

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1439

Introduced by

Representatives Porter, Delzer, Dockter, Headland, Howe, Mock, Pollert

Senators Cook, Dotzenrod, Meyer, Unruh, Wardner

1 A BILL for an Act to amend and reenact subsection 3 of section 57-51.1-03 of the North Dakota
2 Century Code, relating to an oil extraction tax exemption for the incremental production from
3 tertiary recovery projects using carbon dioxide; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 3. a. The incremental production from a secondary recovery project which has been
8 certified as a qualified project by the industrial commission after July 1, 1991, is
9 exempt from any taxes imposed under this chapter for a period of five years from
10 the date the incremental production begins.

11 b. The incremental production from a tertiary recovery project which has been
12 certified as a qualified project by the industrial commission is exempt from any
13 taxes imposed under this chapter for a period of ten years from the date the
14 incremental production begins. Incremental production from a tertiary recovery
15 project from a horizontal well drilled and completed within the Bakken and Three
16 Forks formations which has been certified as a qualified project by the industrial
17 commission is not exempt from July 1, 2015, through June 30, 2017, and is
18 thereafter exempt from any taxes imposed under this chapter for a period of five
19 years from July 1, 2017, or the date the incremental production begins,
20 whichever is later.

21 c. The incremental production from a tertiary recovery project that injects more than
22 fifty percent carbon dioxide produced from coal and has been certified as a
23 qualified project by the industrial commission is exempt from any taxes imposed
24 under this chapter for a period of twenty years from the date the incremental

1 production begins or from the date the project is certified by the industrial
2 commission as meeting the fifty percent or more carbon dioxide produced from
3 coal injection requirement, whichever is later. To qualify for the exemption under
4 this subsection, the project must be located outside the Bakken and Three Forks
5 formations and must use carbon dioxide produced from coal. The incremental
6 production that has been certified by the industrial commission under this section
7 must be used to calculate the exemption under this subdivision.

8 d. The incremental production from a tertiary recovery project that injects more than
9 fifty percent carbon dioxide produced from coal and has been certified as a
10 qualified project by the industrial commission is exempt from any taxes imposed
11 under this chapter for a period of ten years from the date the incremental
12 production begins or from the date the project is certified by the industrial
13 commission as meeting the fifty percent or more carbon dioxide produced from
14 coal injection requirement, whichever is later. To qualify for the exemption under
15 this subsection, the project must be located within the Bakken and Three Forks
16 formations and must use carbon dioxide produced from coal. The incremental
17 production that has been certified by the industrial commission under this section
18 must be used to calculate the exemption under this subdivision.

19 e. For purposes of this subsection, incremental production is defined in the following
20 manner:

21 (1) For purposes of determining the exemption provided for in subdivision a and
22 with respect to a unit where there has not been a secondary recovery
23 project, incremental production means the difference between the total
24 amount of oil produced from the unit during the secondary recovery project
25 and the amount of primary production from the unit. For purposes of this
26 paragraph, primary production means the amount of oil which would have
27 been produced from the unit if the secondary recovery project had not been
28 commenced. The industrial commission shall determine the amount of
29 primary production in a manner which conforms to the practice and
30 procedure used by the commission at the time the project is certified.

- 1 (2) For purposes of determining the exemption provided for in subdivision a and
2 with respect to a unit where a secondary recovery project was in existence
3 prior to July 1, 1991, and where the industrial commission cannot establish
4 an accurate production decline curve, incremental production means the
5 difference between the total amount of oil produced from the unit during a
6 new secondary recovery project and the amount of production which would
7 be equivalent to the average monthly production from the unit during the
8 most recent twelve months of normal production reduced by a production
9 decline rate of ten percent for each year. The industrial commission shall
10 determine the average monthly production from the unit during the most
11 recent twelve months of normal production and must upon request or upon
12 its own motion hold a hearing to make this determination. For purposes of
13 this paragraph, when determining the most recent twelve months of normal
14 production the industrial commission is not required to use twelve
15 consecutive months. In addition, the production decline rate of ten percent
16 must be applied from the last month in the twelve-month period of time.
- 17 (3) For purposes of determining the exemption provided for in subdivision a and
18 with respect to a unit where a secondary recovery project was in existence
19 before July 1, 1991, and where the industrial commission can establish an
20 accurate production decline curve, incremental production means the
21 difference between the total amount of oil produced from the unit during the
22 new secondary recovery project and the total amount of oil that would have
23 been produced from the unit if the new secondary recovery project had not
24 been commenced. For purposes of this paragraph, the total amount of oil
25 that would have been produced from the unit if the new secondary recovery
26 project had not been commenced includes both primary production and
27 production that occurred as a result of the secondary recovery project that
28 was in existence before July 1, 1991. The industrial commission shall
29 determine the amount of oil that would have been produced from the unit if
30 the new secondary recovery project had not been commenced in a manner

1 that conforms to the practice and procedure used by the commission at the
2 time the new secondary recovery project is certified.

3 (4) For purposes of determining the exemption provided for in subdivision b and
4 with respect to a unit where there has not been a secondary recovery
5 project, incremental production means the difference between the total
6 amount of oil produced from the unit during the tertiary recovery project and
7 the amount of primary production from the unit. For purposes of this
8 paragraph, primary production means the amount of oil which would have
9 been produced from the unit if the tertiary recovery project had not been
10 commenced. The industrial commission shall determine the amount of
11 primary production in a manner which conforms to the practice and
12 procedure used by the commission at the time the project is certified.

13 (5) For purposes of determining the exemption provided for in subdivision b and
14 with respect to a unit where there is or has been a secondary recovery
15 project, incremental production means the difference between the total
16 amount of oil produced during the tertiary recovery project and the amount
17 of production which would be equivalent to the average monthly production
18 from the unit during the most recent twelve months of normal production
19 reduced by a production decline rate of ten percent for each year. The
20 industrial commission shall determine the average monthly production from
21 the unit during the most recent twelve months of normal production and
22 must upon request or upon its own motion hold a hearing to make this
23 determination. For purposes of this paragraph, when determining the most
24 recent twelve months of normal production the industrial commission is not
25 required to use twelve consecutive months. In addition, the production
26 decline rate of ten percent must be applied from the last month in the
27 twelve-month period of time.

28 (6) For purposes of determining the exemption provided for in subdivision b and
29 with respect to a unit where there is or has been a secondary recovery
30 project and where the industrial commission can establish an accurate
31 production decline curve, incremental production means the difference

1 between the total amount of oil produced from the unit during the tertiary
2 recovery project and the total amount of oil that would have been produced
3 from the unit if the tertiary recovery project had not been commenced. For
4 purposes of this paragraph, the total amount of oil that would have been
5 produced from the unit if the tertiary recovery project had not been
6 commenced includes both primary production and production that occurred
7 as a result of any secondary recovery project. The industrial commission
8 shall determine the amount of oil that would have been produced from the
9 unit if the tertiary recovery project had not been commenced in a manner
10 that conforms to the practice and procedure used by the commission at the
11 time the tertiary recovery project is certified.

12 (7) For purposes of determining the exemption provided for in subdivisions c.
13 and d, and with respect to a unit where a tertiary recovery project was in
14 existence, and where the industrial commission cannot establish an
15 accurate production decline curve, incremental production means the
16 difference between the total amount of oil produced from the unit during a
17 new tertiary recovery project and the amount of production which would be
18 equivalent to the average monthly production from the unit during the most
19 recent twelve months of normal production reduced by a production decline
20 rate of ten percent for each year. The industrial commission shall determine
21 the average monthly production from the unit during the most recent twelve
22 months of normal production and shall upon request or upon its own motion
23 hold a hearing to make this determination. For purposes of this paragraph, if
24 determining the most recent twelve months of normal production the
25 industrial commission is not required to use twelve consecutive months. In
26 addition, the production decline rate of ten percent must be applied from the
27 last month in the twelve-month period of time.

28 (8) For purposes of determining the exemption provided for in subdivisions c.
29 and d, and with respect to a unit where a tertiary recovery project was in
30 existence, and where the industrial commission can establish an accurate
31 production decline curve, incremental production means the difference

1 between the total amount of oil produced from the unit during the new
2 tertiary recovery project and the total amount of oil that would have been
3 produced from the unit if the new tertiary recovery project had not been
4 commenced. For purposes of this paragraph, the total amount of oil that
5 would have been produced from the unit if the new tertiary recovery project
6 had not been commenced includes both primary production and production
7 that occurred as a result of the tertiary recovery project that was previously
8 in existence. The industrial commission shall determine the amount of oil
9 that would have been produced from the unit if the new tertiary recovery
10 project had not been commenced in a manner that conforms to the practice
11 and procedure used by the commission at the time the new tertiary recovery
12 project is certified.

13 d-f. The industrial commission shall adopt rules relating to this exemption ~~that~~which
14 must include procedures for determining incremental production as defined in
15 subdivision ee.

16 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2019.