ~~department~~ *board* to deposit all tax revenues, penalties, and interest collected pursuant to these provisions into the ~~Oil Severance~~ *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, 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:*

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*PART 21. OIL SEVERANCE TAX LAW*

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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*  
14     *the fund that is created by Section 42147.*

15     *(c) "Gas" means all natural gas, including casing head gas,*  
16     *and 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”  
2 includes the mean high tide line to three nautical miles offshore.

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5 or withdrawn from below the surface of the soil or water.

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

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

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

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

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

1       42010. (a) (1) An oil and gas severance tax is hereby imposed  
2 upon any operator for the privilege of severing oil or gas from the  
3 earth or water in this state at the rate of 9.5% of the average price  
4 per barrel of California oil or \_\_\_\_% of the average price per unit  
5 of gas, as calculated pursuant to this section.

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

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

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

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

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

1 *equipment, material, or other property by reason of the payment*  
2 *of the severance tax pursuant to this part.*

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

12 (b) *The board may prescribe, adopt, and enforce rules and*  
13 *regulations relating to the administration and enforcement of this*  
14 *section.*

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

19 (d) *This section applies when not superseded by federal law.*

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

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

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

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

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

1 *the last day of the calendar month following the calendar quarter*  
2 *to which it relates, together with a remittance payable to the board*  
3 *for the amount of tax due for that period.*

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

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

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

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

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

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

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

7 SEC. 2. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.

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18 **All matter omitted in this version of the bill**  
19 **appears in the bill as introduced in the**  
20 **Senate, February 12, 2013. (JR11)**  
21