

1991 Senate Bill 366

Date of enactment: **April 28, 1992**
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1991 WISCONSIN ACT 262

AN ACT *to renumber* subchapter VI of chapter 144 and subchapter VII of chapter 144; *to amend* 73.01 (4) (a), chapter 144 (title) and 144.99; and *to create* 70.397 and subchapter VI of chapter 144 of the statutes, **relating to:** the regulation of oil and gas exploration and production, imposing a severance tax on oil and gas, granting rule-making authority and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 70.397 of the statutes is created to read:
70.397 Oil and gas severance tax. (1) DEFINITIONS.

In this section:

- (a) "Department" means the department of revenue.
- (b) "Market value" means the sales price or market value of oil or gas at the mouth of the well, except that if the oil or gas is exchanged for something other than cash, if there is no sale between the time of severance and the due date of the tax or if the department determines that the oil or gas was not sold in an arm's-length transaction, "market value" means the value determined by the department based upon a consideration of the sales price of oil or gas of similar quality.
- (c) "Producer" means any person owning, controlling, managing or leasing any oil or gas property, any person who severs oil or gas from the soil or water and any person owning a royalty or other interest in oil or gas.
- (2) IMPOSITION. A severance tax is imposed upon each producer who severs oil or gas from the soil or water of this state. The amount of the tax is 7% of the market value of the total production of oil or gas during the previous year. If more than one producer severs oil or gas at a location, the tax imposed under this section is levied upon the producers of oil or gas in the proportion of their ownership at the time of severance but shall be paid by the person in charge of the production operation, who

may deduct the amount of tax imposed upon a producer from the payments due that producer.

(3) REPORTS; ADMINISTRATION. (a) Sections 70.38 (1), 70.385 and 70.39, as they apply to the tax under s. 70.375 (2m), apply to the tax under this section. If a producer severs oil or gas from more than one location in this state, the producer shall submit a report for each location separately.

(b) Sections 71.74 (2), (9), (11), (14) and (15), 71.77, 71.78, 71.80 (6), 71.83 (1) (a) 1 and 2 and (2) (a) 2. and 3. and 71.85 (2), as they apply to the taxes under ch. 71, apply to the tax under this section.

(c) Any person feeling aggrieved by an assessment notice under this section may, within 60 days after receipt of the notice, file with the department a petition for redetermination setting forth the person's objections to the assessment. In the petition, the person may request an informal conference with representatives of the department. The secretary of revenue shall act on the petition within 90 days after receipt of the petition for redetermination. If the person is aggrieved by the secretary's denial of the petition, the person may appeal to the tax appeals commission if the appeal is filed with the commission within 30 days after the petition is denied.

(d) No petition for redetermination may be filed, acted upon or appealed unless the tax objected to is paid by the due date.

(e) The department shall administer the tax under this section.

SECTION 2. 73.01 (4) (a) of the statutes, as affected by 1991 Wisconsin Act 39, section 1897, is amended to read:

73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015, the commission shall be the final authority for the hearing and determination of all questions of law and fact arising under sub. (5) and ss. 70.11 (21), 70.38 (4) (a), 70.397, 70.64, 70.995 (8), 72.86 (4), 1985 stats., 76.38 (12) (a), 76.39 (4) (c), 76.48 (6), 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal there is filed with the commission a stipulation signed by the department of revenue and the adverse party, under s. 73.03 (25), agreeing to an affirmance, modification or reversal of the department's position with respect to some or all of the issues raised in the appeal, the commission shall enter an order affirming or modifying in whole or in part, or canceling the assessment appealed from, or allowing in whole or in part or denying the petitioner's refund claim, as the case may be, pursuant to and in accordance with the stipulation filed. No responsibility shall devolve upon the commission, respecting the signing of an order of dismissal as to any pending appeal settled by the department without the approval of the commission.

SECTION 3. Chapter 144 (title) of the statutes is amended to read:

CHAPTER 144
WATER, SEWAGE, REFUSE, MINING,
OIL AND GAS AND AIR POLLUTION

SECTION 4. Subchapter VI of chapter 144 of the statutes, as affected by 1991 Wisconsin Acts 32 and 39, is renumbered subchapter VII of chapter 144.

SECTION 5. Subchapter VI of chapter 144 of the statutes is created to read:

CHAPTER 144
SUBCHAPTER VI
OIL AND GAS

144.941 Definitions; oil and gas. In ss. 144.941 to 144.944:

(1) "Exploration" means the on-site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of searching for oil or gas or establishing the nature and extent of a known oil or gas deposit and includes associated activities such as clearing and preparing sites or constructing roads for drilling. For the purposes of the definition of exploration, geologic examination does not include drill holes constructed for the purpose of collecting soil samples or for determining geologic information by seismic methods.

(1g) "Gas" means naturally occurring gaseous hydrocarbons.

(1m) "Oil" means naturally occurring liquid hydrocarbons.

(1s) "Principal shareholder" means any person that owns at least 10% of the beneficial interest of another person.

(2) "Production" means the process involved in the extraction of oil or gas for commercial purposes, and the construction of roads, construction, testing and completion of wells and installation and operation of pipelines, tanks and other necessary equipment for that extraction.

(3) "Related person" means any person that owns or operates an oil or gas exploration or production site in the United States and that is one of the following when an application for an oil or gas exploration or production license is submitted to the department:

(a) The parent corporation of the applicant.

(b) A person that holds more than a 30% ownership interest in the applicant.

(c) A subsidiary or affiliate of the applicant in which the applicant holds more than a 30% ownership interest.

144.942 Oil and gas exploration and production.

(1) No person may engage in the exploration for oil or gas without a license from the department.

(2) No person may engage in the production of oil or gas without a license from the department.

(3) No person may commit waste in the exploration for or in the production of oil or gas.

(4) No person may conduct drilling operations for the exploration for or production of oil or gas from beneath the beds of the Great Lakes or bays or harbors that are adjacent to the Great Lakes, unless all drilling operations originate from locations above and on the landward side of the ordinary high-water mark and are conducted according to the terms of a written lease obtained from the department under s. 30.20 (2) (b).

(5) No person holding an oil or gas exploration or production license may engage a general contractor or affiliate to operate an oil or gas exploration or production site if the general contractor or affiliate has 2 or more felony convictions for violation of a law for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States within 10 years before the issuance of the person's license, unless the general contractor or affiliate receives the department's approval of a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

144.943 Departmental powers and duties; oil and gas. (1) The department shall establish a licensing procedure for oil and gas exploration and production in this state. The procedure shall require the applicant to do all of the following:

(a) Submit any information that the department considers necessary to determine whether the applicant is competent to conduct oil and gas exploration, production

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and site reclamation and to determine whether the requirements of sub. (5) are satisfied.

(b) Submit any information necessary for the department to determine whether the proposed exploration, production and site reclamation will comply with ss. 144.941 to 144.944 and rules promulgated under those sections.

(c) Pay fees to cover the costs of plan review and licensing.

(d) File with the department a bond conditioned on the faithful performance of all of the requirements of ss. 144.941 to 144.944 and rules promulgated under those sections.

(2) The department shall promulgate rules to protect the waters of the state, air, soil, plants, fish and wildlife from the adverse effects of oil and gas exploration and production, including rules relating to all of the following:

(a) Location, construction, operation and maintenance of wells and ancillary facilities to provide the greatest practicable protection to the environment.

(b) Disposal of waste liquids encountered or produced in oil and gas exploration and production.

(c) Plugging of wells and abandonment and reclamation of well sites and mud pits and all other ancillary facilities to provide long-term environmental protection.

(d) Reclamation of affected land when exploration and production are completed.

(e) Competence of an applicant to conduct oil and gas exploration, production and site reclamation.

(3) The department shall promulgate rules to prevent waste in the exploration for or the production of oil and gas, including rules related to all of the following:

(a) Prevention of the escape of oil or gas from one stratum to another, and water or brine into oil and gas strata.

(b) Prevention of the premature or irregular encroachment of water that reduces the total recovery of oil and gas.

(c) Prevention of fires, explosions, blowouts, seepage or caving.

(d) Secondary recovery methods of oil or gas.

(e) Spacing of wells.

(f) Regulation of well production, including the allocation of allowable production in any field or pool.

(g) Operation of wells with efficient ratios of gas to oil.

(5) The department may not issue a license for oil or gas exploration or production if it finds any of the following:

(a) That the applicant has violated and continues to fail to comply with ss. 144.941 to 144.944 or any rule promulgated under those sections.

(b) That the applicant, a principal shareholder of the applicant or a related person has, within 10 years before the application is submitted, forfeited a reclamation bond

for oil or gas exploration or production that was posted in accordance with a permit, license or other approval for an oil or gas exploration or production site in the United States, unless the forfeiture was by agreement with the entity for whose benefit the bond was posted and the amount of the bond was sufficient to cover all costs of reclamation.

(c) That the applicant, a related person or an officer or director of the applicant has, within 10 years before the application is submitted, 2 or more felony convictions for violations of laws for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person convicted, as part of the sentence or as a condition of probation, to engage in activities to remedy the violation and the person has complied with that order.

2. The person convicted is a related person or an officer or director of the applicant with whom the applicant terminates its relationship.

3. The applicant included in its license application under sub. (1) a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(cm) That the applicant, a related person or an officer or director of the applicant or a related person has, within 10 years before the application is submitted, been required to forfeit more than \$10,000 for a violation of a law for the protection of the natural environment arising out of the operation of an oil and gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person who was required to forfeit more than \$10,000 to engage in activities to remedy the violation and the person has complied with that order.

2. The person who was required to forfeit more than \$10,000 is a related person with whom the applicant has terminated its relationship.

3. The applicant included in the license application a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the forfeiture.

(d) That the applicant or a related person has, within 10 years before the application is submitted, declared bankruptcy or undergone dissolution that resulted in the failure to reclaim an oil or gas exploration or production site in the United States in violation of a state or federal law and that failure has not been remedied and is not being remedied.

(e) That, within 10 years before the application is submitted, a license or other approval for oil or gas exploration or production issued to the applicant or a related person was permanently revoked because of a failure to reclaim an oil or gas exploration or production site in the

United States in violation of state or federal law and that failure has not been and is not being remedied.

(6) The department may not deny a license for oil or gas exploration or production under sub. (5) if the person subject to the convictions, forfeiture, permanent revocation, bankruptcy or dissolution is a related person but the applicant shows that the person was not the parent corporation of the applicant, a person that holds more than a 30% ownership in the applicant, or a subsidiary or affiliate of the applicant in which the applicant holds more than a 30% interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy or dissolution.

144.944 Penalties; oil and gas. (1) Any person who makes or causes to be made in an application or report required under ss. 144.941 to 144.944 a statement known to the person to be false or misleading in any material respect or who refuses to submit information required by the department under ss. 144.941 to 144.944 may be fined not less than \$1,000 nor more than \$5,000.

(2) Any person who violates ss. 144.941 to 144.944 or any order issued or rule promulgated under ss. 144.941 to 144.944 may be required to forfeit not less than \$1,000 nor more than \$10,000 for each violation. Each day of violation is a separate offense.

(3) (a) If a person makes or causes to be made in an application or report required under ss. 144.941 to 144.944 a statement known to the person to be false or misleading and that statement is material to the issuance of an exploration or production license, the department may revoke the license. If a person holding an exploration or production license repeatedly makes or causes to be made in an application or report required under ss. 144.941 to 144.944 a statement known to the person to be false or misleading in any material respect or refuses to submit information required by the department under ss.

144.941 to 144.944, the department may revoke the license.

(b) If a person holding an exploration or production license continues to violate ss. 144.941 to 144.944 after the department has issued an order to cease those violations, the department shall revoke the license.

(4) Any oil or gas produced in violation of ss. 144.941 to 144.944 or any order issued or rule promulgated under ss. 144.941 to 144.944, or any product manufactured from that oil or gas, is subject to confiscation. The department may seize that oil, gas or products and request the department of justice to commence an action to confiscate the oil, gas or products.

SECTION 6. Subchapter VII of chapter 144 of the statutes, as affected by 1991 Wisconsin Act 39, is renumbered subchapter VIII of chapter 144.

SECTION 7. 144.99 of the statutes is amended to read:

144.99 Penalties. Any person who violates this chapter, except ss. 144.30 to 144.426, 144.941 to 144.944 and 144.96 (1), or any rule promulgated or any plan approval, license or special order issued under this chapter, except under those sections, shall forfeit not less than \$10 nor more than \$5,000, for each violation. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, this penalty does not accrue.

SECTION 8. Nonstatutory provisions; natural resources. The department of natural resources shall submit proposed rules required under this act to the legislative council staff for review under section 227.15 (1) of the statutes no later than the first day of the 19th month beginning after the effective date of this SECTION.

SECTION 9. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 70.397 and 73.01 (4) (a) of the statutes takes effect on January 1, 1992.