

1 SEVERANCE TAX RELATED AMENDMENTS

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Gordon E. Snow

5 Senate Sponsor: Kevin T. VanTassell

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7 LONG TITLE

8 General Description:

9 This bill amends provisions related to the Uintah Basin Revitalization Fund, the Navajo  
10 Revitalization Fund, and provisions on oil and gas severance tax revenues.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ modifies definitions;
- 14 ▶ modifies how monies are allocated from the Uintah Basin Revitalization Fund to  
15 each county and the Ute Indian Tribe of the Uintah and Ouray Reservation,  
16 including clarifying the relationship between statute and an interlocal agreement  
17 amongst the parties;
- 18 ▶ addresses how monies from the Uintah Basin Revitalization Fund may be used by  
19 the Tribe;
- 20 ▶ removes date restrictions on deposits into the Uintah Basin Revitalization Fund;
- 21 ▶ increases on an ongoing basis the cap on deposits into the Uintah Basin  
22 Revitalization Fund;
- 23 ▶ eliminates the requirement that the governor annually approve that grants and loans  
24 may be made from the Navajo Revitalization Fund;
- 25 ▶ modifies the cap on severance tax monies that are deposited into the Navajo  
26 Revitalization Fund;
- 27 ▶ amends oil and gas severance tax provisions to eliminate the tax exemption for the  
28 first \$50,000 annually in gross value of oil and gas wells; and
- 29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill has retrospective operation to January 1, 2007.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **9-10-101**, as last amended by Chapter 18, Laws of Utah 2004

37 **9-10-104**, as enacted by Chapter 341, Laws of Utah 1995

38 **9-10-106**, as enacted by Chapter 341, Laws of Utah 1995

39 **9-11-107**, as last amended by Chapter 150, Laws of Utah 2001

40 **59-5-102**, as last amended by Chapter 346, Laws of Utah 2006

41 **59-5-116**, as last amended by Chapter 13, Laws of Utah 2004

42 **59-5-119**, as last amended by Chapter 150, Laws of Utah 2001



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **9-10-101** is amended to read:

46 **9-10-101. Definitions.**

47 As used in this chapter:

48 (1) "Board" means the Uintah Basin Revitalization Fund Board.

49 (2) "Capital projects" means expenditures for land, improvements on the land, and  
50 equipment intended to have long-term beneficial use.

51 (3) "County" means:

52 (a) Duchesne County; or

53 (b) Uintah County.

54 [~~(3)~~] (4) "Division" means the Division of Housing and Community Development.

55 [~~(4)~~] (5) "Revitalization Fund" means the Uintah Basin Revitalization Fund.

56 [~~(5)~~] (6) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

57 Section 2. Section **9-10-104** is amended to read:

58 **9-10-104. Duties -- Loans -- Interest.**

59 (1) The board shall:

60 (a) subject to the other provisions of this chapter and an agreement entered into under  
61 ~~[the]~~ Title 11, Chapter 13, Interlocal Cooperation Act, among the state, ~~[Duchesne and Uintah~~  
62 ~~Counties]~~ the counties, and the Tribe, make recommendations to the division for grants and  
63 loans from the revitalization fund to county agencies and the Tribe that are or may be socially  
64 or economically impacted, directly or indirectly, by mineral resource development;

65 (b) establish procedures for application for and award of grants and loans including:

66 (i) eligibility criteria;

67 (ii) subject to Subsection 9-10-106(2)(b), a preference that capital projects, including  
68 subsidized and low-income housing, and other one-time need projects and programs have  
69 priority over other projects;70 (iii) a preference [to] for projects and programs that are associated with the geographic  
71 area where the oil and gas were produced; and72 (iv) coordination of projects and programs with other projects and programs funded by  
73 federal, state, and local governmental entities;

74 (c) determine the order in which projects will be funded;

75 (d) allocate the amount to be distributed from the revitalization fund for grants or loans  
76 to each county and the Tribe during a fiscal year as follows:77 (i) up to and including the first \$3,000,000 that is approved for distribution by the  
78 board during a fiscal year, the board may allocate the amount in accordance with the interlocal  
79 agreement described by Subsection (1)(a), except that the board may not allocate less than 75%  
80 of the amount under the interlocal agreement to the Tribe unless the interlocal agreement is  
81 further modified by statute; and82 (ii) beginning with fiscal year 2007-08, any amount approved for distribution by the  
83 board during that fiscal year in excess of \$3,000,000 shall be allocated equally amongst each  
84 county and the Tribe so that each receives 1/3 of the amount approved for distribution by the  
85 board in excess of \$3,000,000;

86           ~~[(d)]~~ (e) qualify for, accept, and administer grants, gifts, loans, or other funds from the  
87 federal government and from other sources, public or private; and

88           ~~[(e)]~~ (f) perform other duties assigned to it under the ~~[Interlocal Cooperation Act]~~  
89 interlocal agreement described in Subsection (1)(a) that are not prohibited by law or otherwise  
90 modified by this chapter.

91           (2) The board shall ensure that loan repayments and interest are deposited into the  
92 revitalization fund.

93           (3) The interlocal agreement described in Subsection (1)(a) shall be consistent with the  
94 following statutes, including any subsequent amendments to those statutes:

95           (a) this chapter;

96           (b) Title 11, Chapter 13, Interlocal Cooperation Act;

97           (c) Section 59-5-116; and

98           (d) any other applicable provision of this Utah Code.

99           Section 3. Section **9-10-106** is amended to read:

100           **9-10-106. Eligibility for assistance -- Applications -- Review by board -- Terms --**  
101 **Security.**

102           (1) Counties or the Tribe that wish to receive loans or grants from the board shall  
103 submit formal applications to the board containing the information required by the board.

104           (2) The board may not fund:

105           (a) start-up or operational costs of private business ventures; and

106           (b) general operating budgets of the counties or the Tribe~~[-]~~, except that the Tribe may  
107 use a grant or loan to fund costs associated with the management and administration of energy  
108 or mineral development on:

109           (i) lands held in trust by the United States for the Tribe and its members; or

110           (ii) lands owned by the Tribe.

111           (3) (a) The board shall review each application for a loan or grant before approving it.

112           (b) The board may approve loan or grant applications subject to the applicant's  
113 compliance with certain conditions established by the board.

- 114 (c) The board shall:
- 115 (i) ensure that each loan specifies the terms for repayment; and
- 116 (ii) secure the loans by proceeds from any general obligation, special assessment, or
- 117 revenue bonds, notes, or other obligations of the appropriate subdivision.

118 Section 4. Section **9-11-107** is amended to read:

119 **9-11-107. Revitalization fund administered by board -- Eligibility for assistance --**  
120 **Review by board -- Restrictions on loans and grants -- Division to distribute monies.**

121 (1) (a) If an eligible entity wishes to receive a loan or grant from the board, the eligible  
122 entity shall apply to the board. The application shall contain the information required by the  
123 board.

124 (b) The board shall review each application for a loan or grant before approving the  
125 loan or grant.

126 (c) The board may approve loan or grant applications subject to the applicant's  
127 compliance with certain conditions established by the board.

128 (2) In determining whether an eligible entity may receive a loan or grant, the board  
129 shall give priority to:

130 (a) capital projects and infrastructure, including electrical power, water, and other one  
131 time need projects;

132 (b) housing projects that consist of:

133 (i) the purchase of new housing;

134 (ii) the construction of new housing; or

135 (iii) a significant remodeling of existing housing; or

136 (c) matching educational endowments that:

137 (i) promote economic development within the Utah portion of the Navajo Reservation;

138 (ii) promote the preservation of Navajo culture, history, and language; or

139 (iii) support postsecondary educational opportunities for Navajo students enrolled in  
140 courses or programs taught within the Utah portion of the Navajo Reservation.

141 (3) A loan or grant issued under this chapter may not fund:

142 (a) start-up or operational costs of private business ventures;  
143 (b) general operating budgets of the eligible entities; or  
144 (c) a project or program that will operate or be located outside of the Navajo  
145 Reservation in San Juan County, Utah, except for educational endowments approved by the  
146 board under Subsection (2)(c).

147 (4) (a) The board may not approve a loan unless the loan:  
148 (i) specifies the terms for repayment; and  
149 (ii) is secured by proceeds from a general obligation, special assessment, or revenue  
150 bond, note, or other obligation.

151 (b) Any loan repayment or interest on a loan issued under this chapter shall be  
152 deposited into the fund.

153 (5) The board may not approve a loan or grant unless the loan or grant provides for  
154 matching monies or in-kind services from:

- 155 (a) the Navajo Nation;
- 156 (b) the Navajo Trust Fund;
- 157 (c) San Juan County;
- 158 (d) the state;
- 159 (e) the federal government;
- 160 (f) a Utah Navajo Chapter, as defined in Section 63-88-101; or
- 161 (g) other private or public organization.

162 [~~(6) (a) During any fiscal year, the board may not approve a loan or grant unless the~~  
163 ~~governor notifies the division in writing that loans and grants may be approved during that~~  
164 ~~fiscal year.]~~

165 [~~(b) The governor shall provide the notice required by Subsection (6)(a) if the governor~~  
166 ~~finds that there is progress in resolving issues between:]~~

167 [~~(i) the state, including its political subdivisions; and]~~

168 [~~(ii) (A) the Navajo Nation; or]~~

169 [~~(B) the members of the Navajo Nation living in Utah.]~~

170 [~~7~~] (6) The division shall distribute loan and grant monies:

171 (a) if the loan or grant is approved by the board;

172 (b) in accordance with the instructions of the board, except that the board may not  
173 instruct that monies be distributed in a manner:

174 (i) inconsistent with this chapter; or

175 (ii) in violation of rules and procedures of the department; and

176 (c) in the case of a loan, in accordance with Section 63A-3-205.

177 Section 5. Section **59-5-102** is amended to read:

178 **59-5-102. Severance tax -- Rate -- Computation -- Annual exemption -- Tax credit**  
179 **-- Tax rate reduction -- Study by Tax Review Commission -- Study by commission.**

180 (1) Each person owning an interest, working interest, royalty interest, payments out of  
181 production, or any other interest, in oil or gas produced from a well in the state, or in the  
182 proceeds of the production, shall pay to the state a severance tax on the basis of the value  
183 determined under Section 59-5-103.1 of the oil or gas:

184 (a) produced; and

185 (b) (i) saved;

186 (ii) sold; or

187 (iii) transported from the field where the substance was produced.

188 (2) (a) Subject to Subsection (2)(d), the severance tax rate for oil is as follows:

189 (i) 3% of the value of the oil up to and including the first \$13 per barrel for oil; and

190 (ii) 5% of the value of the oil from \$13.01 and above per barrel for oil.

191 (b) Subject to Subsection (2)(d), the severance tax rate for natural gas is as follows:

192 (i) 3% of the value of the natural gas up to and including the first \$1.50 per MCF for  
193 gas; and

194 (ii) 5% of the value of the natural gas from \$1.51 and above per MCF for gas.

195 (c) Subject to Subsection (2)(d), the severance tax rate for natural gas liquids is 4% of  
196 the value of the natural gas liquids.

197 (d) (i) On or before December 15, 2004, the Office of the Legislative Fiscal Analyst

198 and the Governor's Office of Planning and Budget shall prepare a revenue forecast estimating  
199 the amount of revenues that:

200 (A) would be generated by the taxes imposed by this part for the calendar year  
201 beginning on January 1, 2004 had 2004 General Session S.B. 191 not taken effect; and

202 (B) will be generated by the taxes imposed by this part for the calendar year beginning  
203 on January 1, 2004.

204 (ii) Effective on January 1, 2005, the tax rates described in Subsections (2)(a) through  
205 (c) shall be:

206 (A) increased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated  
207 under Subsection (2)(d)(i)(B) is less than the amount of revenues estimated under Subsection  
208 (2)(d)(i)(A); or

209 (B) decreased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated  
210 under Subsection (2)(d)(i)(B) is greater than the amount of revenues estimated under  
211 Subsection (2)(d)(i)(A).

212 (iii) For purposes of Subsection (2)(d)(ii):

213 (A) subject to Subsection (2)(d)(iv)(B):

214 (I) if an increase is required under Subsection (2)(d)(ii)(A), the total increase in the tax  
215 rates shall be by the amount necessary to generate for the calendar year beginning on January 1,  
216 2005 revenues equal to the amount by which the revenues estimated under Subsection  
217 (2)(d)(i)(A) exceed the revenues estimated under Subsection (2)(d)(i)(B); or

218 (II) if a decrease is required under Subsection (2)(d)(ii)(B), the total decrease in the tax  
219 rates shall be by the amount necessary to reduce for the calendar year beginning on January 1,  
220 2005 revenues equal to the amount by which the revenues estimated under Subsection  
221 (2)(d)(i)(B) exceed the revenues estimated under Subsection (2)(d)(i)(A); and

222 (B) an increase or decrease in each tax rate under Subsection (2)(d)(ii) shall be in  
223 proportion to the amount of revenues generated by each tax rate under this part for the calendar  
224 year beginning on January 1, 2003.

225 (iv) (A) The commission shall calculate any tax rate increase or decrease required by



226 Subsection (2)(d)(ii) using the best information available to the commission.

227 (B) If the tax rates described in Subsections (2)(a) through (c) are increased or  
228 decreased as provided in this Subsection (2)(d), the commission shall mail a notice to each  
229 person required to file a return under this part stating the tax rate in effect on January 1, 2005  
230 as a result of the increase or decrease.

231 (v) The Office of the Legislative Fiscal Analyst and the Governor's Office of Planning  
232 and Budget shall report the estimates prepared in the revenue forecast required by Subsection  
233 (2)(d)(i) to the:

234 (A) commission on or before December 15, 2004; and

235 (B) Executive Appropriations Committee on or before January 31, 2005.

236 (3) If oil or gas is shipped outside the state:

237 (a) the shipment constitutes a sale; and

238 (b) the oil or gas is subject to the tax imposed by this section.

239 (4) (a) Except as provided in Subsection (4)(b), if the oil or gas is stockpiled, the tax is  
240 not imposed until the oil or gas is:

241 (i) sold;

242 (ii) transported; or

243 (iii) delivered.

244 (b) Notwithstanding Subsection (4)(a), if oil or gas is stockpiled for more than two  
245 years, the oil or gas is subject to the tax imposed by this section.

246 (5) A tax is not imposed under this section upon:

247 ~~[(a) the first \$50,000 annually in gross value of each well or wells as defined in this~~  
248 ~~part, to be prorated among the owners in proportion to their respective interests in the~~  
249 ~~production or in the proceeds of the production;]~~

250 ~~[(b)]~~ (a) stripper wells, unless the exemption prevents the severance tax from being  
251 treated as a deduction for federal tax purposes;

252 ~~[(c)]~~ (b) the first 12 months of production for wildcat wells started after January 1,  
253 1990; or

254            [~~(d)~~] (c) the first six months of production for development wells started after January  
255 1, 1990.

256            (6) (a) Subject to Subsections (6)(b) and (c), a working interest owner who pays for all  
257 or part of the expenses of a recompletion or workover may claim a nonrefundable tax credit  
258 equal to 20% of the amount paid.

259            (b) The tax credit under Subsection (6)(a) for each recompletion or workover may not  
260 exceed \$30,000 per well during each calendar year.

261            (c) If any amount of tax credit a taxpayer is allowed under this Subsection (6) exceeds  
262 the taxpayer's tax liability under this part for the calendar year for which the taxpayer claims  
263 the tax credit, the amount of tax credit exceeding the taxpayer's tax liability for the calendar  
264 year may be carried forward for the next three calendar years.

265            (7) A 50% reduction in the tax rate is imposed upon the incremental production  
266 achieved from an enhanced recovery project.

267            (8) The taxes imposed by this section are:

268            (a) in addition to all other taxes provided by law; and

269            (b) delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year  
270 when the oil or gas is:

271            (i) produced; and

272            (ii) (A) saved;

273            (B) sold; or

274            (C) transported from the field.

275            (9) With respect to the tax imposed by this section on each owner of oil or gas or in the  
276 proceeds of the production of those substances produced in the state, each owner is liable for  
277 the tax in proportion to the owner's interest in the production or in the proceeds of the  
278 production.

279            (10) The tax imposed by this section shall be reported and paid by each producer that  
280 takes oil or gas in kind pursuant to agreement on behalf of the producer and on behalf of each  
281 owner entitled to participate in the oil or gas sold by the producer or transported by the

282 producer from the field where the oil or gas is produced.

283 (11) Each producer shall deduct the tax imposed by this section from the amounts due  
284 to other owners for the production or the proceeds of the production.

285 (12) (a) The Tax Review Commission shall review the tax provided for in this part on  
286 or before the October 2008 interim meeting.

287 (b) The Tax Review Commission shall address in its review the following statutory  
288 provisions:

289 (i) the severance tax rate structure provided for in this section;

290 (ii) the exemptions provided for in Subsection (5);

291 (iii) the tax credit provided for in Subsection (6), including:

292 (A) the cost of the tax credit;

293 (B) the purpose and effectiveness of the tax credit; and

294 (C) whether the tax credit benefits the state;

295 (iv) the tax rate reduction provided for in Subsection (7);

296 (v) other statutory provisions or issues as determined by the Tax Review Commission;

297 and

298 (vi) whether the statutory provisions the Tax Review Commission reviews under this  
299 Subsection (12) should be:

300 (A) continued;

301 (B) modified; or

302 (C) repealed.

303 (c) The Tax Review Commission shall report its findings and recommendations  
304 regarding the tax provided for in this part to the Revenue and Taxation Interim Committee on  
305 or before the November 2008 interim meeting.

306 (d) (i) The Tax Review Commission shall review the applicability of the tax provided  
307 for in this chapter to coal-to-liquids, oil shale, and tar sands technology on or before the  
308 October 2011 interim meeting.

309 (ii) The Tax Review Commission shall address in its review the cost and benefit of not

310 applying the tax provided for in this chapter to coal-to-liquids, oil shale, and tar sands  
311 technology.

312 (iii) The Tax Review Commission shall report its findings and recommendations under  
313 Subsections (12)(d)(i) and (ii) to the Revenue and Taxation Interim Committee on or before the  
314 November 2011 interim meeting.

315 (13) (a) The commission shall during the 2004 interim:

316 (i) subject to Subsection (13)(b), conduct a study of the effective tax burden for the  
317 taxes imposed by this part per barrel of oil or MCF of gas for the time period beginning on  
318 January 1, 1984 and ending on September 30, 2004;

319 (ii) study whether the effective tax burden studied under Subsection (13)(a)(i) has  
320 increased or decreased;

321 (iii) receive input from the oil and gas industry in conducting the study required by  
322 Subsections (13)(a)(i) and (ii);

323 (iv) make findings and recommendations regarding whether any provision of this part  
324 should be amended, including:

325 (A) whether any tax rate under this part should be amended;

326 (B) whether a minimum value of oil or gas should be established by statute;

327 (C) whether a limit should be established by statute on the amount of processing costs  
328 that may be deducted under Section 59-5-103.1; and

329 (D) whether a limit other than the limit established in Section 59-5-103.1 should be  
330 established by statute on the amount of transportation costs that may be deducted under Section  
331 59-5-103.1; and

332 (v) report the findings and recommendations required by Subsection (13)(a)(iv) on or  
333 before the October 2004 interim meeting to:

334 (A) the Revenue and Taxation Interim Committee; and

335 (B) the Utah Tax Review Commission.

336 (b) In conducting the study required by Subsections (13)(a)(i) and (ii), the commission  
337 shall take into account factors including:

- 338 (i) the production volume of oil and gas;
- 339 (ii) the sales price of oil and gas; and
- 340 (iii) the revenues raised by the taxes imposed by this part for the time period described
- 341 in Subsection (13)(a)(i).

342 Section 6. Section **59-5-116** is amended to read:

343 **59-5-116. Disposition of certain taxes collected on Ute Indian land.**

344 (1) Except as provided in Subsection (2), there shall be deposited into the Uintah Basin  
345 Revitalization Fund established in Section 9-10-102:

346 (a) for taxes imposed under this part [~~beginning on July 1, 1996~~], 33% of the taxes  
347 collected on oil, gas, or other hydrocarbon substances produced from a well:

348 (i) for which production began on or before June 30, 1995; and

349 (ii) attributable to interests:

350 (A) held in trust by the United States for the Tribe and its members; or

351 (B) [~~for taxes imposed under this part beginning on July 1, 1996, and ending on~~  
352 ~~December 31, 2009~~], on lands identified in Pub. L. No. 440, 62 Stat. 72 (1948);

353 (b) for taxes imposed under this part [~~beginning on July 1, 1996~~], 80% of taxes  
354 collected on oil, gas, or other hydrocarbon substances produced from a well:

355 (i) for which production began on or after July 1, 1995; and

356 (ii) attributable to interests:

357 (A) held in trust by the United States for the Tribe and its members; or

358 (B) [~~for taxes imposed under this part beginning on July 1, 1996, and ending on~~  
359 ~~December 31, 2009~~], on lands identified in Pub. L. No. 440, 62 Stat. 72 (1948); and

360 (c) for taxes imposed under this part [~~beginning on January 1, 2001, and ending on~~  
361 ~~December 31, 2009~~], 80% of taxes collected on oil, gas, or other hydrocarbon substances  
362 produced from a well:

363 (i) for which production began on or after January 1, 2001; and

364 (ii) attributable to interests on lands conveyed to the tribe under the Ute-Moab Land  
365 Restoration Act, Pub. L. No. 106-398, Sec. 3303.

366 (2) (a) The maximum amount deposited in the Uintah Basin Revitalization Fund may  
367 not exceed:

368 (i) \$3,000,000 in [~~any state~~] fiscal year[-] 2005-06;

369 (ii) \$5,000,000 in fiscal year 2006-07;

370 (iii) \$6,000,000 in fiscal years 2007-08 and 2008-09; and

371 (iv) for fiscal years beginning with fiscal year 2009-10, the amount determined by the  
372 commission as described in Subsection (2)(b).

373 (b) (i) The commission shall increase or decrease the dollar amount described in  
374 Subsection (2)(a)(iii) by a percentage equal to the percentage difference between the consumer  
375 price index for the preceding calendar year and the consumer price index for calendar year  
376 2007-08; and

377 (ii) after making an increase or decrease under Subsection (2)(b)(i), round the dollar  
378 amount to the nearest whole dollar.

379 (c) For purposes of this Subsection (2), "consumer price index" is as described in  
380 Section 1(f)(4), Internal Revenue Code, and defined in Section (1)(f)(5), Internal Revenue  
381 Code.

382 [~~(b)~~] (d) Any amounts in excess of the maximum described in Subsection (2)(a) shall  
383 be deposited into the General Fund.

384 Section 7. Section **59-5-119** is amended to read:

385 **59-5-119. Disposition of certain taxes collected on Navajo Nation Land located in**  
386 **Utah.**

387 (1) Except as provided in Subsection (2), there shall be deposited into the Navajo  
388 Revitalization Fund established in Section 9-11-104 for taxes imposed under this part  
389 beginning on July 1, 1997:

390 (a) 33% of the taxes collected on oil, gas, or other hydrocarbon substances produced  
391 from a well:

392 (i) for which production began on or before June 30, 1996; and

393 (ii) attributable to interests in Utah held in trust by the United States for the Navajo

394 Nation and its members; and

395 (b) 80% of the taxes collected on oil, gas, or other hydrocarbon substances produced  
396 from a well:

397 (i) for which production began on or after July 1, 1996; and

398 (ii) attributable to interests in Utah held in trust by the United States for the Navajo

399 Nation and its members.

400 (2) (a) The maximum amount deposited in the Navajo Revitalization Fund may not  
401 exceed:

402 (i) \$2,000,000 in [~~any state~~] fiscal year[-] 2006-07; and

403 (ii) \$3,000,000 for fiscal years beginning with fiscal year 2007-08.

404 (b) Any amounts in excess of the maximum described in Subsection (2)(a) shall be  
405 deposited into the General Fund.

406 **Section 8. Retrospective operation.**

407 This bill has retrospective operation to January 1, 2007.