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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

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

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

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

(3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner

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

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

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

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

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

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

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

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

~~d.~~f. The industrial commission shall adopt rules relating to this exemption ~~that~~which must include procedures for determining incremental production as defined in subdivision ~~c~~e.

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