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Bill 77, Unpaid Municipal Taxes, and the Connection to the Inactive and Orphan Wells Problem

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Bill Commented On: Alberta's [Bill 77: Municipal Government \(Restoring Tax Accountability\) Amendment Act, 2021](#), 2nd Session, 30th Legislature

Alberta's [Bill 77: Municipal Government \(Restoring Tax Accountability\) Amendment Act, 2021 \(2nd Session, 30th Legislature\)](#) is moving towards becoming law. This post describes what Bill 77 would do, explains the connection between oil and gas companies' unpaid municipal taxes and Alberta's orphan well problem, and describes some reasons why Bill 77 will be ineffective.

Bill 77

Bill 77 is only 8 pages in length (3 pages being changes to legislation). Bill 77 Amends the *Municipal Government Act*, [RSA 2000 c M-26 \(MGA\)](#) to give municipal governments the power to place liens on some of the property of companies that fail to pay their assessed municipal taxes, and specifically allows the municipal government to place such liens on "linear property", which includes pipelines and wells (section 284(1)(k) of the *MGA*). The property a Municipal Government can place a lien on is limited to the property within the municipality, and the lien would have priority over every person except the Crown (see section 5 of Bill 17).

As described in the legislature, the point of Bill 77 is that:

...if a company becomes bankrupt or decides not to pay their taxes, municipalities will again have a tool to convince these companies to pay or else property may be seized to cover debts. As a result, companies will have more of an incentive to negotiate payment plans with municipalities for their unpaid taxes, and if they do not, municipalities will have a hammer.... (2nd reading, *Alberta Hansard*, 30-2, (2 November 2021) at page [5928](#) (Hon Ric McIver))

The Inactive, Low-production, and Orphan Wells Problem

Alberta's inactive and orphan wells problem is enormous and somewhat complex, and I will not attempt to describe the entire problem here. For more background, see previous ABlawg posts [here](#) and [here](#). To give a few highlights, the Alberta Energy Regulator (AER) does not try to collect financial security for the clean-up of oil and gas assets until an operator's ratio of deemed assets to deemed liabilities falls below 1, with possible license transfer restrictions once a company's ratio falls below 2. This approach resulted in the Orphan Well Association (OWA) having 2,983 orphaned sites on March 31, 2020, down to 2,126 on March 31, 2021, a reduction that is only

possible because the federal and provincial governments loaned the OWA a combined \$535 million over the past three years, which the OWA plans to be paying back until 2035 ([OWA annual report 2020/2021](#) at 31). Since the OWA is meant to be funded by the oil and gas industry, this amounts to a large and more than decade-long government loan to the oil and gas industry.

Connected to the orphan wells problem are inactive and low-production wells often held by operators nearing insolvency – these are wells likely to become orphans soon. The AER collects information on all licensees to assess their solvency, but the AER stopped making that information available to the public after [November 2019](#). The AER now refuses to release a company’s asset-to-liability ratio on the basis of confidentiality. Wells owned by licensees with low asset-to-liability ratios are basically soon-to-be orphans, and the remaining value of the production from these wells is often worth less than the cost of the necessary clean-up (for a fulsome explanation of how this works, see the [Alberta Liability Disclosure Project’s: *The Big Cleanup*](#)).

The Connection

Although the total unpaid municipal tax bill of oil and gas companies has become very large, at \$245 million, it [has been noted in the legislature](#) that only a small number of oil and gas companies do not pay their municipal taxes. The president of the Rural Municipalities of Alberta was [reported as saying](#) that more than 95 percent of oil and gas companies are paying their taxes on time. It is only a small number of oil companies that may potentially face the new liens under Bill 77.

These few trouble companies are not likely to be merely malicious actors choosing not to pay for no reason – they are much more likely to be strapped for cash because they own mostly low-producing wells with high clean-up liabilities. Framing the unpaid municipal tax problem as a question of ‘bad actors’ is a misleading waste of time. The behaviour of the companies is determined by their economic situation, the nature of their oil and gas assets, and Alberta’s chosen regulatory scheme, not by the moral character of individual corporate directors.

It is trite that companies that become bankrupt typically do not have a lot of highly valuable assets, and therein is the problem for Bill 77. The liens under Bill 77 are likely to be mostly on oil and gas assets that have little or no value, often worth less than the cost of the clean-up for those assets. In order for a lien to be useful, the lien needs to be on something valuable. Most of the liens produced under the changes brought by Bill 77 are unlikely to meet that requirement. For the most part, liens under Bill 77 would be liens on empty wells, which are effectively a kind of toxic garbage. Bill 77 will be effective only in those rare instances where a company with high-value oil and gas assets in the municipality is not paying their taxes.

Another problem for Bill 77 is that if a bankrupt oil and gas company does have some valuable assets, those assets will often be taken by the AER and OWA in order to try to pay for the company’s clean-up liabilities. This dispute between the AER and rural municipalities over the assets of bankrupt and nearly bankrupt oil companies is already heating up, as the issue is present in the bankruptcies of both Manitok and Trident (see *Manitok Energy Inc (Re)*, [2021 ABCA 323 \(CanLII\)](#) at paras 20-26). This dispute is particularly unfortunate because both the clean-up of orphan oil and gas wells and the payment of overdue taxes by oil and gas companies are important to rural municipalities.

Conclusion

What I have said here will not be a surprise to those involved in rural municipal government, who already understand this issue and [have not been enthusiastic about Bill 77](#). Rural municipalities have been asking for changes at the AER level, and they are correct to do so. The problem of oil and gas companies with unpaid rural municipality taxes is downstream from the AER's failures to regulate inactive and low-producing oil and gas assets with high clean-up liabilities.

The problem of unpaid municipal taxes by oil and gas companies is likely to quiet down for a while, as high oil prices will allow companies some financial leeway to pay some of their tax bills – but every Albertan knows oil prices eventually fall. Alberta needs to act fast on both oil and gas companies' unpaid municipal taxes and the orphan and inactive wells issue generally. A good first step would be for the AER to resume posting each company's asset-to-liability ratios so that Albertans can understand the problem instead of guessing about it.

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