

**SECOND ENGROSSMENT
with House Amendments**

Sixtieth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2419

Introduced by

Senator Stenehjem

Representative Berg

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact chapter 57-51.2 of the North Dakota Century Code,
2 relating to agreements with an Indian tribe to share revenue from state taxes on oil and gas
3 production within the boundaries of the Fort Berthold Reservation; to amend and reenact
4 section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax
5 exemption on production from wells on Indian reservations, Indian trust land, and land owned
6 by an Indian tribe; to provide a continuing appropriation; to provide an effective date; and to
7 declare an emergency.

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

9 **SECTION 1. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-51.1-03. Exemptions from oil extraction tax.** The following activities are
12 specifically exempted from the oil extraction tax:

- 13 1. The activity of extracting from the earth any oil that is exempt from the gross
14 production tax imposed by chapter 57-51.
- 15 2. The activity of extracting from the earth any oil from a stripper well property.
- 16 3. For a well drilled and completed as a vertical well, the initial production of oil from
17 the well is exempt from any taxes imposed under this chapter for a period of fifteen
18 months, except that oil produced from any well drilled and completed as a
19 horizontal well is exempt from any taxes imposed under this chapter for a period of
20 twenty-four months. Oil recovered during testing prior to well completion is exempt
21 from the oil extraction tax. The exemption under this subsection becomes
22 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
23 each month in any consecutive five-month period. However, the exemption is
24 reinstated if, after the trigger provision becomes effective, the average price of a

- 1 barrel of crude oil is less than the trigger price for each month in any consecutive
2 five-month period.
- 3 4. The production of oil from a qualifying well that was worked over is exempt from
4 any taxes imposed under this chapter for a period of twelve months, beginning with
5 the first day of the third calendar month after the completion of the work-over
6 project. The exemption provided by this subsection is only effective if the well
7 operator establishes to the satisfaction of the industrial commission upon
8 completion of the project that the cost of the project exceeded sixty-five thousand
9 dollars or production is increased at least fifty percent during the first two months
10 after completion of the project. A qualifying well under this subsection is a well
11 with an average daily production of no more than fifty barrels of oil during the latest
12 six calendar months of continuous production. A work-over project under this
13 subsection means the continuous employment of a work-over rig, including
14 recompletions and reentries. The exemption provided by this subsection becomes
15 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
16 each month in any consecutive five-month period. However, the exemption is
17 reinstated if, after the trigger provision becomes effective, the average price of a
18 barrel of crude oil is less than the trigger price for each month in any consecutive
19 five-month period.
- 20 5. a. The incremental production from a secondary recovery project which has
21 been certified as a qualified project by the industrial commission after July 1,
22 1991, is exempt from any taxes imposed under this chapter for a period of
23 five years from the date the incremental production begins.
- 24 b. The incremental production from a tertiary recovery project which has been
25 certified as a qualified project by the industrial commission subsequent to
26 June 30, 1991, is exempt from any taxes imposed under this chapter for a
27 period of ten years from the date the incremental production begins.
- 28 c. For purposes of this subsection, incremental production is defined in the
29 following manner:
- 30 (1) For purposes of determining the exemption provided for in
31 subdivision a and with respect to a unit where there has not been a

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

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

28 (3) For purposes of determining the exemption provided for in
29 subdivision a and with respect to a unit where a secondary recovery
30 project was in existence before July 1, 1991, and where the industrial
31 commission can establish an accurate production decline curve,

1 incremental production means the difference between the total amount
2 of oil produced from the unit during the new secondary recovery project
3 and the total amount of oil that would have been produced from the unit
4 if the new secondary recovery project had not been commenced. For
5 purposes of this paragraph, the total amount of oil that would have
6 been produced from the unit if the new secondary recovery project had
7 not been commenced includes both primary production and production
8 that occurred as a result of the secondary recovery project that was in
9 existence before July 1, 1991. The industrial commission shall
10 determine the amount of oil that would have been produced from the
11 unit if the new secondary recovery project had not been commenced in
12 a manner that conforms to the practice and procedure used by the
13 commission at the time the new secondary recovery project is certified.

14 (4) For purposes of determining the exemption provided for in
15 subdivision b and with respect to a unit where there has not been a
16 secondary recovery project, incremental production means the
17 difference between the total amount of oil produced from the unit during
18 the tertiary recovery project and the amount of primary production from
19 the unit. For purposes of this paragraph, primary production means the
20 amount of oil which would have been produced from the unit if the
21 tertiary recovery project had not been commenced. The industrial
22 commission shall determine the amount of primary production in a
23 manner which conforms to the practice and procedure used by the
24 commission at the time the project is certified.

25 (5) For purposes of determining the exemption provided for in
26 subdivision b and with respect to a unit where there is or has been a
27 secondary recovery project, incremental production means the
28 difference between the total amount of oil produced during the tertiary
29 recovery project and the amount of production which would be
30 equivalent to the average monthly production from the unit during the
31 most recent twelve months of normal production reduced by a

1 production decline rate of ten percent for each year. The industrial
2 commission shall determine the average monthly production from the
3 unit during the most recent twelve months of normal production and
4 must upon request or upon its own motion hold a hearing to make this
5 determination. For purposes of this paragraph, when determining the
6 most recent twelve months of normal production the industrial
7 commission is not required to use twelve consecutive months. In
8 addition, the production decline rate of ten percent must be applied
9 from the last month in the twelve-month period of time.

10 (6) For purposes of determining the exemption provided for in
11 subdivision b and with respect to a unit where there is or has been a
12 secondary recovery project and where the industrial commission can
13 establish an accurate production decline curve, incremental production
14 means the difference between the total amount of oil produced from the
15 unit during the tertiary recovery project and the total amount of oil that
16 would have been produced from the unit if the tertiary recovery project
17 had not been commenced. For purposes of this paragraph, the total
18 amount of oil that would have been produced from the unit if the tertiary
19 recovery project had not been commenced includes both primary
20 production and production that occurred as a result of any secondary
21 recovery project. The industrial commission shall determine the
22 amount of oil that would have been produced from the unit if the tertiary
23 recovery project had not been commenced in a manner that conforms
24 to the practice and procedure used by the commission at the time the
25 tertiary recovery project is certified.

26 d. The industrial commission shall adopt rules relating to this exemption that
27 must include procedures for determining incremental production as defined in
28 subdivision c.

29 6. The production of oil from a two-year inactive well, as determined by the industrial
30 commission and certified to the state tax commissioner, for a period of ten years
31 after the date of receipt of the certification. The exemption under this subsection

1 becomes ineffective if the average price of a barrel of crude oil exceeds the trigger
2 price for each month in any consecutive five-month period. However, the
3 exemption is reinstated if, after the trigger provision becomes effective, the
4 average price of a barrel of crude oil is less than the trigger price for each month in
5 any consecutive five-month period.

6 7. The production of oil from a horizontal reentry well, as determined by the industrial
7 commission and certified to the state tax commissioner, for a period of nine
8 months after the date the well is completed as a horizontal well. The exemption
9 under this subsection becomes ineffective if the average price of a barrel of crude
10 oil exceeds the trigger price for each month in any consecutive five-month period.
11 However, the exemption is reinstated if, after the trigger provision becomes
12 effective, the average price of a barrel of crude oil is less than the trigger price for
13 each month in any consecutive five-month period.

14 ~~8. The initial production of oil from a well is exempt from any taxes imposed under
15 this chapter for a period of sixty months if:~~
16 ~~a. The well is located within the boundaries of an Indian reservation;~~
17 ~~b. The well is drilled and completed on lands held in trust by the United States
18 for an Indian tribe or individual Indian; or~~
19 ~~e. The well is drilled and completed on lands held by an Indian tribe if the
20 interest is in existence on August 1, 1997.~~

21 **SECTION 2.** Chapter 57-51.2 of the North Dakota Century Code is created and
22 enacted as follows:

23 **57-51.2-01. Authority to enter agreements.** The governor, in consultation with the
24 tax commissioner, may enter agreements with the Three Affiliated Tribes relating to taxation
25 and regulation of oil and gas exploration and production within the boundaries of the Fort
26 Berthold Reservation.

27 **57-51.2-02. Agreement requirements.** An agreement under this chapter is subject to
28 the following:

29 1. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas
30 production attributable to fee land within the exterior boundaries of the reservation
31 is retained by the state and allocated as provided by law. All revenue from taxes

- 1 under chapters 57-51 and 57-51.1 from oil and gas production attributable to
2 Indian trust land and land owned by an Indian tribe within the exterior boundaries
3 of the Fort Berthold Reservation is allocated as follows:
- 4 a. Revenue from taxes under chapter 57-51 attributable to oil and gas
5 production on Indian trust land and land owned by an Indian tribe must be
6 allocated among political subdivisions in the amount, proportion, and manner
7 provided in chapter 57-51.
- 8 b. The cost of state oil and gas administration and regulation must be deducted
9 and transferred for deposit in the state general fund.
- 10 c. All revenue remaining after deduction of the amounts under subdivisions a
11 and b must be divided in equal amounts between the state and the tribe.
- 12 2. An oil or gas well that is drilled and completed during the time an agreement under
13 this chapter is in effect is subject to state tax and regulatory provisions for the life
14 of the well.
- 15 3. The exemptions for oil and gas production under chapters 57-51 and 57-51.1 do
16 not apply to production within the boundaries of the reservation unless the
17 exemption is specified in the agreement or in a later amendment to the agreement
18 and the revenue loss attributable to the exemption is divided equally between the
19 state and the tribe.
- 20 4. Fees and taxes imposed by the tribe under an agreement with an oil or gas
21 exploration or production company within the boundaries of the reservation
22 entered before July 1, 2007, are unaffected by an agreement under this chapter.
23 Fees and taxes may not be imposed by the tribe by agreement or otherwise with
24 an oil or gas exploration or production company for activities within the exterior
25 boundaries of the reservation after the effective date of this Act.
- 26 5. Jurisdiction of any dispute under this chapter or under the agreement entered
27 under this chapter is in the federal district court for the western division of North
28 Dakota.
- 29 **57-51.2-03. Statutory inconsistencies superseded.** This chapter supersedes any
30 inconsistent provisions of chapters 57-51 and 57-51.1 and any provision of state law relating to

1 regulatory provisions of state law relating to oil and gas exploration and production and
2 administration of those provisions.

3 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1,
4 2010.

5 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.