

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2419

2007 SENATE NATURAL RESOURCES

SB 2419

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

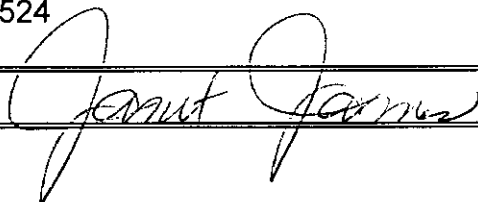
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 23, 2007

Recorder Job Number: # 5524

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the hearing on SB 2419 relating to agreements with Indian tribes to share revenue from state revenue from state taxes on mineral production from Indian reservations.

All members of the committee were present.

**Senator Robert Stenehjem** of District 30 prime sponsor of SB 2419 introduced the bill stating the intent and purpose of introducing this as a delayed bill came an idea as an amendment to an Appropriations bill. He felt it was not fair to have the Senate have a hearing on an issue that is this important without having the house be involved. He apologized for the lateness in the session but this bill will get due diligence from the committee. He further suggested amending the bill so that there is a sunset clause on the bill. If no agreements are reached or compacts are signed, then it would sunset, so that grandfathering will not have to be considered.

**Senator John Warner** of District 4 testified in support of SB 2419 (see attachment #1).

**Representative Dawn Charging** of District 4 testified in support of SB 2419 thanking the committee for allowing the opportunity for the delayed bill. She recognized Chairman Marcus Wells Jr. for his leadership role in bringing this to the legislative body. She further asked

considerations of those not familiar with the legislative process and that the committee does not get too tied up the agreement.

**Representative Jim Kasper** of District 46 testified in support of SB 2419 stating he also will agree with the amendments and as a great positive step forward will be well received by the house.

**Representative Dave Drovdal** of District 39 testified in support of SB 2419 stating he is excited about this bill because of the potential for job opportunities for both tribal and non-tribal alike.

There has not been the exploration as there should be. He does not have amendments because he knows the committee will handle this right.

**Steve Kelly**, attorney representing the Three Affiliated Tribes (TAT) testified in support of SB 2419 stating the tribe has been working on oil and mineral development for the past three years having conversations with the industry regarding regulations and tax structure in the reservation. This bill is a result of those discussions. He began by presenting history of the reservation and the laws. A case decided in the 1980's held that an operator that produces oil on the reservation can be taxed by the state. It causes a dilemma for tribes as the operators are then taxed by the state and the tribe causing a dual taxation problem. The tribe has a 5% tax and the state has an 11 ½ % tax therefore the total tax for oil production would be 16 ½ % on the reservation, therefore why would any industry drill oil wells on the reservation at that rate. The propose of the bill is to come to an agreement on what the taxes would be for oil production on the reservation. Therefore companies would have a certainty and a comfort level to develop on the reservation. The state and the tribe will get more tax revenue. Alotees who own individuals who own trust land and the fee land owners will all benefit. 1 million acres of land on the reservation includes 300,000 acres owned by the alottes, 300,000 fee land

owners. In 1997 it was changed that only 51% consent from the allotted lands owners is required for approval of production. Counties benefit from the state's 5% gross production tax and the 6% oil extraction tax and the reservation has a 5 year exemption from that tax. SB 2419 will allow the tribe to negotiate with the state for up to 50 % of the state taxes and feel very good about that and will not take anything less. The bill allows negotiations to occur. He continued to explain each section of the bill as he sees it. Section 1 removes the exemption if there is an agreement negotiated and the tribe would resend their tax and just collect the state tax. Section 2 gives the governor the authority to negotiate with the tribe in consultation with the tax commissioner including some restriction so that all are on equal footing. He suggested amendments (Section 3 provides a continuing appropriation to pay the tribe through the tax fund.

**Senator Lyson** stated that the SB 2419 is nothing more than the legislature of North Dakota giving the governor the right to negotiate with the tribes and the perimeters.

**Steve Kelly** confirmed that and further stated this is an opt in provision. TAT is the only tribe with substantial oil potential in the state and this is intended for only them.

**Senator Lyson** further stated the bill gives the governor the authority to negotiate with TAT.

**Steve Kelly** presented amendments to SB 2419 (see attachment #2).

**Senator Lyson** stated he read the bill for the first time the day before and does not think there is a problem with amendments but are the perimeters wide enough for negotiations.

**Steve Kelly** does not really care who does the negotiations but the tribe just want to get this going.

**Senator Ben Tollefson** asked if BIA would be involved in the negotiations.

**Steve Kelly** answered that the BIA regulates the surface on the reservation and the BLM regulates everything down hole by federal law but neither would be involved in the negotiations.

**Senator Joel Heitkamp** asked if putting the 50% lock in, will that take away one the tribe's tools to attract the industry to develop the oil on the reservation. Because what the state has is locked in. You have some play here as you are negotiating but by locking it in are we tying your hand as to what is might take to get it started.

**Steve Kelly** answered no because what the tribe would be giving up is the tax and an agreement would be in effect as long as the tribe ascended and did not impose its own tax. We would be giving up our right to tax in the agreement.

**Senator Constance Triplett** inquired that he has been referencing the existing state law of 5% tax and 6 ½ % tax and what if the state changes the formula after the negotiations have taken place.

**Steve Kelly** answered he wanted something in the bill that talked about flat tax on the reservation but did not want it to get to complicated. They will keep track of legislation and will ask for an exemption if that occurs.

**Marcus Wells Jar**, Chairman of the Three Affiliated Tribes testified in support of SB 2419 stating he started with the legislature through the governor's office working on this issue and taxes. He further stated they are willing to do whatever it takes to iron out the wrinkles and get this opportunity to happen. He wants to work together just as with other issues and this bill is another opportunity to do so.

**Senator Herbert Urlacher** stated that several years ago a bill was introduced to require signature requirements be lowered to 51% from 100%. What stopped the develop was the high demand for a high rate of royalty and will that be a problem?

**Marcus Wells Jr.** answered the standard rate is uniform and acceptable,

**Daniel Rouse** legal council to the North Dakota Office of the State Tax Commissioner testified on the office and the commissioner in support of SB 2419. He stated that at the end of the day or when the agreement has been reached it is this office that will be the agency that administers it, therefore they wanted some voice and influence over it. The bill will help the industry, other state agencies, and tribal officials and are very close to an agreement, but needed this means to allow the governor in consultation with the tax department and other officials to get the ball rolling. Gas and oil exploration will occur and this will get it going. Right now everyone is getting 100 % or nothing and all can work together so all benefit. He referred to Steve Kelly's amendment and the taxation rules need to be decided by the legislature. He also presented amendments to the committee (see attachment #3).

**Senator Lyson** asked if he and Mr. Kelly could work together and combine the amendments to the satisfaction of all and then report back to the committee.

**Senator Heitkamp** asked if he had a chance to review Mr. Kelly's and if he has a problem with them.

**Daniel Rouse** responded that perhaps the amendments might be restrictive for the governor's office but will do as the chairman instructed.

**Senator Heitkamp** asked if the amendments take away the question if the tribes will get 50% and the only one that stands to lose less than 50% is the tribe.

**Dan Rouse** answered that it might turn out that way.

**Senator Lyson** again asked the two men to work together on the amendments.

**Steve Kelly** stated he suggested that the tribe's share of the revenue would come out of the oil extraction tax and if that is possible – why or why not.

**Daniel Rouse** responded that they are looking for as much simplicity in the administration as possible and there are two chapters in the century code that sets a good frame work to use for off reservation production activity. We would like to apply those same rules and laws to the on reservation activity. The amendments suggest deviating from that and treating reservation oil activity differently than off reservation activity. That might all be part of the negotiations.

Discussion was held as to time limitations and future scheduling of SB 2419.

**Ron Krebsbach**, McLean County Commissioner testified they are in support of SB 2419.

**Senator Heitkamp** asked if they support the bill with the amendments to keep the counties whole.

**Ron Krebsbach** agreed.

**Senator Heitkamp** stated that if he read the present bill the counties are not whole.

**Senator Lyson** confirmed they were under a different law.

**Lynn Helms**, North Dakota Industrial Commission Department of Mineral Resources testified in support of SB 2419 presenting maps and graphs (see attachment # 4 -7).

Senator Lyson closed this part of the hearing on SB 2419 until a later time.



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

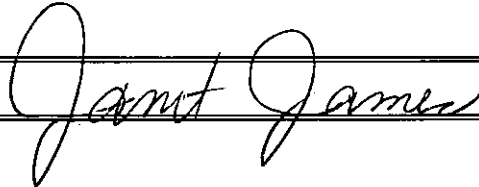
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 26, 2007

Recorder Job Number: # 5565

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the hearing on SB 2419 relating to agreements with Indian tribes to share revenue from state taxes on mineral production from Indian reservations.

All members of the committee were present.

**Dan Rouse** of the North Dakota Tax Department told the committee that at their request he as a representative of the tax department and Steve Kelly, attorney representing the Three Affiliated Tribes, as well as other members of the tribal council including Chairman Marcus Wells Jr. and Representative Dawn Charging met to discuss SB 2419. The simple matter is that they reached an agreement as to the scope of the amendments that they offered.

**Representative Charging** will withdraw her amendments introduced by Steve Kelly and then represent amendments that all can deal with.

**Senator Stanley Lyson**: what about the amendments you presented.

**Dan Rouse**: yes.

**Representative Dawn Charging** of District 4 agreed that as Dan Rouse suggested she would like to replace the amendments of last week with amendments .0103 (see attachment #1).

**Senator Lyson:** there is a positive Fiscal Note, but is not available until a couple days and will be included at the hearing on the house sub-committee.

**Senator Constance Triplett:** are you okay with the amendments from the tax commissioner # 0102 tx and would like to adopt both sets of amendments.

**Representative Charging:** yes both.0102tx and .0103.

**Senator Ben Tollefson:** you removed the word exclusive.

**Steve Kelly:** the reason for the change because the state will have whatever authority it needs to enforce the tax collections, but BLM has some authority as well as well as the tribe retaining some authority.

**Senator Ben Tollefson:** it bothers me. The BIA and other organizations you have referred to, will not be directly or indirectly involved with the negotiations.

**Steve Kelly:** they will not be involved with any negotiations, but once the agreement is made they will sign off. The BLM will have a role as they have the responsibility to attend hearings and with the tribe and how that works remains to be seen.

**Senator Lyson:** so you and the tax department have worked out the word exclusive and both are in agreement.

**Steve Kelly:** agreed.

**Ryan Bernstein:** council to the Governor stated the governor is in support of the concept and agrees with this agreement thinking it is a good economic development tool for both the reservation and the state of North Dakota. A lot of work has already gone into this and is in full agreement.

**Senator Ben Tollefson:** again, why was exclusive there to begin with and no longer necessary?

**Ryan Bernstein:** this is something the tax department and the tribe have been working on and they have agreed. We have not been involved.

**Dan Rouse:** the word exclusive was in the first draft because when a state agency is involved is commonly used. Based upon negotiation the ultimate agreement may have other entities involved in collection. There might be a shared responsibility and collection if there needs to be a bad dept collection.

**Senator Ben Tollefson:** so the removal of the word exclusive does not take anything away from the jurisdiction of the state over this agreement.

**Dan Rouse:** that is correct.

**Senator Lyson:** again to remind the committee, this is a bill to give the governor the authority to negotiate with the tribe and we are trying to set the perimeters of the debate.

**Steve Kelly:** taking out exclusive does not diminish the jurisdiction of the state, but to collect taxes and things like that, the tribes, BLM, and BIA might be involved as well. That is why it is stricken because we do not know what all will be entailed if there is a collection problem.

**Bob Harms,** President of the Northern Alliance of Independent Producers testified in support of SB 2419 (see attachment #2).

**Senator Lyson:** do you want to narrow the perimeters of the governor's authority to negotiate for the state. Are you trying to warn the committee of possible problems?

**Bob Harms:** yes, to encourage the committee to set up some process and safeguards that serve everyone well the tribal chairman, governor and the state. By including some procedural safeguards, so that legislative leadership is consulted so that by the time negotiations are completed, the legislative branch would be advised or involved of how the negotiations are unfolding. That way when the negotiations are completed, the governor can approach the

legislative branch for concurrence. The tribe can also go back to their political entities for approval.

**Senator Herbert Urlacher:** so you are suggesting to not just leave it up to the governor and put it into binding language within the bill.

**Bob Harms:** that is the way it is set out in Chapter 54.58, whether the legislature is in session or not. He further suggested to add or substitute the attorney general into the agreement process as the state's attorney; he could provide additional resources that would be helpful in moving the agreement forward.

**Tom Disselhorst,** attorney from Bismarck, North Dakota testified on SB 2419 and has worked with the Three Affiliated Tribes. He referred to the royalty rates and negotiations. Regulatory agencies difficulties will still exist within the negotiations. This is a major step for the tribes and state. We already have statute that regulates agreements between the tribes and political subdivisions and there is nothing in this bill that exempts that. The parties could agree to have safeguards such as public hearings if they wish. One other issue is the environment and the oil industry, the agencies can all be involved to protect surface owners and not violate any laws.

**Senator Lyson:** is there anything in the bill and the amendments that block the negotiations between the tribes and the governor.

**Tom Disselhorst:** not in the bill and it will all be part of the negotiations.

**Senator Triplett:** elaborate on the suggestion to include the attorney general. If the tax department is already involved, does that not mean the AG's office is already involved?

**Dan Souse:** as a special assistant to the attorney general and my designation is from him. I do not work for them, but have a direct responsibility to keep them informed of matters that apply and affect the entire state.

**Senator Lyson:** what are the boogie man her for the state?

**Dan Rouse:** the biggest boogie man is that this will take some time. There are a lot of people who are interested in the outcome. He will not speak for the governor who would lead the negotiations for the state side, I know him well enough to know he will want to make sure everyone is heard. And that will take some time, we want to move it forward, but we want to do this right.

**Senator Urlacher:** is there a time schedule?

**Dan Rouse:** everyone is anxious and this is an ambitious - as soon as possible.

**Senator Ben Tollefson:** remembers the signing of the gaming compact with the tribes and later becoming an issue before the legislature. Is this a similar situation and should go through the legislature for final consideration.

**Senator Lyson:** the gaming situation was different due to the federal involvement. Discussion was held as to the federal, state legislature and the governor's priority in this situation. This is not uncharted territory as this has been done before where existing law has given state agencies and the governor's office the ability to enter into agreements with the tribal governments.

**Senator Lyson** asked for opposing testimony and hearing none asked for testimony in a neutral position.

**Lynn Helms,** representing the North Dakota Industrial Commission Department of Mineral Resources stated he hoped the committee would place as few as preconditions as possible on this negotiation process. Last week people were trying to stake out their slice of the pie – and there is no pie. The counties, the state, nor the tribes are going to invest the \$4,7 billion dollars needed for this development, but it is the industry that will. This bill will set the environment for them to do this. You can't carve up the pie until there is one.

**Senator Triplett:** have you seen both sets of amendments?

**Lynn Helms:** he has not.

**Vicky Steiner** representing the North Dakota Oil Counties testified stating in concept the counties are supportive of the bill. There has been discussion regarding keeping the counties whole and if that would hinder the process. The bottom line is they would like to see this development move forward and are willing to work with the group.

**Steve Kelly:** in listening to the testimony, some have lost sight of intent of the bill. It is not to just promote oil development on the reservation - it is to provide incentives – but it is for industry. By providing incentives the state and the tribe both win. Everyone should understand this is novel and this special situation on Fort Berthold makes this workable.

**Senator Lyson** closed the hearing on SB 2419.

**Senator Constance Triplett** made a motion to adopt amendments 70883.0103 and 70883.0102tx.

**Senator Ben Tollefson** second the motion.

Roll call vote #1 for adoption of the amendments was taken by voice vote indicating 7 Yeas, 0 Nays and 0 absent or not voting.

**Senator Constance Triplett** made a motion for a Do Pass as Amended of SB 2419.

**Senator Herbert Urlacher** second the motion.

Roll call vote #2 for a Do Pass as Amended of SB 2419 was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

**Senator Stanley Lyson** will carry SB 2419.

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/24/2007

Amendment to: Reengrossed  
SB 2419

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2419 Second Engrossment with Conference Committee Amendments authorizes the Governor to enter into agreements with the Three Affiliated Tribes to administer and share oil tax revenue from wells within the boundaries of the Fort Berthold Reservation.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of SB 2419 Second Engrossment with Conference Committee Amendments would depend on any agreements being entered into between the Three Affiliated Tribes and the state, and the level of oil production occurring on tribal lands covered by such an agreement. Because of these unknowns, it is not possible to estimate the fiscal impact of SB 2419 Second Engrossment with Conference Committee Amendments.

In FY 2006, there was approximately \$671,000 in oil and gas gross production and oil extraction taxes collected from oil production on the Fort Berthold Reservation. This is the only existing production that could be covered by an agreement. Any taxes on new production cannot be estimated.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	04/24/2007



**FISCAL NOTE**  
**Requested by Legislative Council**  
04/12/2007

Amendment to: Reengrossed  
SB 2419

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2419 Second Engrossment with House Amendments authorizes the Governor to enter into agreements with the Three Affiliated Tribes to administer and share oil tax revenue from wells within the boundaries of the Fort Berthold Reservation.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of SB 2419 Second Engrossment with House Amendments would depend on any agreements being entered into between the Three Affiliated Tribes and the state, and the level of oil production occurring on tribal lands covered by such an agreement. Because of these unknowns, it is not possible to estimate the fiscal impact of SB 2419 Second Engrossment with House Amendments.

In FY 2006, there was approximately \$671,000 in oil and gas gross production and oil extraction taxes collected from oil production on the Fort Berthold Reservation. This is the only existing production that could be covered by an agreement. Any taxes on new production cannot be estimated.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	04/16/2007

# FISCAL NOTE

Requested by Legislative Council

03/28/2007

Amendment to: SB 2419

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engr. SB 2419 authorizes the Governor to enter into agreements with the Three Affiliated Tribes to administer and share oil tax revenue from wells within the boundaries of the Fort Berthold Reservation.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of Engr. SB 2419 would depend on any agreements being entered into between the Three Affiliated Tribes and the state, and the level of oil production occurring on tribal lands covered by such an agreement. Because of these unknowns, it is not possible to estimate the fiscal impact of Engr. SB 2419.

In FY 2006, there was approximately \$671,000 in oil and gas gross production and oil extraction taxes collected from oil production on the Fort Berthold Reservation. This is the only existing production that could be covered by an agreement. Any taxes on new production cannot be estimated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/28/2007

# FISCAL NOTE

Requested by Legislative Council  
03/23/2007

Bill/Resolution No.: SB 2419

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2419 authorizes the Governor to enter into agreements with Indian tribes to administer and share oil tax revenue from wells on tribal lands.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of SB 2419 would depend on any agreements being entered into between the Indian tribes and the state, and the level of oil production occurring on tribal lands covered by such an agreement. Because of these unknowns, it is not possible to estimate the fiscal impact of SB 2419.

In FY 2006, there was approximately \$671,000 in oil and gas gross production and oil extraction taxes collected from oil production on the Fort Berthold Reservation. This is the only existing production that could be covered by an agreement. Any taxes on new production cannot be estimated.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
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Phone Number: 328-3402

Date Prepared: 03/26/2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2419

Page 2, line 3, replace "those" with "oil and gas gross production taxes and oil extraction taxes" and after the second "to" insert "production from"

Page 2, line 4, after "the" insert "exterior"

Page 2, line 5, replace "No more than fifty" with "Fifty", after the first "the" insert "total of", replace "may" with "collected under chapters 57-51 and 57-51.1 must", and after "tribe" insert "but the entire allocation to the tribe must be payable from tax collections under chapter 57-51.1"

Page 2, line 6, replace "An administrative fee to" with "To"

Page 2, line 7, after "agreement" insert ", one percent"

Page 2, line 13, after "57-51.1" insert ", except with regard to tax liens and delinquent taxes, which are subject to agreement. The tax exemptions or tax rate reductions under chapters 57-51 and 57-51.1 do not apply within the boundaries of an Indian reservation and only those tax exemptions or rate reductions granted by the tribe apply to oil or gas taxes from production within the boundaries of the Indian reservation"

Renumber accordingly

70883.0103  
Title.

Prepared by the Legislative Council staff for  
Representative Charging  
March 26, 2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2419

Page 1, line 23, replace "Indian tribes" with "the Three Affiliated Tribes"

Page 1, line 24, replace "an Indian reservation" with "the Fort Berthold Reservation"

Page 2, line 3, replace "those" with "oil and gas gross production taxes and oil extraction taxes"  
and after the second "to" insert "production from"

Page 2, line 4, after "the" insert "exterior" and replace "an Indian reservation" with "the Fort Berthold Reservation"

Page 2, line 12, remove "exclusive"

Renumber accordingly

March 23, 2007

Attachment # 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2419

Page 1, line 18, replace "covered by" with "subject to"

Page 1, line 23, after "revenue" insert "levied and collected"

Page 2, line 1, replace "Agreements" with "An agreement" and replace "are" with "is"

Page 2, line 5, replace "taxes" with "tax revenue calculated for apportionment to the state general fund"

Page 2, line 6, replace "state" with "tax commissioner" and remove "its"

Page 2, line 9, replace "state returns" with "tax commissioner refunds taxes" and remove "taxes paid"

Page 2, line 10, replace "state" with "tax commissioner" and replace "recoup" with "recover"

Page 2, line 12, replace "state" with "tax commissioner"

Page 2, line 13, after "57-51.1" insert "as applied to wells subject to any agreement authorized by this chapter"

Page 2, line 17, after "in" insert "an" and replace "agreements" with "agreement"

Page 2, line 19, replace "dealing with" with "relating to"

Page 2, line 20, replace "Agreements" with "An agreement" and replace "are" with "is"

Page 2, line 21, remove "those in"

Page 2, line 22, after "fund" insert "an agreement"

Page 2, line 23, remove "agreements"

Renumber accordingly



March 26, 2007

*JB*  
3-27-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2419

Page 1, line 18, replace "covered by" with "subject to"

Page 1, line 23, replace "Indian tribes" with "the Three Affiliated Tribes" and after "revenue" insert "levied and collected"

Page 1, line 24, replace "an Indian reservation" with "the Fort Berthold Reservation"

Page 2, line 1, replace "Agreements" with "An agreement" and replace "are" with "is"

Page 2, line 3, replace "those" with "oil and gas gross production taxes and oil extraction taxes" and after the second "to" insert "production from"

Page 2, line 4, after "the" insert "exterior" and replace "an Indian reservation" with "the Fort Berthold Reservation"

Page 2, line 5, replace "taxes" with "tax revenue calculated for apportionment to the state general fund"

Page 2, line 6, replace "state" with "tax commissioner" and remove "its"

Page 2, line 9, replace "state returns" with "tax commissioner refunds taxes" and remove "taxes paid"

Page 2, line 10, replace "state" with "tax commissioner" and replace "recoup" with "recover"

Page 2, line 12, replace "state" with "tax commissioner" and remove "exclusive"

Page 2, line 13, after "57-51.1" insert "as applied to wells subject to any agreement authorized by this chapter"

Page 2, line 17, replace "agreements" with "an agreement"

Page 2, line 19, replace "dealing with" with "relating to"

Page 2, line 20, replace "Agreements" with "An agreement" and replace "are" with "is"

Page 2, line 21, remove "those in"

Page 2, line 22, after "fund" insert "an agreement"

Page 2, line 23, remove "agreements"

Renumber accordingly

Date: 3-26-07

Roll Call Vote #: \_\_\_\_\_

## 2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

**BILL/RESOLUTION NO.** 2419

**Senate   Natural Resources**

## Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

### Action Taken

Action Taken Adopt Internal 70882.01tx, 70883.0103

**Motion Made By**

Motion Made By Tringali Seconded By Tollefson

**Seconded By**[illegible]

**Total**      **(Yes)** \_\_\_\_\_ **No** \_\_\_\_\_

**Absent**

## Floor Assignment

**If the vote is on an amendment, briefly indicate intent:**

Date: 3-26

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2419

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Triplett Seconded By Malachuk

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman	✓		Sen. Joel Heitkamp	✓	
Sen. Ben Tollefson, ViceChairman	✓		Sen. Jim Pomeroy	✓	
Sen. Layton Freborg	✓		Sen. Constance Triplett	✓	
Sen. Herbert Urlacher	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Lyson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2419: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2419 was placed on the Sixth order on the calendar.

Page 1, line 18, replace "covered by" with "subject to"

Page 1, line 23, replace "Indian tribes" with "the Three Affiliated Tribes" and after "revenue" insert "levied and collected"

Page 1, line 24, replace "an Indian reservation" with "the Fort Berthold Reservation"

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Renumber accordingly

2007 HOUSE NATURAL RESOURCES

SB 2419

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

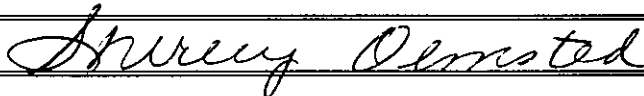
House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2007

Recorder Job Number: 5659

Committee Clerk Signature



Minutes:

**Chairman Porter** opened the hearing on SB 2419 and asked the clerk to take the roll.

**Senator Stenehjem** came forward as a sponsor of SB 2419. See written testimony marked as Item #1. He thinks this is a very important bill and wants the House Natural Resources Committee to do what needs to be done with this bill to get it passed.

**Chairman Porter** asked if there were any questions for Senator Stenehjem.

**Representative Hanson** asked about line 3 and 5 on page 1 of the bill and if Indian reservations included all reservations and all tribes in North Dakota or does it just include the Three Affiliated Tribes.

**Senator Stenehjem** said he would like to defer that question to the experts that will follow his testimony.

**Representative Rick Berg** came forward in support of SB 2419. He said obviously in the bigger sense this bill is trying to promote more economic activity on the reservations. From his perspective he is very supportive of the intent of this legislation. He also thinks the committee needs to look very closely at the agreements that are in place and incentives that are in place and understand the distinction between fee land and tribal land on the reservation and not take away incentives that we have in place on the fee land and at the same time we are making a

smoother process for partnerships to be in place between the drilling companies and the mineral owners. He encouraged the committee to work through this bill. This is not an urgent thing that has to be acted on today, but get the testimony and get the input and if there are any questions that need to be resolved, there will be plenty of time to address those.

**Mr. Steve Kelly**, representing the Three Affiliated Tribe, came forward in support of SB 2419.

He wanted to give some background on this. In 1980 there was a Supreme Court decision that held that the state could collect oil and gas taxes from production on an Indian Reservation. Indian tribes were not happy with that decision because they imposed their own taxes and so it gave rise to a dual taxation problem. Some tribes have addressed that by doing a couple of things. Down in southern Ute they have produced everything because the state cannot sue the tribe as the state does not get any of those taxes. Other tribes have working interests as part of their agreements so they are not taxes by the state. Two tribes in Utah have reached agreements with the state and there are actual laws in place that provide for them to collect taxes and then there is the tax credit down in New Mexico. One of things that North Dakota has done in 1997 there was a company by the name of Lanko that was trying to produce on the Fort Berthold Reservation and a man by the name of Jim Powers came in and lobbied for an exemption and that is the exemption that you see under Section 1 in SB 2419. That exemption provides an exemption to the state's oil extraction tax for all production on the reservation. You see that you have a, b and c and a really covers everything so the well is located within the boundaries of an Indian reservation. B says the well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian and c says the well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997. Now B speaks to all trust land. All trust land is land owned by the federal government held in trust for either an individual or for the tribe which

is tribal trust land. You have fee land within the reservation. An individual Indian can own fee land and a non-Indian can own fee land within the reservation. All of that land makes up the Fort Berthold Reservation. There will be three types of lands. There is fee land owned by either an individual Indian or a non-Indian; a trust land owned by an individual Indian which is called an allotment; and then trust land owned by the Tribe which is tribal trust land. This exemption is 6-1/2% which applies for five years from production on any Indian reservation which was geared towards the Fort Berthold Indian Reservation applies to all production on the reservation. I am not going to go into the numbers as to how much production there is on the reservation other than to say around the reservation there is approximately 400 wells. On the Fort Berthold Reservation there are about 50 stripper wells. There is a reason for that. There is a reason for the lack of production. Up until 1997 the BIA regulations required that an oil company had to get 100% approval to drill on trust land. Tribal land is interspersed with a lot of land so even if the tribe agreed to allow the company to drill on the land, often times they had to go and get 100% approval from the owners and that was pretty hard to do and a lot of times they couldn't do it. That law got changed in 1997 by Congress and now it only requires 51% approval by the landowners with mineral interests. It is a lot easier now to get consent to drill on land than it was before 1997. Around that time the price of oil was way down but we have seen a shift in the last three years so there has been some interest. Approximately 3 years ago we had an oil company by the name of Black Rock Resources approach a tribe and we entered into our first development mineral act agreement. There has been other interest shown by other oil companies such as Marathon, Petroleum Development Corporation, and Kodiak and they actually had their first sale not too long ago. They put up 100,000 acres for sale and the oil companies came and leased up about 10,000 acres so hopefully in the future there will be more interest. One of the problems that we have is that we have a dual tax. The



tribes has always had a gross production tax and 2003 that tax was amended to 5% so right now on the reservation the taxes that apply are the state gross production tax which is 5%, the oil extraction tax which is 6-1/2% and the tribes 5% total. The total tax on the reservation after five years is 16-1/2%. Now that 6-1/2% five year exemption only applies to wells drilled after 1997 and I believe that we only have one on trust land that has been drilled in the last twenty years. Most of our wells are over 20 years old. What ? (cannot hear) Petroleum really did was create a problem that the state and the tribes have to resolve if industry is going to come on and produce on the reservation. The hottest place right now is the Bakken Plain and that is what all the oil companies come to the reservation and want to explore the Bakken Formation. The tribe has many other formations that have not been properly developed that have been developed off the reservation so we think that if the state and the tribe enter into an agreement so that there is one tax and there is a division of those taxes between the tribe and the state, because after all both the tribe and state feel impacts from oil activity on the reservation so if we can get one tax and agree to the division of those taxes we think that will be an incentive to industry to come on and product on the reservation which should benefit the state, the counties, the tribe and industry. I would like to go over the bill real quick. I want to try to address a question that was posed by Representative Solberg.

**Chairman Porter** said it was Representative Hanson.

**Mr. Kelly** said you are exactly correct. You caught an oversight here. On line 3 the bill was initially going to apply to all tribes but I think the only production in North Dakota right now is on Fort Berthold Reservation. It was suggested that this bill only apply to the Three Affiliated Tribes since the other tribes are not involved. On line 3 it should read instead of Indian Reservations, from the Fort Berthold Indian Reservation. On line 5 it should it should read "from wells on and striking Indian Reservations and put in the Fort Berthold Indian Reservation

and striking trust land and strike and land owned by an Indian tribe. Those would be my recommendations.

**Chairman Porter** the title does not become law so that really doesn't matter.

**Mr. Kelly** said he was just addressing the question.

**Chairman Porter** said the only thing that becomes law is what is after line 8. They will change the title appropriately. I am sure they just missed it when they were working on the amendments.

**Mr. Kelly** said on Section 1, as to the exemption, what has been added is the underlined portion beginning with "the exemption provided in this subsection is inapplicable to production from a well within the boundaries of an Indian reservation subject to an agreement entered under chapter 57-51.2. When we initially started this process the thought was that there would be a uniform tax with the state of North Dakota. Obviously now there is an exemption on the reservation which the Three Affiliated Tribes can live with. Whether or not this exemption stays in place does not matter to the tribe. If it does, great and if it doesn't that is fine too. You are probably going to hear about a suggest amendment to this language and the tribe has no objection to that suggested amendment. Under Section 2, it talks about authority to enter agreements. This simply gives the governor in consultation with the state tax commission, to enter into agreements with the Three Affiliated Tribes and then section 57-51.2-02 sets out the agreement requirements that are imposed upon the Governor and incidentally upon the Tribe as well. The first one talks about the fact that this agreement will only encompass gross production and oil extraction tax attributable to production of oil and gas on the reservation. Two says that no more than fifty percent of the tax revenue calculated for apportionment to the state general fund may be allocated to the tribe. Three says there will be an administrative fee that the state will charge in collecting the taxes and distributing to the tribe. The state has fuel

excise tax agreement and cigarette tax agreements with other tribes and there is normally a 1% administrative fee so in other words if the state collects one million dollars and distributes that to the tribes, the state will get ten thousand dollars which is one percent of the total amount collected. Four addresses situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to either recover from the tribe payments already made to it or to offset future distributions to the tribe. The tribe fully understands that and it is fine. Five says that the tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by the chapter. That is fine with the tribe as well. Six says the agreement must address the regulatory regime governing the oil and gas industry's on-reservation activities to provide the industry with an acceptable level of regulatory consistency and certainty. The tribe does not have a thorough set of laws regulating oil and gas production and I have talked to the council about this and I think what we are going to do this time is adopt the state law. For your information had entered into agreement in about 1986 I believe with the State Industrial Commission that allowed the tribe to come in and sit in on hearings and gave some regulatory to the Industrial Commission so we have already cooperated with the Industrial Commission as far as regulatory oversight on production on reservations and we really don't have much of a problem with that. 57-51.2-02 talks about statutory inconsistencies superseded and Section 3 is the continuing appropriation. The Tax Department can probably talk better about the need for that paragraph than I can. I believe that is in there so that the Tax Commissioner has authority to make distributions to the tribe for any amounts collected under the agreement. The effective date of this bill would be June 30, 2007. Members of the committee, I approached the council after visiting with industry and taking a look at the state laws and the tribe laws about approaching the Governor about

entering into an agreement. That is how this all got started. I did that about 2 months ago and I sat down with the Governor's attorney and the Attorney General and discussed the possibility of getting something done. I really do believe after talking to industry that this bill and an agreement will be beneficial to the state and the tribes and surrounding counties. We recommend a do pass on this bill.

**Representative Solberg** had a question regarding page 2, line 5 thru 7 regarding the wells located within the exterior boundaries of the Fort Berthold Reservation. Would you comment on the fee patent land that is located within the exterior boundaries of the Fort Berthold Reservation?

**Mr. Kelly** said there are approximately 350,000 acres of fee land within the reservation. The rest is about 650,000 acres. As many of you know, we have Lake Sakakawea goes all the way through the reservation. The tribe owns all the minerals under the lake which is approximately 156,000 acres and then of course you have the minerals under the river bed that is in dispute between the tribe and the state. The lotees own approximately 300,000 acres and the tribes have another 80,000 acres and there is about 350,000 acres of fee land. Most of those fee land acres are in what we call the northeast quadrant which includes Makoti, Plaza, and Parshall and then it comes all the way across to New Town. Those are the fee lands on the reservation.

**Representative Solberg** asked if these three lines include the fee patent land?

**Mr. Kelly** said yes it does.

**Chairman Porter** said currently if an individual owned fee land and owned the minerals to that fee land and drilled a well on that fee land within the exterior boundaries of the Fort Berthold Reservation, who would get the tax money.

**Mr. Kelly** said the state tax is at right now the tribe is not taxed right now. (Not sure if this is what he said.)

**Chairman Porter** said couldn't the tribe tax it right now.

**Mr. Kelly** said that is in question. There is no case on point. There is case law that indicates that we could not legally tax.

**Representative Keiser** said he went through it very quickly and there is an area that he is unsure about. Can you please tell me a little slower what the tribe is charging now on oil drilling within their area and what the state is charging? I know what the exemptions are but just what are the differences between the two.

**Mr. Kelly** said he apologized for talking so fast. That is a bad habit. The tribe charges a 5% gross production tax. They only applied that tax on the trust lands on the reservation and any production involving trust lands. The state right now imposes its gross production tax of 5% and the extraction tax of 6-1/2%. The tribe is free to tax what it wants to tax. It could raise it taxes to 10%. That really doesn't benefit anybody because 10% of nothing is still nothing. That is the situation right now. The total tax on production right now on the reservation is 16-1/2% excluding the exemption.

**Representative Keiser** asked if you are only charging 5% gross production, where is the rest coming from on the reservation? Did you see 16-1/2%? The state is charging 11-1/2% and the tribe is charging an additional 5%?

**Mr. Kelly** said yes.

**Chairman Porter** asked him to clarify the state then is allowed to charge their 11-1/2% for wells drilled on tribal land within the exterior boundaries of the Fort Berthold Reservation.

**Mr. Kelly** said that answer is yes under a Supreme Court decision.

**Representative Drovdal** said he knew that this was written quite loosely so that there can be negotiations between the tribe and the Governor. What do you see as the tribe's goal? Is the up to 50% before or after the political subdivisions get their share out of our production tax?

**Mr. Kelly** said he had no idea at this point. What I had originally suggested was that the idea that this exception was going to be out, the state's 11-1/2% would apply, and that the tribe and the state would split that tax. My thought was that the tribe's portion would come out of the oil extraction tax because the counties are paid out of the gross production tax, it wouldn't be touched but as legislation often is, things change and things are amended. There are companies that have bought up leases in the last couple of years on the reservation that did so because they wanted to take advantage of this tax exemption. They would like to see this tax exemption stay in place and the state and the tribe enters into an agreement that contemplates or takes into account the exemption. Right now, I don't what kind of agreement we will end up with if we are going to end up with any agreement. It is an opportunity that the parties can enter into an agreement that is mutually acceptable that benefits industry and both parties.

**Representative Drovdal** said he didn't know if Mr. Kelly was aware of it but they just passed a bill in the house an exemption for the Bakken Formations. How do you see that activity that we do in the House and Senate as far as incentives for oil companies, and do you have any feeling for how the tribe would want to deal with those agreements with the state of ND?

**Mr. Kelly** said when they agreed to a uniform tax, it ties the tribe's hands to a certain extent. How we will deal with that in an agreement remains to be seen. I did like the idea of having a flat tax on the reservation and then splitting that tax whatever it is. But there are other interests and I understand those interests. I think we can work around those interests. If the bill passes the way it is today, that is fine and if there are further amendments concerning the exemption, that is fine as well.

**Representative Meyer** asked if they had addressed the TERO (Tribal Employment Rights Office) tax on the fee patent land. Is that going to be affected by this legislation?

**Mr. Kelly** said that no, the TERO tax was not going to be affected by this legislation. Earlier this year a company by the name of Enron Golden Gas who is actually has leased up 50,000 on the northeast quadrant. They recognize that it is questionable whether or not our TERO Tax applies on the fee land but they don't want to fight about it so they said they were willing to pay our TERO tax because we need workers and services and we think your TERO tax is convoluted. We would like to offer to pay 1% of the total to drill a well which can be up to six million dollars. They came in and asked and the council listened and they agreed. We have amended our TERO laws so that for any company that comes in to drill there is a 1% cost drilling charge that is a one time charge that is assed and other oil companies have taken a look at it and they do not have a problem with it. This agreement will not cover the TERO tax. This is only the oil and gas extraction taxes.

**Representative Meyer** said then the way this bill is currently written, all of these prior negotiations would be invalid like Enron Oil and Gas for example. They have already entered into these agreements and if we pass this legislation, how are those prior agreements that they have already entered into in good faith, and now we are going to say that it doesn't count the way they were written now.

**Mr. Kelly** said they do not have an agreement for the Enron Oil and Gas or for any other oil company to pay the TERO tax. That is just law on the reservation. They still have to pay in addition to the TERO fee the oil extraction tax and the oil production tax. If they drill on trust land they would be subject to a 5% gross production tax by the tribe and then on the state taxes as well and also the tribes TERO.

**Representative Meyer** said in talking about the fee patent land that they have entered into negotiations with, this would affect that. That would affect their agreement unless they are grandfathered in somehow wouldn't it?

**Mr. Kelly** said no it would not.

**Representative Meyer** had another question on page 2. When you are talking about allocating this back to the tribe, are you talking about individual enrolled members or to the tribal council when you talk about the 50% of the taxes collected.

**Mr. Kelly** said there would be an agreement between the state and the tribe and the taxes would be allocated back to the tribe which they would use for governmental purposes.

**Representative Meyer** so no individual royalty owner would be compensated. Would it all go back to your tribal government?

**Mr. Kelly** said that was correct.

**Representative Keiser** said going back to page 2 I think I now understand the taxes on page 1. It says on subsection 1 on line 5 and in subsection 2 line 8 that the only taxes and no more than 50% of the tax, what exact taxes are we talking about?

**Mr. Kelly** asked if they talking about splitting the tribe's taxes too?

**Representative Keiser** said he wanted to know what taxes they were talking about.

**Mr. Kelly** said what was originally contemplated here was that they would only apply the state tax on the reservation and the tribe would not impose its tax. There would be one tax and we would split that tax. Now there are those that want to reserve the five year exemption on the oil extraction tax. The tribe does not have a problem with that except that instead of splitting the 11-1/2% tax now you are down to a five percent tax if the exemption applies on the reservation. The pie gets a whole lot smaller and I have to go back to the tribal council and explain to them that I got an agreement and the only taxes that you will be able to get off the



reservation the first five years is one half of 5% and they are going to say we are already taxed 5% on two thirds of the reservation. Why should we do that? There are reasons why they might want to do that but it is a tougher sell. One of the things that we might be able to suggest and deal with the governor on is that to keep the exemption in, the tribe gets the tax up to whatever the states tax is so there is uniformity, at least on the trust land portion of the reservation and how we split that would be subject to part of the negotiations. This way there is flexibility. To be honest, to keep the exemption in we would have the flexibility to address everyone's needs. That is really why I don't have a problem with it. The only point I would like to make is that was not what I had envisioned originally.

**Chairman Porter** said in that scenario I guess the other missing link out of that is that the fee land that you currently cannot tax because it is owned by non tribe members would not be under that tax and that would be split with the Three Affiliated Tribe and they don't collect that now or are entitled to that now.

**Mr. Kelly** said there has to be give and take here.

**Chairman Porter** said he understood that but that was not part of your explanation. You are also gaining on those other wells that you currently would not be receiving the tax at all on.

**Mr. Kelly** said that is exactly right and that would be a point that I would make to the council. They would be receiving a 2-1/2% off reservation that you are not getting on reservation so that is a selling point. The 2-1/2% would make up for the five percent they are currently getting. Thank you for clarifying that.

**Mr. Ryan Bernstein**, legal council for the Governor's office came forward in concept of this proposed legislation. The Governor sees this as a good economic development tool for both the state and the reservation. This has to be an agreement where both parties come out in this. Right now there is no economic development as far as oil drilling on the reservation so if

there is some tax agreement structure that we could work out that benefits the oil industry which will in turn benefit the reservation and the state of North Dakota. As it has been pointed out before the proportion whether or not it is half or whatever we negotiation, something is still better than what is going on right now which is nothing. There are still some discussions that need to go on with this. As I pointed out, this is a two step process here with the legislature. You guys have your ability to put your fingerprint on this, especially under the agreement requirements but there is also some discussion that needs to happen in Section 1 on the 60 month exemption and if it will fly in the future or whether it will not. I think the committee is well versed on that at this point and will make a good decision with that. To answer some of the questions that I have heard, the 50% is a minimum of what is going into the general fund so my understanding from the Tax Department is that political subdivisions take that first and then it is 50% after that which is how it is working right now. With that, I would be happy to answer any questions from the committee.

**Representative Keiser** said these are important issues and we got into a compact on gambling and then the state had to pay for an awful lot of improvements on a highway. What are the implications for roads in the affected areas off the reservation with this development and what are the costs associated with that?

**Mr. Bernstein** said that is a good question. First off I want to go to the point that this is a two part negotiation one with the legislature and the second is with the governor and those concerns would have to be raised at both points. That goes to some of the discussions about taxes that are imposed to the counties as to what they will get and try to cover their costs much like it is now with oil producing counties off the reservations. They are able to get some of the tax monies to help build into the roads and infrastructures that will cover the activity that will go

on there. As it is written right now that would be taken right off the top and then the money would be split after that.

**Representative Keiser** as we go down to the exemption and then we are splitting the money, how much is going to be left for them that is adequate in the governor's perspective.

**Mr. Bernstein** said that has not been decided yet on the exemption. I think that is something that the committee needs to look at very carefully.

**Representative Drovdal** said in the discussion about the five year exemption, are you suggesting that will be part of the negotiations between the governor and the tribe or is that something we should list in here as our intent that if the agreement is reached that five year exemption is void.

**Mr. Bernstein** said this has a point of contention for a while. I guess at this point I would enter into the conversations with the committee and the tribe on whether or not you would want to handle it that way. My concept would probably be to deal with it at the governor's level and make this an optional thing. You guys obviously have the power to deal with that here and if you are more comfortable dealing with that here, then that is fine.

**Representative Drovdal** said you did touch on this too, of course, if we are going to have an opinion this is where we have the chance. This seems to supersede the distribution on the second page under 57-51.2-03. It seems to supersede the distribution formula that we have on our production tax. You had mentioned that you thought the governor was going to hold the counties harmless in this distribution so they would still receive their percentages. Is this a subject that should be in the negotiations?

**Mr. Bernstein** said he did not use the terms hold the county harmless. You will have to look under 57-51.2-02 under section 5 where they are dealing with the tax commissioner retains the authority to administer and enforce chapters as they are now that being the production tax, the

excise tax and how that is implemented and paid out. I would defer to the tax department to answer those questions on how they want to handle stuff like that.

**Representative Meyer** said this really creates an entirely different president, does it not with the governor and the tax department negotiating with oil companies with the Three Affiliated Tribes. To me this is different than the gaming compact. We are creating a whole scenario of allowing the governor and the tax commissioner to be negotiating with an oil company. One of the people I do not see included in here at all is the BIA and the Department of the Interior. I am just wondering how we can write legislation that is going to address these concerns?

**Mr. Bernstein** said this is a good question. It is probably a unique circumstance in this but it is a sovereign tribe and is something that is appropriate for the governor to be negotiating with and the tax structure is the appropriate for the legislature to address. There is a current section of code that if any political subdivision does negotiate with a tribal entity that there are certain procedures to go through for that and filing with the Secretary of the Interior. This isn't completely unique but in many aspects it is. Obviously yes part 2 of the negotiations states, one being this and part 2 being the governor, there will have to be a broad discussion to make sure that everybody is informed with new tax agreements.

**Representative Meyer** said but with that shouldn't the Department of the Interior be included in this before you start. Coming in after the fact is where we are really going to get into a discussion with the fee patent lands and other things that are concerns.

**Mr. Bernstein** said he was not so sure that those absolutely implicate the fee patent lands with the BIA so that is something really separate from BIA and tribes with fee patent lands but there will be conversations with many people who are involved with this throughout the whole process. We will look to other parts of the statutes as I have pointed out that will kind of give guidance as to what should be contemplated in these agreements.

**Mr. Lynn Helms**, Director of the Department of Mineral Resources for the ND Industrial Commission came forward in support of the legislation on behalf of the ND Industrial Commission. They encourage a do pass on this legislation. He handed out 4 pictures and he wanted to talk about those briefly. His role is to talk about what is currently going on and what the potential is. The first is the graph that shows the state production contrasted with the productions on the Fort Berthold Reservation. As you can see the best it has ever been was in 1991 when production on reservation lands achieved about 3-1/2% of the state total. Since that time it has been declining even though state production has been growing at a rapid pace. We are now down to three tenth of one percent of production that is produced on Fort Berthold land even though it sits in the middle of the Williston Basin. I think that is very significant. It shows the fact that the current situation leads to no investment and that and that is because we have an unstable tax regime and an unstable regulatory regime and we have a situation with the TERO fees and so building in all those uncertainties to the geological uncertainty of drilling on reservations lands has just kept the industry investment out. The second one is a zoomed in section of the big map that your committee used to have on the wall in here of the Bakken potential. The reason the background is gray is because the entire reservation lies upon the potential for middle Bakken production. The dark blue are current Bakken producing fields with all of them experiencing horizontal drilling at the present time. The light blue is other formations that are producing. As Mr. Kelly indicated you have over 400 active producing wells around the reservation boundary and 50 stripper wells within the reservation boundary. Again this is attesting to the fact that the current climate really discourages investments. See attached graphs and written testimony marked as Item #2.

**Representative Keiser** asked him to help him understand in the bill what exterior boundaries are. What are the areas that are affect by this bill?

**Mr. Helms** said this bill affects everything within the green line. When we refer to the exterior boundary of the Fort Berthold Reservation it is that green line so this bill would impact all lands within that green line whether they were fee, allotted or tribal. Obviously the negotiations could go a lot of different directions on those different sets of lands.

**Representative Keiser** asked why they said exterior as it seems to me to be the interior portion. Where does that term come from?

**Mr. Helms** said that was a very good question. Only in the United States would we put the Department of the Interior in charge of things that are outside. That is the way that we tend to do things with the federal government. The reason it is described as the exterior boundary is because it is a line that defines the outside edge and that is why that language is used. This bill affects everything inside that green line that defines the very outside edge.

**Representative Drovdal** said this bill deals only with the tax charged on the oil exploration. Do you feel that this is the reason we have not seen activity on the reservation?

**Mr. Helms** said he does not believe that is the case. This bill does on page 2 lines 14 through 16 says that negotiations must include addressing the regulatory regime that governs oil and gas production within the exterior boundaries of the reservation. It sorta leads us or appoints the negotiating parties towards the 1986 agreement which said we have got to create a regulatory regime within these boundaries so that oil companies know how much their bond is going to be, who they are going to have to post the bond with, who the field inspectors, what are the rules going to be and how do those rules get changed and all of those factors. If you have a regulatory regime that changes on an hour by hour or a day by day basis and it is inconsistent with between what is outside that green line and what is inside that green line, it will certainly chill the investment.

**Representative Keiser** said he understands the inconsistency being a problem but the current tax structure that we are using in North Dakota seems to be providing adequate incentive so if we were to apply the same standards of the tax structure here one would have to assume that the tax structure would be adequate from an incentive standpoint.

**Mr. Helms** said he believes that is true and I believe the goal which we support, that goal of this bill and these negotiations is from a tax and regulatory standpoint, is to make that green line disappear in regards to an oil company. When they come in they wouldn't see that green line when it came times to pay taxes or when it came time to deal with regulatory situations. If you look at oil activity in the rest of the state, I believe you are correct. It indicates that we have a good tax system outside of this green line.

**Representative Keiser** said then really we really don't need to say that we need to negotiate that we just need to have it the same. We can make this a lot simpler.

**Mr. Helms** said it is how we get there. I believe that because of the legal case law that allows both the state and the Three Affiliated Tribes to tax and regulate within these boundaries then we ought to come to some agreement between the two parties agreeing that we are going to do it the same as we do it everywhere else. Case law does allow both parties independently to do there thing the way it stands right now. The third thing that I handed out is the graph that shows where the Bakken formation lies and there are other formations beyond the Bakken but that is the one that everyone is excited about. Those red dots really show the seven play areas that are active in the Bakken. The size of those dots indicates the levels of success and I think that it is important to point out that where the Fort Berthold Reservation lies is kind of centered amongst the three biggest dots. The greatest amount of success is being seen right around those reservation boundaries to the north and to the west and to the south. Those companies that are exploring the Bakken in those areas are interested in working on the Fort

Berthold lands. The final handout that you have is a black and white graph and basically one of the things that we do at the Oil and Gas Division is keep track of what kind of wells are being drilled, what their initial production rates are, what their potential is, and we also have an economic model that we run. This really identifies the potential. The average Bakken well drilled in 2006 had an initial production of 266 barrels per day so you can see there the kind of economic yield that the average well produces. If you apply that to the 988,000 acres within that green line, you can see that there is room for 772 wells. That indicates a possible two hundred sixty seven million barrels of oil with a lot of job, room for ten rigs to run for ten years, 1200 jobs directly working on those rigs and millions and billions of dollars in production taxes, extraction taxes, sales taxes, royalties and wages entering the economy. The problem is how to get there. We start worrying about how we are going to carve this all up. The fact is, it is not happening now because of that. The counties are not going to make the investment. The state is not going to make the investment. The tribe is not going to make the investment to make this happen. This is going to take about five billion dollars in capital and another billion dollars in operating expenses and it is going to be the oil companies, the operators that will make that investment. What this is all about is creating the climate that will encourage those operators to come in and exploit the two hundred sixty seven million barrels. I would encourage the committee to put as few preconditions as possible on the negotiations because that sort of thing in the past is what has discouraged investment on the reservation lands.

**Chairman Porter** said currently in the state, do we charge a TERO tax and how much is it?

**Mr. Helms** said outside of the reservation boundaries there is no TERO tax, there is no TERO fee and there is nothing of that type. We require bonding on oil and gas wells and then there is the gross production tax and the oil and gas extraction tax. That is something that has to be dealt with.



**Chairman Porter** said so that would remain an existing unlevelled part of this equation that is not addressed in this piece of legislation.

**Mr. Helms** said that is correct.

**Chairman Porter** said his other question relates back to the bill that we just passed last Friday and if we are seeing a need to incentivise the Bakken play because the success rates have been less than expected and the cost of getting there are stable to increasing. How does that play into then this same Bakken formation inside of the exterior boundaries of the Three Affiliated when we are removing all of those ex exemptions?

**Mr. Helms** said he sees the Bakken inside that green line the same way as I see it outside. If we need an incentive to get companies to make an investment in the Bakken outside the green line, they are going to need it inside as well. The goal of this negotiation should be to be flexible enough that we can make that green line disappear with regards to tax rates meaning that we really cannot carve out a percentage in the bill and say this group is going to get this percentage no matter what. It may be necessary that the combination of production taxes and extraction taxes is adjusted just like the one that you passed last Friday. Then the parties need to figure out who they are going to share that whatever that revenue is that results from that incentivised tax or nonincentivised tax that needs to be shared among the political subdivisions, the state and the tribe.

**Representative Meyer** said she knows it is a great idea for this green line to go away but in reality that is a sovereign nation. Although this bill is addressing the taxes, just to my way of thinking that is the least part of it. Under this language that is in here, is that going to allow them, on page 2 subsection 6, to every other entity being able to kick in and determine which court is going to allow and dispute, it is going to address the TERO tax, it is going to address the three different entities we have on the reservation, the trust land, the fee patent land, and

the tribal trust land, or is that the intent of this that all of their governmental entities on the reservation are just going to go away and they are as far as oil and gas concerned that is going to be negotiated and that is all just going to be the state of North Dakota's call on it.

**Mr. Helms** said he may be too much of an optimist but I think that will give the negotiating parties the freedom to address all of those issues. I see all of those as regulatory regime issues. It would give the negotiating parties to apply give and take to that so, if we to apply a scenario and if it was necessary to continue with some type of TERO fee on the reservation there might be some kind of adjustment in some other area, perhaps taxes or perhaps bonding or something like that so that we didn't have in a lot of cases here you can have both of them, a state bond that you have to post as well as a federal bond with the BLM and perhaps a bond with the BIA and we may be able to come to an agreement where we are going to have a TERO fee but we will cut down to one bond for that well. We will just bond with one authority instead of bonding with three. I think in my optimistic view this will allow that kind of flexibility for that give and take in negotiations to try to compensate for those kinds of things. We may not get there and we may not be able to completely level that playing field. It is part of the bill and it is required that any agreement address that.

**Representative Meyer** said to continue along that same line of thought, when you enter into negotiations and the tribal council decides that they are going to go ahead and do this and then it becomes a circumstance where there are other entities that say well, no we haven't agreed to that exactly and that was my point in the Department of the Interior. We haven't agreed to that. Whose law is going to supersede here? There is nothing in law right now to create these agreements with a sovereign nation with the Governor so when that happens which law is going to govern here?

**Mr. Helms** said that again is going to be part of the agreement. Some of the preliminary discussions that I sat in, the discussions centered around the idea of federal court so in other words if there was an agreement and a contract between the state and the Fort Berthold Tribe and an issue arose where it was felt that the agreement was being violated or not followed by the authority, it would not be addressed in the state court or in the tribal court but it would be addressed and dealt with in a federal court. This would give all the parties some comfort that they had a place to go to deal with disagreements. Those details will come and I am sure they will.

**Representative Hofstad** asked if he could explain the TERO fee, when it is applied and how much it is.

**Mr. Helms** said he would like to defer that question to Mr. Kelly if he is in the room.

**Mr. Kelly** said the tribe imposes a TERO fee for activities of contract employment on the reservation which applies mostly to construction and to oil activity on the reservation. The fee right now for oil activity on the reservation is one percent of the cost to drill a well. The cost to drill a bilateral well is six million dollars estimated, five million for one lateral and two and one half million for a well that goes straight down into the ground. Basically the TERO office would be getting sixty thousand for a bilateral, fifty thousand one time fee for a one lateral and twenty five thousand for one of those wells that goes straight down. Does that answer your question?

**Representative Hofstad** asked if there any other fees or TERO fees associated with the construction of roads or anything else.

**Mr. Kelly** said no but it covers the site preparation and everything that is necessary to drill that well. The only thing it wouldn't cover is if there was going to be a pipeline system put in to ship the oil off somewhere and that is specifically in the TERO resolution.

**Representative Keiser** and what is done with those funds. Who holds those funds and what is the purpose of those funds?

**Mr. Kelly** said the TERO fees go into the TERO fund and they are used for training. Our TERO office is very flexible in providing employees for what is call non-core positions. For instance if a new company comes on, and we have one right now, and they need people to carry jugs and walk over the hills. We have those people to do that. They provide training for our people so that is where that money goes. We don't charge an unemployment tax on the reservation and we don't charge income tax on the reservation. The only taxes that we have pertaining to oil is the TERO oil fee that is for the oil is for construction and profits on the well and we have a gross production tax of 5% and then we have a property tax on the oil equipment that is about 1%.

**Representative Keiser** said the TERO fund is charged by the tribe. Is it a federal program or is it a decision of the council? Who has the authority over these dollars?

**Mr. Kelly** said the tribal business council has authority over those funds and how they are utilized.

**Representative Charging** asked if this would be comparable to the job services.

**Mr. Kelly** said it would be very comparable to the job services. That is exactly why I brought it up. He said there were a couple of other questions that he thinks would benefit this committee that was brought up earlier that I would like to address. One was brought up by Representative Meyer regarding the BIA approval of the agreement. The BIA and the Department of the Interior would not have to approve the tax agreement between the state and the tribe. However, if there is an agreement like there was in 1986 pertaining to regulatory issues then we would probably have the BIA and BLM involved and they would just sign off. There would be negotiations as to what the regulatory provisions and agreement would be.

Then the tribe would obviously consult with the BLM because BLM has jurisdiction on trust lands and those two entities would be involved and probably MMS and naturally the entity that collects the royalties. To the extent that the agreement covered any of that those entities would be involved. All they do is sign off on it and that is the extent of their involvement.

**Chairman Porter** said on that point, do you see the possibility of a tax agreement only and not the tax and regulatory agreements.

**Mr. Kelly** said no he didn't see that happening. He said industry has made it clear that they want to know what the rules are going to be as far as regulations go.

**Chairman Porter** said so you would see that they have to be coexistent in order for this to work.

**Mr. Kelly** said yes it is right in the bill and we anticipate adopting state law. One thing that we need to make clear and recognize as a tribe is the force pooling so that companies know what to do if they have somebody who comes in their play and they can't lease to or they have another oil company that is in their play that does not want to participate in a well. These are things that we are going to have to address and take care of in the tribe but it behooves us to do that so that industry feels comfortable in developing on reservations.

**Chairman Porter** said this brings him back to your statement that the BIA would not have to approve the tax agreement but would have to approve the regulatory agreement. In order for this to go forward they would have to have an approval stamp on this agreement since it is going to include both.

**Mr. Kelly** said what he envisions is that the agreement would reference a regulatory agreement and that regulatory agreement would be signed off by the BIA and the BLM.

**Chairman Porter** said so you would see this as two separate agreements.

**Mr. Kelly** said yes. My next point goes back to your question Representative Keiser as to why couldn't we just legislate this. The answer to that is no and the reason is that the legislature cannot bind the tribe. That is why an agreement is necessary.

**Representative Meyer** asked if he felt like the BIA or the BLM could weigh in on whether these taxing monies would go to the tribal entities and not the individual tribal enrolled members because they have weighed in on that in other circumstances.

**Mr. Kelly** said I suppose they could weigh in. I can assure you that the monies are needed by the tribe to provide services. The Department of the Interior only funds the tribe at 40% of need and we don't tax anything else other than our resources on the reservation so these tax dollars are badly needed to provide services that are not funded by the federal government.

**Representative Meyer** said just to follow up on that the individuals have seen where sometimes it might be more beneficial for the individuals to be given compensation versus the tribal government. That is kind of where the BLM and BIA are weighing in on these decisions.

**Mr. Kelly** said if they want to weigh in that is fine. The more the merrier.

**Chairman Porter** asked Mr. Helms to continue.

**Representative Keiser** asked about Mr. Helm's statement that hopefully this bill would make the green line disappear. I see it probably doing just the opposite. I would like to direct your attention to line 23 and 24 on page 1 and lines 1 and 2 on page 2 that the governor can enter into an agreement, where in this bill is the language that will not just allow but will create a situation and guaranteeing that this green line will disappear.

**Mr. Helms** asked to begin by letting him apologizing that when he was quoting line numbers he was looking at an older version of the bill. On page 2, lines 19 to 21 of the current second engrossment deals with the regulatory regime. Again, the goal of this negotiation is to make the green line disappear and I think that talks about that whole regulatory consistency item. I

think this whole system of fees and bonds and industrial commission and tribal mineral committee and all of that is addressed under that and the goal is to try to regulation wise make the green line disappear so that an oil company has some confidence as to what will happen when they move inside that exterior boundary in terms of bonding and inspection and permitting and hearings and all of those things that take place. From the tax standpoint I don't see any language that requires that the tribe do away with their tax and the state does away with their tax and there is a unified tax system. That is something that you are all going to have to look at. I think it anticipates that. It anticipates that the agreement would be a tax system within the reservation that exactly mirrors what is outside of the green boundary but there isn't language requiring that those taxes be done away with and be negotiated in this agreement. I don't see those words used.

**Representative Hofstad** asked if he could give them an idea of some of the regulatory issues that stand as roadblocks right now. What are some of things that you would try to address in this regime?

**Mr. Helms** said let's start with permitting. When you apply for a drilling permit to drill a well, as it stands right now there are two permitting authorities. You would have to permit the well at the tribal headquarters as well as with the ND Industrial Commission. In fact if it is on tribal trust or on allotted lands you have to permit it at the Bureau of Land Management as well who regulates the underground structure and you have to permit it with the Department of the Interior or BIA if it is on tribal surface. Permitting wise you have got a real barrier. It is even worse that it is on Forest Service lands. You have a federal agency that is regulating the surface along with the tribal authorities. You have the federal agency that is regulating the down hole along with tribal authorities and state authorities. You have four or five permitting agencies that you have to deal with. That needs to be ironed out. Then you get ready to post

a bond. The state requires a bond because it doesn't want to be liable for the well, the tribe has authority to require a bond and the BLM requires a bond. Potentially you could end up posting three bonds for your oil well inside the green line versus one bond outside the green line. When you drill the well and it comes time to pool the mineral interests with in the spacing for the well and the state has a long history of how pooling takes place, force pooling, risk penalties and all of those things that have gone through the legislature and rules have been adopted. None of those rules exist within the tribal boundary so there uncertainty as to how we can force pool and how you would apply a risk penalty and how you would even set up a spacing unit for a well that has been drilled within the boundaries. Incidentally if you decide you are going to unitize and do a water flood there isn't any tribal law regarding how you put spacing units together and form an enhanced oil recovery unit. Who is going to inspect to be sure that the regulations are being complied with? Who has access to the site? That is just a handful of issues that have to be dealt with.

**Representative Hofstad** asked if the Industrial Commission tried to negotiate any of these issues with the tribe.

**Mr. Helms** said that back in 1986 they had negotiated an agreement with the Three Affiliated Tribes and it was signed by the tribal authority and the Industrial Commission at the time and the signature of the BIA was never put on it. It never became something that was enforceable. Both parties have continued to treat it as a gentlemen's agreement but it never really took affect because it lacked the signature. We have gone down that path before and part of my discussions with Mr. Kelly have been centered around starting with that agreement and we need to make some changes for the future. The current Industrial Commission is comfortable with that agreement and the tribe is relatively comfortable but it is not enforceable as it stands right now without that signature. We think those can be worked out but again I am an optimist.



**Representative Meyer** asked how will this affect the royalty distribution or I guess I should ask if it will affect it.

**Mr. Helms** said he didn't believe that it will. I believe that royalties would be outside this agreement so the tribe on tribe trust lands would be allowed to set its royalty rates. If there were state lands within that boundary the state has its own royalty rate fee and a lot of the owners would negotiate a royalty rate with the land man who came to knock on their door. It is not anticipated that it would affect royalties at all.

**Mr. Ron Ness** of the North Dakota Petroleum Council came forward in support of the concept of this bill. I think that you have seen that there are many issues and there hasn't been a well drilled on tribal land for over 27 years. How it involves the state and the other entities and how they split the pie is a discussion where all those entities will have to participate in. First you must have a pie to split and I think that is the intent of this to try to create some activity. There are a couple of things that have come up and as we see this, the concept of removing the green line is great but no matter what that green line is not removed and companies understand that. There are so many things that come out each time we have a hearing or a discussion about this. I was not aware that there was a 1% property tax on oil field equipment and of course the state is not charging a property tax. There is a 5% gross production tax which is in lieu of the property taxes. In addition there are employment requirements so there are a lot of things that just really don't remove that green line and I think section one of the bill as it is drafted really needs to come out or be changed drastically because the companies that I have talked with are anticipating from a 10 to 20% increase in their drilling costs and that will not likely happen. The activity will not take place as it hasn't in the last two and one have decades. As the one company saw the extraction tax exemption in section one really allowed them to agree to the agreements relating to the TERO provisions so if you were to add all of

those on top of each other now what is the tax rate and Mr. Helms did a great job of talking about the regulatory aspects. Those are significant and there are long term issues here to discuss and address. I think we likely need to keep this concept and bill broad until we get a much better understanding of what the issues are there are many things that factor in. We would support the bill and we think it is a great concept. It is a win win situation for everyone if it can be done in a way that all parties can move forward but certainly in section one I would suggest removing that language and leaving it subject to an agreement or possibly we may have to come down with some kind of a flat tax system that extols in some of the other costs the companies are going to experience when operating there. We have a lot of moving parts. Maybe there is a flat tax of around 7 or 7-1/2% when you factor in some of those other costs that would bring you up to an area of from 7 to 9% which we usually see as the tax structure. See attached testimony marked as #3.

**Chairman Porter** asked about page 2, subdivision 1. He said current this language would include all wells whether they were on tribal land or not.

**Mr. Ness** said that was correct and he should also recognize that there is a separate formula for gas tax production in the state so there are other elements that we really haven't talked about. It would include everything within the boundaries of the reservation.

**Chairman Porter** said so currently the state is getting all of the money on those wells on that property on private property or fee lands held within those exterior boundaries.

**Mr. Ness** said if a well would be drilled the state would collect their 5% gross production tax for the first five years plus the 14.6 flat tax on the thousand cubic feet on the gas and the state would collect all of those taxes and the tribes 5% tax would be in question in addition to the TERO fees they may or may not agree to. I guess the property tax but I don't know if that is on fee or how that goes.

**Representative Drovdal** said on the floor of the house on Friday when they were debating the bill for the Bakken formation there was statement made on the floor stating that he talked to an oil man and the oil man had told him that taxes don't bother them. They will drill for oil regardless of the taxes. If that is the case does it matter what the taxes are here?

**Mr. Ness** said certainly you are going to go where the oil is. If I am a hunter, I am going to go where the pheasants are. Now whether it is posted or I have access that is the second question. That is going to determine if you actually step on ground or not and I think that is really the essence of that statement. We can see that the regulatory aspects are a concern. Look at that map and the oil companies will stay away and will continue to stay away until they have some level of certainty of what is going to happen. I think everyone clearly understands that and that is why we are all here on this side of the bill. Until we provide some certainty in all of those areas there will be no activity and there will be no pie to split. That is the bottom line.

**Chairman Porter** asked Mr. Kelly if he could answer one question for him. He wanted to be clear on the TERO tax. If the well is drilled inside of the boundaries of the reservation on fee land, does the TERO tax still apply.

**Mr. Kelly** said the tribe said that they believe that it does but the company believes that it does not. We have not fought over that issue. We have realized and I have advised my client is that they are not going to collect a whole lot anyway so let's not fight over that and pick our battles. We have not charged them.

**Mr. Robert Harms**, President of the Northern Alliance of Independent Producers came forward in support of SB 2419. See written testimony marked as Item #4. He said that he wanted to go back to some of the discussion that they had with Mr. Helms. The reason that we have 400 wells surrounding Fort Berthold and 50 stripper wells on the reservation itself and

that we have not had a new well drilled there in over 20 years and the recent sale by the BIA indicates that they have posted 100,000 acres of land for minerals to lease and only sold 10% of them, those results really are a result of three things. They all related to cost and the economics of doing business on the reservation. Those drivers are 1) the tax climate, 2) the regulatory climate that Mr. Helms was talking about and 3) the allotted lands that exist on the reservation and contribute dramatically to the uncertainty of the costs of doing business on Fort Berthold. What I mean by that third point is that if you think of Fort Berthold as a scattered checkerboard what you will run into if you are an oil and gas company is one area may have fee lands and the adjacent land where you can take your exploration activity and turn it into an (cannot hear the word) and then you run into allotted lands where you have to have a 51% of the allottees sign the gas lease. Now that is the current law as of 1997. You have heard about the exemption that is discussed in Section one of bill. In 1997 Jim Powell's from Williston and Canna, a large company from Canada worked for a couple of years on a project to indulge oil and gas on the reservation. Those efforts results in two changes in the law on the reservation. The exemption that is mentioned in section one and the change in federal law so that requiring all of the allottees to sign the gas lease you were able to get a lease with 51%. Still even today that is a challenge and adds to the cost of doing business on the reservation. My point is simply that the cost of doing business in the jurisdiction will have a direct result of the kind of oil and gas activity that exists. This bill goes a long way towards solving and tries to resolve some of these issues so that we can accomplish the goal of having more oil and gas activity on the reservation. He referred to his recommendations that are on page 2 of his written testimony. See page 2 of written testimony marked as Item #4. He thinks that they should take a lesson from the gaming compacts and those agreements as far as trying to set a stage so that the governor can successfully negotiate an agreement on behalf of

the state and the chairman of the tribe can successfully negotiate on his behalf and they can take those agreements back to the respective political communities with the assurance that they will not be criticized and will be embraced by the legislators. I think that it is important to give that some consideration. We think it is important to add the Attorney General to add success to this process. He said they want to be sure that they do not increase the taxes on the reservation and they must be sensitive to how they treat the fee lands.

**Chairman Porter** said that in Section 2, on line 23 are you recommending that we replace the governor with the Industrial Commission or just add in the inclusion of the Attorney General.

**Mr. Harms** said he when he said substitute he was thinking either for the Tax Commissioner or at least to add the Attorney General to the agreement. Ultimate authority should remain with the governor. We did pramutal gaming compacts in 1993 and he negotiated those compacts then. I think if one person has the ability to make that decision he can supply the political covers for insurance they won't be leaving too much on the table.

**Representative Nottestad** said wouldn't the governor have access to the Attorney General's Office at any time for consultation and discretion about this negotiations rather than having him right there at the table.

**Mr. Harms** said he would but he was thinking both in terms of the current negotiations as it does have a sunset on it. This bill is likely to be a model for years to come. I think the parties may change between the Attorney General and the Governor and the Attorney General is the states elected attorney so to speak and I think having him involved or at least consulting would be helpful.

**Representative Kelsh** was wondering why we have a continuing appropriation on this.

**Mr. Harms** said he thought once the terms of the agreement are negotiated there is going to be some kind of distribution back to the tribe and I think that is the reason for the continuing appropriation. We have no idea as how to calculate that. That is my guess.

**Chairman Porter** said he thought it was because it falls back on the taxing statutes and that it allows inside the compact and allows the state to pay their share of the tax then they don't have to come back to the legislature to spend that money.

**Representative Meyer** was wondering if on page 2, line 10 what the fees were to compensate the tax commissioner. Is that done anywhere else? Is it going to be taken out of the money appropriated to the tribe?

**Chairman Porter** said he thought that would be a better question for the tax department.

**Mr. Harms** said he did know that the agreements that they have with Standing Rock include a fee for the tobacco and fuel agreements and I know with the gaming compacts there is a fee in there to provide some compensation for background checks and that sort of thing.

**Representative Keiser** said he has heartburn when it comes to these kinds of positions because this is a huge policy question and it should be addressed by the legislature. On the one hand you and others have been arguing that we should make it so general that we have flexibility to craft a solution which is very much a policy issue and a policy solution. You mentioned that there has to be one person in charge and at another point you mentioned that maybe it should be the leadership or that they should play some role in it. What would be wrong other than it would make it a slightly more complicated if you had the governor and the leadership from both houses or chambers be involved and get all three to agree to the final document so that we don't get into criticism that we now have with the gambling compacts. I know it is more complicated but we are giving away policy decisions that are very important to us and we can never come back and address them. Do you have a lot of problems with that?

**Mr. Harms** said he had a couple of comments on that. He agrees with him that this is a huge policy issue and that if we had the time and the ability to take the tribal council and the legislature to negotiate policy that would probably be the right way to do it. Given where we are in the session and the logistics of accomplishing what I have just described, it is not very realistic to do. I think it is a significant policy question so that is why I am suggesting some kind of consultation process that I have described. The difficulty that I see in having those on the state side, it is difficult to negotiate a deal with committee. Ultimately someone has to be able to make the decision. That is why I suggested bringing them along so that they at least know what is going on but ultimately their feedback with the governor would sensitize into the negotiations that take place. From a producer standpoint, it is really not our problem.

**Ms. Vicky Steiner** came forward representing the Association of Oil and Gas Producing Counties. She handed out a copy of what the 5% gross production tax and the extraction tax in more of a picture form. See attachment marked as Item #5. Part of this bill deals with the governor negotiating the gross production tax and the exemption on the oil extraction tax. Our oil and gas counties looked at the original bill and really like the concept that we develop the minerals there but there are so many ideas and versions right now that I haven't had a chance to visit with them at all about all the different scenarios that have been presented and keeping in mind that 75% of the gross production tax goes to the state general fund you have a tremendous vested interest in seeing that the reservation minerals are developed and that you partner in that development. You will benefit and the state will benefit and obviously the tribes and counties will benefit. I realize that it is complicated and is a delayed bill and it looks a little frustrating today but it is definitely worth your effort to give it your best and I encourage you to look at the alternatives and see how you can make this work.

**Representative Keiser** said conceptually when it comes back to the local counties and schools and cities, that portion could be carved out and come back in some part, either all of that portion or some significant part of that could be going back to the tribe to support their efforts.

**Ms. Steiner** said her understanding was that when they talked about this and the original concept was 11-1/2% with 5-3/4% to the state and that included a fee for administering the tax and 5-3/4% to the tribe. That was the original concept that we talked about. I know that the companies have talked about wanting the 5% exemption and if you were to divide that 50/50 by going 2-1/2 and 2-1/2, I understand that concept. If it is the Bakken you would get 3-1/2 and 3-1/2. We were willing to work with the governor on how he wanted to make that split if that is what the state wanted to do. We were not going to oppose that.

**Representative Charging** asked if the counties allocate monies to the tribes for any roads.

**Ms. Steiner** said she was not aware of that but when she talks to her county commissioners they say that there is someone of a working relationship there where they feel that they do support roads that the tribe uses as they come off the reservation. They are tied together.

**Chairman Porter** asked for any testimony in opposition of SB 2419. There was none. He asked if they had any questions for the tax department.

**Representative Meyer** said she was just questioning on page 2 if those statutory inconsistencies if they were going to supersede anything that is there now and the other one is about the administrative fee to compensate them.

**Chairman Porter** asked someone from the tax department to come up.

**Mr. Myles Vosberg** came forward on behalf of the tax department. He wanted to handle some administrative issues and explain that one of the agreements that they have with the



tribes now and they do get an administrative fee that they withhold on the tobacco tax so that is the common process.

**Representative Meyer** asked if that has created a problem on how that fee is administered for example with that fee collection on the reservation. Hasn't that created some problems?

**Mr. Vosberg** said he didn't believe that it had. It just helps the tax department recover the expenses that they incur in administering those taxes for the tribe. That is part of the agreement that we drew up and there hasn't been any disputes.

**Representative Meyer** said when this is withheld from the distribution to the tribe, you feel like that this would not be a problem and they would be in agreement with that.

**Mr. Vosberg** said they do not see a problem with that. If the money was split 50/50 for example, whatever they agreed to paid would just be withheld.

**Representative Drovdal** said under the language from SB 2419 is the tax lumped into one tax of 11-1/2% or is our current 1-1/2% protected under bill.

**Mr. Vosberg** said he has not been involved a great deal in this.

**Mr. Kevin Schatz** who is the supervisor of the oil and gas tax and he said the taxes collected are two separate funds. They certify those amounts by the counties to the state treasurer's office who applies the appropriate funds.

**Representative Drovdal** said so they are protected and this bill does supersede that protection for counties share of the oil production taxes.

**Representative Keiser** said he disagrees with that. The language says on page two that no more than 50% of the tax revenue calculated for apportionment to the state general fund may be allocated to the tribe. That is the only place in here where it states specifically what may be done with those tax dollars. It says on 23 and 24 of page 1 that the governor and that the tax commissioner may enter into agreements to do with whatever they want with those other

dollars. Then it goes on later to say that it supersedes any other activity so other than the lines that talks about the 50% of the tax dollars to the states general fund that is the only thing in there that is controlled so I do not concur.

**Mr. Schatz** said their understanding is that the state formula would be applied and the amount that goes into the state general fund would be what would be negotiated with the tribe.

**Representative Keiser** asked where it said that in the bill because it says just the opposite in this bill. It says the governor in consultation with the tax commissioner may enter into agreements with the revenue levied and collected under chapters 57-51 and 57-51.1 so we are giving the governor and the tax commissioner the authority to enter into an agreement on everything but that.

**Mr. Schatz** said that is the type of agreement that they would enter into.

**Representative Drovdal** said the answer to that is that he believes the collection of tax specifies that so much of the first million and so much of the second million and so much of the third million goes to the counties and does not go into the general fund. They would be protected under that.

**Chairman Porter** asked for further questions. Hearing none, the hearing on SB 2419 was closed.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

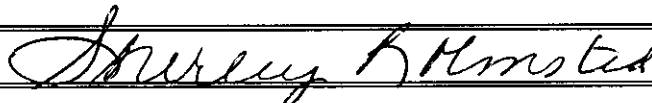
House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2007

Recorder Job Number: 5660

Committee Clerk Signature



Minutes:

**Chairman Porter** continued the discussion on SB 2419. He indicated the next possible date and time that we can get together because of the conference committee schedule would be on Wednesday, April 4th at 3:00. We can certainly have some discussion right now regarding this bill.

**Representative Keiser** said fool me once shame on you. Fool me twice, shame on me. I was there when we did the compact on gaming and speaking only for my self, it will not happen again that I will allow us to give away such authority as we did at that time.

**Representative Meyer** said under this when entering into these agreements and I have to agree with Representative Keiser that it supersedes anything that is going to happen it now as I am reading this bill.

**Representative Drovdal** said he was under the impression when he asked the question of Mr. Kelly that the distribution is a separate set of rules under 57-51.2-02 instead of what they listed here so I would like to have that checked out. I keep wondering about how this six month exemption that are listed in Section 1 and how you intend to apply if this agreement happens to go in place and I don't believe they have specified one way or the other.

**Chairman Porter** said a couple of concerns that he has right out of the shoot are the two things that are happening here with the wells on the land that is fee land inside those exterior boundaries that is now being brought into this and then not all the taxes being laid on the table so that it is an even level playing field going into the agreements. It seems like the state is bringing in the oil and gas production taxes and we are also bringing into play all the wells located within the exterior boundaries which is not the current case and then the TERO tax is something that is held out separately. I guess if we are going to have negotiations at a table where everything is up for negotiations then everything should be up for negotiations because I do believe that we are taking current situations that the state of ND gets 100% of and now allowing the tribe to get 50% of that current situation.

**Representative Drovdal** said just a quick comment, right now the state is getting 50% of nothing because it is a black hole and nothing is being developed and it is a problem. We have to realize that they are a sovereign nation. We are just drawing the parameters that are important to us and how tight we draw them may make this impossible. We want a tight line but I do agree that we need to figure out a way to get the oil companies to drill because it is jobs to North Dakota citizens.

**Chairman Porter** said he agreed with him but if we are going to have an agreement then everything should be on the table at the start of the negotiations. We shouldn't pick and choose what is on the table. Everything related to oil and gas production should be on the table and let it go from there. That is what negotiations are. You don't get to withhold part of it. We are going to end it here and be back on Wednesday, April 4th at 3:00. The committee was adjourned.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

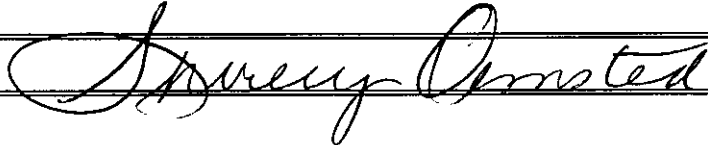
House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: April 4, 2007

Recorder Job Number: 5748

Committee Clerk Signature



Minutes:

**Chairman Porter** called the Natural Resources Committee to order and asked the clerk to call the roll. He said they would continue the discussion on SB 2419. He offered an amendment 70882.0301 marked as Item #1. His amendment would remove section one which is the existing exemption of the 6-1/2% tax. It also goes into section 2 and after tax commissioner adds "and the attorney general". On page 2, line 1 after the word "wells" inserts "on Indian trust land and land owned by an Indian Tribe." On page 2, line five inserts all taxes and fees on Indian trust land and land owned by an Indian Tribe. Number 7 is added on page 2, line 21. Those two pieces are out of the gaming compact language that talks about if the agreement between the governor and the tribal chairman happens while we are in session and then what happens if the agreement is reached while we are not in session. He asked if there were any questions.

**Representative Meyer** also had a proposed amendment. See attached amendment 70882.0302 marked as Item #2. She said her amendment is a hog house to SB 2419. It sets out to accomplish that all the production and extraction taxes on the fee land will go to the state. Production tax and extraction tax on Indian and the trust land would go to the tribes. The tribes will have to agree to adopt the same taxing structures that we have in place with the

state right now. All the monies for the counties, cities and schools are going to be held harmless. There funds are taken out of the tribe's funds first and the remainder will go to the tribes. The state will provide the regulatory authority on the wells on the Indian lands as well as fee lands. The governor does not have to enter into any agreement. This will be the agreement. The siting fees, the TERO tax on fee lands, wells and all of that goes away. The fees on Indian lands will be negotiated by the oil company with the tribal council. There is also an emergency clause on this. If the Indian tribal council signed off on this, it becomes the agreement. With the emergency clause, if that happens to pass, it can happen whenever they get there.

**Chairman Porter** asked about the sixty month exemption and if it does still exist within the code.

**Representative Meyer** said it would not and would fall under the same provisions and taxing structure that the state has right now. That will go away. It will be the same extraction tax that is in place right now with the state.

**Chairman Porter** asked where the repealer was for that or how does it happen.

**Representative Meyer** said this chapter supersedes on page 2, statutory inconsistencies this chapter supersedes any inconsistency provisions of chapter and that is one of the inconsistency provisions Chapter 57-51. It also on the existing agreements that are in place now that is covered on page 2, under number 6 as there already is an agreement out there right now with an oil company with a well being drilled right now and they have to be grandfathered in. They stand alone and constitutionally that has to be done that way. We can't go in and supersede the contract that they have already established.

**Chairman Porter** said on the regulatory provisions of the state law state administration regulatory commissions apply to all wells on land in the boundary of the Indian Reservation. Who is going to pay for that?

**Representative Meyer** said the same people that pay for it now.

**Chairman Porter** said right now if the land it was drilled on was trust land the state of North Dakota would be getting revenue from it. What you are doing by taking any revenue away from the state of North Dakota on trust land is you are telling us that we have to provide all the regulations for free and in exchange for nothing.

**Representative Meyer** said that goes back to the same argument where you want nothing of nothing. There is nothing being drilled now. This is an attempt to make it equal with the tribe.

They are going to be giving up on the fee land the tribal fees and taxes. This is just a compromise with them if they come to agreement.

**Chairman Porter** said in his mind this is a little more than a compromise. We are doing all the work and we are already collecting the money on the fee land. We are collecting all of the normal taxes that happen so you are taking our ability to collect any tax on the trust land plus giving us the burden and us paying for all the regulatory issues that go with it.

**Representative Damschen** said he was not sure that he understood all of this. There was a discussion yesterday about the governor having some negotiating right. Is this going to violate that or is this the agreement?

**Representative Meyer** said that if this is what you decide to do, this is the agreement. The tribal council will have to sign off on this and the governor will not have to negotiate anything and this is the agreement that they will have to agree to. I had problems with the previous bill where you are setting up a case where you have the governor and the tax commissioner negotiating with an oil company or with the tribe which I think is setting up a different precedent

that what we have done before. To me that process would be delayed by two years and if they agree to this it would become the agreement.

**Representative Drovdal** said there are several parts to this discussion. One is the taxes which is between the counties and the tribes and the other is the basic underlying principal that we want to get oil companies to produce some oil and they are not doing that. Part of the problem that we are told is the administration and fees and taxes and all of this complicated area and in the top part you say with the acceptance of the state administration and enforcement of oil and gas regulatory and tax law but down below on 5 you say the oil companies are again going to have to negotiate on the fees and taxes with the tribe which is right back where we are currently and we are not going to get the oil companies in the mix because part of the problem right now is every time we get a new administration at the tribe we have new fees and taxes and they can't deal with it. That is why they want the state to come in and administrate for them. We are giving it to them on top and then taking it away from them down here are we not?

**Representative Meyer** said those fees have to be negotiated and I personally feel more comfortable letting them be negotiated between the oil companies and the tribal council. What this does do is no tribal fees or taxes will apply within the boundaries to the fee land.

**Representative Keiser** said that looking at the map that was handed out, what parts of these are fee lands and what parts are trust or private lands.

**Representative Meyer** said the northeast quadrant.

**Representative Keiser** said if he understood this proposal correctly, we want to apply the existing law to both those sections. The state would get the revenue from this corner and the tribe would get the revenue from all the rest of the drilling activity minus the counties, schools and cities or the political subdivisions.



**Representative Hofstad** said he was wondering as we go forth and make those administrative provisions and regulations that if the oil companies would feel uncomfortable with that agreement, what authority would we have to impose regulations or authority on them. I am just wondering if that is going to be acceptable to the oil companies.

**Representative Meyer** that is what this does. It removes the green line that we kept hearing about. If the tribal council chooses to check off on that, that green line goes away and they have agreed to all the regulatory provisions of state law. That is what this does. If the tribes will not sign off on it, then it doesn't happen and if they do sign off on it that green line goes away. They have agreed under this agreement to abide by every regulatory provision in state law. That is included in that and I think that was the piece that was missing because the oil companies don't feel comfortable because the regulatory provisions were different. This makes them identical and as I said the appropriate tribal governing body of this state would have to sign off on this agreement so that those regulatory provisions would be what they would be following.

**Chairman Porter** asked what she would see in subdivision 5 if the tribal government changed with the tribal government coming in because the fees imposed are subject to that agreement between the tribe and the oil and gas exploration or production company of the tribe coming back and say we need more money or we are upping up everything now that you have a significant investment in this area.

**Representative Meyer** I believe it is the same thing that we have happening already. They have a contract and when they have agreed to abide by that contract, I mean that can happen in any case, but we already have that on page 2, subsection 6, and that is already in place. They have paid those fees and they are willing to go forward with that. They would have to be allowed to negotiate that contract now and we are hoping with the acceptance of this that the

tribes have accepted this agreement and it becomes a charter if you will that they are going to operate under. You can't foresee everything that is going to happen but I would hope that this would address that.

**Chairman Porter** said one of the issues that was brought forth during the testimony on the bill that it was pretty clear that the instability of those fees is one of the major reasons why there isn't any activity going on so by still leaving it open that what is going to be the benefit of a company to come in and drill not knowing when that is going to change.

**Representative Meyer** said they have oil companies in there doing this now. I feel that they feel comfortable with this provision and I cannot second guess them. I believe that they feel comfortable and have negotiated this with the tribe when they have a contract it is there. They are there and operating right now.

**Representative Drovdal** said he heard from the testimony that we don't have oil companies in there now. We have one on fee land but we don't have one any on the reservation and that is the goal is to get them in there. As you pointed out some of the regulations are very uncertain and that is what is keeping them out of there. That is why we wanted them to negotiate with the governor to come up with a package that everyone can live with.

**Representative Charging** said that she certainly could answer some of those questions because I am a member and an employee as well of the Three Affiliated Tribes. I cannot help it but it is a little bit offensive to continually hear it and hear it. There are companies in the reservation. There has been one continual administration and is that the reason that they haven't come in. I cannot tell you that but I do think we need to be a little bit more observant and a little bit more diplomatic. Terms change every four years and they change there and they change here. On occasion we have changes in our very own legislation. We have the

ability and the right to make those changes and there has to be some trust involved here in both sides of this bill and that is all I am asking.

**Representative Keiser** said he not only really supports what Representative Charging said and have an appreciation for the sensitivity of this issue but the reality part that we have to deal with as a committee and a legislature and there certainly are businesses that are very comfortable working with the tribes and we can document that and there is not a problem. On the other hand what we need as a goal is to try to develop a policy through whatever mechanism that will allow a business that needs to make a significant investment over a long period of time to have a sense, not of stability of government as we don't have that within our own government. We are going to have new governors and we are going to have new legislators but we need a system in place like law or agreements that will allow that company to make the investment and know that it can't be changed once the investment is made. Our laws do that. We can change the law but we can't change the building code and we can't make everyone go back and redo the building until they have modifications or an addition to the building. What we need to make sure that we do here or at least we are trying to accomplish it in this bill is to come up with two things. One is a tax system that works for all parties and the second issue is the regulatory issues. If we don't succeed on the regulatory issues there will be no drilling because no one is going to mortgage their house for any business and go out and invest all of those dollars if it isn't guaranteed that the regulations that are there when they make the investment will be there in twenty years when they need to get their recovery back. We need to work on that and make sure that we do that.

**Representative Meyer** said in response to Representative Keiser that is what I believe this policy does. When the tribal council decides to sign off, they will accept the regulatory provisions of state law and state administration. I believe that we have accomplished that goal

although you cannot foresee everything but when they make a good faith effort to sign off and that they are subject to the regulatory provisions, I think that is a great step towards doing this.

**Representative Charging** said she thought she was correct on that. She wanted to let the committee know that we are a ward of the federal government and within those boundaries they also have to answer to their laws and therefore if oil and gas are drill it isn't like there aren't any rules. There are stringent federal regulations. This will certainly make it uniform because that is the goal of the tribe.

**Chairman Porter** said he knew that Mr. Kelly wanted to get up and talk.

**Mr. Steve Kelly** who is the attorney for the Three Affiliated Tribes came to the podium. He wanted to address some of the comments. He also wanted to thank everyone for their hard work. He wanted to make one general comment. He said this is tough stuff. As Representative Charging pointed out, it is not just the state and the tribe. It is also the federal government that is involved. From the tribal perspective, they are always keenly aware of federal government's interests in this. Representative Meyer specifically asked about the BIA and BLM involvement in this. The average number of interests on a tract of land on the reservation which can range from anywhere from 10 acres to 640 acres could be 40 interests. Some have 300 interests and we have to divide all of that out and it can be very difficult. I was actually on the phone today with the BLM and the BIA today in response to the concerns raised by Representative Meyer and they agreed and I told them the representations that I made the other day to the committee and I wanted them to understand. I wanted to tell you that even the Aberdeen office for the BIA was not clear on that and they had to call on energy minerals out of Denver and would have to rely on the Billings office that does a lot of this work to get their information so that they were clear. The thing that we have to remember is over in this area, the Aberdeen area, this is the only reservation with oil and gas production on it so we

are kind of in a new area. They did agree with me at the end of the day that the tax agreement is not subject to BIA approval or BLM approval or MMS approval. The regulatory agreement is and they are very supportive of this effort. They encouraged the state and the tribe to get something done. He told Representative Meyer that he had the call set up whenever she was ready to ask the questions. With respect to this bill he had not seen either of these amendments until he walked in there so he would like to go over them and address some of these and I will start with Representative Meyer's hog house amendment first. Before I do that, this is law and the concept is that there would not have to be an agreement. At the end of the day there has got to be an agreement because the regulatory stuff is involved. We have to have the governor involved in some way. The next questions is how much do you want to negotiate this thing out. I am sensing that some of you would like to see these things ironed out in legislation and it would leave the finer points to the governor. That is fine by us. Other including the Senate wanted to leave it broader and let the governor negotiate anything. We can do it that way too. I kind of like this approach because there is more certainty on the tribal side of things. The one thing we do not have here and we always have to keep this in mind is that the tribal council is not here themselves. They have sent me and I am letting them know what I am doing and what I have tried to do and I have their blessing to come here and speak and represent them here. It is through me that we can try to iron some of those things out. I appreciate your tolerance in working with me. The point is that at the end of the day an agreement is going to have to be reached because some of the things that are in this bill cannot be legislated by the state. The only way the state can tie the tribe's hands which I am hearing the state would like to do with respect to certainty is by agreement and then if the agreement is breached, then all of this goes away. That is the way our agreements work. One other thing here is that what we are trying to do here is, the other day when we were here

we talked about fee land and trust land and a gain I want to give you those figures. Roughly 350,000 acres of a million acre reservation is fee lands. Of there are 650,000 acres in trust lands. You are talking about roughly 2/3 in trust land. There has got to be some incentive in this for the tribe and so that is why that we were suggesting at the end of the day that what we would do is split the taxes all the way across. The law is what the law is. The northeast part of the quadrant is on the reservation. Some people do not like that. We have a petroleum decision that says that the state can tax on fee lands. The tribe doesn't like that and then we have the Atkinson Decision that suggests that the tax cannot collect taxes on the fee lands and obviously the tribe does not like that. At the end of these days, these decisions create an obstacle for development on the reservation so what do we do about it. We can only have one tax and try to pass some regulatory certainty and uniformity to get them to develop to create revenue so that we can all share in it. I think that is the goal and if we all agree on that then the only question is how do we divvy it up. Originally we thought we could split everything 50/50 including the fee lands but there are some people against that. This bill takes fee lands out of it. We can work with that as long as the tribe gets all the taxes on the trust lands. You have the counties worked into this. I understand that is basically the state's share. We might be able to work with that but we have to work the numbers out. There are some incentives here and in addition to this I want everyone to keep in mind the one question that came up what if we are going to regulate everything and we have costs where are we going to get returns. You are getting in return, I would suggest, corporate taxes and income taxes and other taxes that will be generated by production on the reservation. There are collateral benefits to the state in the form of other revenues. With that being the background, I would like to go over the first section being 57-51.2-01. The only language that I would object to in that paragraph is where it says at the end of line 4 where it says "of state administration and

enforcement of oil and gas regulatory and tax laws". We cannot agree to that and the tribe cannot agree to that and the federal government is obviously going to have some control. What we want here is a regulatory regime and that is the language that was used in the original bill that will give industry the confidence to develop on the reservation. We can do that through tribal law by passing a law that says we adopt state law on the reservation and as far as regulation goes what the state would want, and by the way we had an agreement before with the State Industrial Commission, we can agree to certain things and one of them that the state might want to do because the counties will be getting the taxes coming in and measure production and we don't have a problem with that. Things that will confirm revenue, enforcement, reclamation and things like that we don't have a problem with. We will probably have dual regulations because the BLM will have oversight and MMS is the same way. We couldn't have that provision in the language. I guess I had that backwards there.

**Representative Meyer** said he just stated that if the tribal governing body agrees to this they can agree to that provision.

**Mr. Kelly** said they can agree on the agreement but you cannot pass a law that enforces us.

**Representative Keiser** said what he thought Representative Meyer is that we can write this and that is what the governor can agree to not binding the tribe but we can write it in a way that says the governor may negotiate anything more restrictive but this is the minimum agreement on behalf of the state.

**Mr. Kelly** if you are putting this in as a minimum for the governor that is fine but if it is an implication on the tribe or the federal government that won't work.

**Representative Meyer** said she doesn't believe that is what it does do.

**Mr. Kelly** said he was reading it differently. I don't have a problem with the taxes under chapter 57-51 and 57-51.1 from oil and gas production attributable to fee land within the

reservation boundaries is retained by the state and allocated as provided by law. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to Indian trust land and land owned by an Indian tribe within reservation boundaries is allocated to the tribe, except as provided in subsection 3. Generally speaking we wouldn't have a problem with that because now we are talking the state gets all the fee land and the tribes get trust land taxes but I have a question as to whether or not that would include as it looks to me that you would have the gross production and the oil extraction taxes included there but under 3 they are all a part of this. The only thing that I would like to add in there is that if this is the route you are going to go is that I would include a tribal member. On Section 2 (he reads section 2) and again to me I read that as you are trying to legislate what the tribe can do and you cannot do that. We can agree to it by an agreement but that is it. Under 3, (he reads section 3) he said his comment on that is basically what you are doing by doing this you are saying that the state gets to tax all the fee lands and the tribe gets all the taxes on the trust lands because you have the counties included and they get basically 4% out of that 5% up to a certain amount. He talked to an individual about what the actual collection of the state fund is and of these taxes that go to the state I have been informed is about 48%. Essentially the state would be getting half of the gross production tax on the trust lands so the tribe is essentially splitting on the trust lands and not getting anything on the fee lands. We might be able to work with that if it only applies to the gross production but we I need to talk to the state about that.

**Representative Drovdal** said they had a presentation earlier this year because of the caps that were put in the percentage on that first 5% is 75% is going to the state and the cities; counties and schools are getting 25%. There is a bill in that changes that formula somewhat and to me if it goes into affect it will be like 63% and 27%.



**Mr. Kelly** said he was ignorant on that. I would have to take a look at the numbers.

Remember I have to take this back and sell the council on this. There is also the 6-1/2% oil extraction tax and there is only a reference to the counties. Would the tribe get whatever the oil extraction tax is?

**Representative Meyer** said correct.

**Mr. Kelly** said that was a good development. He read Section 4. Again, I think that is something that we should leave to the governor because he cannot commit for the BIA or BLM or the tribe at this point because it is complicated. We have the state industrial commission director back here and he can tell you.

**Representative Meyer** said this just lays out the provisions of what the agreement could be.

**Mr. Kelly** said then we need more specific language to be sure that it reads that way. I just saw this so I am at a little bit of a disadvantage. I need time to get my arms around this and ask some questions and make sure that we are all on the same page. I am commenting off the cuff. We probably have a dual regulations system and I am not sure that we need that. The states needs to know what the federal government and the tribe does and the federal government and the tribe needs to know what the state does and to make sure that everything is covered. At the end of the day what we want is just the proper regulations.

**Representative Charging** (said something about federal law on lands, unable to hear question)

**Chairman Porter** asked Mr. Helms to address that question.

**Mr. Helms** said there is a lot of land that is under that exact scenario. All of the national grasslands area in McKenzie County and Billings County as well as BLM regulated stuff down in Bowman County. In all of those situations there is a dual regulatory role where both the federal regulations and the state regulations both apply to those operators because on the

BLM lands the BLM does the surface and the down hole and the state does as well. If it is within the grasslands, then the Forest Service does the surface, the BLM does the down hole and the state does both so it would be handled the same way. I am convinced that the BLM in this case of course it would be the BIA as opposed to the Forest Service but I am convinced that they would maintain their regulatory authority over these lands and so we would struggle in the same lands as we do with the Forest Service. It has not been an insurmountable barrier but it has been kind of a barrier. In order to change them they have to change CFR and advertise in the federal register so there is a lot of stability there.

**Representative Charging** said then in the section we are adapting to another land (can't hear comment from Representative Charging).

**Mr. Helms** said he believes that this provision does exactly that. It does not replace BIA or BLM regulations with state regulations it just simply says that state regulation will also apply to whatever happens in the exterior boundaries of the reservation.

**Chairman Porter** asked Mr. Kelly to continue.

**Mr. Kelly** said he like how Mr. Helms put that. He read section 5. He believes that it was Representative Drovdal that had the comment about "well aren't we giving something back that we are trying to take away". Here is the situation on the reservation. We have companies that voluntarily pay that TERO fee and voluntarily comply with TERO. As a state, please don't get involved in that. If they are willing to do that, fine. The TERO commission has come to me and said they are not paying this and I say to not push the issue. It is not worth it and we would probably loose anyway. But, it is offensive to the council just like the non-Indian in the northeast quadrant are sensitive to the tribe exercising jurisdiction over there. The tribe is sensitive to the decisions that say that they can't. We have companies that are doing business over there that I believe will want to come onto the reservation and do business. If

they are willing to pay that fee, who cares? It is voluntary. If they say no I know that it is going to be a tough uphill climb for us to do anything. They know it too. I believe that is what you are talking about and I don't know that it needs to be in there. It is not just money, but relationships. The whole purpose of this thing is why we are here today is to try to develop relationships so that we can get some revenue out of this region. He read section 6. He said he had a question there and he heard Representative Meyer say that there is somebody that already has a well.

**Representative Meyer** said it is unconstitutional to go in and supersede on the top of an existing contract. This language is in there if there are contracts out there that have already been negotiated. The fees they are paying and all of those have to be exempted out and that is what section 6 does.

**Mr. Kelly** asked if they were talking about leases that have been entered in to or production.

**Representative Meyer** said Legislative Council indicated that it was any contract that exists that has to be honored and has to be grandfathered in. We cannot go retroactively and subject them to new law and that is why number 6 addresses the constitutionality of allowing those contracts out there or null and void the contract that they have now.

**Representative Keiser** asked if she meant the state.

**Representative Meyer** said yes the state.

**Representative Drovdal** said he thought there was some concern is that some company comes in today and leases and thinks there is a six month exemption and he finds out all of a sudden that he doesn't qualify and we will want to honor that.

**Mr. Kelly** said that is where he thought they were going with this. I do want to say that I went over the entire file last night about the 1997 exemption and Mr. Powers did a lot of work for the tribe and after going through that I really felt bad that he did all the work that he did and the

agreement didn't go through. I would really hate to see the exemption go away and maybe we could have a five year sunset or something. From the tribe's side, please do not do anything to upset his agreement or the agreements that he has in place right now. If the intention of number 6 is to do that, it is fine. Section 57-51.2-03 is fine and the effective date I would guess that the only questions there is are we talking about all production after (not sure what he said)

**Chairman Porter** said that definitely falls back to subdivision 6. It is only effective for new after the affective date of this act because we cannot go back according to subdivision 6 and retroactively change the taxing structure that already exists according to Representative Meyer.

**Representative Keiser** said they can change the taxing structure except for any contractual arrangement that has been made whether it is production or what.

**Chairman Porter** said on Section 2 the effective date is moving forward again and then the emergency clause just makes it the day the governor signs it.

**Mr. Kelly** said that was his comments on the hog house amendment.

**Representative Keiser** said he would like to react to see if he is on track. I respect the fact that it is a reservation and that there is a green line is a reality but I am going to use three scenarios. One is that that green line doesn't exist and is privately held out there and if we were to any drilling in that area for any purpose there would be the 5% and after five years the 6-1/2% and the state would get that. However that is not what we have. The reality is that we do have this boundary and right now if there were drilling to occur in there without any other agreement the state would receive the 5% and after five years they would receive the 6-1/2% and the tribe would receive nothing under those two scenarios. What we are trying to find is a solution and I am just talking about the tax not the regulatory part yet as that is a separate

issue. Instead of making it so complicated what kind of arrangement can we make that would just say look the state is giving up 5 or 11-1/2% and we are willing to compromise on that. The tribe can get all 11-1/2% or any part of it, wouldn't it just be simpler maybe not a flat fee but a differential fee. We are making this so complicated and then just say (I am going to throw some numbers out so don't overreact) but let's say the state would say we will take 3/5<sup>th</sup> of any fee collected and the tribe gets 2/5<sup>th</sup>. Or we could switch it. When the state takes its 3/5<sup>th</sup> it applies the formula to these dollars. The tribe gets its share and it applies it to the tribe and its government but it also takes responsibility for all the improvements within that green area. If there are roads that have to be built, they will use their dollars to build them. Then we get outside the green line, the state has to take care of it. I think we are trying to craft all of these exceptions and we may not reach a number that is acceptable to all parties.

**Mr. Kelly** said there is a lot of ways to do this and that is part of the problem that we have here. The governor wants to negotiate and I really actually think I am the blame for this. This was my suggestion and when I saw that 6-1/2% exemption I thought in the long term if the state is willing to give 6-1/2% to industry why can't we use that 6-1/2% to reach an agreement and have some stability and some certainty in a tax structure here. That is why I visited with the governor and then the attorney general on this. Here we are. I am for anything that gets the deal done and gets us the goal that we are trying to attain. A flat fee sounds good if we can do it that way. The county has roads, the state has roads and the tribe's has roads. The tribes are willing to take care of their roads with the revenues and the counties are going to have to take care of their roads and the state has to take care of its roads and by the way, most of the roads that we are talking about are in the northeast quadrant. There are a lot of ways that we can do this but there is one thing that I do want to say. When I talk about the

exemption, I am talking about only leaving the exemption in place in that northeast quadrant and not having it in place on the trust lands. That would be just like the rest of the state.

**Representative Keiser** said that sounds great but there is a reason for that exemption.

There is a lot of risk when you take all of those dollars and drill and you don't find something. It is an incentive to get activity done. If we really want to remove this line and make it transparent you have to either change the rules we are using outside the green line or allow those same rules to apply inside the green line. Then you just have to figure out what to do with the dollars.

**Mr. Kelly** said what we have right now is 150,000 acres leased up over the northeast quadrant that are taking advantage of the 5% and that hasn't driven anybody to the trust land. We have regulatory issues. I just don't think at the end of the day the 5% is that important on the reservation. I think in the long term, and we have to think long term here, because this Bakken play is not a short term play. I think we want stability and uniformity. That is the goal here, so however we get there, but at the end of the day we have to have some avenue.

**Chairman Porter** said we would have to end this today because of the conference committees that have been scheduled. I am going to go back to Representative Berg's office and Jim sets up the potential for when we can meet as a committee again and let him know that we need another one hour block to deal with SB 2419. My guess is that Friday would be the earlier but it more likely to be Monday. I won't be able to go up there until 4:30 after my conference committee ends so if you want to hang around until then we will certainly make sure that you know what that time is.

**Mr. Kelly** said thank you members of the committee.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: April 10, 2007

Recorder Job Number: 5856

Committee Clerk Signature

*Shirley Clemsted*

Minutes:

**Chairman Porter** called the Natural Resources Committee to order and asked the clerk to call the roll. Representative Keiser had a handout (marked as Item #1) and proposed amendments .0303 (marked as Item #2).

**Representative Keiser** reviewed his amendment .0303. Having listened to the previous discussions on SB 2419 it seems to me that perhaps we could look at really what is a flat tax approach to the land on the reservation for the purpose of oil drilling. On the top half of your handout is the current situation as I will define it. It is not exactly right but if you will walk through this with me. The state currently, forget about the exemption, could be charging 11-1/2%. If you had a million dollars of revenue the 5% gross production tax would generate \$50,000.00 and the 6-1/2% oil extraction tax would generate \$65,000.00 and as you notice there is the potential for a 5 year exemption on wells right now. If we take the 5% gross production tax it comes down and if these numbers aren't exactly right, it is due to my calculations, but approximately 66% or \$32,860.00 of the \$50,000 goes into a variety of funds. Approximately 34% goes to the schools, counties and cities and of that \$50,000 that would be \$17,140.00. In addition to that the tribes certainly has the authority now to charge a tax and I

think currently they are at 5% but that is not in the code and they can also charge a TERO fee and they can also charge additional fees like siting fees.

**Representative Solberg** asked if the TERO was over and above the 5%.

**Representative Keiser** said yes it was over and above the 5% if they choose to do the TERO.

It is negotiated presently between both parties and I am just talking about the present here.

Then we get to the regulations and the regulations clearly if it is on the reservation the BLM and some federal authorities have the authority to regulate but relative to oil extraction regulation it is sort of undetermined who has what authority. What you see on the bottom half of this page is what this amendment does. It says it first begins to separate trust land and tribal land on the left and fee land on the right. Let's start on the right. Fee land would stay under the formula above. The state receives the tax income and credits that currently apply and the state regulates all the activity on the fee land. On the left side the trust land and tribal land is a partnership and this is where the compact portion of this amendment is. If there were a million dollars in activity, it would generate 11-1/2% that is a flat tax and that would be \$115,000. Right off of the top would come the portion that the cities, counties and schools would have received under the top formula so when you go back up to the top if they were receiving \$17,140 that is what they would receive right off the top. The next part is on the state regulations and I didn't know because I didn't have a fiscal note so we would come up with a cost of the regulations and plug that number in. Then whatever is left and in this example the tribes and state would have \$92,860 out of the total of \$115,000 and that would be split evenly between the state and the tribe to do with as they wish. If you go to the second page of this handout the amendments also contains language that does these things. No. 1 the regulation of the oil activity from the current state statutes, rules and regulations relevant to oil exploration and drilling would apply to the oil activities within the reservation. That is why



when you go back to the first page when I put \$5000 on the regulations and it would be some cost that the state would have through the compact the authority to regulate. That doesn't mean that the feds wouldn't be regulating also because we can't control that. The feds would also be regulating but there is no cost associated with the federal regulations. The feds are covering that. No. 2 is any credit/reduction offered by the Tribe or the state must be shared equally between the tribe and state. In other words when you come back to the first page and you see that the state has \$46,430 and the tribe having \$46,430 if they wanted to offer some kind of exemption to encourage growth, they can do that but it must be on a 50/50 basis. That is what the amendment states. I must apologize because I missed a very critical point on the first page if you go down to the tribe split and they get \$46,430, the amendment currently says that there may be no TERO or siting fees or other fees charged by the tribe in the amendment.

**Representative Damschen** asked if that was by both parties of the compact.

**Representative Keiser** asked if he meant TERO fees.

**Representative Damschen** said no, the additional fees.

**Representative Keiser** said no, just the TERO fees and siting fees that the tribe might want to impose, could not be imposed. They would take, in lieu of those fees, the \$46,430.00. Back to the second page, the amendment also says that the oil extraction tax exemption expires in 4 years for all activities on the tribal land regardless of whether they are fee lands, trust lands, unless it has already occurred. No. 4 says that jurisdiction for all disputes will be in Federal Court. This is a flat tax with a 50/50 split however it is really a modified flat tax fee because we are saying that the counties and schools and cities get whatever they would be getting under current law first and that there would be some charge for regulation and that is what this amendment does. There are a couple of areas that the committee should think about that are

not in the amendment under the schools, counties and cities that \$17,140, is it appropriate to divide those dollars in some way and the amendment does not do that but into an impact fund. As you will recall in Bowman County earlier this year we had a bill that said if you go in this area which is a pretty virgin area for drilling and suddenly the drilling activity takes off they are going to need some impact dollars to help with the activity within that region and so you may want to make sure that some of those dollars because you are going to have a lot more kids going to the school systems out there, you are going to have a lot more roads and other issues with impact so we may want to take the schools, counties and cities and further amend this amendment to say we are going to subdivide. It does not currently do that.

**Representative Solberg** asked about the graph on the top of the first page, the oil extraction tax of 6-1/2% with the five year exemption, and then on number 3 on the second page, it is states that this oil extraction tax expires in 4 years. My question is why it is 4 years here and 5 years on the front page.

**Representative Keiser** said currently law for any activity that has occurred up until now had the 5 year exemption and we can't go backwards. What the amendment says that going forward if this were to pass that activity that is developed if this became law would have a 4 year window versus a 5 year but that the entire window expires in 4 years. That is another area that the committee should consider whether they want to make it the same or different or whatever.

**Representative Hunskor** said the schools, counties and cities, that \$17,000, is that intended as a one third, one third, one third even split.

**Representative Keiser** said no. It would be the same formulas that they using. I think that is kind of a local decision.

**Representative Nottestad** asked if on the split with the schools and there are BIA schools, would they be involved in the split as well as the public schools.

**Representative Keiser** said he did not want to sound like an authority on this, but it was his understanding that there are no BIA schools in this district and that is what I have been told. I am not an expert on that area.

**Representative Damschen** said it was his understanding that if the state and the tribe together in their compact want to offer some incentives like 10% rather than 11-1/2% and then they would take a reduction in equal proportions.

**Representative Keiser** said yes. I might also suggest to the committee that I have this map before you (see items marked as #3 and #4) and this gives you a breakdown in part at least of the fee lands versus the trust and tribal land. All of the white is fee land and the tax department and I am not sure if they are going to testify today but I believe they have some reservations about applying this amendment as it currently exists to the fee land within the colored portion. It is going to be very problematic if you do slant drilling figuring out how to do that. One option is to just treat everything that is in this colored portion, change the amendment, and treat it all as one category and all of this big section up here as the "fee land". The tax department does have some concerns about the formulas that are in the amendments in terms of those little white areas within this map. They think it is going to be a nightmare figuring out how to allocate the tax.

**Chairman Porter** said it would be a wonderful nightmare because it would mean that there are all sorts of activity. What a great nightmare.

**Representative Keiser** said he would be happy to answer any other questions and he hoped the handout helps.

**Representative Damschen** said back to the additional fees and taxes. If they were in a compact and signed a compact, can the state charge additional fees?

**Representatives Keiser** said the state would continue to charge any fees that they are currently charging like employment taxes and workers comp fees, etc. but they wouldn't have the ability to put in a new tax just for this activity.

**Representative Meyer** asked if this was going to be creating the agreement or compact and this amendment would be what agreement is that the compact is going to be accepting. It is a reversal from what we were doing before where it was just saying here is your certificate of acceptance upon filing an agreement on both parties and this is a switch from the way I read it which currently could be incorrect where it establishes a compact and the agreement portion that the compact can act on. Is that correct?

**Representative Keiser** said he thinks that is incorrect. What this does, it does not establish a compact but this defines the terms under which North Dakota may enter a compact. It only applies to the governor and the negotiations but it does set the limits within which the state could have, and he could have the authority too operate within the compact but the tribe doesn't need to accept this. We have no jurisdiction over them as they are a sovereign nation. This would define what we would think is an appropriate agreement with any party that would be a sovereign nation that would be within our state.

**Representative DeKrey** asked if he wanted a motion or are we just going to move on.

**Chairman Porter** said we need to get this bill moving and get it going.

**Representative DeKrey** made a motion to accept the Keiser amendment .0303.

**Representative Keiser** seconded the motion.

**Representative Drovdal** said that Representative Keiser just pointed out that this is a sovereign nation. This is land that is within a sovereign nation. Are we creating a problem by

carving out fee land within a sovereign nation? They are going to look at this and say that this is their land and I think the negotiations are very important and that this is putting restrictions on the Three Affiliated Tribes and they may just walk away from the whole negotiation process. I have not visited with them on this but they are going to protect their land within their boundaries and they consider this under their control. Now we start carving it out even though we have the right to do it so I am a little concerned about this so I would like to hear from the tribes.

**Chairman Porter** said we would hear from them.

**Representative Keiser** said I think that is a very legitimate concern. What he attempted to do with this was find policy that would be a win/win for all of the players and would be acceptable and achievable and be able to be passed. The reality is that I have had several people say look if this goes to the top and say why do we want to do anything, we can hopefully get 11-1/2% of this and keep it all. We need to have some give and take and so what this amendment attempts to do based on all the input from leadership and various groups was to provide an approach that does have give and take that makes everyone potentially a winner with the drilling activity but there were people who felt very strongly about the fee land and separating it out. That is all I can say to the committee members. I don't know that if we don't carve it out as it is proposed in the amendment I don't know and we can't predict all of that and it would be simpler on the one hand to just say anything within it gets this formula but the bottom line is that just as we carved out the schools and counties and cities, if we don't take care of them they will all be saying you have to give us that share.

**Representative Drovdal** said what he said is true but first of all we are specifying and has been specified by every person that has testified that if this compact goes through and the negotiations go through the state tax laws are going to be applied on the territory that we are

● talking about. Those state tax laws already protect the counties, cities and schools. We wouldn't even need to put that in. Secondly, I guess even though I agree with the fee land being separate I guess I kind of wonder if we shouldn't leave that up to the governor. With this we have really taken a lot of the negotiations out. The bill reads up to 50% and we need to do something with the oil extraction taxes that are currently in place. As you remember we just passed a bill in the house and senate that is in the governor's possession to give that exemption for the horizontal and that would also apply on these taxes. Most of these are not going to be horizontal so the tax would not apply then. Shouldn't we allow the governor to represent North Dakota instead of us tying this much into it?

● **Representative Keiser** said again my position is that I want to restrict the governor. I want the legislature to define the policy within reason so I guess I don't have a problem with that. The other thing is that in the amendments we certainly attempted to do this but whether or not it is doing that but that this compact would circumvent all other state law. I think the amendment does that and if it doesn't we need to make sure that it does say in affect that all the other laws we had relative to reductions cannot occur. The tribes and the state have to agree and we are operating on a tax of 11-1/2% and if it comes down in this formula and we are going to offer any deductions the tribe has the authority to say yes or no and we don't come back and offer the exemptions without their authority.

**Chairman Porter** said he thought page 5, number 3 addresses that concern.

● **Representative Charging** before we vote I guess I would like request that (unable to hear what she is saying) and this is the first time that obviously the other party meaning the tribes that is represented here today by Mr. Steve Kelly that he have an opportunity to get some of the questions answered that we have. This agreement requires two parties.

**Chairman Porter** asked for further discussion. Hearing none, he asked Mr. Kelly to come to the podium.

**Mr. Kelly** thanked them for allowing him to testify about the amendments presented by Representative Keiser. First of all, he wanted to thank him for putting out the graph because he doesn't read very well and he understands what he is trying to do. He said he provided some maps that were before them. I gave them to you for two purposes. It is difficult to understand how the fee land the tribe land and the white section is referred to as the northeast quadrant. I hope you find these helpful. Commenting on the amendments by Representative Keiser, there are basically two ways to go about this. One way is the way that it was presented by Representative Meyer and basically that you put into legislations provisions that say the tribe meets these conditions and they certify and these laws will apply. The other way is to go about it the way the original bill tried to do and in a way that Representative Keiser is trying to accomplish here and that is go through an agreement process with the governor but let's put some sideboards on the agreement. As I stated last time, we are willing and the tribe itself is willing to do whatever process makes it through the legislature and is agreeable to the governor but we need to have some sideboards too and you need to hear our concerns so I will address those concerns with this legislation now. The big thing that I want to talk about goes to your amendment Chairman Porter as well is provision no. 4 where you talk about fees and taxes imposed by the tribe under an agreement with an oil and gas exploration or production company within the boundary of the reservation entered before July 1, 2007 are unaffected by an agreement under this chapter. Fees and taxes may not be imposed by the tribe by agreement or otherwise with an oil or gas exploration or production company for activities within the exterior boundaries of the reservation after the effective date of this act. I know that is addressed towards the tribes TERO fees. Chairman Porter you had similar

language in your amendments and I just want to make it very clear that this is a non starter for the tribe. It is not because we are really hooked on imposing a TERO fee. It has more to do with sovereignty and the rights imposed on us. The tribe is not opposing the TERO fee but what if the tribe came back and said ok don't apply worker compensation laws on the reservation or income tax or all of these other things. We ought to stay away from those types of stipulations and additions. I will tell you this that what the tribe is trying to achieve is development of oil and gas on the reservation. It has actually reduced and simplified the TERO fee as it applies to oil companies right now at the request of an oil company. We have no intention of in the future of decreasing that TERO fee. It would not behoove us to do so. It would be self defeating and contradictory to what we are trying to do right here. I would plead with the committee not to go down the road and to exclude provision 4 from the agreement.

Remember and keep this in mind that if we are going to go to the governor and negotiate, the governor can bring this up and maybe sitting face to face with the council he might be able to make some leeway. As far as on the fee lands and I have said it before we have problems and oppose our TERO fee. As far as the trust land I think the council would find it a little bit offensive for the state to say don't pass any laws. Second of all, the council itself cannot limit or restrict future councils as to what laws they can pass. Any agreement or any law would have to make the agreement or say something about the condition of the tribe not passing laws contrary to the agreement or something to that affect. The TERO fee and anything like that is really off limits. The goal here is to have one uniform gross production oil extraction tax on the reservation and to split it. Looking at the formula with respect to the split, I want to make one thing clear. When the tribe came in here and wanted to split all the taxes on the reservation including the fee lands we understand and including the northeast quadrant, we understand that there are some that have a big problem splitting any taxes on the fee lands.



We do not agree with that but we do understand those individuals position and we appreciate the comments that have been made concerning the tribe's sovereignty and whether any agreement should include that portion. We would welcome any language that would get the governor the right to negotiate with the tribe concerning those lands. Whether or not you get that through that is another issue however when we address this issue the tribe really needed two things. Either we can negotiate something for the whole reservation or for them to negotiate something on the trust portion then the tribes should get 2/3rds of whatever tax is imposed because that is the land base. That would stand to reason from our end of things. I believe with the caveat that 100% of the tax with the exception of what goes to the county and I believe that is what Representative Meyer's amendments did. Basically the tribe stood in the shoes of the state so that the counties would get their share and everything else would go to the tribe. Under this amendment, the state and tribe and this is based on one million dollars in revenue, \$115,000 in tax, the state takes the first cut and it goes to the counties but the state still gets and it would roughly be about 15% of the tax and then after that is split out then the state and the tribe would split. So basically the breakdown is going to be somewhere in the area of 55% TO 45% in favor of the state under this formula. I may be able to work with this with the tribe because it will depend on what this first breakout is going to be. We are still going to be in the neighborhood of 5% of the tribe's tax and I can probably explain that. Having said that the one thing that I want to comment on is that I believe a flat tax on the reservation is really going to be the easiest sell because it is easy to explain and I don't have to deal with exemptions. I went up to the tax department and we went through a theoretical problem and the exemptions are crazy to deal with. One of the points I want to make in addition to the TERO point is that the tribe would rather deal with a flat tax whether it is 11-1/2% or whatever. The second comment I would like to make is 11-1/2% flat tax would make the brown and red

portion of the reservation less attractive to off and on reservation in the northeast quadrant.

One thing he has thought of about is when we deal with this down the road and I just want to plant the seed here is if we were to do as I believe it were suggested by Mr. Ness that maybe an 8-1/2% flat tax on the reservation with no exemptions would be more in line with what the state is doing right now and then we would just split it 4-1/4 and 4-1/4. The state could pay the counties what it wants to out of its share under that gross production formula that it has in place right now. Something to that affect. That is one way that you could address the competitive advantages and disadvantages depending on what side of the reservation you are on.

**Chairman Porter** said on that last comment there is nothing there is nothing in the amendment that would say that the tribes and the governor's office couldn't charge less than that amount. All it says is that is the maximum so there isn't anything that says that in the negotiation process they couldn't charge less than that amount. The other thing to be clear is that section 3 is the repealer of the oil extraction tax on the entire reservation so that would level the playing field but it was felt that it would be unfair to those individuals who have purchased or have leased minerals in that northeast quadrant in the hopes of having that extraction tax in place and it would be unfair to just stop it on July 1<sup>st</sup> or with this emergency clause on there of saying that it is done tomorrow. The 2010 date of that repealer moves it up to where it would be a more level playing field but as far as the tax on the tribal land and the land held in trust that is just the maximum. That is the negotiation factor that if the tribes want to enhance or match the current Bakken incentive that is out there because that is exempted in subdivision 3 then they can come into that negotiations and say why don't we just get things in play and start at 7% or let's start at 6% or why don't we start at 5% and if the governor's office

agrees to that and the tribal council agrees with that then that is the amount. It just can't be more than 11-1/2%.

**Representative Keiser** said again any reduction that would be done in the negotiations would be split 50/50. We wouldn't ask one partner to take on more than the other partner.

**Mr. Kelly** thanked Mr. Porter for explaining that. One thing he wanted to point out is under Section 2, 57-51.2-21A talks about the distribution to the counties under present law. That is fine to the tribe as long as it comes out of the states portion but according to the graph that is not what is shown here. I just wanted to point that out. I understand your point and I appreciate you bringing that up. The other point that I would like to make is when I met with the tax commission regarding a scenario hypothetical under Representative Meyer's bill it was represented to me that it would be an administrative nightmare to impose these exemptions and propose these tax in the brown and red sections which is the trust area on the reservation. It would be easier if any bill were to just cut out the northeast quadrant and make that subject to the state tax and this part subject to the trust tax. They are here so they can testify to that as well.

**Chairman Porter** asked Mr. Kelly how that would work in that northeast quadrant say up by New Town there is tribal land there and I can't see the number but let's just say that the drilling was on one of the fee pieces a mile east of that tribal land and was a horizontal well and went under that tribal land. How would that be handled?

**Mr. Kelly** said he asked that very question. The way this works is wherever the well is drilled they would get the tax so if the well was drilled on the tribal section then it would come under the tribal state tax agreement. If it was drilled on the white section, it would be subject to state tax regardless of what lands it went other.

**Chairman Porter** said in the same scenario if you went down where Dunn Counties name is and you did the same thing in reverse and drilled on that white section and if you drilled on that fee land wouldn't it work just in reverse of what you explained?

**Mr. Kelly** said exactly.

**Chairman Porter** so it wouldn't be all that complicated. I am not seeing that level of complication that comes from.

**Mr. Kelly** said you would have to deal with the tax department on that one.

**Representative Keiser** said he thinks it is a very complicated issue because of the tax on the side of the drilling because of utilization of slant drilling you are going to get into all kinds of issues so the easiest strategy if you adopted this amendment would be that you say wherever it is drilled, that is the taxes.

**Mr. Kelly** said what he wanted to make clear is that they have to understand that what it is exactly when it comes to trust lands that the state taxes. It does not tax their working interests so that is what makes it complicated based on all the owners. Chairman Porter part of his amendments that he liked you talk about tribally owned or land owned by the tribe or tribal members. A lot of the land in this light area is like that and that is another thing that makes it difficult. It would be a lot easier administratively if we were to just to differentiate through the northeast quadrant. That is a part of the nightmare. The other thing is regarding the five year exemption that is struck under paragraph 8 and referred to in section 3. In Section 2 it says an oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state tax and regulatory provisions for the life of the well. I would tie that into the exemption. Then if you go down and read section 3 it says it becomes effective on July 1, 2010. I would just ask if somebody drills a well six months before the end of year 4

is it the intent of this amendment to have the 5 year exception apply for the life of that well or just for the six months of production up to 2010.

**Representative Keiser** said as he understood it was for the life of the well.

**Mr. Kelly** said that was his understanding as well but he had been asked by the audience about that. I just wanted to make it clear that he was right.

**Representative Keiser** said one of the reasons for this was the incentive that it provides for activity. If they can come in and get that exemption now they will want to go.

**Mr. Kelly** said they might want to make some amendments to make that clear. The tax department didn't interpret it that way and Mr. Ness didn't interpret it that way as well. The other thing is the administrative fee in here. We might be able to negotiate that with the governor or it might be able to come out of this portion but I believe that is probably what was meant under the graph and you have regulations and maybe that includes the administrative fee. I am not sure.

**Chairman Porter** said that it does include the regulation.

**Mr. Kelly** said that is a positive. He said another thing act might be like the original portion and be specific to the Fort Berthold Reservation. It looks to me like it is under the title but of course is not long.

**Chairman Porter** said on Section 2, that next line down is where it starts talking about on page 4. That is where the specifics for the agreement would be.

**Representative Keiser** said he did want to clarify one point. It was his understanding when talking with Mr. Walstad that we weren't changing any of the rules that if you were to drill that well within that exemption period that when they did the drilling it had to be operational and producing. They wanted to circumvent someone from start drilling and not abandoning it but doing nothing for five or ten years and then coming back. I think the current law requires it to

be producing within a certain period and that would be a requirement. Mr. Walstad said we would be consistent with our current law.

**Mr. Kelly** said he thought that was correct and we would want to have that in place to prevent stacking on that exemption.

**Representative Keiser** said it was his understanding that whatever the current law was this would be the same within that exemption.

**Mr. Kelly** said he would like to address the question that was asked by Representative Nottestad regarding whether or not the tribal schools, we have three tribal schools or what we call tribal schools on the reservation as to whether or not they are funded with county monies. My comment to that is the White Shield School, the Twin Buttes School and the Mandaree School are all under the state school districts so they would be funded just like any other state school. This brings me to the comment regarding funding for impacts and that is if we end up in a scenario where the counties get the first cut it would help me sell this to the council if there was some understanding that some of this money would be used for the reservation. It is the general sense on the reservation that the reservation roads do not get funded to the same extend that the non reservation roads to.

**Chairman Porter** said if we did nothing with this bill and it went to the floor of the house and died and the tribes came in and sat down with the governor to come to an agreement on regulations or took the current agreement on regulations to the federal authority that has to put their stamp of approval on it and they did that and they stamped it and they said that this is ok. These regulations and this agreement on regulations is ok. We would have in place a 5% gross production tax for five years as a state. If the tribe came in and levied whatever tax they wanted to from TERO to whatever if they wanted to wouldn't we have basically the same thing without all of the rest of this bill?

**Mr. Kelly** said yes.

**Chairman Porter** said then my next question is why do we have this bill in front of us? If this can already be done in the governor's office and the tax structure is attractive to oil companies the way it currently is because half of our tax is gone then short of the regulation which there is already an agreement on which only needs the stamp of federal approval, why are we here?

**Mr. Kelly** said because you have the oil extraction tax along with the gross production tax.

**Chairman Porter** said he understands that but our oil extraction tax doesn't kick in for five years so the incentive of a Bakken well, let's just say that they run on the average they really exist for about three years after they go into production, the oil extraction doesn't even come into play until the vast majority of the oil is already taken out of that well. That certainly wouldn't keep a company from drilling.

**Mr. Kelly** said or until the Legislature does away with the exemption.

**Chairman Porter** said no one even brought it up until the bill was here.

**Mr. Kelly** said that is exactly why I brought it up. When I looked at that I thought you know they say that they want certainty here and the state of North Dakota has already realized that there is a problem and they gave the exemption but they gave it to industry. In my mind for the long term it is better for the state and the tribe to enter into an agreement that will provide certainty on the reservation with respect to taxes and have that be the law. That is my opinion. I think that is better in the long run than an exemption. I thought that I was on the same page with industry and I did not anticipate that there would be this uproar about the exemption in the northeast quadrant. That came to light after we started this. Quite frankly, if the state were to say look we deal with the gross production tax on the trust land and the tribe can do whatever they want we would be ok with that.

**Representative Meyer** asked if the Fort Berthold Reservation eligible for the six million dollar oil impact grant. Can that be given to the reservation?

**Mr. Kelly** said he did not know.

**Chairman Porter** asked for any further discussion on the proposed amendments.

**Representative Meyer** asked Representative Keiser to clarify if he was suggesting that the northeast quadrant be handled completely separately and then the fee lands that are interspersed on the southwest and those are handled like they are not fee lands. Can you clarify that?

**Representative Keiser** said no. This amendment treats all fee lands as fee lands under the old rules or the current rules I should say.

**Chairman Porter** asked for further discussion.

**Representative Charging** she said Mr. Kelly had brought this up but she knew there was some concern about that because there is a Supreme Court ruling that designates the green line and the green line is what it is. What we are talking about is taxing the entity in total. We can't change the status of the land nor can we change jurisdiction and there are many places in our century code and is expressly stated in federal law so that brings up some questions. I live in a district and I represent both factions and I hear taxation without representation and that is an issue. One other point would be that it is a lot and we are rushing though and we are talking about a five hundred million dollar surplus that we are enjoying and struggling with and just think what could be extracted out of this section of the state and that is what we are trying to come down to. I would like to entertain the idea of an amendment that would propose that earmarking those dollars for specifically within those boundaries. Somehow there has to be attention to the boundaries and special attention to the interior boundaries within the exterior boundaries. The conditions within the boundaries of the reservation are pretty tough and there



are some highways that have one rancher on it and that highway you really can't drive on and hasn't been worked on.

**Representative Meyer** said maybe if someone in the audience could answer this question if the oil impact grants on the six million dollars, are the reservations eligible for those grant dollars or have they ever been given on the reservation.

**Representative Charging** said as far as she knows the answer is no. She was not sure who the appropriate person would be to answer that.

**Mr. Lynn Helms** said it would be through the State Land Department.

**Representative Charging** said there is a separation between the tribes and the state. Under the present impact dollars that go out not one dollar has come to the tribe so while we are willing to carve out this section of land for this agreement, then let's open the door? If we are going to share then let's share.

**Representative Meyer** said under this amendment that is what I was getting at as I believe that would make them automatically eligible for the oil impact granting funds because of how this amendment would plug into it. I believe that would be correct because of how it is allocated now.

**Representative Charging** said since the tribe is sovereign it is within their constitution (can't hear her comment) and it does not recognize the tribe. (This is an incomplete statement). The constitution of North Dakota does not recognize the tribe. If we are eligible then I want there to be language that says that.

**Chairman Porter** said if there was no further discussion the clerk would call the roll for the motion to accept amendments .0303. Let the record show 9 yes, 5 no (Charging, Drovdal, Nottestad, Hunskor, & Kelsh) with all present. The motion prevailed.

**Representative DeKrey** made a motion for a do pass as amended on SB 2419.

**Representative Keiser** seconded the motion.

**Chairman Porter** asked for discussion.

**Representative Keiser** said if this passes on the house floor it will certainly end up in conference committee and I think there have been several issues that have been raised that are legitimate and should be considered by a conference committee. The majority of the committee agreed.

**Representative Charging** said we do have time and I guess it is about what we want and what we are willing to do. We did bring up some very valid concerns and actually offered some potential language but the committee was unwilling and this is what we got.

**Chairman Porter** asked for further discussion. Hearing none, he asked the clerk to call the roll call vote on a ***do pass as amended on SB 2419***. Let the record show 10 yes, 4 no (Charging, Drovdal, Nottestad, & Kelsh) with all present. The motion prevailed.

**Representative Keiser** will carry this bill to the floor.

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2419

Page 1, line 3, remove "to amend and reenact subsection 8 of section 57-51.1-03"

Page 1, remove line 4

Page 1, line 5, remove "from wells on Indian reservations, Indian trust land, and land owned by an Indian tribe;"

Page 1, remove lines 9 through 20

Page 1, line 24, after "commissioner" insert "and the attorney general"

Page 2, line 1, after "wells" insert "on Indian trust land and land owned by an Indian tribe"

Page 2, line 5, replace "The only" with "All", after the first "taxes" insert "and fees", and replace "are oil and gas gross production taxes and oil" with "must be"

Page 2, line 6, remove "extraction taxes" and after "wells" insert "on Indian trust land and land owned by an Indian tribe"

Page 2, after line 21, insert:

"7. If the legislative assembly is not in session at the time negotiations for an agreement under this section are being conducted, the chairman and vice chairman of the legislative council or the designee of the chairman or vice chairman may attend all negotiations and brief the legislative council on the status of the negotiations. If the legislative assembly is in session at the time negotiations are being conducted, the majority and minority leaders of both houses, or their designees, may attend all negotiations and brief their respective houses on the status of the negotiations.

If the legislative assembly is not in session when negotiations for an agreement under this section are concluded, the governor shall forward a copy of the agreement as finally negotiated to each member of the legislative council at least twenty-one days before the agreement is signed. If the legislative assembly is in session when the negotiations are concluded, the governor shall forward a copy of the agreement as finally negotiated to each member of the legislative assembly at least twenty-one days before the agreement is signed."

Renumber accordingly

April 4, 2007

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2419

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 57-51.2 of the North Dakota Century Code, relating to tribal acceptance of state administration and enforcement of oil and gas regulatory and tax laws within the boundaries of an Indian reservation; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** Chapter 57-51.2 of the North Dakota Century Code is created and enacted as follows:

**57-51.2-01. Acceptance of state administration and enforcement of oil and gas regulatory and tax laws.** This chapter is effective within the boundaries of an Indian reservation upon filing with the governor, tax commissioner, and legislative council of certification of acceptance by the appropriate tribal governing body of state administration and enforcement of oil and gas regulatory and tax laws as provided in this chapter for oil and gas exploration and production within the boundaries of the Indian reservation.

**57-51.2-02. State oil and gas regulatory and tax laws application within reservation boundaries.** Upon acceptance under section 57-51.2-01, the following provisions apply within reservation boundaries:

1. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to fee land within reservation boundaries is retained by the state and allocated as provided by law. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to Indian trust land and land owned by an Indian tribe within reservation boundaries is allocated to the tribe, except as provided in subsection 3.
2. Except as otherwise provided in this section, the provisions of chapters 57-51 and 57-51.1 apply to oil and gas production within the boundaries of the Indian reservation and may not be changed by tribal action.
3. Revenue from taxes under chapter 57-51 attributable to oil and gas production on Indian trust land and land owned by an Indian tribe must be allocated among political subdivisions in the proportion and manner provided in chapter 57-51 and all remaining revenue must be allocated to the tribe.
4. Regulatory provisions of state law and state administration of regulatory provisions apply to all wells on land within the boundaries of the Indian reservation.
5. Tribal fees and taxes do not apply to fee land within the boundaries of the Indian reservation. Fees imposed by the tribe on Indian trust land and land owned by an Indian tribe within the boundaries of the reservation are subject to agreement by the tribe and the oil or gas exploration or production company.

6. This chapter does not apply to taxes or regulatory authority with regard to a contract between a tribe and an oil or gas exploration or production company entered before the effective date of this Act.

**57-51.2-03. Statutory inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for oil and gas production after the effective date of this Act.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

VR  
4/10/07  
195

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2419

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

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

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

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

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes

effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

5.
  - 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 subsequent to June 30, 1991, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins.
  - c. 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.

- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
8. ~~The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:~~
  - a. ~~The well is located within the boundaries of an Indian reservation;~~
  - b. ~~The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or~~
  - c. ~~The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.~~

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

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

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

1. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to fee land within the exterior boundaries of the reservation is retained by the state and allocated as provided by law. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to Indian trust land and land owned by an Indian tribe within the exterior boundaries of the Fort Berthold Reservation is allocated as follows:
  - a. Revenue from taxes under chapter 57-51 attributable to oil and gas production on Indian trust land and land owned by an Indian tribe

must be allocated among political subdivisions in the amount, proportion, and manner provided in chapter 57-51.

- b. The cost of state oil and gas administration and regulation must be deducted and transferred for deposit in the state general fund.
- c. All revenue remaining after deduction of the amounts under subdivisions a and b must be divided in equal amounts between the state and the tribe.
- 2. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state tax and regulatory provisions for the life of the well.
- 3. The exemptions for oil and gas production under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the reservation unless the exemption is specified in the agreement or in a later amendment to the agreement and the revenue loss attributable to the exemption is divided equally between the state and the tribe.
- 4. Fees and taxes imposed by the tribe under an agreement with an oil or gas exploration or production company within the boundaries of the reservation entered before July 1, 2007, are unaffected by an agreement under this chapter. Fees and taxes may not be imposed by the tribe by agreement or otherwise with an oil or gas exploration or production company for activities within the exterior boundaries of the reservation after the effective date of this Act.
- 5. Jurisdiction of any dispute under this chapter or under the agreement entered under this chapter is in the federal district court for the western division of North Dakota.

**57-51.2-03. Statutory Inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any provision of state law relating to regulatory provisions of state law relating to oil and gas exploration and production and administration of those provisions.

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

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

Renumber accordingly

Date: 4-10-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2419

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amendment 0303

Action Taken

Motion Made By DeKrey Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman – Rep. Porter	✓		Rep. Hanson	✓	
Vice-Chairman – Rep Damschen	✓		Rep. Hunsakor		✓
Rep. Charging		✓	Rep. Kelsh		✓
Rep. Clark	✓		Rep. Meyer	✓	
Rep. DeKrey	✓		Rep. Solberg	✓	
Rep. Drovdal		✓			
Rep. Hofstad	✓				
Rep. Keiser	✓				
Rep. Nottestad		✓			

Total Yes 9 No 5

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Motion Previous

Date: 4-10-07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB2419

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

Do Pass on Amended Bill

Motion Made By

DeKrey

Seconded By

Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman – Rep. Porter	✓		Rep. Hanson	✓	
Vice-Chairman – Rep Damschen	✓		Rep. Hunskor	✓	
Rep. Charging		✓	Rep. Kelsh		✓
Rep. Clark	✓		Rep. Meyer	✓	
Rep. DeKrey	✓		Rep. Solberg	✓	
Rep. Drovdal		✓			
Rep. Hofstad	✓				
Rep. Keiser	✓				
Rep. Nottestad		✓			

Total Yes 10 No 4

Absent 0

Floor Assignment

Keiser

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2419, as reengrossed: Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2419 was placed on the Sixth order on the calendar.

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

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

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

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

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period.

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

5.
  - 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 subsequent to June 30, 1991, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins.
  - c. 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.

- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
- 6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
- 7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
- ~~8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:~~
  - ~~a. The well is located within the boundaries of an Indian reservation;~~
  - ~~b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or~~
  - ~~c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.~~

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

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

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



1. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to fee land within the exterior boundaries of the reservation is retained by the state and allocated as provided by law. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to Indian trust land and land owned by an Indian tribe within the exterior boundaries of the Fort Berthold Reservation is allocated as follows:
  - a. Revenue from taxes under chapter 57-51 attributable to oil and gas production on Indian trust land and land owned by an Indian tribe must be allocated among political subdivisions in the amount, proportion, and manner provided in chapter 57-51.
  - b. The cost of state oil and gas administration and regulation must be deducted and transferred for deposit in the state general fund.
  - c. All revenue remaining after deduction of the amounts under subdivisions a and b must be divided in equal amounts between the state and the tribe.
2. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state tax and regulatory provisions for the life of the well.
3. The exemptions for oil and gas production under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the reservation unless the exemption is specified in the agreement or in a later amendment to the agreement and the revenue loss attributable to the exemption is divided equally between the state and the tribe.
4. Fees and taxes imposed by the tribe under an agreement with an oil or gas exploration or production company within the boundaries of the reservation entered before July 1, 2007, are unaffected by an agreement under this chapter. Fees and taxes may not be imposed by the tribe by agreement or otherwise with an oil or gas exploration or production company for activities within the exterior boundaries of the reservation after the effective date of this Act.
5. Jurisdiction of any dispute under this chapter or under the agreement entered under this chapter is in the federal district court for the western division of North Dakota.

**57-51.2-03. Statutory Inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any provision of state law relating to regulatory provisions of state law relating to oil and gas exploration and production and administration of those provisions.

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

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

Renumber accordingly

2007 SENATE NATURAL RESOURCES

CONFERENCE COMMITTEE

SB 2419

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SNB 2419

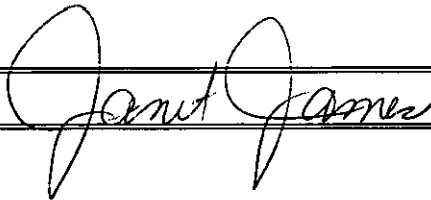
Senate Natural Resources Committee

☒ Check here for Conference Committee

Hearing Date: April 17, 2007

Recorder Job Number: # 6067

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the conference committee on SB 2419.

All members of the conference committee were present including **Senator Stanley Lyson**.

**Senator Rich Wardner, Senator Constance Triplett, Representative George Keiser, Representative Charles Damschen, and Representative Shirley Meyer.**

**Senator Lyson:** before we get into this too deeply, there are copies of amendments (see attachment #1) from the legislative council from the Three Affiliated Tribes. Would the house please walk us through their amendments and why they hog housed the bill?

**Representative George Keiser:** I have given the committee a graphic (see attachment #2), I developed which summarizes the amendments. This is easier than walking through it and I took some liberties with this graphic and will try and point them out. One of the things we heard initially in our testimony in the house was that we wanted to attempt to try take the green line which is the boundaries of the tribal land and to make it transparent, to be able to have equal opportunity on both side of that green line. Currently, the top half of this handout is really what is the current situation. That is what the state has in some way for a potential for 11 ½ % taxation on the land. If you have \$1million in production, there would be 5 % gross

production tax of \$50,000, 6½ % oil extraction tax, \$65,000. There is a five year exemption in play so it would depend on the timing. If you take the gross production tax, it is further divided down, that 50,000 goes to schools, cities and counties set at approximately 34% or \$17,140 and 65% at \$32,860 goes to other uses. In addition to that currently the tribe has the authority to impose a tax at this time a 5% tax. They also have the authority to impose a TERO fee which is like our worker's comp fee and also additional fees, specifically citing fees or other fees. The regulations right now are the third component and they are somewhat undetermined. They can change irregularly. What our amendment does is on the bottom half of the sheet and on page 2. it took the same formula the state and the tribe would be sharing on a flat tax basis, revenues that came in through the trust land and tribal land. To the far right, that box refers to fee land, so lets take the trust land and the tribal land, assuming again that there were a \$1million in product and assuming a flat tax of 11 ½%, which the amendment do assume, then the schools, cities and counties would be held harmless. The 17,140 they would have gotten above, is the first thing taken off. The second component taken off of the tax would be the constant regulation and I put \$5000 in and I don't know what that would be. You would need to get a fiscal note on that, the fiscal note doesn't yet contain that, I see. And then, the remaining amount of that \$115,000 or 92,860, if those numbers were correct, would be divided evenly between the state and the tribes. The current amendment restricts the tribe from imposing a TERO fee/tax or any other fees. And again that formula applies to the trust land and tribal land. On fee land, that state receives income, current credits apply and current state regulations would apply. So you would go up to the formula above for the state portion and apply that to fee land. On page 2, our additional components of our amendments, under the regulations, the limitations invoked by the state would be current state statutes, rules and regulations would apply and the state would oversee those just as they do on non reservation

land. Now that is in addition, and the amendments don't address it, but that is in addition to federal oversight that the tribes are required to fall under currently as well. Number 2, if there were any credit or reduction offered by the tribe or the state, that credit or reduction would have to be split 50/50 and that is an important point. If you go back to page 1, where the tribes and the state would be splitting those revenues, 46,430 each, we still could have any reduction we wanted. We could still have a 6 1/2 % oil extraction-five year exemption. We could have any exemption we wanted imposed there but this would require the tribes and the state to agree to that in their compact and that if there was an agreement for a reduction of 6 1/2 % or 3% or any %, that whatever the reduction was, it would be split evenly by the partners, being the tribes and the state. The current amendments have the oil extraction tax exemption expiring in four years for all oil companies, for activity on those lands. Finally, the jurisdiction, should any dispute arise relative to drilling and development on the reservation properties, the federal court would be the court of jurisdiction. I do not know if this helps your committee or not, but this what the amendments do. It was an attempt; it was a first attempt at trying to create basically a flat tax and distribute it evenly between the two partners on the trust land and tribal land, recognizing that schools, counties and cities would have money pulled out first, and then some regulatory and oversight cost of the tax department as well. So I would be happy to answer any questions.

**Senator Lyson:** when I look at it and when I look at the bill the senate sent out as a negotiation type bill between the state and the tribal entity. Looking at this as a group that the tribe would have equal power in a discussion period with the governor to negotiate the terms of all of the things that you people put into the bill. With what you have done, you almost limited, almost taken away the power of the tribes to negotiate anything and certainly limited the governor from any discussion or agreements he could make.

**Representative Charles Damschen:** I think when we worked on this we had three things in mind, or three entities, the tribe, the state and the oil companies and all three would benefit from whatever agreement the governor and the tribe would reach. We also felt some responsibility to lay down some perimeters for the governor as our negotiator. I don't think we intended to dictate to the tribe the concessions or agreements they wanted to make, we did feel the responsibility to lay down some perimeters for the governor.

**Senator Lyson:** I thought that is what the senate bill did; set down some perimeters, but we didn't get into changing the whole bill into a tax bill and that is pretty much what you have done.

**Senator Constance Triplett:** to follow up on that, I would like to ask the folks from the house if you can tell us what you think you have left for anyone to negotiate. What is there still in the negotiating point the way you have laid this out?

**Representative Keiser:** really what we have left, certainly any reduction could be negotiated. Other than that we are setting the floor, certainly they could go a higher percent of taxation, higher than 11 ½ %, which would be outside the green boundary, but Representative Damschen expressed the majority of the house's position which is, we think it is a legislative responsibility to set the policy, rather than to delegate it to the executive branch.

**Senator Lyson:** wouldn't you agree though when negotiating you should set perimeters so there is some lead way there because we still have the authority after any agreement is made to ....( undistinguishable on tape). We have all the authority, this isn't like the gaming bill, that the federal government said the governor was the only one, we still maintained the authority here and I think your perimeters are so that nothing is negotiable.

**Senator Rich Wardner:** I agree with you and Senator Triplett, there is not much left, you negotiated already, I mean it's ....and there may be some other things that you discussed that

we're not aware of, there always is, but I see a difference between the bill sent out of the senate and this one.. the one in the senate gave power to the governor to negotiate and then we would have to bless it, where as this one, you guys have done the negotiating. And this could be a good plan, I don't know what the tribe says, but.....

**Representative Keiser:** I have legitimate description of what we have done. We had assumed the responsibility of setting the policy. That is exactly what we have done and we don't have a problem with that.

**Senator Triplett:** ordinarily in relations between the legislature and the governor, I wouldn't have a problem with what you have done either and I think in general I probably agree with you. In this particular case when you are dealing with tribal government though, I think there is a distinction because they are be law they are considered sovereign independent nations within our state and I really think it is just a tad bit culturally insensitive for us to do this kind of policy making in what looks to me as a take or leave it mode. That is my concern, I think in any other context I would agree, but in the context of dealing with the tribes, I think there is a notion that we should leave some space for the governor and the tribal council to work together. We would still maintain the policy piece by coming back in the end and approving it or not approving it . I think that would be ...which I think is actually not clearly stated in our version of it and maybe should be more clearly stated, that we would reserve the rights to pass on it when it is done, but I think ...I guess without having heard from the tribes I don't know but I wouldn't be surprised if they would just walk away from this rather that deal with ..... there is a potential of drilling on the reservation that obviously the taxes would help us and them ... so I think there is a need to get to a place where it will happen.

**Senator Lyson:** because of the layout of the Fort Berthold Reservation and the lines have changed in the 1970's and it took in a lot more land then they originally had. They lost a lot of

land with Sakakawea and got a lot back. So there is a great amount of fee land on the Indian reservation and if we can't come up with an agreement between the tribes and the state, that we are leaving these people out of the chance of receiving oil wells on their property. I can tell you , I live with these people and the industry will not go in there unless all the strings are attached and the knots are tied. That is as simple as I can put it and I think what you folks have done is made it way to restrictive that the tribes want to leave the table.

**Representative Damschen:** I think the way I understood it, right now, fee land drilling can probably happen and the state would probably get their tax revenue off of ...

Senator Lyson: that is true but they still have the government ruling over the reservation, so there are rules within that they can apply to ....that is would the industry is worried about.

**Representative Damschen:** and I think that is what our concern was the regulation was the really the main issue as far as some stability in the regulations and that was the reason we wanted incorporate those into the agreement as a minimum. I viewed it as a pre-approved agreement. It really doesn't matter if you come back with an agreement that we don't approve, except that if it happens that we have to approve or disapprove it in two years, then the drilling will be delayed another two years or possibly four if we have to come to the legislative assembly.

**Senator Triplett:** my understanding there has not been a well drilled there for 27 years and there is reason for that and that is because of the uncertainty, and so I'm not sure that two years away is that big of a deal if gets to the point when something happens, but if all we do here is send everybody away again so that they won't even come to the table and have the conversation, we sending them away for a lot longer than two years again.

**Senator Lyson:** I don't know if we are going to get any further than we are today. I know there are amendments up in the legislature being drawn up and we'll pass out some amendments I



have not seen either as I just got them this morning. So I would like to do at this point is to recess our meeting and call up another meeting in a day or two and ask for longer time than a half hour. If that would be acceptable, but before we don that there are a couple of things I would like to take a look at. Starting on page 7 of the house version and look at section 2, there is not a lot of things but one thing is ... where we talked about the completion time and so on and the taxes if this is going to be what you're going to do. Line 13 after to, you should have the word "only". And on three I wrote to myself, tell us what the meaning of this is, what is the intent.

**Representative Keiser:** again I think we have the ???, but I think we refer to the five year exemption on oil extraction tax.

**Senator Lyson:** well it certainly has to be clarified.

**Representative Keiser:** it was drafted by legislative council to do that so that this would become a new contractual agreement that if there were reductions, or exemptions created that it would be created in the compact and jointly shared by the parties.

**Senator Wardner:** well I think when you read in there what those chapters are about, I think they would maybe make sense. It says the exemptions for oil and gas production under production tax instead of saying Chapter 57-51 that's all about production tax and the next one is the extraction tax , so we are talking about production and the extraction tax, do not apply to production within the boundaries of the reservation unless the exemption is specified in the agreement. In other words we are talking about that the agreement is going to over ride any other tax law we have in the state of North Dakota. And then it says in a later amendment to an agreement and the revenue loss attributed to exemption is divided evenly between the state and the tribe. I believe that is what Representative Keiser mentioned that if there is any loss or gain we divide it equally and that is the way I see it.

**Senator Lyson:** and I would agree with that until the attorney general says it is not good language.

**Representative Keiser:** has the attorney general say that.

**Senator Lyson:** yes, these are little things we can deal with but it think some of these things the way I understand ... (undistinguishable on the tape). Some of the amendments will affect these items ..maybe we should just wait until ....

**Representative Keiser:** it sounds to me, that the attorney general has not had a chance to diagnose it , although I hate to say that. I do have confidence in the language in the section. One area that I think is worthy of pursuing on the house amendment is where we state the tribe may not impose any TERO taxes or fees. Having listening to discussions occurring after we adopted the amendment and passed the bill out, I think we can draft language that allows the tribe to impose those fees as long as they establish with the company at the front end of the development, so that the company knows what those fees might be.

**Senator Lyson:** that is one of those things that have to be in the agreement because ....

**Representative Meyer:** if I had to guess I would think that is part of the amendment that are being drafted.

**Representative Keiser:** I think so.

**Senator Lyson:** that is why we should wait although we don't have a long time to get things done, .....I certainly want to see the governor to be able to negotiate rather than just say....cause we do have the power after he negotiates.

**Representative Keiser:** I agree with Senator Triplett and I did not read you bill as showing that much power and it's really after the horse is out of the barn. Policy points you in this view state??, where there is normal limitations and provide that with the negotiators, or do you allow

your negotiators to negotiate and then simple confirm it. And that is philosophical, perhaps the difference between the house and the senate.

**Senator Lyson** closed the conference committee on SB 2419.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

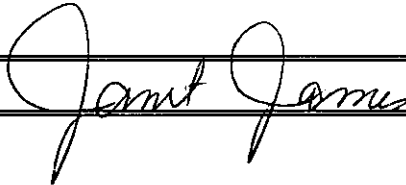
Senate Natural Resources Committee

☒ Check here for Conference Committee

Hearing Date: April 18, 2007

Recorder Job Number: # 6107

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the second conference committee on SB 2219.

All members of the conference committee were present including **Senator Stanley Lyson**.

**Senator Rich Wardner, Senator Constance Triplett, Representative George Keiser, Representative Charles Damschen, and Representative Shirley Meyer.**

**Senator Lyson**; before we start today I want to make a statement so that we can try to get on the same page. Just ask that we all sit back a little bit and think just a little bit about SB 2419. I would like to take some time to talk about the bill and why it is in front of us. Likes try to work through the bill in a spirit that is good for the citizens of North Dakota, what's good for North Dakota, what' s good for the Three Affiliated Tribes and what can we do to give the oil industry the confidence to move onto the reservation and drill for oil. It will help the state of North Dakota, the tribes and the industry and most of all it will do a lot of good for the citizens of North Dakota, Indians and whites living on or off the reservation. Before we do anything else this morning, I would just like to take a few minutes for each one of you give a short scenario of what you think this bill should be doing. I will start. When the bill first came in I felt that we should have a bill that the executive power of the state should be able to negotiate with the

sovereign nation to be able to come with an agreement that the state of North Dakota could live with and the tribes could live with and give the oil companies the confidence to come on the reservation and work. I think the bill the house has made, has made some good strides towards that in the right area, but with that there is still some tweaking to do. One of things I think is to consider and consider very strongly is not only taxes but what the state is going to get, but also we are negotiating something that can be an agreement with something, there are things that have to be in that agreement so that we understand where we are coming from. Some of the talking points or bullets is the TERO tax and that has been blocked in. These little bullets I'm giving you right now is something that are...these loose ends are going to have to be tied in a square knot so we know where we are at. The fees charged by the tribe and the approval of pipe lines or the progressive tax on pipe lines in the field...because they are going to be putting pipe lines from one area to another area, so that is another area. Another area is workers and what are the rules going to be on the workers and that has to be in the plan or rules. Any time you have an oil field working, you are going to have a lot of service units coming on to that field doing their jobs, pumpers, working rigs, whatever else is coming into that field. What are the fees going to be if any by the tribe, so the industry knows what those rules are going to be. We have to know what the professional fees are going to be issued by the tribe and that has to be in the rules also. I'm talking about professional fees for selling leases or working leases and things like that so that industry knows what that is. And I think we need to look at the permitting, the pooling, the bonding and the unification of the field. These things all need to be in the rule or the law or the bill we are talking about, so when the negotiations are coming down, we know what we are talking about and who we want in there. Along with what is already in the bill, that I think we can tweak enough to get something in.

**Senator Constance Triplett:** are you saying all those details should be in the bill or are you saying the topics areas should be listed in the bill as points to be negotiated.

**Senator Lyson:** just topic areas to that they know these are the things we think that should be into the agreement.

**Representative Keiser:** I didn't come prepared but I will still do it. Drilling would be good for everybody if we can do it. There are no losers by drilling on the reservation. Why isn't it being done and I think there are two areas of concern. What is the taxation and what are the regulations? If I am an investor as an oil company, I'm not going to go into an area that I don't have some degree of confidence and certainty as to regulations and taxation. It is along haul and it can be 20 year project and I don't want to commit a \$1million or \$7million if I don't have some certainty, so from my perspective and only mine, what the senate did was attempt to say, create a statutory vehicle to give the governor the authority to negotiate on behalf of the state with the sovereign nation. Not unreasonable to do that. However, it didn't define any of the perimeters of the negotiation. The house on the other hand came back and looked at it and where I approached it, not speaking for the committee members, really you have a legitimate boundary separate the tribal land from the state's land or non-tribal land. That is the green line on the map. One of the statements made early to our committee was that we would like that line to be as transparent as possible, that is if you are drilling on one side verse the other side to whatever degree possible, you would not recognize a difference. They would be the same. With that general thought in mind we then said, well alright, we certainly recognize that it was major point made by the tribes in the house hearing, that the state has no authority to dictate to the tribes, nor do we expect it nor do we want. I don't want to do that. I recognize the tribes as a sovereign nation, on the other hand, I recognize the state of North Dakota as not a sovereign nation but a sovereign political entity, that has every much as a right to do what they want to

do as does the tribe on tribal land. So we have an obligation and within our system we have the legislative body, which set the policy for those things. So going back to taxation and regulation, if we are going to make that line transparent as much as possible, then it seems only reasonable that we begin by saying, what is the state doing outside of that line. Why don't we do it inside the line from our policy position? And as a result that is where we come with basically 11 ½ % flat tax, because that is what it is outside the line.

**Senator Lyson:** not all the time.

**Representative Keiser:** not all the time but I will come back to that. So we said okay, but if that is the maximum it can be outside the line, can't be more, I can drill a well right now and can't go past 11 ½%. I know the tax situation. In terms of regulation, we have statutes, rules, regulations that dictate control, create my expectations as to what will happen outside that line.

We think that if there is exploration inside that line and the states a partner, that we are a partner in a compact, we should hold them to the same standards that we hold somebody to outside that line in terms of regulation. Make sense. Suddenly that line starts to disappear for the developers as much as possible. So, lets do that, lets impose that. Now, what we did as you now know we set up the two systems, tribal land and trust land verses the fee land. It was strong division that those two are separate and can be treated separately. But we took 11 ½ % tax and the two restrictions that we put on those dollars prior to being divided equally. One was we wanted the schools, counties and cities to be held harmless. That they are going to get their money outside as they are inside the line. Then we had regulation and administration costs should be covered and anything left gets divided. Perhaps what did not do a good job and has been discussed since our meeting, is that page 2 of our handout isn't quite right, at least it has to be clarified. That is that specifically the two parties in the agreement and the senate did make an issue about what was left to negotiate, any reduction of that 11 ½ % is

open to negotiation. If you have one kind of drilling, a different kind of drilling, one operation and a different kind of operation, if you have a 6 1/2 % exemption, you can still have all those things. They have to be negotiated between the governor and the tribe. Those things can be a whatever level the parties can agree too, the only stipulation, I felt that the state should not be taking 80% of that reduction or 20%. That as pure partners in a 50/50 deal it should be evenly distributed. So, really our motivation is really two fold as much as possible to create stability in taxation and regulation and to find it. Just as if the governor were to negotiate it, it would look something like this, ultimately. Its going to work, numbers might be different, but the dollars are going to go here and the dollars are going to there and these taxes and these regulations are going to apply. So that is what the governor is going to negotiate. And so why don't we do it because we are the policy setters. And yes it can be argued that this is dictating to the tribes what will be done, I would say we are setting the perimeters. I think there is a lot of room for negotiations downwards in terms in any fees or taxes that are charged by the state. I think that is open to negotiations and we tried to make the language clear in that respect. I don't know if we are that far apart and again personally, I cannot for myself transfer our responsibility for developing policy to the executive branch. Even options of bring it back and saying lets the majority and minority leaders approve it or review or lets have legislative council review it, lets have the industrial commission review. All of those options are transferring that responsibility. The one option that I could accept, personally, would be the governor would have to call a special session unless the legislature endorse it. Now that gets expensive, that gets real expensive, but at that point, if we want the governor to negotiate it, then we should fully approve it. This is my perspective as to what this bill is about.

**Senator Wardner:** I don't believe we indicated we that we thought the legislature has to make the call, the full legislature in the end, because I know even with our administrative rules,



people have heartburn over that, that we are a mini legislature there when we avoid rules and stuff and very much aware of that. There are a lot of things I defiantly agree with you on, however...for example when we talk about the 5 year exemption that's already there. You have that covered..that is something we would have to honor because there are people that have already taken leases with that in mind and we would have to....but that is something the negotiations could take care of a little bit, that is one of those things. There is no question that when you said it is good for everybody, it is. Its good for the tribes, its good for western North Dakota, its good for North Dakota because those companies pay good living wages, there is tax revenue, there's sales tax revenue that is coming in. I guess the one thing, I'm not sure how we get there, but one of things I want to mention, and that is a cultural thing. Native Americans like to meet and talk about things, that is their culture. With this we kind of, take them out of it. I don't know what the answer is to that is, but I realize we need some perimeters, but we need to be sensitive to that. I made a comment to the chairman maybe this is a high level interim study where the legislature and the tribes negotiate as a legislative study and come to an agreement. We come together next legislative session and he said two years is too long, however if we don't do anything as Senator Triplett said the other day, we could end up gong 4 or 6 years. We want to get this done in the shortest period of time. That is where I am doming from and if we can work out these little details and make some good points, Representative Keiser, however we need to hear from the tribes.

**Representative Damschen;** first of all I want to commend you on the approach you are taking, it is good. I think we will find out we are not as far apart as we might have thought we were at first. I think, I am going to be pretty broad and not real specific, but I think our ultimate goal for me anyway is the other government on the reservation, on tribal lands. To accomplish this, there are three entities we need to satisfy: the industry, the tribe and the state.

And I think there is three areas that we need to stabilize: regulation, tax structure and of course we need to maintain sovereignty for both the state and the tribe. And I kind of think, I suspect this a goal that we probably all have, we may be taking a different path there, but I think its doable. Those are three entities and issues that have to be addressed before we are going to get anywhere and of course we don't have the industry developing the oil filed there. None of the rest of it is necessary but without the rest of it addressed, the development won't take place either. I will end it at that and I think our goals are pretty much in line.

**Senator Triplett:** I think I can be fairly brief here, I think in terms of the overview, I pretty well agree with the perimeters that you laid out when we first started. The one addition I would make is to follow up on the what Representative Damschen said about one of the issues is to maintain sovereignty for both parties. I don't think that any of us are suspect of what we do here or what the governor does is going to be static for the rest of time. I think there is an expectation that our tax laws might change over time, that our regulations might change over time and our regulations might change over time and so I don't know that we necessarily, I mean I understand that we need certainty for the oil industry but we also need flexibility over time. So maybe we should add the notion of a grandfathering clause into the list of things we want the governor to negotiate so that when the industry goes in and develops a field or a well or something, then that particular time and place that whatever rules are in place ...we would not be suggesting to the tribe or to ourselves that the rules couldn't change in the future in terms of adjusting tax rates up or down or change in regulations as technology gets better or as the world oil situation gets better or whatever. So I think we need to put something in there that we want flexibility for the future while still giving people assurance that the rules where in place when the well was developed will be there for the duration of the well.

**Representative Keiser:** Senator Triplett, our current state regulation isn't it that way now?

When off the reservation when you drill a well, you have to meet the standard that are in place now.

**Senator Triplett:** I think that is true but I heard people saying things here we're going to make these rules and we are going to set things down and it is going to be in stone and industry is going to know what is going to happen and it is starting to feel rigid to me for the future. I just wanted to make that point that inside this compact we need to have the same level of flexibility that we feel for ourselves and the state.

**Senator Lyson:** we have to be careful about some of this tribal land that is not accessible of anyone else.

**Representative Meyer:** I'm coming from this with a much more simplistic approach. I would like to be drilling as soon as the road restrictions go off. With that it's a lot simpler than we are trying to make it. We only have to address a handful of things, gross production tax, your extraction tax, your TERO fees, the fees and fines the tribe is trying to address, the sunset clause as mentioned on the oil companies out there. According to our constitution, those have to be honored, you can't go in and change those existing contracts. I worked on amendments yesterday to maybe address some these broad based basic things that we want to accomplish here.

**Senator Lyson:** I think we are going to leave the amendments for our next meeting because we are ..I would rather wait.

**Representative Meyer:** that is basically the things being addressed in these amendments it's not trying to ...and what we were trying to do to the senate version of the bill, so that we address these things specifically, so that we could move ahead faster and in a more prudent fashion. True there are a few things and I think we can get there and just don't think we are

very far apart. There are not very many issues that I think that any of us are disagreeing about. But there's three entities here, the state, the tribes and the oil companies. I think all three of us need to be negotiating on this and just in visiting with people ...and we are off a few percentages, but I think those can be addressed. We could have an agreement ready to go and sign off and we are still leaving the perimeters open as these are minimum requirements that we are expecting of the state. I think we should in the negotiations here as **Representative Keiser** said in addition to that and that would still be left over in negotiations if we take this perfect amendment (See attachment # 1)

**Senator Lyson:** thank you Representative Meyer and I don't disagree with what you are saying but you have to remember this, there are several things in here and it is much simpler because there are a lot of little twitches that we have to cover, that I'm talking strictly for the industry now. There are going to want all these things covered and I think that the tribe wants them covered also. So we need to take a look at these small things, we don't have to negotiate them but we have to get them in here someplace to make sure that these things are covered in the negotiations. Now with that, because we have another meeting that we need to go too, so we are going to stop pretty soon, but before we do that, I'm asking Representative Keiser, as the leader of the house side to...I'm offering him the opportunity to sit with me and Mr. Kelly with the attorney general. He would like to speak to us because there is legal issues that his attorney that is the expert on tribal land issues would like to talk to us. We will have to set an appointment as the expert is recovering from surgery, but he is willing to come down and meet with us. Is that okay?

**Representative Keiser:** that would be great.

**Steve Kelly:** agrees.

**Senator Lyson:** we are cutting it to the chase but they want us to be there and we will bring it back to the committee. I apologize to the committee as not having everybody there and I think that sometimes with a smaller group things can work out better. I agree with everybody, we are not as far away as it looks. I think we are fairly close and I think that we can come up with something. We haven't got much time, so lets not play games with each other, say it like we think it and lets get it done.

**Representative Keiser:** before we go Bob Harms asked for some amendments to be drafted and if you want we can pass them out (see attachment #2). These amendments do have my name on them, but they were drafted for Mr. Harms. If there are other amendments, they should be given to the committee.

**Senator Lyson:** I will give you Mr. Kelly's amendments as well.

The committee had already received those amendments.

**Senator Lyson** closed the conference committee #2 on SB 2419.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2419

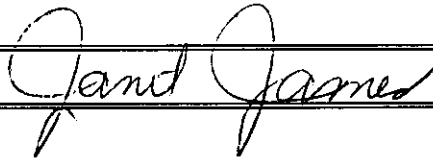
Senate Natural Resources Committee

☒ Check here for Conference Committee

Hearing Date: April 19, 2007

Recorder Job Number: # 6156

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the third conference committee on SB 2419.

All members of the conference committee were present including **Senator Stanley Lyson**.

**Senator Rich Wardner, Senator Constance Triplett, Representative George Keiser, Representative Charles Damschen, and Representative Shirley Meyer.**

**Senator Lyson:** let me give a little bit of a synopsis of what took place this morning.

Representative Keiser and I along with Steve Kelly visited with the Attorney General AG) and Chuck Carvelle of the AG's office. We meet close to an hour going through several different things and Steve and the AG are having amendments drawn up to look at. We are hoping that everybody can look at and agree with in mostly so that we have something to head out with as soon as we get those things... I just checked and they are not done and probably will not be done until mid afternoon, so with that I will give Representative Keiser an opportunity to respond to what he heard this morning and then we will recess for the day and call a meeting for early tomorrow morning.

**Representative Keiser:** I think it was a very productive meeting as Senator Lyson said and what we did was sat down with the tribe and said what are the key hurdles relative to the way

the house proposal is etc. I will not hit all of them but I will try and do as well as I can. Number one, to deal with, maintain the tribe's sovereign position relative to its taxing structure, relative to the TERO tax and other fees, etc., and what we, I will have to wait and see the amendments, but it was my understanding that what we would be adding to what the house already provided with some adjustments would be a list of things that would have to be considered in the negotiations. And that would be the take out of the house version that they cannot have a TERO tax and any other fees and to leave that open and part of the negotiation process. That the tribe and the governor would be able to sit down and say yes you can do it or no you can't do it. And to base much of that discussion on the date of when the well goes into production sort of thing, which is what we do with other applications. So the date of production is sort of the corner of that. The other point that the tribe raised which I thought was relatively reasonable, although I don't like it but is certainly an area that I think the committee should consider compromising on was the current house version says that you take out the cities, counties and schools first and then we also take out the regulation and administration. The tribe's position is: well you're the ones that want to impose the regulation on tribal land, we don't have a problem with that, we just don't want to pay for it. And so rather than taking out administration and regulation off of the top, before you go to your 50/50 split, those dollars would just be paid for by the state with its proportion, because we are the one dictating that you have to do that. The other area which I haven't seen the amendments and I'm not sure really what they are really going to proposing is, we had made a clear distinction between the three types of land, the fee land. The tribe said they have problems with that, would like to see some other form of split of the revenues, so that the state would not keep 100% of the taxation of the fee land etc. The regulation might be consistent across all three forms and that would

certainly be area open to further discussion, but we suggested they draw the amendment so that we could look at them and see what they would do. Other than that I don't think...

**Senator Lyson:** one of the things is that fee land, we are talking about the northeast quadrant of the reservation right now. One of the things talked about was 100% state and the tribal land being 50/50 and the tribe said no. The tribal land is 70% of the reservation and the fee land is 30%. If you are going to get 100% from that, give us 70% of the tribal land, so that is negotiable thing and we said lets get something in there so that is something the governor and the tribe can work out. Of course with the schools and everything, they'll end up being a flat tax type of thing, so that we know exactly, everybody is going to know what they are going to be getting at the time of production of that well. Its hard to sit here and tell you everything we talked about within an hour but those are the areas that we are going to look for in this new amendment to try to be fair, we're trying to break this thing down so that every one of us can look at this thing and be proud that it is fair to all three; the industry, the state and the tribe.

**Representative Meyer:** was there any mention about existing leases and how the extraction tax exemptions were into play into any of that.

**Senator Lyson:** we did talk a little bit about that and we talked about the 5 years on there now, whether that should stay and I think what we are going to end up having that thing in the negotiation portion of it with the governor to say. But, I think what the industry is looking for to be honest with you, we what to know, we want this bill to say for certain, what will happen. So will have to wait and see exactly how these amendments come out. As soon as get, its going to be similar to that Representative Meyer and I can't tell you exactly how its going to come and Steve just walked through the door. I think our meeting this morning was really productive and we will have to wait until the amendments are drawn up and hopefully they will be done by mid afternoon, whenever they get it done, we will get copies and I will get it to everybody so



you can take a look at it. I am going to ask for a hearing as early tomorrow morning as we can get it. I am going to ask for an hour hearing. Is there anything you would like to add Steve.

**Steve Kelly** and for the record I'm the attorney for the Three Affiliated Tribes and with respect to the question that was just asked by Representative Meyer, what we are going to do in the draft is weed out the exemption, focus on what the agreement would be with the reservation. The tribe does not have a dog in that fight and we will let you guys decide whether or not you want an exemption in there or not. But the first cut is going to be the terms of the split of between the tribe and the state and then we will see if that's something you can work with an if not then go back to the drawing board.

**Senator Triplett:** this is just procedural if you cannot get an hour long hearing tomorrow, is it possible to request two thirty minute hearings as that we can possibly get this done before Saturday.

**Senator Lyson:** what would I like to do is if we can't get an hour hearing for in the morning, what I will do is say is give us one as quickly as you can. I would to leave some space in the mid afternoon if we have a meeting in the morning, that we can have another one if we can have another one tomorrow afternoon. If we can I would like to finish this thing up tomorrow and don't know that we can, but I'm going to give it a shot. If we can't we will have to come in on Monday.

**Senator Lyson** closed the conference committee hearing on SB 2419.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2419 Conference Committee**

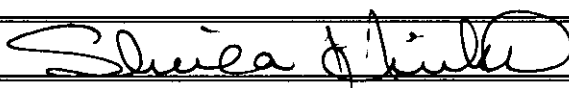
Senate Natural Resources Committee

☒ Check here for Conference Committee

Hearing Date: **April 20, 2007 am**

Recorder Job Number: **6192**

Committee Clerk Signature



Minutes:

2419 SNAT

4<sup>th</sup> Session

*All Members Present:*

**Chair Stanley Lyson, Sen Rich Wardner, Sen Connie Triplett**

**Rep. George Keiser, Rep. Charles Damschen, Rep. Shirley Meyer**

**Chair Lyson:** Yesterday I handed out proposed amendment, bill, along with engrossed bill, an opportunity to look at them last night and pick them apart or whatever, with that, if there are other comments, we have ½ hour, like to take # 1 and go through these things, Amendments on one side, bill on the other. Mr. Kelly from the Tribe, is with us to answer questions.

Section 1, engrossed bill, Then look at amendments.

**S Triplett:** Referring to 400, no number on it, typed out one?

**Chair Lyson:** Question, amendment part, what happened, 3 words left out on the engrossed part. *Read from the proposed amendments.* 3:22m

**Rep. Meyer:** I didn't have them [*amendments.*] now has them , everyone has them.

**Chair Lyson:** So you don't have a problem with those, #1. Proposed amendments that you have in your hand, under #1, oil extraction taxes, words were missing.

**Rep Keiser:** it is just a clerical thing.

**Chair Lyson:** #2 any problem?

**Rep Keiser:** If you have a problem, what do you mean?

**Chair Lyson:** Comments?

**Rep Keiser:** It changes it from the House concept dramatically, so yes, I have problems with it, I'm not accepting this amendment.

**Chair Lyson:** Whole amendment?

**Rep Keiser:** There were some commonalities in other sections, that 5% gross production tax is on trust land and free land, it was the same as it was earlier, it was included in the 11.5 %, one of the things, I don't want to jump ahead, it was intriguing to me, I did want an explanation, in our proposal, it was a 11.5% tax, 6% for state in place and in play, the 6.5 could be reduced, in the proposed bill, 6.5% isn't in place, but can be implemented in negotiations. What is the advantage starting from the bottom vs. the top?

*Sen. Lyson asked Steve Kelly to approach the podium.*

**Steve Kelly Attorney for the Tribe:** Chuck from the AG office worked with Steve.

There is no advantage in original bill or either way . The state always has had a gross production tax, and there really are no exemptions for that tax, be easier to have a gross tax, and deal with an extraction tax and exclude exemptions to the extraction tax.

**Rep Keiser:** Our bill does that also, the one difference being that you came up from "0" to negotiate upwards to 6.5, and we said we start at 6..5 and negotiations have to come down.

We also had that any reduction in tax, would be shared equally.

**Steve:** Any agreement would have to be agreed to by both parties. So it is redundant.

**Rep. Keiser:** There is a significant agreement difference. The agreement is we have to share that reduction, 50/50 vs. it can be negotiated, you take "0" to 50 or 70 or 80 percent vs. the other party. It leads to the negotiation what the distribution percentage may be.

**Chair Lyson:** You don't want to give the Governor the opportunity to negotiate.

**Rep. Keiser:** Our bill does not allow the negotiation, if there would be or won't be, but not the participation rate in that.

**Kelly:** There are many ways to do this, I am assuming under this bill, there will be a flat tax, it will be established by gross production tax, and it will be an agreement, number thrown out is 8%, if agreement is amended, we're not talking about the state, we are not dealing with state exemptions, unless the tribes and state sit down and agree, 50/50, the extraction negotiated will only apply to the trust lands, so there is a 50/50 split,. If there will be an increase or decrease in taxes, it will be a split.

**R Keiser:** The whole concept from the get-go was a 50/50 split. No one had deviated from that, was your bill. So you want to put it in there, I don't have a problem with it.

**Chair Lyson:** I do, it's our bill too.

**Kelly:** The whole concept, was 50/50 split, your bill deviated from that, If you want to put it in there, I don't have a problem with it.

**Sen Triplet:** My two cents, I have a problem with this group of this amendments for the opposite reason, I do trust the Governor's office to negotiate fairly on the behalf of ND, and my serious concern is we are going to go too fast, and are going to mess it up, this is a topic that deserves a lot of serious consideration over a period of months by the interested parties to know what the issues are, and I really prefer that we keep the parameters to a minimum and send the people off to do the serious work in a way that is thoughtful and I think would be more

productive than trying in 3-4 days to try to throw together in as much as it possibly can, I'm willing to work through details. I think we're on the wrong track here.

13.50m

**Chair Lyson:** If this is the feeling of the committee, It's no sense in wasting our time, I'm not going to go along with the House recommendation, If that's your stand, you may as well, recess now.

**Rep Keiser:** Again, what I did was took the proposal and, I was talking about specifics with this bill, this has a 5% gross production tax in all segments, it takes the oil extraction tax and comes up with a max of 6.5% not through negotiation, exemptions do not apply on the trust land, 50/50 split on the revenue is across the board, takes off the administrative and the schools, that would come back to the state's portion. Fee land, exemptions stay in place, fee land 20/80 split on the revenues. I apologize, I am trying to compare to the House bill. The other suggestion which I certainly don't like, but can support, if the state wants to propose it would stay in the boundaries, the state would apply for regulation, I think in Kelly's amendment. 1% of the total tribe revenue to go back to the state general fund, for administration, I oppose that, I think you're giving too much, you shouldn't be paying 1% back.

**Kelly:** Goes back to the original minutes, page 2, line 10, [16:18m] *reads from bill*, that would also apply to amendments.

**Rep Keiser:** I would understand that. That's the revenue side, isn't it?

**Kelly:** That's what your question pertained to, revenue.

**Sen Wardner:** That was going to be my question, evenly divided. Debate on # 2.

**Kelly:** Question was when Rep. Kaiser, said any reductions wouldn't divide exemptions.

**Rep Meyer:** To clarify that, I was assuming it meant 50/50 on any reductions or exemptions, If we came to an agreement and put deductions in the oil tax, and said we went down to 1%.

**Rep Keiser:** If that's the intent, we didn't have, the revenues will be split 50/50, and reductions would be negotiations. When you can negotiate reductions, you can also negotiate participate participation potentially, it wasn't defined.

**Kelly:** We're going from 5 and going to negotiate a flat rate, it would be split evenly. This pertains to trust land.s The 1% is 1% of the total, not 1% of the 4 or 5% that we get, so if it says the state pays \$1 M, \$100,000 would go back to the state.

**Rep Keiser:** I think that's too much

**Kelly:** Then reduce it then. [19:38m]

**Kelly:** I think your outline of what this bill does, is exactly right. On the 20% does everyone understand that it is the fee land on reservations that is actually 1% of the 5%? Then 2% of the counties would get, and then the state would get 2%.

**Rep Keiser:** From my prospective, we need to make adjustments, eliminate the cost of regulation and administration and see we could take the current house version, and divide to impact the reservation so they are getting a significant funding, so they're not used outside the impact area. That's where my position is.

**Chair Lyson:** if we're going to sit here and worry about which bill we're going to be working on, sometimes, rewriting it in a different way is better for both sides. It's taken most of your ideas and put it in here, I think we should be broad minded enough, put it in there, rather than taking ownership and worry about bill of ownership. We need to have it acceptable for state and the tribe, this bill began to say, it was a negotiable bill so that the Governor can negotiate with the tribe.

**Mr. Kelly:** Want to make sure the tribes position. Some Representatives. would like it more soluble. The tribe doesn't care who does it, but wants to have something done. We don't care who we negotiate with, but want to accommodate everyone. I would like to hit upon

something, R Keiser, the impact is important, one of the original ideas, was that on the 5% split fee, split in the way counties 2%, 1% Newtown, Partial, and White Shield, tribe gets 1%. The community, Parshall and NewTown don't have infrastructure for new housing, Newtown doesn't have law enforcement

2% counties, 1% state, 1% tribe, 1% municipalities on the reservation.

**Chair Lyson** I don't think anyone has an argument on the split, we're concerned on how this bill is put together. We have the ideas rather than spend ½ hour on what the format we're going to be doing it on. How much time do you have to be on a subcommittee this afternoon?

**Sen Triplette:** Before we move, we need a sense of what everyone is else thinks, please pipe up.

**Rep Meyer:** I think we're close, we want to be drilling, I think this isn't Senate or House version and plugged into it, there are a few minor things, I think we're close.

**Chair Lyson:** We're looking at how we're putting it together

**Sen Wardner:** I think Keiser and Kelly need to sit down and visit, let's get the misunderstandings up, let's get it done this afternoon. If Keiser will agree to it, I feel that's where we're at right now.

**Rep Keiser:** I can identify quickly, some like the House and some like the Senate version, there are places where its not quite clear, as I read this, it was the revenue that got split, we can make that clear, the major changes are 20/80 split on fee land, other than my mentioning it, the committee has not mentioned it,

**Chair Lyson:** I think that the Governor should be doing that, I don't think we can do that, that's why we trust the executive portion of the government, to negotiate for us.

**Rep Keiser:** I would turn the tables, say, if you think the Senate bill is the bill we need to go with, then we need different people.

**Chair Lyson:** I didn't say our bill is the same or have ours, we have a pretty good vehicle put together, ours wasn't the greatest, I don't think yours wasn't the greatest, I think we need to get this thing together. I think it's silly to argue.

**Rep Keiser:** I hate to disagree with my chairman, but, I heard you disagreed with the 20/80, do you want it in this bill, or not?

**Chair Lyson:** I have no problems with it in here. I think everyone here thinks we're close. What I'm hearing YOU say, it's got to be under YOUR floormat on how you got it set up, I don't understand that, why should it be under that, if it covers everything you need, why are you so worried about your floormat?

**Rep Keiser:** This bill is very similar to the House format. There are several major changes, one is the 20/80 split vs. "0"/100 split in the House floormat.

**Sen Wardner:** On the 20/80 split, would that be a problem for you? I agree with you, if we put it in, its no longer negotiable, if we put no number in there, if it is no longer negotiable.

**Rep. Meyer:** [speaks up] What if we just changed "shall" to "may." I thought a real simple thing, may instead of shall, there's your negotiations, a very simple correction.

**Sen Triplett:** I have another obligation, I have to leave, have issue with reference of federal courts, we don't have control over the federal courts, and if they choose not to take jurisdiction over a particular case, then maybe we need to define further. If they have a question, .

**Chair Lyson:** Will Mr. Kelly and Rep. Keiser work together? May be meeting 2-3 more times,

**Sen Triplett** I'm busy from 1:30-3:00, available in the evening if need to gather again.

**Chair Lyson:** Asked if ok to replace S Triplett as she is involved with other bills.

**ADJOURNED**



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2419 Conference Committee SETTLED**

Senate Natural Resources Committee

☒ Check here for Conference Committee

Hearing Date: **April 21, 2007 Sat. am**

Recorder Job Number: **6247**

Committee Clerk Signature

Minutes:

2419 SNAT

*Members present:*

Sen Lyson, Sen. Wardner, Sen. Triplett

Rep. Porter, Rep. Damschen, Rep Meyer

*RE: Drilling on the reservation, and power of negotiations for Governor.*

**Rep Porter:** after yesterdays meeting which I was in the background for Kaiser and Mr. Kelly, took the information from the meeting back to Leg Council and structured this Hog House revision to 2419. Mr Kelly before he left town, reviewed and discussed it and everybody was on board. The subdivision, the only tax that are subject to the agreement, are oil, gas, and extraction taxes, *read from the bill may not exceed 6.5 percent....*

Allocation of revenue was agreed upon.

States share, runs through normal distribution, the political subdivisions and schools are held harmless, all the activity is subject to this agreement once it's signed for the life of the well. .

Once drilled, it's done, the number 7 talks about the tero tax and fees that the tribes is willing

to give up as par to the agreement. 8 & 9 talk about the tax commissioner, already in the agreement. Number 10, talks about state regulatory agreement, I think there was a question on ;that so that it covers not only while the well is in place, but also from the start of the drilling process to the end of the life of the well, the well is covered under the state's regulatory provisions. Federal court is the jurisdiction in this agreement. The statutory inconsistencies, was put in by the A.G. There is a reporting process that talks about the Legislative Council being notified. Inapplicability of chapter 544002 is the section of the Century Code that deals specifically with agreements between the tribes and the state of ND. That is waiving the public hearing, and the notice process that's inside of that.

Law has a sunset trigger, if not an agreement in place, it goes away, has emergency clause, once signed by governor, negotiations can start.

Hog House bill.

**Sen Triplett:** Mr. Helms expressed a concern on the language 5751.2-03 dealing with statutory inconsistencies, it appears that the intention of the language is to say that we're superceeding any inconsistent provisions of the other two chapters which is fine, but then it says, "and any provisions of state law, relating to oil and gas exploration and production and administration." ...It implies grammatically that the chapter supercedes any provisions of state law relating to regulatory provisions, that's not what we want to say. Maybe we need to throw the word "inconsistent provisions" in someplace on the second line. Is that what is intended there?

**Rep Porter:** Yes

**Chair Lyson:** Where?

**Sen Triplett:** The sentence would read: "This chapter supersedes any inconsistent provisions of chapters 57, 51 and 57-51.1 and any inconsistent provisions...." So we are not grammatically "undoing" all the regulatory things inadvertently.

**Chair Lyson:** Does anyone else have questions on S. Triplett is talking about?

**Sen Triplett:** I think grammatically it is a bad sentence. It is a cumbersome sentence, taking care of the one word takes care of it and should clarify it.

**Rep Porter:** It was a lawyer who wrote this.

**Chair Lyson:** Would adding the word in there, it does clean it up. The intent is there, a little cleaner.

**Sen Triplett:** Yes, the intent is clearer and cleaner.

**Rep. Porter:** I'm going to move 0308 with the change of Sen Triplett, on page 2, inside of the 5751.2-03 language on the second sentence, after the word, "any", so it reads: "this chapter supersedes..." 7:18m

**Rep. Damschen:** 2<sup>nd</sup>

**Rep. Meyer:** I have 2 questions, one under number 7, when we agree not to impose a tribal tax, is that taro tax, is this designed to cover everything?

**Rep Porter:** In discussion with Rep Kaiser and Kelly, that language covers all fees and taxes.

**Sen Triplett:** Maybe we should say "fees and taxes" then. Otherwise the word "taxes" doesn't include fees. We should include those words.

**Rep Porter:** It was understood that those fees are taxes

Asked **Ryan Burnstein** to the podium, give thoughts, Legal Council to the Governor.

By looking over it, drafted by Steve Kelly, we might as well put in taxes and fees to cover it,

there is one other point. The last part, inapplicability, Chapter 54-40.2, my suggestion would be, maybe we should take out and change the words sections, 54-40.2-03.1, and then goes

on to another section. if we can change that to "chapter" instead of "section," leave it at 54-40.2, under that, there is something in there that says it specifically addresses limitations on agreements. We would have to bring that in there, for more flexibility. Then we wouldn't override the intent.

*10:26m – lawyer reads*

**Rep Porter:** Change sections to chapter, 54-40.2, and then the rest of that is crossed off?

**Ryan B:** Change "sections" to "chapter" 54-04.2, and then cross everything else out to "do" and change "do" to "does."

**Sen Triplett:** while we have Mr. Burnstein at the podium, are you ok with what we were proposing to do on 5751.203 where we just added the word "inconsistencies"?

**Ryan B:** Yes.

**Rep Meyer:** The second question is under number 10. If that is the intent that regulatory provisions, will be before, during, and after the life of the well, that the regulatory provisions will be in place.

**Chair Lyson:** I think that is our intent

**Ryan B:** Intent is...? Run it by me again, so I'm clear.

**Rep. Porter:** The intent of the word "life" is from the start to the finish.

**Ryan B:** Of the well itself?

**Rep. Porter:** Of the drilling process of the individual well.

**Ryan B:** That starts once this agreement is entered into, right?

**Chair Lyson:** The intent is there, we don't have to change the writing in the bill, just so we have it on the record that the intent is that.

**Rep Porter:** I would withdraw motion for the amendment.

**Rep Damschen:** Withdrew the second

**Rep Porter:** I would like to make a NEW motion. I move 0308 with the changes on page 2, subsection 7, line 1, after the word tax include the word or fees, down below in the area 57-51.203 statutory inconsistencies, superseded on the 2<sup>nd</sup> line, after the second any, insert the word "inconsistent", so that the sentence reads: "this chapter supersedes any inconsistent divisions of chapters 57-51, and 57-51.1 in any inconsistent provisions of state law relating to regulatory provisions of state law, relating to oil and gas exploration, and production and administration of those provisions."

Under the title of 57-51.205, cross out the word "sections," insert the word "chapter," and it would read: "Chapter 54-40.2 does not apply to any agreement entered under Chapter 57-51.2"

**Rep. Meyer:** Second

Discussion:

**Roll on the Amendment 70882.0308 : 6-0-0 Passed**

Amendment passed.

**Rep. Porter:** It is a monumental piece of legislation that will move things in the right direction, not only for ND, but on the Fort Berthold Reservation.

**Rep Wardner:** What Porter said is correct, as this IS economic development.

**ADJOURNED**

April 17, 2007

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2419

That the House recede from its amendments as printed on pages 1385-1389 of the Senate Journal and pages 1541-1545 of the House Journal and that Reengrossed Senate Bill No. 2419 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 57-51.2 of the North Dakota Century Code, relating to agreements with the Three Affiliated Tribes to share revenue from state taxes on oil and gas production within the boundaries of the Fort Berthold Reservation; and to declare an emergency.

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

**SECTION 1.** Chapter 57-51.2 of the North Dakota Century Code is created and enacted as follows:

**57-51.2-01. Authority to enter agreements.** Until July 1, 2008, the governor may enter agreements, with the approval of the emergency commission, with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation.

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

1. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production within the exterior boundaries of the Fort Berthold Reservation is subject to allocation as provided by an agreement under this chapter.
2. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state tax and regulatory provisions for the life of the well.
3. Fees and taxes may not be imposed by the tribe on an oil or gas exploration or production company for activities on land within the exterior boundaries of the reservation after the effective date of this Act.
4. This chapter does not apply to taxes or regulatory authority with regard to a contract between a tribe and an oil or gas exploration or production company entered before the effective date of this Act.
5. Jurisdiction of any dispute under this chapter or under the agreement entered under this Act is in the federal district court for the western division of North Dakota.

**57-51.2-03. Statutory Inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any provision of state law relating to regulatory provisions of state law relating to oil and gas exploration and production and administration of those provisions.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

April 12, 2007

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2419

That the House recede from its amendments as printed on pages \_\_\_\_\_ of the Senate Journal and pages \_\_\_\_\_ of the House Journal and that Reengrossed Senate Bill No. 2419 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 57-51.2 of the North Dakota Century Code, relating to agreements with an Indian tribe to share revenue from state taxes on oil and gas production within the boundaries of the Fort Berthold Reservation; to provide a continuing appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** Chapter 57-51.2 of the North Dakota Century Code is created and enacted as follows:

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

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

1. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to fee land within the exterior boundaries of the reservation is retained by the state and allocated as provided by law. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to Indian trust land and land owned by an Indian tribe within the exterior boundaries of the Fort Berthold Reservation is allocated as follows:
  - a. Revenue from taxes under chapter 57-51 attributable to oil and gas production on Indian trust land and land owned by an Indian tribe must be allocated among political subdivisions in the amount, proportion, and manner provided in chapter 57-51.
  - b. The cost of state oil and gas administration and regulation must be deducted and transferred for deposit in the state general fund.
  - c. All revenue remaining after deduction of the amounts under subdivisions a and b must be divided in equal amounts between the state and the tribe.
2. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state tax and regulatory provisions for the life of the well.
3. The agreement must address the regulatory regime governing the oil and gas industry's on-reservation activities to provide the industry with an acceptable level of regulatory consistency and certainty.

4. Jurisdiction of any dispute under this chapter or under the agreement entered under this chapter is in the federal district court for the western division of North Dakota.

**57-51.2-03. Statutory Inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any provision of state law relating to regulatory provisions of state law relating to oil and gas exploration and production and administration of those provisions.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for oil and gas production after June 30, 2007. This Act is effective after June 30, 2009, unless by that date the governor notifies the tax commissioner and the legislative council that an agreement has been entered with an Indian tribe under chapter 57-51.2.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



PROPOSED AMENDMENTS TO RENGROSSED SENATE BILL NO. 2419

Page 1, line 3, after the semicolon insert "to provide exceptions to provisions of chapter 54-40.2"

Page 1, line 3, remove "to amend and reenact"

Page 1, overstrike lines 4 and 5

Page 1, line 6, remove "by an Indian tribe;"

Page 6, remove overstrikes from lines 14 through 20

Page 6, after line 28 insert:

"1. The only taxes subject to agreement shall be the state's oil and gas gross production taxes and oil extraction taxes attributable to production from wells located within the exterior boundaries of the Fort Berthold Reservation.

2. The state's oil and gas gross production tax under chapter 57-51 shall apply to all wells located within the Fort Berthold Indian Reservation.

3. The applicability of the state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the Fort Berthold Indian Reservation shall be subject to negotiation between the governor and the Three Affiliated Tribes, provided that the total oil and gas extraction taxes agreed to shall not exceed six and one-half percent.

4. Any exemptions provided under chapters 57-51 and 57-51.1 shall not apply to production within the boundaries of the Fort Berthold Indian Reservation, except that the exemption provided by subsection 8 of section 57-51-1-03 shall apply to oil and gas production attributable to fee lands in the reservation.

5. The allocation of revenue from the state's oil and gas gross production and oil extraction taxes on the Fort Berthold Indian Reservation shall be as follows:

a. The tribe and the state shall evenly divide all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Indian Reservation.

- b. The tribe shall receive twenty percent of the total oil and gas gross production taxes collected from all production attributable to non-trust land on the Fort Berthold Indian Reservation, provided that the tribe consents to not enforce its tribal employment rights ordinance on such lands. The state shall receive the remainder.
  - c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapter 57-51.
  - d. One percent of the total revenue available for distribution to the tribe pursuant to subdivisions a and b shall be deducted from the tribe's share and transferred for deposit in the state general fund to compensate the state for administering the agreement.
- 6. An oil or gas well that is drilled and completed during the time of an agreement under this chapter shall be subject to the terms of the agreement for the life of the well.
  - 7. To address situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to either recover from the tribe payments already made to it or to offset future distributions to the tribe.
  - 8. The tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
  - 9. The agreement must address the regulatory regime governing the oil and gas industry's on-reservation activities to provide industry with an acceptable level of regulatory consistency and certainty.

Page 6, remove lines 29 through 31

Page 7, remove lines 1 through 11

Page 7, line 12, after "time" insert "of"

Page 7, line 13, replace "is in effect is subject to state tax and regulatory provisions" with "shall be subject to the terms of the agreement"

Page 7, remove lines 15 through 19

Page 7, line 22, replace "are" with "shall be"

Page 7, after line 22 insert "The Three Affiliated Tribes must agree not to impose a tribal tax on future production on oil and gas produced on the Fort Berthold Indian Reservation as a condition of the agreement."

Page 7, remove lines 23 through 24

Page 7, line 26, delete "Jurisdiction of any dispute under this chapter or under the agreement entered"

Page 7, line 27, replace "under this chapter is in the" with "The"

Page 7, line 28, after "Dakota" insert "shall be the venue for any dispute arising from a revenue sharing agreement between the State and the Three Affiliated Tribes"

Page 8, after line 2 insert

"57-51.2-04. Reports. After entering an agreement under this chapter the governor shall file a report with the legislative council describing the agreement's negotiations and terms and thereafter shall file biennial reports with the legislative council describing the agreement's implementation and any difficulties in its implementation.

57-51.2-05. Inapplicability of chapter 54-40.2. Sections 54-40.2-03.1 and 54-40.2-03.2 do not apply to any agreement entered under chapter 57-51.2."

Page 8, lines 3, after the second period insert "This Act is effective for oil production after June 30, 2007. This Act is ineffective after June 30, 2009, unless by that date the governor has notified the tax commissioner and legislative council that an agreement has been entered with the Three Affiliated Tribes under chapter 57-51.2."

Page 8, remove line 4

Renumber accordingly

1  
2 **PROPOSED AMENDMENTS TO REENGROSSED**

3 **SENATE BILL 2419**  
4

5 **SECTION 1.** Chapter 57-51.2 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **57-51.2-01.** Authority to enter agreements. The governor, in consultation with the tax  
8 commissioner, may enter agreements with the Three Affiliated Tribes relating to taxation  
9 and regulation of oil and gas exploration and production within the boundaries of the Fort  
10 Berthold Reservation.

11 **57-51.2-02.** Agreement requirements. An agreement under this chapter is subject to  
12 the following:

- 13 1. The only state taxes subject to a tax sharing agreement with the Three  
14 Affiliated Tribes shall be oil and gas gross production taxes attributable to  
15 wells located within the exterior boundaries of the Fort Berthold Indian  
16 Reservation.
- 17 2. The State's gross production tax shall apply within all lands on the Fort  
18 Berthold Indian Reservation.
- 19 3. The applicability of the State's oil extraction tax under chapter 57-51.1 as  
20 applied to oil and gas production attributable to trust lands on the Fort  
21 Berthold Indian Reservation shall be subject to negotiation between the  
22 Governor and the Three Affiliated Tribes provided that the total oil and gas

1 extraction taxes agreed to on such lands shall not exceed six and one-half  
2 percent.

3 4. Any exemptions for oil and gas production under chapters 57-51 and 57-51.1  
4 shall not apply to production within the boundaries of the Fort Berthold Indian  
5 Reservation except that the exemption provided by subsection 8 of section 57-  
6 51.1-03 shall apply to oil and gas production attributable to fee lands on the  
7 Fort Berthold Indian Reservation.

8 5. The allocation of revenue from oil and gas production taxes on the Fort  
9 Berthold Indian Reservation shall be as follows:

10 a. Production attributable to trust lands. The Tribe and the State shall evenly  
11 divide all oil and gas gross production and oil extraction taxes attributable  
12 to production from trust lands on the Fort Berthold Indian Reservation.

13 b. All other production. The Tribe shall receive 20% of the total oil and gas  
14 gross production taxes collected from all production attributable to non-  
15 trust lands on the Fort Berthold Indian Reservation provided that the the  
16 Three Affiliated Tribes consents to not enforce its Tribal Employment  
17 Rights Ordinance on such lands. The State shall receive the remainder.

18 c. The state's share of the revenue as divided in subdivisions (a) and (b) is  
19 subject to distribution among political subdivisions as provided in chapter  
20 57-51.

21 d. One percent of the total revenue available for distribution to the Tribe  
22 pursuant to subdivisions (a) and (b) shall be deducted from the Tribe's

1           share and transferred for deposit in the state general fund to compensate  
2           the state for administering the agreement.

3       6. An oil or gas well that is drilled and completed during the time of an  
4           agreement under this chapter shall be subject to the terms of the agreement for  
5           the life of the well.

6       7. Fees and taxes imposed by the tribe under an agreement with an oil or gas  
7           exploration or production company within the boundaries of the reservation  
8           entered before July 1, 2007 shall be unaffected by an agreement under this  
9           chapter. The Three Affiliate Tribes must agree not to impose a tribal tax on  
10          future production of oil and gas on the Fort Berthold Indian Reservation as a  
11          condition of the agreement.

12      8. To address situations in which the tax commissioner refunds taxes to a  
13          taxpayer, the agreement must allow the tax commissioner to either recover  
14          from the tribe payments already made to it or to offset future distributions to  
15          the tribe.

16      9. The tax commissioner must retain authority to administer and enforce chapters  
17          57-51 and 57-51.1 as applied to wells subject to any agreement authorized by  
18          this chapter.

19      10. The agreement must address the regulatory regime governing oil and gas  
20          industry's on-reservation activities to provide the industry with an acceptable  
21          level of regulatory consistency and certainty.

1 11. The federal district court for the western division of North Dakota shall be the  
2 venue for any dispute arising from a revenue sharing agreement between the  
3 State and the Three Affiliated Tribes.

4 **57-51.2-03. Statutory inconsistencies superseded.** This chapter supersedes any  
5 inconsistent provisions of chapters 57-51 and 57-51.1 and any provision of state law  
6 relating to regulatory provisions of state law relating to oil and gas exploration and  
7 production and administration of those provisions.

8 ~~**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1,~~  
9 ~~2010.—~~ This Act is effective for oil production after June 30, 2007. This Act is  
10 ineffective after June 30, 2009, unless by that date the governor's office notifies the tax  
11 commissioner and legislative counsel that an agreement has been entered with the Three  
12 Affiliated Tribes under chapter 57-51.2.

13 **57-51.2-04. Reports.** After entering an agreement under this chapter the governor shall  
14 file a report with the legislative council describing the agreement's negotiations and  
15 terms and thereafter shall file biennial reports with the legislative council describing the  
16 agreement's implementation and any difficulties in its implementation.

17 **57-51.2-05. Inapplicability of chapter 54-40.2.** Sections 54-40.2-03.1 and 54-40.2-  
18 03.2 do not apply to any agreement entered under chapter 57-51.2

19 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Date : 4-20-07 10:00 AM  
Roll Call Vote # : #1 Friday

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2419 SNAT

Senate Natural Resources Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By ALL HERE Seconded By \_\_\_\_\_

Senators	Yes	No	Representatives	Yes	No
Senator Lyson, Stanley <u>AH</u> ✓			Rep. Keiser, George <u>AH</u> ✓		
Senator Wander, Rich ✓ <u>Wardner</u>			Rep. Damschen, Charles ✓		
Senator Triplett, Connie ✓			Rep. Myer, Shirley ✓		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

AMENDMENT 28 PREPARED

By Sheila Hinkel



73  
4-21-07  
1 of 2

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2419

That the House recede from its amendments as printed on pages 1385-1389 of the Senate Journal and pages 1541-1545 of the House Journal and that Reengrossed Senate Bill No. 2419 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 57-51.2 of the North Dakota Century Code, relating to agreements with the Three Affiliated Tribes to share revenue from state taxes on oil and gas production within the boundaries of the Fort Berthold Reservation; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** Chapter 57-51.2 of the North Dakota Century Code is created and enacted as follows:

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

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

1. The only taxes subject to agreement are the state's oil and gas gross production and oil extraction taxes attributable to production from wells located within the exterior boundaries of the Fort Berthold Reservation.
2. The state's oil and gas gross production tax under chapter 57-51 must apply to all wells located within the Fort Berthold Reservation.
3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the Fort Berthold Reservation may not exceed six and one-half percent but may be reduced through negotiation between the governor and the Three Affiliated Tribes.
4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the Fort Berthold Reservation except as otherwise provided in the agreement.
5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:
  - a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.
  - b. All other production. The tribe must receive twenty percent of the total oil and gas gross production taxes collected from all production attributable to nontrust lands on the Fort Berthold Reservation in lieu of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.

2 of 2

- c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapters 57-51 and 57-51.1.
6. An oil or gas well that is drilled and completed during the time of an agreement under this chapter must be subject to the terms of the agreement for the life of the well.
  7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future production of oil and gas on the Fort Berthold Reservation during the term of the agreement.
  8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to offset future distributions to the tribe.
  9. The tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
  10. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state regulatory provisions for the life of the well in addition to any other applicable regulatory provisions.
  11. The federal district court for the western division of North Dakota is the venue for any dispute arising from a revenue-sharing agreement between the state and the Three Affiliated Tribes.

**57-51.2-03. Statutory Inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any inconsistent provisions of state law relating to regulatory provisions and state law relating to oil and gas exploration and production and administration of those provisions.

**57-51.2-04. Reports.** After entering an agreement under this chapter the governor shall file a report with the legislative council describing the agreement's negotiations and terms and thereafter shall file biennial reports with the legislative council describing the agreement's implementation and any difficulties in its implementation.

**57-51.2-05. Inapplicability of chapter 54-40.2.** Chapter 54-40.2 does not apply to any agreement entered under chapter 57-51.2.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for oil production after June 30, 2007. This Act is ineffective after June 30, 2009, unless by that date the governor's office notifies the tax commissioner and legislative council that an agreement has been entered with the Three Affiliated Tribes under chapter 57-51.2.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

AMENDMENT - .70882.0308

**REPORT OF CONFERENCE COMMITTEE**

**SB 2419, as reengrossed:** Your conference committee (Sens. Lyson, Wardner, Triplett and Reps. Porter, Damschen, S. Meyer) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1385-1389, adopt amendments as follows, and place SB 2419 on the Seventh order:

That the House recede from its amendments as printed on pages 1385-1389 of the Senate Journal and pages 1541-1545 of the House Journal and that Reengrossed Senate Bill No. 2419 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 57-51.2 of the North Dakota Century Code, relating to agreements with the Three Affiliated Tribes to share revenue from state taxes on oil and gas production within the boundaries of the Fort Berthold Reservation; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** Chapter 57-51.2 of the North Dakota Century Code is created and enacted as follows:

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

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

1. The only taxes subject to agreement are the state's oil and gas gross production and oil extraction taxes attributable to production from wells located within the exterior boundaries of the Fort Berthold Reservation.
2. The state's oil and gas gross production tax under chapter 57-51 must apply to all wells located within the Fort Berthold Reservation.
3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the Fort Berthold Reservation may not exceed six and one-half percent but may be reduced through negotiation between the governor and the Three Affiliated Tribes.
4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the Fort Berthold Reservation except as otherwise provided in the agreement.
5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:
  - a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.
  - b. All other production. The tribe must receive twenty percent of the total oil and gas gross production taxes collected from all production attributable to nontrust lands on the Fort Berthold Reservation in lieu

of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.

- c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapters 57-51 and 57-51.1.
6. An oil or gas well that is drilled and completed during the time of an agreement under this chapter must be subject to the terms of the agreement for the life of the well.
7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future production of oil and gas on the Fort Berthold Reservation during the term of the agreement.
8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to offset future distributions to the tribe.
9. The tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
10. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state regulatory provisions for the life of the well in addition to any other applicable regulatory provisions.
11. The federal district court for the western division of North Dakota is the venue for any dispute arising from a revenue-sharing agreement between the state and the Three Affiliated Tribes.

**57-51.2-03. Statutory Inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any inconsistent provisions of state law relating to regulatory provisions and state law relating to oil and gas exploration and production and administration of those provisions.

**57-51.2-04. Reports.** After entering an agreement under this chapter the governor shall file a report with the legislative council describing the agreement's negotiations and terms and thereafter shall file biennial reports with the legislative council describing the agreement's implementation and any difficulties in its implementation.

**57-51.2-05. Inapplicability of chapter 54-40.2.** Chapter 54-40.2 does not apply to any agreement entered under chapter 57-51.2.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for oil production after June 30, 2007. This Act is ineffective after June 30, 2009, unless by that date the governor's office notifies the tax commissioner and legislative council that an agreement has been entered with the Three Affiliated Tribes under chapter 57-51.2.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Reengrossed SB 2419 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2419

Senate Bill 2419  
Sen. John Warner  
Senate Natural Resources Committee  
Senator John Warner

Mr. Chairman, Members of the Committee,

There is a vast hole in the middle of oil development in western North Dakota. In the middle of a region of enormous energy potential, regulatory uncertainty has caused developers to shy away from the lands on the Ft. Berthold Reservation.

Senate Bill 2419 is an innovative proposal to create a climate of regulatory and tax certainty which will encourage exploration in the Bakken formation. This proposal is good for the state, I believe it is good for the tribes, and I know that it is good for the royalty holders who are taxpayers in the State of North Dakota.

I would ask you to proceed with some caution in a couple of areas. Please consider that this negotiation needs to be entered into by equals who are respectful of each others cultural and political traditions. I don't think that it would serve good purpose to make the agreement requirements too strict. Some flexibility may be in the best interest of the negotiations.

Perhaps more important, I would urge you to be very careful about negotiating away the tax revenues due to counties. The counties in this region are already seriously impacted by a lack of revenue when it comes to maintaining roads and administering human services. As this goes forward please keep the counties whole.

Mr. Chairman, Members of the Committee, I believe this is an excellent opportunity to develop the oil and gas resources of a neglected area of North Dakota. I want to thank you for taking the time to prioritize this bill so late in the session and I want to thank you for giving it such careful consideration.



# Northern Alliance of INDEPENDENT PRODUCERS

PO Box 2422 • Bismarck, North Dakota 58502-2422 • Phone 701-224-5037 • Fax 701-224-5038 • email NProducers@aol.com

Natural Resources Committee  
North Dakota Senate  
March 23, 2007

Legislative Hearing **SB 2419 (Oil and gas compacts with India Tribes)**

Mr. Chairman and members of the committee, my name is Robert Harms. I am president of the Northern Alliance of Independent Producers, which is an oil and gas trade association of independent oil producers operating in the Williston Basin. Today, the Alliance represents over 40 independent producers operating in the Williston Basin and who are responsible for 45% of the wells drilled in 2006 representing \$900 million of new investment in our state.

**We support the premise of SB 2419 which appears to be increasing oil and gas production on the Fort Berthold Indian Reservation.** We do have some concerns that I will outline shortly. However, Ft. Berthold is a more dramatic example that "price" is not the only driver in securing more oil and gas activity. Other factors include costs of doing business, tax climate, and other public policy issues that impact investment. This Session we've heard "price" is all it takes to get more drilling. Ft. Berthold stands as a clear demonstration that other factors besides price impact investment and development. So, we support the effort to encourage more oil and gas development at Ft. Berthold (or other reservations that the bill might impact).

Here are our suggestions and concerns:

1. We believe that Section 1 should be eliminated. It would eliminate one of the few incentives that exist to attract additional oil and gas development into North Dakota. (The current exemption provides a 60 month holiday from North Dakota's 6.5% extraction tax that is applied to gross production, regardless of whether a profit is made on the well.

2. We agree with subsection 6, page 2 beginning at line 14 that would include a regulatory regime that would improve the certainty of regulations on a reservation which will attract more oil and gas development.

3. Now as to process: We suggest several considerations or changes in how the negotiation process might unfold:

a.) Add or substitute the Attorney General into the agreement process.

b.) We suggest utilizing an inclusive process something like NDCC 54-58 (attached) that includes minority and majority leadership from both houses, or the chairman and vice chairman of legislative council, to provide input. We also think a hearing with the public and a mechanism for consulting with the industry would be helpful as well.

c.) Finally with respect to the terms of the agreement, we should be cautious so we don't increase the tax and discourage further development, and some consideration should be given on how such agreements should treat fee lands.

With the considerations in mind Mr. Chairman, members of the Committee we ask for a DO PASS on SB 2419, but do believe some changes are warranted.

**CHAPTER 54-58**  
**TRIBAL-STATE GAMING COMPACT**

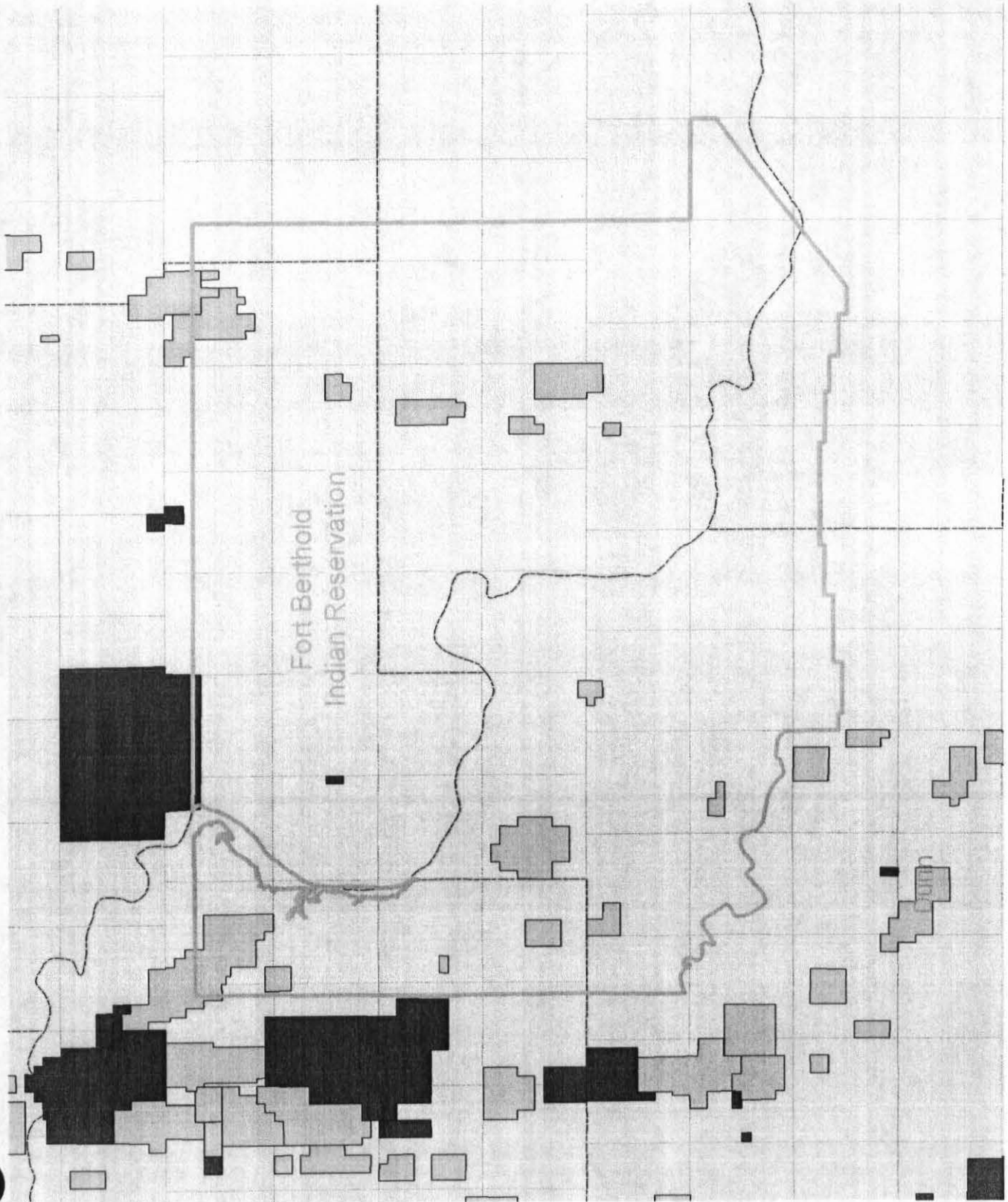
**54-58-01. Tribal-state gaming compact - Definition.** A tribal-state gaming compact is a duly executed agreement between the state and a federally recognized Indian tribe as approved by the secretary of the department of interior of the United States pursuant to the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.].

**54-58-02. Tribal gaming records not subject to disclosure - Exceptions.** Except as provided in each tribal-state gaming compact, all tribal gaming records, including trade secret and proprietary information as defined in section 44-04-18.4, submitted to an agency of this state are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

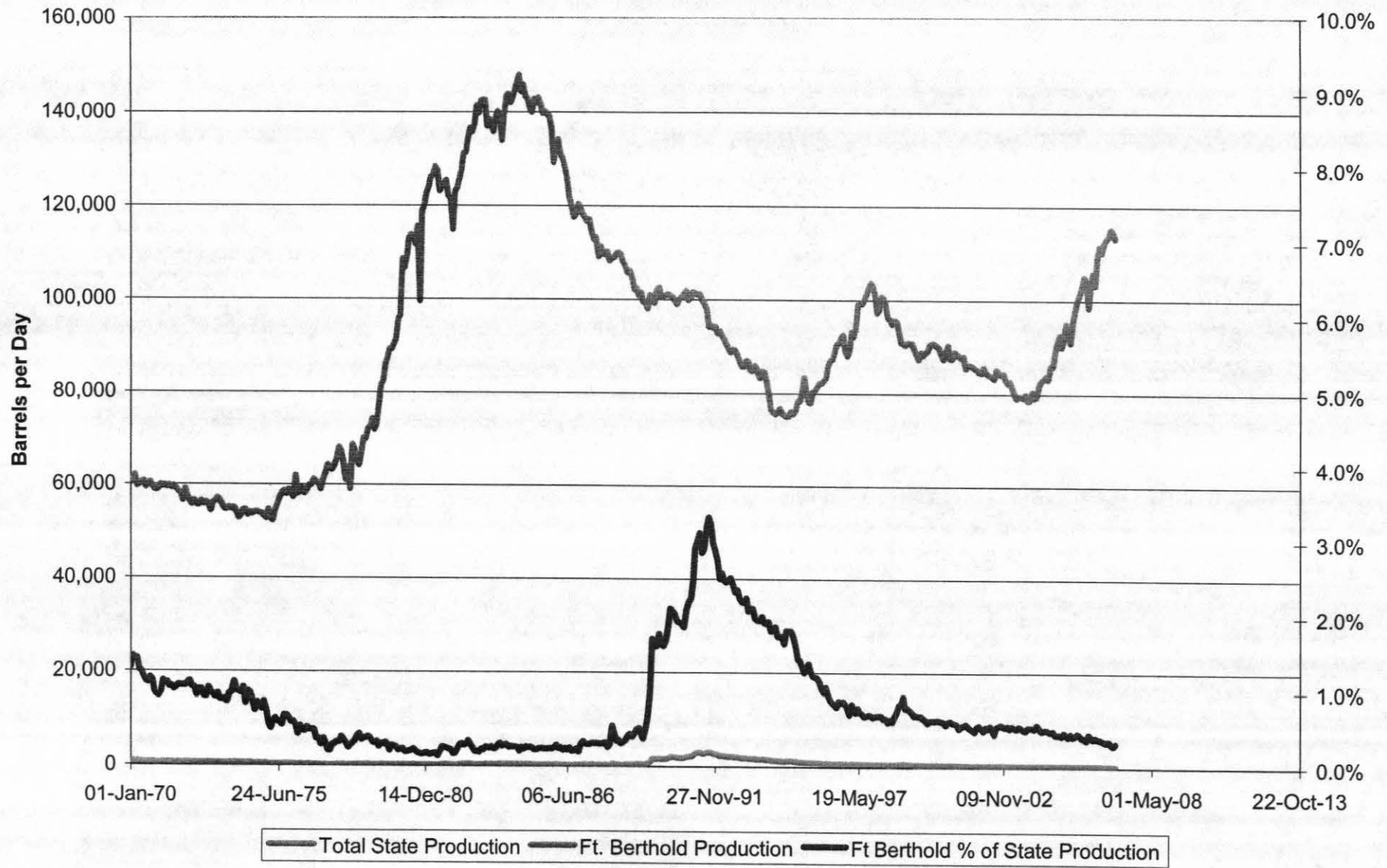
**54-58-03. Tribal-state gaming compact - Creation, renewals, and amendments.** The governor or the governor's designee may represent the state in any gaming negotiation in which the state is required to participate pursuant to 25 U.S.C. 2701 et seq. by any federally recognized Indian tribe and, on behalf of the state, may execute a gaming compact between the state and a federally recognized Indian tribe, subject to the following:

1. If the legislative assembly is not in session at the time gaming negotiations are being conducted, the chairman and vice chairman of the legislative council or the designee of the chairman or vice chairman may attend all negotiations and brief the legislative council on the status of the negotiations.
2. If the legislative assembly is in session at the time negotiations are being conducted, the majority and minority leaders of both houses, or their designees, may attend all negotiations and brief their respective houses on the status of the negotiations.
3. The compact may authorize an Indian tribe to conduct gaming that is permitted in the state for any purpose by any person, organization, or entity.
4. For the purposes of this chapter, the term "gaming that is permitted in the state for any purpose by any person, organization, or entity" includes any game of chance that any Indian tribe was permitted to conduct under a tribal-state gaming compact that was in effect on August 1, 1997.
5. The compact may not authorize gaming to be conducted by an Indian tribe at any off-reservation location not permitted under a tribal-state gaming compact in effect on August 1, 1997, except that in the case of the tribal-state gaming compact between the Turtle Mountain Band of Chippewa and the state, gaming may be conducted on land within Rolette County held in trust for the Band by the United States government which was in trust as of the effective date of the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.].
6. The compact may not obligate the state to appropriate state funds; provided, however, the state may perform services for reimbursement.
7. The negotiations between the tribe and the state must address the possibility of a mutual effort of the parties to address the issue of compulsive gambling.
8. If the legislative assembly is not in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative council at least twenty-one days before the compact is signed.
9. If the legislative assembly is in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative assembly at least twenty-one days before the compact is signed.

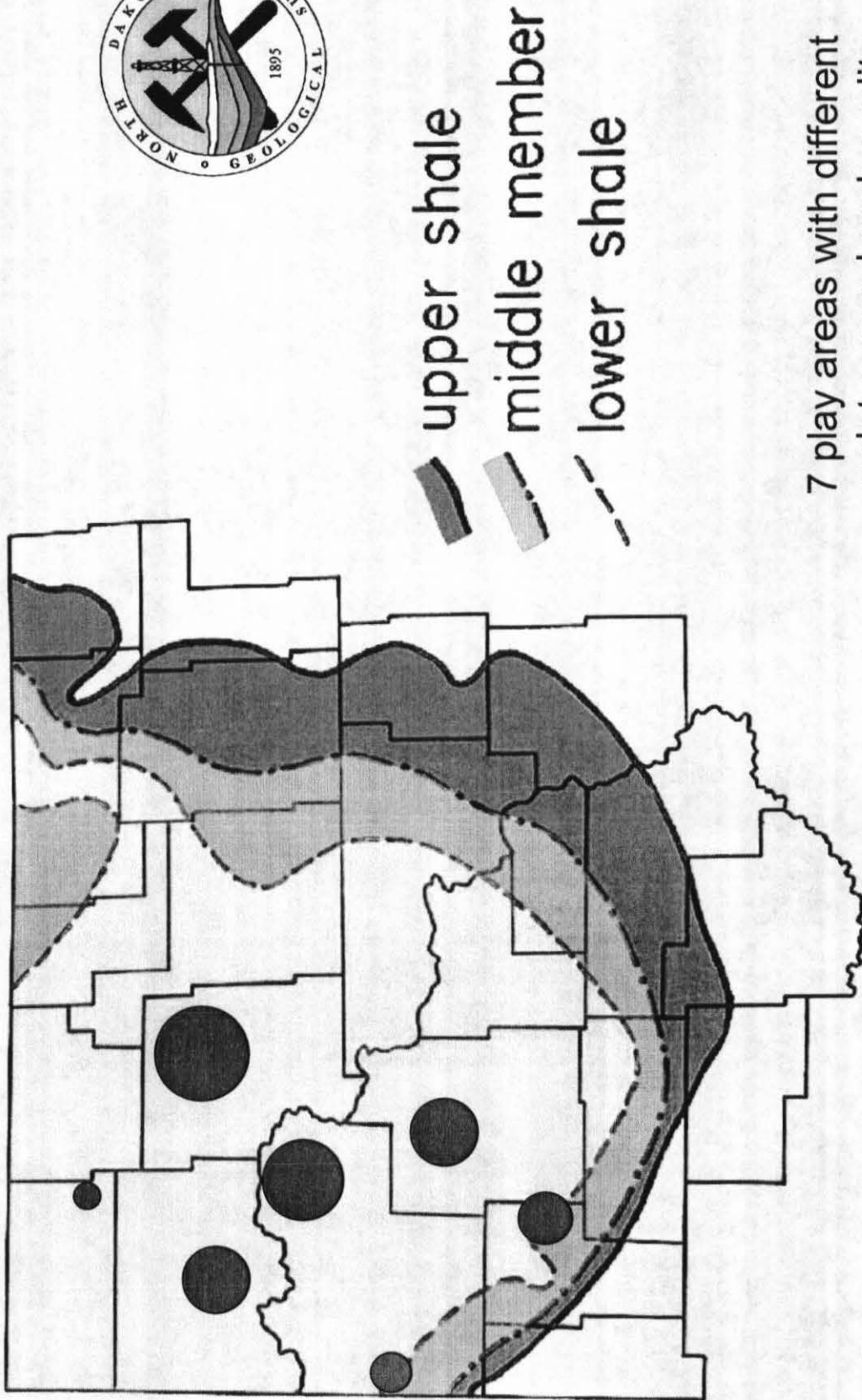
10. Before execution of any proposed tribal-state gaming compact or amendment thereto, the governor shall conduct one public hearing on the proposed compact or amendment.



# ND - Ft Berthold Oil Production



Attachment # 5



upper shale  
middle member  
lower shale

7 play areas with different  
rock type and rock quality.

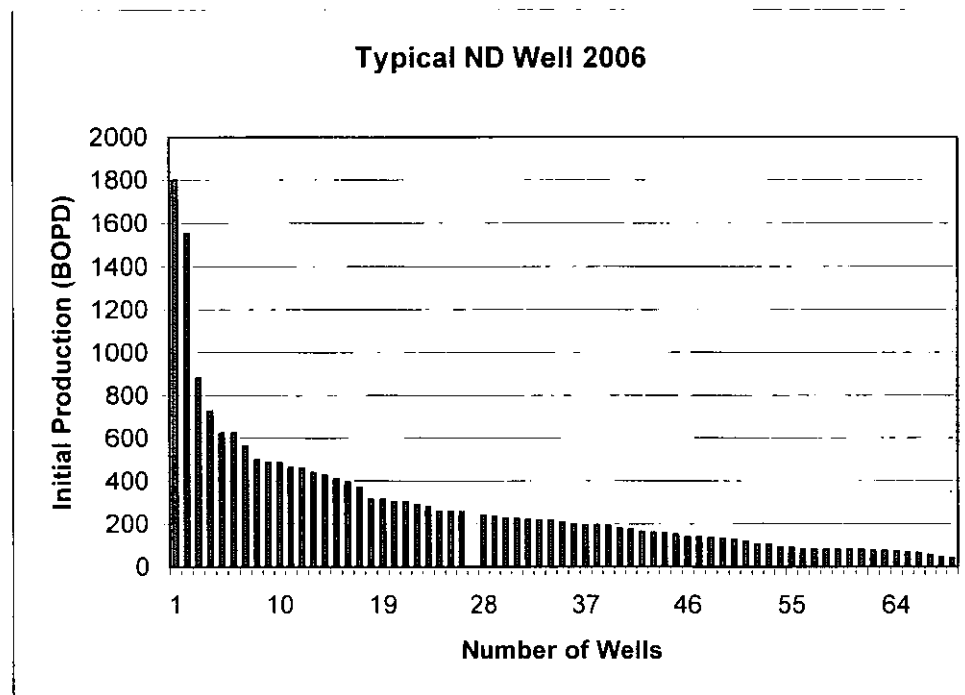
● Sized to illustrate results

## Bakken

266 - BOPD - average well  
345,378 - BO Estimated Ultimate Recovery - average well  
\$6,094,063 - cost to drill and complete  
190,500 - Breakeven reserves (barrels)  
176 - Breakeven oil rate (BOPD)  
\$41.25 - Breakeven oil price (\$/barrel)  
53% > Breakeven reserves  
100% >10 BOPD

988,000 acres  
772 possible wells  
267 million barrels of oil possible

10 drilling rigs for 10 years  
1,158 jobs  
\$738,442,040 production taxes  
\$790,219,707 extraction taxes  
\$128,711,371 sales taxes  
\$616,718,327 royalties  
\$977,016,587 wages



Attachment #7



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2419

Page 1, line 6, remove "and" and after "date" insert "; to provide an expiration date; and to declare an emergency"

Page 3, line 1, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 3, line 2, after the period insert "This Act is ineffective after June 30, 2009, unless by that date the governor notifies the tax commissioner and the legislative council that an agreement has been entered with an Indian tribe under chapter 57-51.2."

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

Re-number accordingly

April 2, 2007

**Proposed Amendment to SECOND ENGROSSMENT  
REENGROSSED SENATE BILL 2419**

Remove SECTION 1, renumber accordingly.

*Stim #1*



Senator Bob Stenehjem  
District 30  
7475 41st Street SE  
Bismarck, ND 58504-3200  
bstenehj@state.nd.us

# NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



Majority Leader

Testimony on SB 2419  
House Natural Resources Committee  
April 2, 2007, 9 a.m.

Mister Chairman and members of the Committee,

SB 2419 relates to exemptions from oil production taxes on Indian lands. It also spells out agreement requirements with Three Affiliated Tribes to share revenue from state taxes on mineral production.

This bill was first proposed as an amendment on another bill in the Senate. When I heard about it, however, I asked that it be introduced as a delayed bill to open the discussion on the issues.

Several people who have insights into this bill will follow and provide expert testimony. I will defer to them for the technical aspects of this bill.

I urge you to recommend SB 2419 for passage.



Ron Ness  
President  
Marsha Reimnitz  
Office Manager

120 N. 3rd Street • Suite 225 • P.O. Box 1395 • Bismarck, ND 58502-1395  
Phone: 701-223-6380 • Fax: 701-222-0006 • Email: ndpc@ndoil.org

*Item #3*

**Senate Bill 2419**  
**House Natural Resources Committee**  
**April 2, 2007**

Chairman Porter and Members of the Committee, my name is Ron Ness. I am the President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 130 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region. Petroleum Council members produced 80% of the nearly 36 million barrels of oil produced in North Dakota in 2006. I appear before you today in support of SB-2419.

The Petroleum Council supports the effort to negotiate a compact with the Three Affiliated Tribes to develop a more stable and uniform regulatory and tax structure on the reservation to encourage oil and gas development. There is great opportunity for all parties to create a win-win if this occurs. Without a more stable business climate, I believe we will continue to see little, if any, oil and gas activity on the reservation.

We urge a Do Pass recommendation on SB-2419. Thank you for your consideration. I would be happy to answer any questions.

Item #4

# **Northern Alliance** *of* **INDEPENDENT PRODUCERS**

PO Box 2422 • Bismarck, North Dakota 58502-2422 • Phone 701-224-5037 • Fax 701-224-5038 • email NProducers@aol.com

Natural Resources Committee

North Dakota House of Representatives

April 2, 2007

## **Legislative Hearing SB 2419 (Oil and gas compacts with Indian Tribes)**

Mr. Chairman and members of the committee, my name is Robert Harms. I am president of the Northern Alliance of Independent Producers, which is an oil and gas trade association of independent oil producers operating in the Williston Basin. Today, the Alliance represents over 40 independent producers operating in the Williston Basin and who drilled 45% of the wells in 2006 representing \$900 million of new investment in North Dakota.

**We support the premise of SB 2419 which is to increase oil and gas production on the Fort Berthold Indian Reservation.** We do have some concerns that I will outline shortly. However, Ft. Berthold is a dramatic example that "price" is not the only driver in securing more oil and gas activity. Little oil and gas activity takes place on the Reservation---some have described it as a "black hole" of minimal oil development even in the face of high oil prices. Other factors besides the price of oil impact oil exploration and development, including the costs of doing business, tax and regulatory climate, and other public policy issues in a jurisdiction. This Session we've heard "price" is all it takes to get more drilling (that incentives aren't necessary to encourage more drilling). Ft. Berthold stands as a clear demonstration that other factors besides price impact investment and development. Getting the tax and regulatory policy correct is a step in the right direction to attract new investment at Ft. Berthold. We support this effort for more oil and gas development at Ft. Berthold (or other reservations that the bill might impact).

Here are our suggestions and concerns:

1. We believe that Section 1 should be eliminated. It would eliminate one of the few incentives that exist to attract additional oil and gas development into North Dakota. (The current exemption provides a 60 month holiday from North Dakota's 6.5% extraction tax that is applied to gross production, regardless of whether a profit is made on the well.)

2. We agree with subsection 6, page 2 beginning at line 19 that would include a regulatory regime that would improve the certainty of regulations on a reservation which will attract more oil and gas development.

3. Now as to process: We suggest several considerations or changes in how the negotiation process might unfold:

a.) Add or substitute the Attorney General into the agreement process.

b.) We suggest utilizing an inclusive process something like NDCC 54-58 (attached) that includes minority and majority leadership from both houses, or the chairman and vice chairman of legislative council, to provide input. We also think a hearing with the public and a mechanism for consulting with the industry would be helpful as well.

c.) Finally with respect to the terms of the agreement, we should be cautious so we don't increase the tax and discourage further development, and some consideration should be given on how such agreements should treat fee lands.

With the considerations in mind Mr. Chairman, members of the Committee we ask for a **DO PASS** on SB 2419, but do believe some changes in the bill are warranted.



Scenario #2

# Current Oil Tax Distribution

(Fiscal Year 2006 Revenue Totals & Distribution)  
\$166,011,820.24 Received

Item #5

## 5% Gross Production Tax

\$103,765,309.35

1% of the 5%  
or  
1/5 (20%)

4% of the 5%  
or  
4/5 (80%)

\$20,753,061.87

\$83,012,247.48

\$5,000,000  
Oil Impact  
Fund

\$15,753,061.87  
State General  
Fund

\$57,761,009.79  
State General  
Fund (70%)

\$25,251,237.69  
Oil & Gas Counties  
(30%)

\$26,702,168.22  
Permanent  
Oil & Gas  
Trust  
Fund

\$30,217,384.82  
State General  
Fund

\$841,456.75  
Oil & Gas  
Research  
Council  
Fund

\$11,738,291.04  
Counties

\$8,837,933.19  
Schools

\$4,675,013.45  
Cities

## 6 1/2% Oil Extraction Tax

\$62,246,510.89

60%

20%

20%

\$37,347,906.53  
State General  
Fund

\$12,449,302.18  
Resources Trust  
Fund

\$12,449,302.18  
Education  
Purposes

\$11,859,809.97  
Permanent  
Oil & Gas  
Trust  
Fund

\$25,029,553.31  
State General  
Fund

\$458,543.25  
Oil & Gas  
Research  
Council  
Fund

\$6,224,651.09  
Common School  
Trust Fund

\$6,224,651.09  
Foundation  
Stabilizat  
Fund

## Summary:

$$\$103,765,309.35 + \$62,246,510.89 = \$166,011,820.24$$

	State General	Resources Trust	Counties	Schools	Cities	Permanent Oil & Gas Trust	Oil & Gas Research Council	Common School Trust	Found Aid Sta
Oil Impact	\$15,753,061.87					\$11,859,809.97	\$458,543.25		
\$5,000,000.00	\$25,029,553.31	\$12,449,302.18	\$11,738,291.04	\$8,837,933.19	\$4,675,013.45	\$26,702,168.22	\$841,456.75	\$6,224,651.09	\$6,224,651.09
(3%)	\$30,217,384.82	(7%)	(7%)	(5%)	(3%)	\$38,561,978.39	\$1,300,000.00	(4%)	(4%)
	\$71,000,000.00								

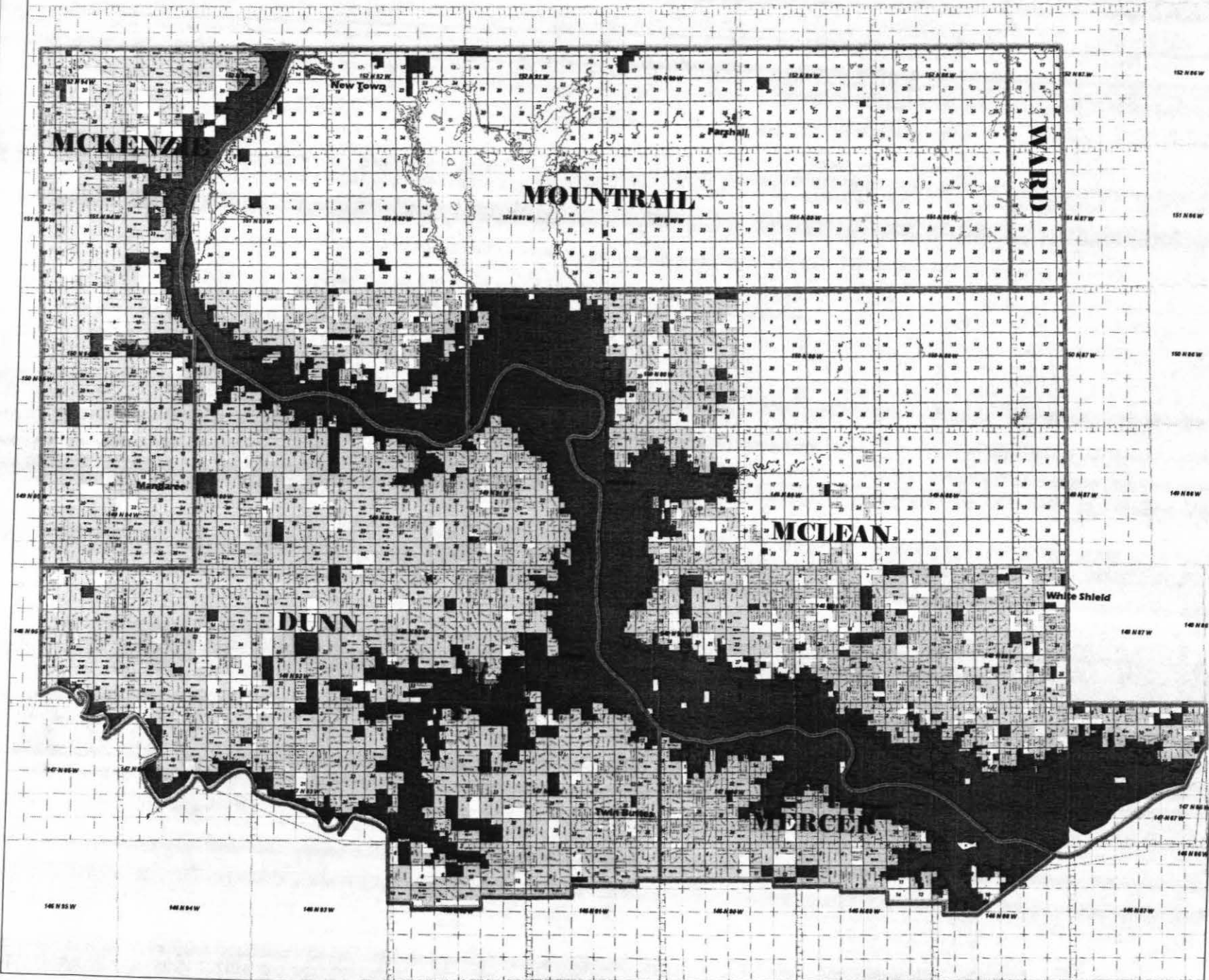
Item #3

# Fort Berthold Reservation



Mandan, Hidatsa & Arikara  
Nation

Three Affiliated Tribes  
Mineral Tracts  
Universal Transverse Mercator  
Projection Zone 13,  
Fifth Principal Meridian,  
NAD1983, GRS 1980



## Legend

- Reservation
- Surface Water
- Sections
- Township & Range
- County Boundary
- LTM Data
- LTM Data
- Mineral Tribal
- Mineral Allotted



Item #4

# Fort Berthold Reservation



Mandan, Hidatsa & Arikara Nation

## Three Affiliated Tribes Surface Tracts

Universal Transverse Mercator  
Projection Zone 13,  
Fifth Principal Meridian,  
NAD1983, GRS 1980



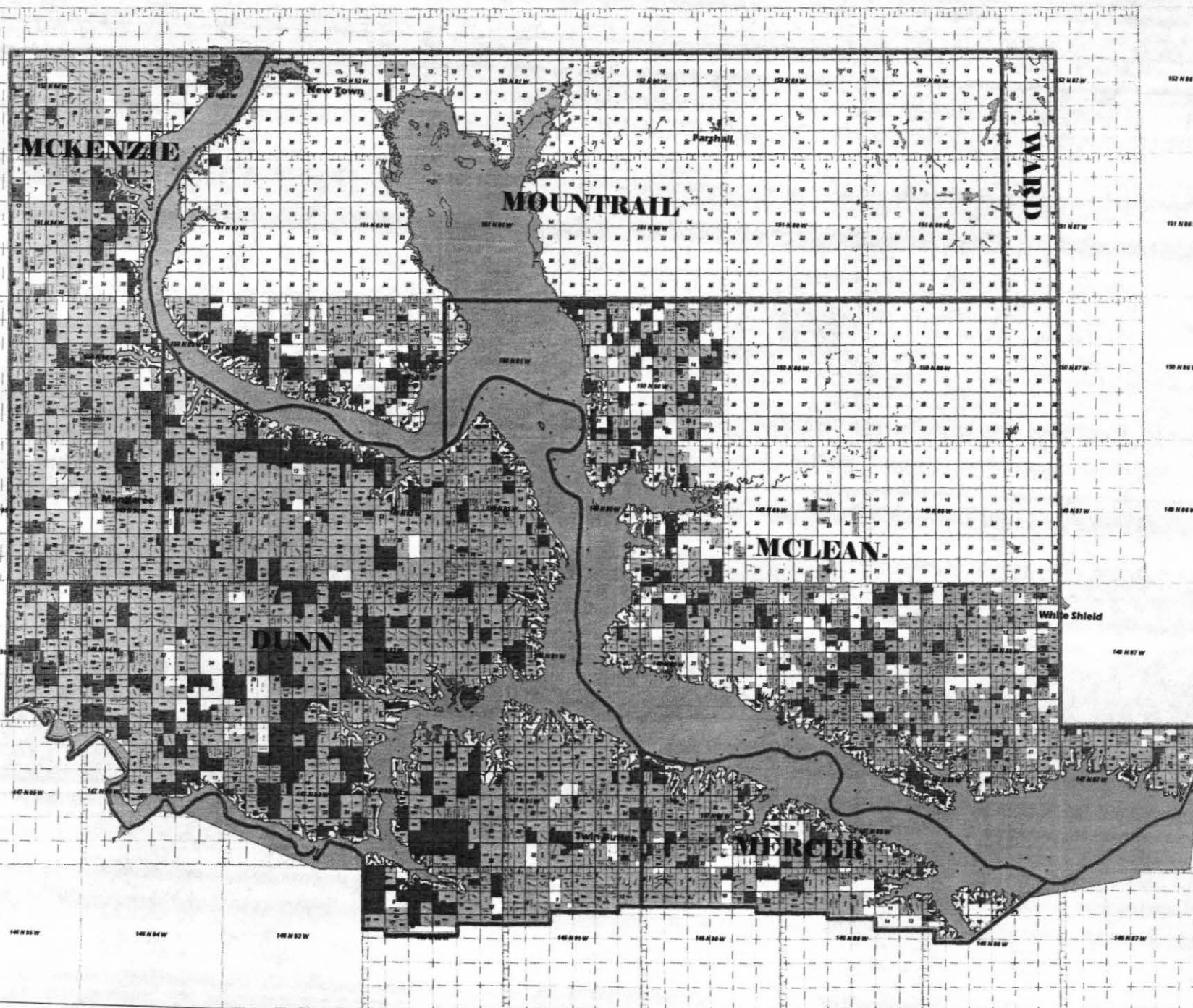
## Legend



- Reservation
- Surface Water
- Sections
- Township & Range
- County Boundary

## LTM Data

- LTM Data
- Surface Allotted
- Surface Tribal



**THE TRIBE'S PROPOSED AMENDMENTS TO  
REENGROSSED SENATE BILL NO. 2419**

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

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

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

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

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand

dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

5. 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 subsequent to June 30, 1991, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins.

- c. 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. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
- 6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel

of crude oil is less than the trigger price for each month in any consecutive five-month period.

7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
8. ~~The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:~~
  - a. ~~The well is located within the boundaries of an Indian reservation;~~
  - b. ~~The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or~~
  - e. ~~The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.~~

**REMOVE DELETION OF THIS SUBSECTION.**

**INSERT THE FOLLOWING:**

The exemptions provided under this section may only apply by agreement between the Governor and the Three Affiliated Tribes entered into pursuant to Chapter 57-51.2.

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

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

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

1. ~~All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to fee land within the exterior boundaries of the~~

reservation is retained by the state and allocated as provided by law. All revenue from taxes under chapters 57-51 and 57-51.1 from oil and gas production attributable to Indian trust land and land owned by an Indian tribe within the exterior boundaries of the Fort Berthold Reservation is allocated as follows:

- a. ~~Revenue from taxes under chapter 57-51 attributable to oil and gas production on Indian trust land and land owned by an Indian tribe must be allocated among political subdivisions in the amount, proportion, and manner provided in chapter 57-51.~~
- b. ~~The cost of state oil and gas administration and regulation must be deducted and transferred for deposit in the state general fund.~~
- e. ~~All revenue remaining after deduction of the amounts under subdivisions a and b must be divided in equal amounts between the state and the tribe.~~

INSERT THE FOLLOWING LANGUAGE:

The exemptions for oil and gas production under chapters 57-51 and 57-51.1 shall not apply to production within the boundaries of the Fort Berthold Reservation unless the exemption is specified in an agreement under Chapter 57-51.2 or in a later amendment to an agreement and the revenue loss attributable to the exemption is divided equally between the state and the tribe.

- 2. ~~An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state tax and regulatory provisions for the life of the well.~~

No more than fifty percent of the oil and gas gross production and oil extraction tax revenue collected by the State may be allocated to the tribe.

- 3. ~~The exemptions for oil and gas production under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the reservation unless the exemption is specified in the agreement or in a later amendment to the agreement and the revenue loss attributable to the exemption is divided equally between the state and the tribe.~~

An administrative fee of 1% of the amount allocated to the Three Affiliated Tribes shall be assessed to compensate the tax commissioner for costs incurred for collecting and distributing the tax to the Tribe.

4. Fees and taxes imposed by the tribe under an agreement with an oil or gas exploration or production company within the boundaries of the reservation entered before July 1, 2007, are unaffected by an agreement under this chapter. ~~Fees and taxes may not be imposed by the tribe by agreement or otherwise with an oil or gas exploration or production company for activities within the exterior boundaries of the reservation after the effective date of this Act.~~

The Tribe must agree not to impose a tax on production of oil and gas on the Fort Berthold Reservation as a condition of the agreement.

5. Jurisdiction of any dispute under this chapter or under the agreement entered under this chapter is in the federal district court for the western division of North Dakota.
6. To address situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to either recover from the tribe payments already made to it or to offset future distributions to the tribe.
7. The tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
8. The agreement must address the regulatory regime governing oil and gas industry's on-reservation activities to provide the industry with an acceptable level of regulatory consistency and certainty.

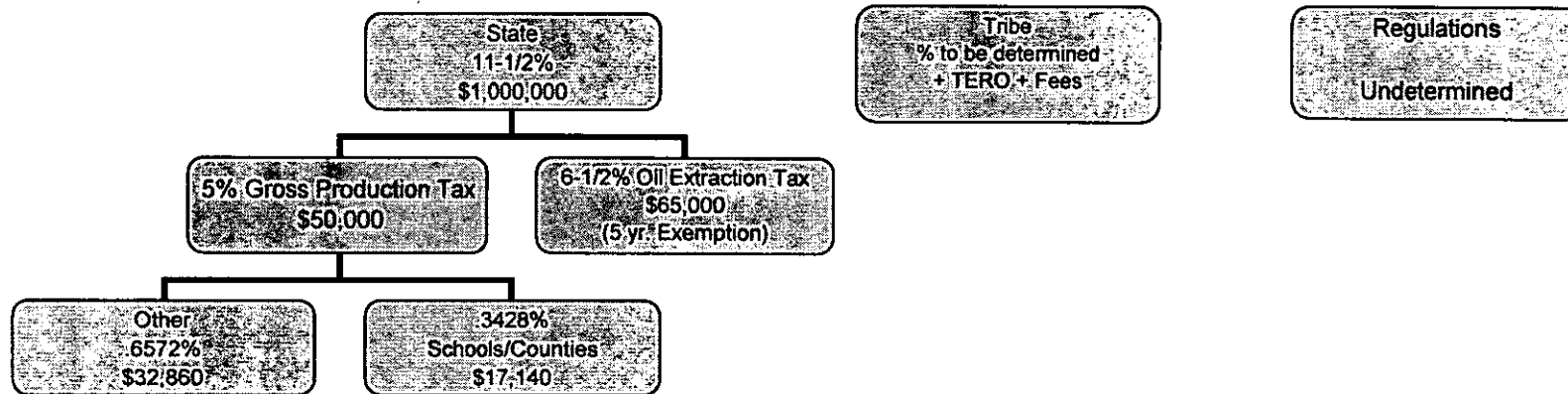
**57-51.2-03. Statutory inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any provision of state law relating to regulatory provisions of state law relating to oil and gas exploration and production and administration of those provisions.

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

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



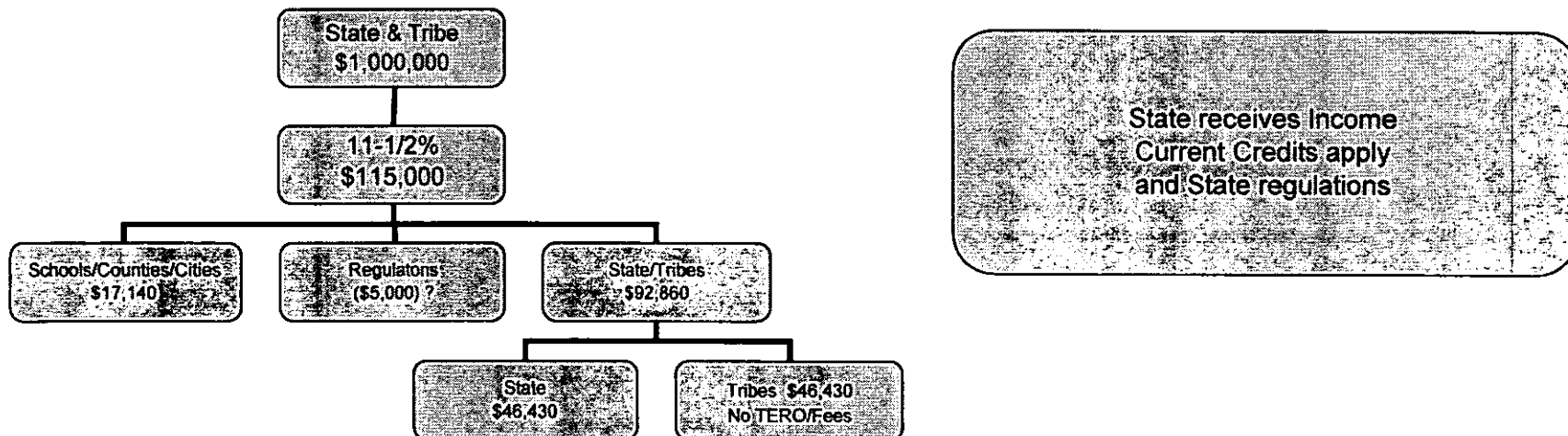
### Current Situation - Applies to Trust Land/Fee Land/Tribal land



### Proposed Compact - State of North Dakota Position

Applies to Trust Land/Tribal Land

Applies to Fee Land



**1. Regulation - Current State Statutes/Rules/Regulations**

**2. Any credit/reduction offered by the Tribe/State split  
must be shared equally between the tribe and state.**

**3. Oil extraction tax exemption expires in 4 years for all  
oil companies.**

**4. Jurisdiction for dispute - Federal Court**