

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1487

(SENATE AUTHORS: SCHMIT)

DATE	D-PG	OFFICIAL STATUS
03/20/2013	1356	Introduction and first reading Referred to Taxes

A bill for an act

1.1 relating to taxes; imposing a tax on extraction and processing of fracturing sand;
 1.2 modifying aggregate production tax rates; appropriating money; providing
 1.3 criminal penalties; amending Minnesota Statutes 2012, section 298.75,
 1.4 subdivision 2; proposing coding for new law as Minnesota Statutes, chapter 297J.
 1.5

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[297J.01] DEFINITIONS.**

1.8 Subdivision 1. **Scope.** Unless otherwise defined in this chapter, or unless the
 1.9 context clearly indicates otherwise, the terms used in this chapter have the meaning given
 1.10 them in this section. The definitions in this section are for tax administration purposes
 1.11 and apply to this chapter.

1.12 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of revenue or a
 1.13 person whom the commissioner has delegated functions.

1.14 Subd. 3. **Extraction.** "Extraction" means commercial excavation or commercial
 1.15 mining of fracturing sand.

1.16 Subd. 4. **Fracturing sand.** "Fracturing sand" means silica sand that can be used
 1.17 in hydraulic fracturing mining for the production of oil or gas due to the silica sand's
 1.18 qualities of sphericity, size, and silica content.

1.19 Subd. 5. **Person.** "Person" means an individual, fiduciary, estate, trust, partnership,
 1.20 or corporation.

1.21 Subd. 6. **Ton.** "Ton" means 2,000 pounds.

1.22 Subd. 7. **Washing.** "Washing" means treatment of fracturing sand to remove
 1.23 impurities such as sand and clay and to prepare the fracturing sand for its use in hydraulic
 1.24 fracturing.

1.25 Subd. 8. **Year.** "Year" means a calendar year.

2.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.2 Sec. 2. **[297J.02] TAX IMPOSED.**

2.3 Subdivision 1. **Extraction tax; rate.** A tax is imposed on any person who extracts
2.4 fracturing sand from within the state. The rate of tax imposed is \$1 per ton.

2.5 Subd. 2. **Processing tax; rate.** A tax is imposed on any person engaged in washing
2.6 or processing fracturing sand within the state. The rate of tax imposed is three percent of
2.7 the market value of the fracturing sand processed. Market value is determined based on
2.8 the sale price of the processed fracturing sand.

2.9 Subd. 3. **Return and remittance.** Taxes imposed by this section are due and
2.10 payable to the commissioner when the fracturing sand return is required to be filed.
2.11 Fracturing sand returns must be filed on a form prescribed by the commissioner. Fracturing
2.12 sand returns and taxes imposed under this section must be filed with the commissioner on
2.13 or before the 20th day of the month following the close of the previous calendar month.

2.14 Subd. 4. **Proceeds of taxes.** (a) All revenues collected under subdivision 1 shall be
2.15 credited to a special account in the general fund and are appropriated to the Environmental
2.16 Quality Board as defined in chapter 116C. These funds shall be used for the purpose of
2.17 environmental oversight of the fracturing sand mining industry.

2.18 (b) All revenues collected under subdivision 2 shall be credited to a special account
2.19 in the general fund and are appropriated as follows:

2.20 (1) one-third of the funds are appropriated to the commissioner of transportation to
2.21 be allocated equally to counties with active fracturing sand mines. These funds shall be
2.22 used for the maintenance of roads as established in chapter 162.

2.23 (2) one-third of the funds are appropriated to the commissioner of natural resources
2.24 to acquire land or interests in land as scientific and natural areas under section 84.033,
2.25 in the areas of the state with industrial silica sand resources likely to be mined, as
2.26 identified by the commissioner, in order to protect unique hydrological features, including
2.27 calcareous fens, springs, and trout streams; endangered or threatened species of plants or
2.28 animals; and unique geological features.

2.29 (3) one-third of the funds are appropriated to the Board of Water and Soil Resources
2.30 to acquire permanent easements that will prevent commercial fracturing sand mining
2.31 in wellhead protection areas, as defined in section 103I.005, subdivision 24, in the
2.32 areas of the state with fracturing sand resources likely to be mined, as identified by the
2.33 commissioner of natural resources. The board must consult with the commissioner of
2.34 health to prioritize the easements to be acquired.

3.1 Subd. 5. **Personal debt.** The tax imposed by this section, and interest and penalties
3.2 imposed with respect to it, are a personal debt of the person required to file a return from
3.3 the time the liability for it arises, irrespective of when the time for payment of the liability
3.4 occurs. The debt must, in the case of the executor or administrator of the estate of a
3.5 decedent and in the case of a fiduciary, be that of the person in the person's official or
3.6 fiduciary capacity only unless the person has voluntarily distributed the assets held in that
3.7 capacity without reserving sufficient assets to pay the tax, interest, and penalties, in which
3.8 event the person is personally liable for any deficiency.

3.9 Subd. 6. **Refunds; appropriation.** A person who has paid to the commissioner
3.10 an amount of tax under this chapter for a period in excess of the amount legally due
3.11 for that period, may file with the commissioner a claim for a refund of the excess. The
3.12 amount necessary to pay the refunds under this subdivision is appropriated from the
3.13 general fund to the commissioner.

3.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.15 Sec. 3. **[297J.03] REGISTRATION; REPORTING; FILING REQUIREMENTS.**

3.16 Subdivision 1. **Registration.** A person who extracts or processes fracturing sand
3.17 within the state must register with the commissioner, on a form prescribed by the
3.18 commissioner, for a fracturing sand identification number. The commissioner shall issue
3.19 the applicant a registration number. A registration number is not assignable and is valid
3.20 only for the person in whose name it is issued.

3.21 Subd. 2. **Reporting.** (a) A person who extracts or processes fracturing sand in this
3.22 sand must file a report showing the amount of fracturing sand extracted or processed
3.23 monthly on or before the 20th day of the month following the month in which the
3.24 fracturing sand was extracted or processed. The commissioner may inspect the premises,
3.25 books, and records, of a person subject to the fracturing sand tax during the normal
3.26 business hours of the person extracting or processing fracturing sand. A person violating
3.27 this section is guilty of a misdemeanor.

3.28 (b) A person shall keep at each place of business complete and accurate records for
3.29 that place of business, including records of fracturing sand extracted or processed in the
3.30 state. Scale records, sales records, or any other records of tons of fracturing sand extracted
3.31 or processed in this state, produced or maintained by the person extracting or processing
3.32 fracturing sand, must be retained by the person extracting or processing fracturing sand
3.33 in this state. Books, records, invoices, and other papers and documents required by this
3.34 section must be kept for a period of at least 3-1/2 years after the date of the monthly

4.1 fracturing sand report unless the commissioner of revenue authorizes, in writing, their
4.2 destruction or disposal at an earlier date.

4.3 Subd. 3. **Extensions.** If, in the commissioner's judgment, good cause exists, the
4.4 commissioner may extend the time for filing reports under this section and fracturing sand
4.5 returns under section 297J.02 and for paying taxes under section 297J.02 for not more
4.6 than six months.

4.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.8 Sec. 4. **[297J.04] LIMITATIONS ON TIME FOR ASSESSMENT OF TAX.**

4.9 Subdivision 1. **Assessment.** Except as otherwise provided in this chapter, the
4.10 amount of taxes assessable must be assessed within 3-1/2 years after the date the return is
4.11 filed, whether or not the return is filed on or after the date prescribed. A return must not be
4.12 treated as filed until it is in processible form. A return is in processible form if it is filed
4.13 on a permitted form and contains sufficient data to identify the taxpayer and permit the
4.14 mathematical verification of the tax liability shown on the return. For purposes of this
4.15 section, a return filed before the last day prescribed by law for filing is considered to
4.16 be filed on the last day.

4.17 Subd. 2. **False or fraudulent return.** Notwithstanding subdivision 1, the tax may be
4.18 assessed at any time if a false or fraudulent return is filed or if a taxpayer fails to file a return.

4.19 Subd. 3. **Omission in excess of 25 percent.** Additional taxes may be assessed
4.20 within 6-1/2 years after the due date of the return or the date the return was filed,
4.21 whichever is later, if the taxpayer omits from a return taxes in excess of 25 percent of
4.22 the taxes reported in the return.

4.23 Subd. 4. **Time limit on refunds.** Unless otherwise provided in this chapter, a claim
4.24 for a refund of an overpayment of tax must be filed within 3-1/2 years from the date
4.25 prescribed for filing the fracturing sand tax return. Interest on refunds must be computed
4.26 at the rate specified in section 270C.405 from the date of payment to the date the refund is
4.27 paid or credited. For purposes of this subdivision, the date of payment is the later of the
4.28 date the tax was finally due or was paid.

4.29 Subd. 5. **Bankruptcy; suspension of time.** The time during which a tax must be
4.30 assessed or collection proceedings begun is suspended during the period from the date of a
4.31 filing of a petition in bankruptcy until 30 days after either: (1) notice to the commissioner
4.32 that the bankruptcy proceedings have been closed or dismissed; or (2) the automatic stay
4.33 has been ended or has expired, whichever occurs first. The suspension of the statute of
4.34 limitations under this subdivision applies to the person the petition in bankruptcy is filed
4.35 against, and all other persons who may also be wholly or partially liable for the tax.

5.1 Subd. 6. **Extension agreement.** If, before the expiration of time prescribed in
5.2 subdivisions 1 and 4 for the assessment of tax or the filing of a claim for refund, both the
5.3 commissioner and the taxpayer have consented in writing to the assessment or filing of a
5.4 claim for refund after that time, the tax may be assessed or the claim for refund filed at any
5.5 time before the expiration of the agreed upon period. The period may be extended by later
5.6 agreements in writing before the expiration of the period previously agreed upon.

5.7 **EFFECTIVE DATE.** This section is effective the day following final enactment

5.8 Sec. 5. **[297J.05] CIVIL PENALTIES.**

5.9 Subdivision 1. **Penalty for failure to pay tax.** If a tax is not paid within the time
5.10 specified for payment, a penalty is added to the amount required to be shown as tax. The
5.11 penalty is five percent of the unpaid tax if the failure is for not more than 30 days, with
5.12 an additional penalty of five percent of the amount of tax remaining unpaid during each
5.13 additional 30 days or fraction of 30 days during which the failure continues, not exceeding
5.14 15 percent in the aggregate. For purposes of this subdivision, if the taxpayer has not filed
5.15 a return, the time specified for payment is the final date a return should have been filed.

5.16 Subd. 2. **Penalty for failure to make and file return.** If a taxpayer fails to make
5.17 and file a return within the time prescribed or an extension, a penalty is added to the tax.
5.18 The penalty is five percent of the amount of tax not paid on or before the date prescribed
5.19 for payment of the tax.

5.20 Subd. 3. **Penalty for intentional disregard of law or rules.** If part of an additional
5.21 assessment is due to negligence or intentional disregard of the provisions of this chapter or
5.22 rules of the commissioner of revenue (but without intent to defraud), there is added to the
5.23 tax an amount equal to ten percent of the additional assessment.

5.24 Subd. 4. **Penalty for false or fraudulent return; evasion.** If a person files a false
5.25 or fraudulent return, or attempts in any manner to evade or defeat a tax or payment of
5.26 tax, there is imposed on the person a penalty equal to 50 percent of the tax found due
5.27 for the period to which the return related, less amounts paid by the person on the basis
5.28 of the false or fraudulent return.

5.29 Subd. 5. **Penalty for repeated failures to file returns or pay taxes.** If there is a
5.30 pattern by a person of repeated failures to timely file returns or timely pay taxes, and
5.31 written notice is given that a penalty will be imposed if such failures continue, a penalty
5.32 of 25 percent of the amount of tax not timely paid as a result of each such subsequent
5.33 failure is added to the tax. The penalty can be abated under the abatement authority in
5.34 section 270C.34.

6.1 Subd. 6. **Payment of penalties.** The penalties imposed by this section must be
6.2 collected and paid in the same manner as taxes. These penalties are in addition to criminal
6.3 penalties imposed by this chapter.

6.4 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.5 Sec. 6. **[297J.06] CRIMINAL PENALTIES.**

6.6 Subdivision 1. **Penalty for failure to file or pay.** (a) A person required to file a
6.7 return, report, or other document with the commissioner, who knowingly fails to file it
6.8 when required, is guilty of a gross misdemeanor. A person required to file a return, report,
6.9 or other document who willfully attempts to evade or defeat a tax by failing to file it
6.10 when required, is guilty of a felony.

6.11 (b) A person required to pay or to collect and remit a tax, who knowingly fails to
6.12 do so when required, is guilty of a gross misdemeanor. A person required to pay or to
6.13 collect and remit a tax, who willfully attempts to evade or defeat a tax law by failing to
6.14 do so when required, is guilty of a felony.

6.15 Subd. 2. **False or fraudulent returns; penalties.** (a) A person required to
6.16 file a return, report, or other document with the commissioner, who delivers to the
6.17 commissioner a return, report, or other document known by the person to be fraudulent
6.18 or false concerning a material matter is guilty of a felony.

6.19 (b) A person who knowingly aids or assists in, or advises in the preparation or
6.20 presentation of a return, report, or other document that is fraudulent or false concerning
6.21 a material matter, whether or not the falsity or fraud committed is with the knowledge
6.22 or consent of the person authorized or required to present the return, report, or other
6.23 document, is guilty of a felony.

6.24 Subd. 3. **False information.** A person is guilty of a felony if the person:

6.25 (1) is required by section 297E.05 to keep records or to make returns, and falsifies or
6.26 fails to keep the records or falsifies or fails to make the returns; or

6.27 (2) knowingly submits materially false information in any report, document, or
6.28 other communication submitted to the commissioner in connection with lawful gambling
6.29 or with this chapter.

6.30 Subd. 4. **Criminal penalties.** (a) Criminal penalties imposed by this section are in
6.31 addition to civil penalties imposed by this chapter.

6.32 (b) A person who violates a provision of this chapter for which another penalty is
6.33 not provided is guilty of a misdemeanor.

7.1 (c) A person who violates a provision of this chapter for which another penalty is not
7.2 provided is guilty of a gross misdemeanor if the violation occurs within five years after
7.3 a previous conviction under a provision of this chapter.

7.4 (d) A person who in any manner violates a provision of this chapter to evade a tax
7.5 imposed by this chapter, or who aids and abets the evasion of a tax, is guilty of a gross
7.6 misdemeanor.

7.7 Subd. 5. **Statute of limitations.** Notwithstanding other provision of the criminal
7.8 laws of this state, an indictment may be found and filed, or a complaint filed, upon a
7.9 criminal offense named in this section, in the proper court within six years after the
7.10 offense is committed.

7.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.12 Sec. 7. **[297J.07] INTEREST.**

7.13 Subdivision 1. **Rate.** If an interest assessment is required under this section, interest
7.14 is computed at the rate specified in section 270C.40.

7.15 Subd. 2. **Late payment.** If a tax is not paid within the time specified by law for
7.16 payment, the unpaid tax bears interest from the date the tax should have been paid until
7.17 the date the tax is paid.

7.18 Subd. 3. **Extensions.** If an extension of time for payment has been granted, interest
7.19 must be paid from the date the payment should have been made if no extension had been
7.20 granted, until the date the tax is paid.

7.21 Subd. 4. **Additional assessments.** If a taxpayer is liable for additional taxes because
7.22 of a redetermination by the commissioner, or for any other reason, the additional taxes
7.23 bear interest from the time the tax should have been paid, without regard to any extension
7.24 allowed, until the date the tax is paid.

7.25 Subd. 5. **Erroneous refunds.** In the case of an erroneous refund, interest accrues
7.26 from the date the refund was paid unless the erroneous refund results from a mistake of
7.27 the department, then no interest or penalty is imposed unless the deficiency assessment is
7.28 not satisfied within 60 days of the order.

7.29 Subd. 6. **Interest on judgments.** Notwithstanding section 549.09, if judgment is
7.30 entered in favor of the commissioner with regard to any tax, the judgment bears interest
7.31 at the rate specified in section 270C.40 from the date the judgment is entered until the
7.32 date of payment.

7.33 Subd. 7. **Interest on penalties.** A penalty imposed under section 297J.05,
7.34 subdivision 1, 2, 3, 4, or 5, bears interest from the date the return or payment was required
7.35 to be filed or paid, including any extensions, to the date of payment of the penalty.

8.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.2 Sec. 8. Minnesota Statutes 2012, section 298.75, subdivision 2, is amended to read:

8.3 Subd. 2. **Tax imposed.** (a) Except as provided in paragraph (e), a county that
8.4 imposes the aggregate production tax shall impose upon every operator a production tax
8.5 of ~~21.5~~ 43 cents per cubic yard or ~~15~~ 30 cents per ton of aggregate material excavated in
8.6 the county except that the county board may decide not to impose this tax if it determines
8.7 that in the previous year operators removed less than 20,000 tons or 14,000 cubic yards of
8.8 aggregate material from that county. The tax shall not be imposed on aggregate material
8.9 excavated in the county until the aggregate material is transported from the extraction site
8.10 or sold, whichever occurs first. When aggregate material is stored in a stockpile within the
8.11 state of Minnesota and a public highway, road or street is not used for transporting the
8.12 aggregate material, the tax shall not be imposed until either when the aggregate material
8.13 is sold, or when it is transported from the stockpile site, or when it is used from the
8.14 stockpile, whichever occurs first.

8.15 (b) Except as provided in paragraph (e), a county that imposes the aggregate
8.16 production tax under paragraph (a) shall impose upon every importer a production tax of
8.17 ~~21.5~~ 43 cents per cubic yard or ~~15~~ 30 cents per ton of aggregate material imported into
8.18 the county. The tax shall be imposed when the aggregate material is imported from the
8.19 extraction site or sold. When imported aggregate material is stored in a stockpile within
8.20 the state of Minnesota and a public highway, road, or street is not used for transporting
8.21 the aggregate material, the tax shall be imposed either when the aggregate material is
8.22 sold, when it is transported from the stockpile site, or when it is used from the stockpile,
8.23 whichever occurs first. The tax shall be imposed on an importer when the aggregate
8.24 material is imported into the county that imposes the tax.

8.25 (c) If the aggregate material is transported directly from the extraction site to a
8.26 waterway, railway, or another mode of transportation other than a highway, road or street,
8.27 the tax imposed by this section shall be apportioned equally between the county where the
8.28 aggregate material is extracted and the county to which the aggregate material is originally
8.29 transported. If that destination is not located in Minnesota, then the county where the
8.30 aggregate material was extracted shall receive all of the proceeds of the tax.

8.31 (d) A county, city, or town that receives revenue under this section is prohibited
8.32 from imposing any additional host community fees on aggregate production within that
8.33 county, city, or town.

8.34 (e) A county that borders two other states and that is not contiguous to a county
8.35 that imposes a tax under this section may impose the taxes under paragraphs (a) and (b)

9.1 at the rate of ten cents per cubic yard or seven cents per ton. This paragraph expires
9.2 December 31, 2014.

9.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.