

HOUSE BILL NO. 1398

Introduced by

Representatives Keiser, Kreun, Schmidt

1 A BILL ~~for an Act to create and enact a new chapter to title 57 of the North Dakota Century~~
2 ~~Code, relating to imposition of a water extraction tax; to provide a penalty; and to provide an~~
3 ~~effective date.~~ for an Act to create and enact chapter 61-41 of the North Dakota Century Code,
4 relating to a fee for industrial use fresh water dispensed for oil and gas industry users; and to
5 provide an effective date.

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

7 **SECTION 1.** ~~A new chapter to title 57 of the North Dakota Century Code is created and~~
8 ~~enacted as follows:~~

9 ~~— **Imposition of water extraction tax - Industrial use.**~~

10 ~~— There is imposed an excise tax, to be known as the "water extraction tax", upon the activity~~
11 ~~in this state of extracting water from an aquifer below the surface of the earth. The rate of tax is~~
12 ~~eleven and one-half percent of the gross value at the well of the water extracted for industrial~~
13 ~~use.~~

14 ~~— **Valuation of water - Alternatives - Exceptions.**~~

15 ~~— The gross value at the well for water is the price paid for the water under an arm's-length~~
16 ~~contract between the producer and the purchaser less, when applicable, transportation costs~~
17 ~~associated with moving the water from the point of extraction to the point of sale under the~~
18 ~~contract. In the absence of an arm's-length contract, the gross value at the well for water is~~
19 ~~established by the first applicable of the following methods:~~

20 ~~— 1. The price paid under an arm's-length contract, to which the person paying the tax is a~~
21 ~~party, for the purchase or sale of water of like kind, character, and quality, in the same~~
22 ~~aquifer or, if none, in a nearby aquifer, less, when applicable, transportation costs~~
23 ~~associated with moving the water from the point of production to the point of sale.~~

1 ~~2. The price paid under an arm's-length contract, between parties other than the person~~
2 ~~paying the tax, for the purchase or sale of water of like kind, character, and quality, in~~
3 ~~the same aquifer or, if none, in a nearby aquifer, less, when applicable, transportation~~
4 ~~costs associated with moving the water from the point of extraction to the point of sale.~~

5 ~~3. The value determined by consideration of the market price relevant in valuing water of~~
6 ~~like kind, character, and quality, in the same area or in a nearby area, less, when~~
7 ~~applicable, adjustments for transportation costs to reflect the differential between the~~
8 ~~value at the point of extraction and the value at the location reflected in the market~~
9 ~~price.~~

10 ~~**Water extraction tax to be in lieu of other taxes.**~~

11 ~~The payment of the water extraction tax under this chapter is in lieu of all ad valorem taxes~~
12 ~~by the state and political subdivisions upon any property rights attached to or inherent in the~~
13 ~~right to extracting water from an aquifer below the surface of the earth.~~

14 ~~**Payment of tax on monthly basis - When tax due - When delinquent - Payment by**~~
15 ~~**purchaser - By producer.**~~

16 ~~1. The water extraction tax must be paid on a monthly basis. The tax is due and payable~~
17 ~~on the twenty-fifth day of the month succeeding the month of extraction. If the tax is~~
18 ~~not paid as required by this section, the tax becomes delinquent and must be collected~~
19 ~~as provided in this chapter. The penalty does not apply if ninety percent of the tax due~~
20 ~~has been paid with the monthly return and the taxpayer files an amended monthly~~
21 ~~return and pays the total tax due within sixty days from the original due date. The~~
22 ~~commissioner, upon request and a proper showing of necessity, may grant an~~
23 ~~extension of time, not to exceed fifteen days, for paying the tax. When the request is~~
24 ~~granted, the tax is not delinquent until the extended period has expired. Any taxpayer~~
25 ~~that requests and is granted an extension of time for filing a return shall pay, with the~~
26 ~~tax, interest at the rate of twelve percent per annum from the date the tax was due to~~
27 ~~the date the tax is paid.~~

28 ~~2. On water extracted and sold, the tax must be paid by the purchaser, and the~~
29 ~~purchaser is authorized to deduct in making settlement with the producer, the amount~~
30 ~~of tax paid. However, if water is extracted and is not sold but is retained by the~~
31 ~~producer, the tax on the water not sold must be paid by the producer.~~

1 ~~3. All calculations of the water extraction tax, including production, distribution, and~~
2 ~~claims for credit or refund, are based on the month of production and must be credited~~
3 ~~to that month.~~

4 ~~**Tax paid to commissioner – Statements by person paying tax – Statements by**~~
5 ~~**producer.**~~

6 ~~1. The water extraction tax must be paid to the commissioner and the person paying the~~
7 ~~tax shall file with the commissioner at the time the tax is required to be paid a~~
8 ~~statement on forms prescribed by the commissioner. The commissioner may require a~~
9 ~~purchaser to file the statement or report by electronic data interchange or other~~
10 ~~electronic media.~~

11 ~~2. On or before the twenty-fifth day of the next succeeding month after extraction, any~~
12 ~~person engaged in the extraction of water within this state shall file with the~~
13 ~~commissioner a statement upon forms prescribed by the commissioner. The~~
14 ~~commissioner may waive the requirement that a producer file a well production report.~~
15 ~~A waiver by the commissioner of the requirement to file a well production report does~~
16 ~~not release the producer from any obligation to remit the tax under this chapter. A~~
17 ~~waiver does not release the producer from any duty or obligation to maintain~~
18 ~~production records for inspection by the commissioner.~~

19 ~~3. Reports from either the purchaser or producer, as the case may be, are delinquent~~
20 ~~after the last day fixed for their filing, and every person required to file a report is~~
21 ~~subject to a penalty of twenty five dollars per day for each property upon which the~~
22 ~~person fails or refuses to file the reports. The penalties prescribed in this section are~~
23 ~~for failure to file reports and are in addition to any other applicable penalty and~~
24 ~~constitute a lien against the assets of the person failing or refusing to file the reports.~~
25 ~~The penalties prescribed in this section must be collected in the same manner as~~
26 ~~water extraction taxes and must be apportioned as other water extraction tax~~
27 ~~penalties; provided, that the commissioner may, for good cause shown, waive any~~
28 ~~penalties imposed under this section.~~

29 ~~4. The tax commissioner may prescribe alternative methods for signing, subscribing, or~~
30 ~~verifying a return filed by electronic means, including telecommunications, that shall~~

1 ~~have the same validity and consequence as the actual signature and written~~
2 ~~declaration for a paper return.~~

3 ~~— **Powers of commissioner.**~~

4 ~~— The commissioner has power to require any person engaged in water extraction and the~~
5 ~~agent or employee of such person, or purchaser of such water, to furnish any additional~~
6 ~~information the commissioner deems to be necessary for the purpose of correctly computing the~~
7 ~~amount of the water extraction tax, and to examine the books, records, and files of such person,~~
8 ~~and has power to conduct hearings and compel the attendance of witnesses, the production of~~
9 ~~books, records, and papers of any person, and full authority to make any investigation or hold~~
10 ~~any inquest deemed necessary to a full and complete disclosure of the true facts as to the~~
11 ~~amount of water extraction from any well location, or of any company or other producer thereof,~~
12 ~~and as to the rendition thereof for taxing purposes.~~

13 ~~— **Commissioner shall compute tax on incorrect returns.**~~

14 ~~— 1. The commissioner may ascertain and determine whether a return required to be filed~~
15 ~~with the commissioner is a true and correct return of the taxable water extracted, and~~
16 ~~of the value thereof, of that person. If any person has made an untrue or incorrect~~
17 ~~return of the water extracted or value thereof, or has failed or refused to make a~~
18 ~~return, the commissioner shall under rules adopted by the commissioner, ascertain the~~
19 ~~correct amount of either, and compute the tax.~~

20 ~~— 2. The time to assess additional water extraction tax found due is three years after the~~
21 ~~due date of the original return or three years after the original return is filed, whichever~~
22 ~~period expires later. However, if there is a change in tax liability on any return by an~~
23 ~~amount in excess of twenty-five percent of the amount of tax liability reported on a~~
24 ~~return, any additional tax determined to be due may be assessed anytime within six~~
25 ~~years after the due date of the return or six years after the return was filed, whichever~~
26 ~~period expired later.~~

27 ~~— 3. If a taxpayer files an amended return, the tax commissioner has two years after the~~
28 ~~return is filed to audit the return and assess any additional tax attributable to the~~
29 ~~changes or corrections even though other time periods prescribed in this section for~~
30 ~~the assessment of tax may have expired. This section does not limit or restrict any~~

1 ~~other time period prescribed in this section for the assessment of tax that has not~~
2 ~~expired as of the end of the two-year period prescribed in this section.~~

3 ~~4. For periods in which the tax commissioner has waived the requirement that a producer~~
4 ~~file a well production report, the tax commissioner has three years after the due date~~
5 ~~of the purchaser's return or three years after the purchaser's return is filed, whichever~~
6 ~~period expires later, to assess the producer for additional tax found due. However, if~~
7 ~~there is a change in tax liability on the purchaser's return by an amount in excess of~~
8 ~~twenty-five percent of the amount of tax liability reported on a purchaser's return, any~~
9 ~~additional tax determined to be due may be assessed from the producer anytime~~
10 ~~within six years after the due date of the purchaser's return or six years after the~~
11 ~~purchaser's return was filed, whichever period expires later.~~

12 ~~5. Any person that consents to an extension of time for assessment of tax must be~~
13 ~~presumed to have consented to a similar extension for refund.~~

14 ~~**Proceedings and penalty on delinquency.**~~

15 ~~When the water extraction tax becomes delinquent, there is imposed a penalty of five~~
16 ~~dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the~~
17 ~~rate of one percent per month on the tax due, for each calendar month or fraction thereof during~~
18 ~~which the delinquency continues, except for the month within which the tax became due, which~~
19 ~~must be collected in the manner provided. If any person fails to make any required report within~~
20 ~~the time prescribed by law for the report, the commissioner shall examine the books, records,~~
21 ~~and files of such person to ascertain the amount and value of such production to compute the~~
22 ~~tax, and the commissioner shall add the amount of any penalties accrued. The commissioner,~~
23 ~~for good cause shown, may waive the penalty or the interest provided by this section. — Lien for~~
24 ~~tax — Preservation of lien — Satisfaction of lien.~~

25 ~~1. The water extraction tax, penalty, and interest provided for in this chapter is a first and~~
26 ~~paramount lien against the purchaser's or producer's property as the case may be. If~~
27 ~~the tax, penalty, and interest is not paid, it may be recovered in any court of competent~~
28 ~~jurisdiction of the county where any such property, assets, and effects are located.~~

29 ~~2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any~~
30 ~~property situated in this state, prior to the commissioner filing in the central indexing~~
31 ~~system maintained by the secretary of state, a notice of the lien provided for in this~~

1 ~~section, takes free of, or has priority over, the lien. The commissioner shall index in the~~
2 ~~central indexing system the following data:~~

- 3 ~~_____ a. The name of the taxpayer.~~
4 ~~_____ b. The name "State of North Dakota" as claimant.~~
5 ~~_____ c. The date and time the notice of lien was indexed.~~
6 ~~_____ d. The amount of the lien.~~

7 ~~The notice of lien is effective as of eight a.m. of the first day following the indexing of~~
8 ~~the notice.~~

9 ~~_____ 3. Upon the payment of tax, penalty, and interest, if applicable, or a penalty assessed~~
10 ~~under this chapter, as to which the commissioner has indexed a notice in the central~~
11 ~~indexing system, the commissioner shall index a satisfaction of the lien in the central~~
12 ~~indexing system.~~

13 ~~_____ 4. The commissioner is exempt from the payment of the fees otherwise provided for by~~
14 ~~law for the indexing of the lien or satisfaction.~~

15 ~~_____ **Delinquent taxes - Sale of property.**~~

16 ~~_____ When any water extraction tax becomes delinquent, the commissioner shall issue warrants~~
17 ~~directed to the sheriff of any county wherein the same, or any part thereof accrued, for the~~
18 ~~collection of the tax, interest, and penalty; and the sheriff to whom the warrant is directed shall~~
19 ~~proceed to levy upon the property, assets, and effects of the person liable for such tax, and shall~~
20 ~~sell the same and make return thereof, as upon execution. The state, through the~~
21 ~~commissioner, is authorized to make bids at any such sale to the amount of tax, penalty, and~~
22 ~~costs accrued.~~

23 ~~_____ **Bond - Reports - Actions.**~~

24 ~~_____ The tax commissioner may require a sufficient bond from any person charged with the~~
25 ~~making and filing of reports and the payment of the water extraction tax imposed under this~~
26 ~~chapter. The bond must run to the state of North Dakota and must be conditioned upon the~~
27 ~~making and filing of reports as required by law, upon compliance with the rules of the~~
28 ~~commissioner, and for the prompt payment, by the principal therein, of all taxes justly due the~~
29 ~~state under this chapter. When any reports required have not been filed, or may be insufficient~~
30 ~~to furnish all the information required by the commissioner, the commissioner shall institute, in~~
31 ~~the name of the state of North Dakota upon relation of the commissioner, any necessary action~~

~~or proceedings in the courts having jurisdiction, to enjoin such person from continuing operations until such reports have been filed as required, and in all proper cases, injunction must issue without bond from the state of North Dakota. Upon showing that the state is in danger of losing its claims or the property is being mismanaged, dissipated, or concealed, a receiver must be appointed at the suit of the state.~~

~~— **Penalty.**~~

~~— Any person intentionally violating this chapter is guilty of a class A misdemeanor.~~

~~— **Deposit of revenue.**~~

~~— All money collected and received under this chapter must be deposited in the general fund in the state treasury.~~

~~— **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2013.~~

SECTION 1. Chapter 61-41 of the North Dakota Century Code is created and enacted as follows:

61-41-01. Definitions.

For purposes of this chapter:

1. "Fresh water" means fresh water drawn from an underground or surface source in this state under an industrial use water permit, whether treated or untreated, and dispensed to an oil and gas industry user.

2. "Oil and gas industry user" means an enterprise engaged in exploration, drilling, or production of oil and gas, and includes businesses that transport water for use in such an enterprise.

61-41-02. Oil and gas industry fresh water user fee.

A fee of twenty cents per one hundred gallons [378.54 liters] is imposed on fresh water dispensed to an oil and gas industry user at a water depot or water-dispensing point in this state. The operator of a water depot or water-dispensing point in this state which dispenses fresh water to an oil and gas industry user shall maintain water-metering devices in compliance with rules adopted by the state water commission

61-41-03. Fee collection and reporting.

1 The operator of a water depot or water-dispensing point in this state which dispenses fresh
2 water to an oil and gas industry user shall collect and remit the fee imposed by this chapter to
3 the state water commission under rules adopted by the state water commission.

4 **61-41-04. Deposit of revenue.**

5 The state water commission shall transmit fees collected under this chapter to the state
6 treasurer, who shall deposit the fees in the oil and gas impact grant fund.

7 **61-41-05. Administration.**

8 The provisions of chapter 57-39.2, pertaining to the administration of the sales tax, including
9 reporting, filing of returns, penalties, liens, rulemaking authority, and any other provisions not in
10 conflict with the provisions of this chapter, govern the administration, with the exception that the
11 state water commission shall exercise those powers under this chapter.

12 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective July 1, 2013.