

FISCAL NOTE
Requested by Legislative Council
03/27/2015

Amendment to: Engrossed HB 1437

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Engrossed HB 1437 with Senate Amendment extends the sunset on the "small" triggered oil extraction tax incentive, to June 30, 2019.

- 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 March 2015 official forecast assumes the "big" trigger becomes effective and remains in effect for the first 11 months of the 2015-17 biennium. Based on provisions of this bill, the "small" trigger will become ineffective for at least one year after the "big" trigger comes off. If the forecast correctly assumes the big trigger becomes effective, there is likely no impact to this bill in the 2015-17 biennium. If the "big" trigger does not become effective, this small trigger would stay in effect until prices rise to \$70, or until June 30, 2019, whichever comes first. While this may result in revenue reductions of up to \$185,000 per new well, this would net out to less revenue lost from this bill than revenue gained from the big trigger not becoming effective.

This bill can be assumed to have no impact, consistent with the March 2015 forecast.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 03/26/2015

FISCAL NOTE
Requested by Legislative Council
02/11/2015

Amendment to: HB 1437

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Engrossed HB 1437 extends the sunset on the "small" triggered oil extraction tax incentive, to June 30, 2017.

- 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 January 2015 re-forecast assumes the "big" trigger becomes effective and remains in effect for the first ten months of the 2015-17 biennium. If that is the case, Section 2 of engrossed HB 1437 repeals this small trigger. Therefore, it is assumed -- consistent with the forecast -- that this smaller trigger provision gets repealed. If the forecast is not correct, and the "big" trigger does not become effective, Section 1 of this bill allows the small trigger to stay in effect until prices rise to \$70, or until June 30, 2017, whichever comes first.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/12/2015

FISCAL NOTE
Requested by Legislative Council
01/19/2015

Bill/Resolution No.: HB 1437

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(280,000,000)		
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1437 extends the sunset on the "small" triggered oil extraction tax incentive, to June 30, 2019.

- 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 January 2015 re-forecast assumes the "big" trigger stays in effect for the first ten months of the 2015-17 biennium. After that, this bill, if enacted, would allow the small trigger to again be in effect for the remaining 14 months of the biennium. This would result in a reduction in oil extraction tax revenues estimated to total \$280 million for the remainder of the biennium.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/03/2015

2015 HOUSE FINANCE AND TAXATION

HB 1437

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1437
2/4/2015
23184

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to extending the date to qualify for the triggered oil extraction tax rate reduction for new horizontal wells.

Minutes:

Attachments 1, 2

Chairman Headland: Opened hearing.

Representative Froseth: Introduced bill. Distributed Christmas tree version of the bill 15.0932.01001 and a proposed amendment 15.0932.01001. See attachments #1 and 2. This extends the 4 ½% reduction in the extraction tax for new horizontal wells for the first 75,000 barrels or 18 months, whichever comes first. When drafting this bill we came across an incident we should change. This bill extends the expiration date from 2015 to 2019. Today that first trigger will go on when the price of oil hits \$55.09, which is today's price, and will stay on until the price goes back up to \$72.50. The big trigger goes on when the price reaches \$55.09 but goes off again when the price comes back up over the \$55.09. This amendment will make that small trigger follow the big trigger; it will go off at the same price range at \$55.09 instead of the \$72.50. I'd like to have John Walstad go over this amendment before we take action on the bill.

Chairman Headland: Your amendment changes the small trigger from going to \$72.50 back to \$55.09 so would that include all the wells that have already been triggered?

Representative Froseth: It would include the wells that are receiving this first discount, 4 1/2%, for the first 75,000 or 18 months and would include those wells that are triggered on at \$55.09 and the trigger doesn't go off until the price comes back up to \$72.50.

Chairman Headland: Industry supports that?

Representative Froseth: They're here so we'll see.

Chairman Headland: Is there any support to HB 1437?

Senator Bekkedahl: This is an issue of strength in our local economy and continuing the employment base we have in oil and gas. I remember when we were at zero rigs drilling in North Dakota and it was an issue of profitability and the ability to maintain a presence in our state. My community is 64% employment in the oil and gas field so it was devastating. I hope the committee sees fit to continue our presence in the oil and gas industry in North Dakota. I look at this as a risk assessment for the state and the industry and maintaining the presence of the industry as a collaborative effort working with them.

Chairman Headland: Further support?

Ron Ness, President of North Dakota Petroleum Council: This trigger was put on in 2009 and it was extended in 2011 for a four year extension but probably should have been extended again last session. If we're keeping the oil taxation structure the same then we suggest keeping it the same and extend this trigger because this is part of the existing structure. It's very hard to conduct your business when there's a trigger on, trigger off, trigger sunsets, trigger ends, etc. My people don't understand what these triggers do and nobody is going to understand the amendment. My version of what the amendment does is that the big trigger eliminates the oil extraction tax on any horizontal well for 24 months and brings the rate on all existing production down from 11 ½% to 9% then sets in place about nine other incentives on work over rigs and re-entries and all of those things that put the rate somewhere between two and four percent. Under the big trigger there is no rate higher than nine percent on any well during the time when the trigger is in effect. This amendment says that if the big trigger has been in effect in any previous 12 month period the little trigger does not stay on. You have to have a 12 month gap after the big trigger has gone off the little trigger goes off. It doesn't change the dollar rates that go along with those triggers; the little trigger is \$57.50 and the big trigger today is \$55.09 but is indexed to inflation so it will adjust on an annual basis. We are all in this together. The state is the biggest stake holder in North Dakota's oil industry; it has the most to gain and the most to lose. We support this as continuing the process we have going forward. We are at 140 drilling rigs today. We were at 186 drilling rigs on December 12 which is a drop of 46 drilling rigs and about a 180 jobs to each of those. Time will tell what the prices do but we've seen some positive news on oil price in the last few days but this is about the economics of investments.

Chairman Headland: Last session we had a piece of legislation that was passed and did a lot of things. Why wouldn't we have included the extension of this trigger?

Ron Ness: I have to take responsibility for that. There were a lot of things moving in all of those different bills and this is one of those dates that you don't see out there. The bill that passed last session turned into a pretty substantial tax increase, certainly on tribal lands and everywhere else. This would've been critical to extend because we were looking to clean up some things and I missed it. That's why Representative Froseth has agreed to putting this forth.

Chairman Headland: We all miss the boat on a lot of things in that area. Is there any further testimony in support?

Roger Kelly, Continental Resources: We are a large producer of oil and gas in this state. We are in support of this bill. It's about the economics of investment.

Representative Trottier: With what is going on in the last couple days, does that give you and your people any feeling if our oil prices are turning around?

Roger Kelly: If I could answer that question I'd be a lot richer. I don't know.

Chairman Headland: Further testimony in support? Is there any opposition? I requested Mr. Walstad's presence so we will close this hearing until we can get the information on the amendment and how it works.

Later in the morning John Walstad came to discuss the amendment.

John Walstad, Legislative Council: This relates to Representative Froseth's bill that extends the time period for the little trigger. The interplay between the little and the big triggers is the issue of this amendment. The tax department gave you a pretty hefty fiscal note the way it was introduced. That was because if the big trigger is in play and the price rises to a point where the big trigger drops off that would leave the smaller trigger in place until the price cracks the \$70 line. In talking with the tax department this amendment would basically zero out the fiscal note for this bill. The language that is included here is the little trigger rate reduction cannot be effective if, within 12 months, the big trigger has been in play. The exemption is 24 months long for a horizontal well and it's under the big trigger that it is in effect. If you drill within the time that it's in effect you get 24 months on that well and that's why the language is effective for completion of a new well. New wells during the time the big trigger is in effect qualify for a 24 month exemption. I didn't want the exemption for horizontal wells, 24 months, to hold the small trigger out. It is during the time when the price of the big trigger is on and you drill a new well in the month of May and the trigger is there but gone in June. If you drill in May you get it for 24 months but this untriggering thing only applies for brand new wells drilled while the big trigger is on. Then for 12 months after the big trigger goes off the little trigger cannot be in effect no matter what the price is. The \$70 shut off for the small trigger is still in play also. Our price point for the two triggers used to have a spread now they don't.

Representative Steiner: You're saying both triggers will not cross over anymore with this amendment?

John Walstad: They will never both be in play at the same time. If the big trigger is on that's a moratorium for the small trigger for 12 months after it triggers off. That was where the fiscal note came in, where the big trigger clicked off and the little one is still in play.

Vice Chairman Owens: That's the key. You have to have 12 clean months before the little trigger can come on.

John Walstad: Correct.

Chairman Headland: But it does not change how the little trigger would work.

John Walstad: \$70 is the turn off trigger on the small one. That would still remain if oil went above \$70 the little trigger would be gone regardless of when the big trigger might have been in play. If oil hovers in the \$60 range after the little trigger comes off the big trigger comes off then the little trigger would not apply until 12 months later after the big trigger goes off.

Chairman Headland: This would be on new wells?

John Walstad: New wells only. Only new wells qualify under the reductions or exemptions.

Representative Klein: Are you saying that under this bill there is no fiscal note?

John Walstad: I talked to Kathy who does the fiscal note and she said this would pretty much zero out the fiscal note.

Chairman Headland: Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1437
2/10/2015
23574

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to extending the date to qualify for the triggered oil extraction tax rate reduction for new horizontal wells.

Minutes:

Attachment #1

Chairman Headland: Distributed proposed amendments 15.0932.01002 and explained. See attachment #1. In this amendment we are extending the small trigger out to the end of the biennium, however, on the amendment page 1 line 10 replacing 2019 with 2016 that should be 2017.

Representative Dockter: MADE A MOTION TO ADOPT AMENDMENT AND CHANGE THE DATE FROM 2016 TO 2017.

Representative Steiner: SECONDED.

Representative Haak: If the big trigger kicks in the small trigger is off. How long is the small trigger off?

Chairman Headland: That section is repealed so it's off forever. The current law states the small trigger goes away of this year so this is an extension that will get us back to the next biennium when we have an opportunity to take a look at tax policy for oil.

Representative Hatlestad: So we're setting up an expiration date for when we come back?

Chairman Headland: Yes it will expire and we will address it next biennium.

Representative Froseth: Is the amendment to the original bill or the amended bill?

Chairman Headland: It's to the original bill.

Representative Steiner: Perhaps we should consider a study and put this into the interim tax committee and pass this.

Chairman Headland: To study the oil tax completely?

Representative Steiner: How we phase ourselves out of the big trigger and how we want to handle incentives for the oil industry.

Chairman Headland: I think we already know what that is going to take. I don't think we need to study it.

VOICE VOTE: MOTION CARRIES TO ADOPT AMENDMENT.

Representative Klein: MADE A MOTION FOR A DO PASS AS AMENDED.

Representative Dockter: SECONDED.

**ROLL CALL VOTE: 11 YES 3 NO 0 ABSENT
MOTION CARRIES FOR A DO PASS AS AMENDED.**

Vice Chairman Owens will carry this bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 3, after the semicolon insert "to repeal subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to the triggered oil extraction tax rate reduction for new horizontal wells;"

Page 1, line 10, replace "2019" with "2016"

Page 1, line 11, overstrike "A well"

Page 1, overstrike lines 12 through 14

Page 1, after line 24, insert:

"SECTION 2. REPEAL. Subsection 9 of section 57-51.1-03 of the North Dakota Century Code is repealed."

Page 2, line 1, replace "This" with "Section 1 of this"

Page 2, line 2, after the period insert "Section 2 of this Act is effective on the first day of any month after June 2015, if on that day the exemption under subsection 3 of section 57-51.1-03 is effective for a horizontal well drilled and completed on that day."

Renumber accordingly

8/2/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 3, after the semicolon insert "to repeal subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to the triggered oil extraction tax rate reduction for new horizontal wells;"

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Page 2, line 1, replace "This" with "Section 1 of this"

Page 2, line 2, after the period insert "Section 2 of this Act is effective on the first day of any month after June 2015, if on that day the exemption under subsection 3 of section 57-51.1-03 is effective for a horizontal well drilled and completed before or on that day."

Renumber accordingly

Date: 2-10-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1437

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0932.01002 + changing 2016 to 2017

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Darter Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote = Motion carries.

Date: 2-10-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1437

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0932.01002

Recommendation: ☒ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Klein Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK		✓
VICE CHAIRMAN OWENS	✓		REP STRINDEN		✓
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER		✓
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 11 No 3

Absent -

Floor Assignment Rep. Owens

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

REPORT OF STANDING COMMITTEE

HB 1437: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1437 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to repeal subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to the triggered oil extraction tax rate reduction for new horizontal wells;"

Page 1, line 10, replace "2019" with "2017"

Page 1, line 11, overstrike "A well"

Page 1, overstrike lines 12 through 14

Page 1, after line 24, insert:

"SECTION 2. REPEAL. Subsection 9 of section 57-51.1-03 of the North Dakota Century Code is repealed."

Page 2, line 1, replace "This" with "Section 1 of this"

Page 2, line 2, after the period insert "Section 2 of this Act is effective on the first day of any month after June 2015, if on that day the exemption under subsection 3 of section 57-51.1-03 is effective for a horizontal well drilled and completed before or on that day."

Renumber accordingly

2015 SENATE FINANCE AND TAXATION

HB 1437

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1437
3/18/2015
Job #25043

☐ Subcommittee ☐ Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to extending the date to qualify for the triggered oil extraction tax rate reduction for new horizontal wells; relating to the triggered oil extraction tax rate reduction for new horizontal wells; and to provide an effective date.

Minutes:

Attachments #1, #2

Chairman Cook opened the hearing on HB1437. All committee members present.

Rep. Glen Froseth, Dist 4, appears and presents HB1437 (**Attachment #1**). Urges a do pass on HB1437.

Sen. Bekkedahl -- I am co-sponsor of bill 1437 and here to testify in support. The primary reason that I am supporting the bill is, for the city of Williston and Williams County, 64% of our employment base is oil and gas production and drilling and completion based. When you have an economy like ours, that is so highly intensive in 1 industry, shutting that industry down has an extremely detrimental effect on our community and our employment. This bill could be one of the tools in the chest that seeks to keep the business going, not just for the state of North Dakota, but for the economy of my region as well.

Ron Ness, North Dakota Petroleum Council -- In support of HB1437 (**Attachment #2**)
(meter 5:00-5:35)

Sen. Cook -- And if the trigger kicks in and stays in the entire biennium, it will be another billion dollars.

Ron Ness - I assume it will probably be a little more than that because the forecast over there, I believe, indicates the trigger will go on and stay on for 11 months, based upon that. I suspect that the \$4.2 billion, which is now \$3.4 billion. It's a function of price which none of us control. It's a function of the rate. But most importantly, it's a function of the barrels and I think that has always been the discussion and I think that is what the little trigger was designed to do. The little trigger went on February 1. The significance of the little trigger is that it provides cash flow. At these prices, the little trigger, in itself, especially during winter months is not going to stimulate a lot of activity because it costs you as much to heat your water as it does at the \$170,000 incentive, probably a little bit less today because the

prices is less, but going back to last session, again, we agreed to the bill that addressed the stripper tax issues. We agreed with our friends on the reservation to eliminate the 5 year extraction tax exemption on tribal lands, recognizing they needed more revenues and, I think, the ramifications of those during the last 2 years have been probably several hundred million dollars. I know it was significant. When we agreed to withhold income tax from royalty payments, I think some of us said this is going to be a bigger deal than some of the revenue folks thought it was going to be. I did hear her say, in a revenue forecast meeting, that that has turned out to be a significant increase in the revenues. These royalties go all over and as you can see from our charts, it was several billion dollars of royalties that we are talking about, over a biennium. We aren't particularly pleased with what happened in the House. This bill came in as a 4 year extension and what the sponsors and I had discussed and industry had discussed was if this is the tax structure that we're staying with, then let's stay with the deal. We have kept our end of the bargain. As it got amended in the House, they not only moved it to 2 years, but then they put a repealer on as soon as the big trigger hits. That's not the deal. I think it's an unfair deal. Because I think the little trigger provides a tremendous value in the current structure that we have. Our encouragement would be to take those things under consideration. This committee, having spent more time on this topic over the last several sessions than any other, that we think the deal should be the deal. We urge you to keep the deal. (meter 9:06-11:17)

Sen. Cook -- Mr. Ness, this is your first time here this session, isn't it?

Ron Ness -- I believe I was here on one other empower bill. We have not asked for much, in fairness.

Sen. Cook -- To the students that are here: there are 2 taxes on all the oil that is produced in North Dakota; 5% production tax; and a 6.5% extraction tax, right?

Ron Ness -- That is correct and if students are looking for information, we are always happy to provide information like you have up on the chart there. There is a lot of good stuff about energy, and jobs, and careers and if you go to ndoil.org we can provide more information.

Sen Cook -- Every well in the state pays the 5% production tax. Not every well pays the 6.5% extraction tax. What this bill does, is if the price of oil gets below \$55.50, the extraction tax does what, Ron?

Ron Ness -- The 6.5% extraction tax drops to 2% for the first 18 months, or 75,000 barrels, whichever comes first. And it goes off when oil gets over \$72.50 for one month. So that equates, on average, to \$160,000 per well incentive on what is probably today a \$7.5 million well. I think the other thing to note coming out of the Moody's guy this morning, I think producers recognize this, what's the new normal for oil? With all of the supply of oil in the world, the new normal is probably \$65 to \$75 a barrel. We may have things go up but I think what you see from the analyst, and what the producer is going to be focused on is, how do I make this work at \$70? (meter 13:30-14:10)

Sen. Laffen -- There were a bunch of numbers in there. Remind us, this little trigger which is what this bill is about, is worth, right now, about how much a month to the state of North Dakota?

Ron Ness -- I believe that the fiscal note in February through the end of this biennium, was \$200 million. I cannot remember exactly how many completions that they indicated what happened but the interesting part is that we completed 35 wells in January. Typical is 150 to 180. This is going to have a much smaller fiscal impact because I don't the wells were completed that they were anticipating. (meter 15:07-16:23)

Sen. Triplett -- You mentioned that the discount has gone down to about \$8 or \$9 a barrel because of a new pipeline opening up. Can you give us a hint of how much production would have to increase before the discounts would start pushing back up again?

Ron Ness -- I think that discount is really related more to what is happening on the coastal areas where you get your barrels because of the surpluses. All of the sudden we could get oil relatively cheaply to Cushing and then that oil gets into the seaway pipeline, gets into Houston. (meter 17:12-17:51)

Sen. Triplett -- I was just wondering if you expect the discount to stay as low as it is now for the major part of the biennium, or if you expect it to go back up again?

Ron Ness -- That's above my pay grade.

Sen. Triplett -- You are obviously aware of the oil conditioning rule that is going into effect on April 1st and I saw something in a publication, it said that the rail conditioning rule would add about 10cents per barrel to the cost of oil. Is that in the ballpark?

Ron Ness -- I don't have the number. (meter 18:43-19:18)

Sen. Triplett -- We keep hearing about declining rig counts, as a barometer for employment and production but at the same time you all are getting so much more efficient about doing multiple wells on a well pad so the rig count is becoming less significant and I'm wondering if you give us a couple of lines about how we should be interpreting the rig count numbers?

Ron Ness -- We did projections on production and we anticipate that our best people estimate that you get about a 10% high grade by moving your rigs into better areas. That still means that you need about 120 to 125 rigs to maintain flat production. (meter 20:10-21:33)

Sen. Triplett -- You talked about a deal being a deal and that we have an obligation to keep our deals, I wanted to remind you that I was part of the discussion when we put the little trigger on and my recollection of it is that we set the \$55 price because that was the minimum cost of production at the time and now that the cost of production, at least in the better areas, is down somewhere closer to \$40 a barrel, is there an argument that if we continue this trigger out into the future that we might realistically consider adjusting the price or not. How do you think about that?

Ron Ness -- I remember. It was after the 16cents. We had missed the big trigger by 16cents and our rigs had gone from 90 to 30. We all know the deal. I would guess that the representative from Kenmare would feel vastly different about that just because the economics in McKenzie County or on the reservation might be better. We had Sen. O'Connell with a bill and he came over to the House with that bill and he wanted to remove the entire tax, if that's what it takes, because we have nothing going on in Bottineau County and I would say the same for Burke County, and the same for Crosby. (meter 23:02-23:13)

Jon Godfread, Greater North Dakota Chamber -- In support. I don't have a whole lot to add. Mr. Ness did a great job of explaining it. My point is talking about the indirect industry and how that oil industry affects the other businesses in our area and across our state: 36% of our wages are coming indirectly from the oil and gas industry. We all understand there's going to be a pull-back. We want to try to mitigate that pull-back and keep as many people employed as we can and this goes toward doing that.

Mark Fox, Chairman, Mandan Hidatsa Arikara Nation -- I want to make some points clear from our tribal government in relationship to what is being considered in this bill. I also have fellow council members along with me: Fred Fox, Frank Grady, Ken Hall. Basically the first comment is we understand the complexities that you are in right now, taxation, a very key important thing for us. The delicate balance between getting government revenue to carry out our needs to regulate, to provide government structure, to protect our environment, to do all the things necessary on Fort Berthold remain. The only way you can do that is if you have taxation. (meter 26:22-27:34) As you know, the small trigger is not currently applicable to trust lands within the reservation. It is applicable to the fee wells that exist on the reservation so we are going to take our cuts on that, along with yourselves. (meter 27:53-30:58)

No further testimony.

Chairman Cook closed the hearing on HB1437

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB1437
3/25/2015
Job #25381

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened the committee work on HB1437. All committee members present.

Sen. Cook -- This is a small trigger extension bill. No fiscal note. The bill extends the small trigger, to what, 2017?

Sen. Laffen -- Remind me, the trigger expires at the end of this biennium? And the big trigger actually gets rid of it. If the big trigger were tripped, the little trigger really has no effect?

Sen. Cook -- No effect.

Sen. Cook -- Senator Bekkedahl, do you have amendments?

Sen. Bekkedahl -- I do have amendments. Christmas tree and the amendment. **(Attachment #1)** When I prepared these amendments it changed significant parts of this but also put it back to the way that it was initially when the trigger was put into place years ago and the changes from last session. If you will note that on the first part to repeal subsection 9, relating to the triggered oil extraction tax rate reduction for new horizontal wells, that's the first part, the repealer; second part is on line 12, change the expiration date from July 2017 to July 2019, which is a 4 year term that was originally placed in the bill and was changed last session. Seventeen, that section a, has the additional language on line 19, but the rate reduction under this subsection cannot become effective if at any time during the preceding twelve months the exemption under subsection 3 was effective for the completion of any new horizontal well. What that does is, if the big trigger is in effect and expires, the little trigger cannot come into effect until the big trigger has been expired for 12 months. And if 12 months after it is still available by the pricing mechanism, the little trigger kicks in.

Sen. Triplett -- That's a well x well analysis that the tax department would have to keep track of, as part of their processing, in terms of when the wells came on line, etc.?

Sen. Bekkedahl -- I think it is date certain, that if the big trigger ended say October 1, 2017, 12 months beyond that was when the little trigger could come into effect.

Sen. Triplett -- Okay. Got it.

Sen. Bekkedahl -- On page 2, line 1, again, what that said is the rate reduction under this subsection is ineffective for any month the exemption under subsection 3 is effective for the completion of any new horizontal well. That dealt with what was discussed earlier, that if the big trigger is in effect, the little trigger cannot be applied with that exemption. And then just corrective language down in section 2, this act is effective for taxable events occurring after June 30, 2015.

All these amendments are designed to put the trigger into the position it was before, except for the fact that if the little trigger could be coming on, any time the big trigger is off because of pricing, the little trigger has to give the state the revenue for at least 12 months before it is kicked on after that happens. We don't go from one trigger to another trigger immediately. There is a 1 year pause in that cycle so that the state gets revenues in that 12 month period.

Sen. Cook -- I was trying to figure out why we were repealing in section 2 the same thing we were amending in section 1 and finally read the effective date and that is where the explanation is. If the big trigger kicks on, the little trigger is repealed.

Sen. Oehlke -- What difference would it make if, on line 21, after the word, effective, you put a period and crossed out the rest of that sentence and the same way on line 2 on the next page? If you just put a period after the word effective, how would that effect?

Sen. Bekkedahl -- I do not know. This was language placed in there by consultation with legislative council.

Sen. Oehlke -- I don't understand why new horizontal wells -vs- existing wells, I don't really understand.

Sen. Bekkedahl -- Could we ask an industry party here?

Sen. Cook -- Just let me read it here.

Sen. Oehlke -- And the other question I had was, what if you didn't put 2019 in there? What if you just didn't have an ending date?

Sen. Bekkedahl -- I think from the standpoint of what the bill is intended to do to keep the industry working in times of extreme depression out there, I think the industry would definitely support that. I don't know if legislators would support that. I certainly would.

Sen. Cook -- Ron, can you answer Sen. Oehlke's first question?

Ron Ness, Petroleum Council -- I believe that this is a new horizontal well incentive and that is why that language was placed there in 2009. It only applies to new horizontal wells.

Sen. Oehlke -- But my question was what difference would it make?

Ron Ness -- My guess is that without that it could apply to any existing well, if the price was below that threshold.

Sen. Oehlke -- After a year went by?

Ron Ness -- Yeah.

Sen. Oehlke -- Is that not the way it is now?

Ron Ness -- Now it is only for a new well which is completed during the time period in which that trigger is on.

Sen. Oehlke -- We haven't dealt with much oil stuff so I need a refresher this year.

Sen. Triplett -- I think the idea is that once the well is completed and is in place in that first initial rush of production, then it's just a matter of pumping the oil out of the well so they don't really need an incentive to do that.

Sen. Cook -- Okay. Let's just sit this aside here.

Sen. Triplett -- We're not going to vote on this right now? We are just looking at the amendments?

Sen. Cook -- Correct.

Sen. Triplett -- I would like, before we move away from this bill, just for discussion purposes and reviewing the testimony, Chairman Fox came in and he didn't have written testimony and his testimony was a little oblique and I'm not entirely sure that I knew what he was saying...

Sen. Cook -- I didn't quite get his message. He wanted to say something.

Sen. Triplett -- What I might have heard between the lines is that this trigger, while it doesn't apply on trust land, it does apply on fee lands, so there will be an impact on the tribal lands and there is some concern that the tribes have not been consulted about this and that they have not been party to the change and that we could do a better job in that regard of changing up the rules by talking to them first. The other question is whether this change would apply on the reservation given that their wells are subject to the compact so I think we, at least, need to think about that.

Sen. Cook -- I do believe that there are conversations going on between tribes and the governor on this topic and Mr. Iverson is nodding his head yes, and he's probably been at that table a few times.

Sen. Triplett -- Are we privy to those conversations?

Sen. Cook - I have no idea what the conversations are. I'm aware that they were having conversations together. I'm sure that any one of us could start asking questions.

Sen. Dotzenrod -- Are we going to move on and go to something else or are we going to talk about this a little bit? I've got a couple questions that go back to the hearing.

Sen. Cook -- Yes, I want to answer all the questions that might arise out of 1437.

Sen. Dotzenrod -- I have the testimony from Mr. Ness and he's here in the room. He made a comment and it's in his written testimony, the second paragraph there, "as many of you may recall we've had this discussion before, HB1437 is solely about keeping a deal". I'm not sure if I follow what he means by that, keeping a deal if the tax code is what we are staying with, HB1437 just keeps things the same. Is he saying that when we passed this bill provided the 6 year time period, from 09 to 15, that that was a deal and that because we did that we are committed to doing it longer than that?

Sen. Cook -- Ron, do you want to answer that? I won't put words in your mouth.

Ron Ness -- This extension was not included at the flurry at the end of the biennium last session and there is only one person that I can blame and that is me. That was in the discussions all along and it didn't get extended but now all the sudden the trigger is on and traditionally extending that trigger wouldn't have been a significant issue but now all of the sudden people think, should we do this or should we not? I look at it from the industry standpoint, if we've decided that we are staying with the tax structure we have, then we should stay with the current tax structure we have. (meter 12:50-14:20)

Sen. Dotzenrod -- Maybe I missed something but I always understood this to be temporary. That it had a beginning date and an end date. It was there, in some ways, as an experiment. There was an argument that this would really make a difference so the agreement that I understood was that this small trigger would go on, with a start and end date, and the idea somehow that because we did that, that it would obligate us then to keep extending it, is a foreign concept to me. (meter 14:51-15:45)

Ron Ness -- I think that you've been in on all the discussions, your assumption on what the tax policy is and my assumption -vs- what the tax policy has been are somewhat the same but we may differ in our opinion of how it is all shaking out over the years. (meter 16:05-16:39)

Sen. Cook -- This trigger is small compared to the big trigger that is going to kick in.

Ron Ness -- This trigger is small but if you go back to 2009, this trigger at \$34/barrel it's a small incentive but in the summer months it may be enough that you would complete more

wells, do more work-overs. We've got to start thinking to make this thing work at \$65-\$75 and it is going to take us a long time to ramp this big machine back up.

Sen. Cook -- The industry has got to think about that and the state does too.

Sen. Triplett -- Do we have enough time under our belt, and I suspect the answer is no, but do you have a sense yet of what the impact of this trigger is, in terms of being able to quantify it, or is it too soon to do that?

Ron Ness -- I don't think you can really quantify this until we see what happens in the next 2 months. (meter 17:46-18:55)

Sen. Triplett -- What I hear you saying is that if we all assume that the big trigger will go into effect on June 1, currently with an expiration date the truth of it is, even after this is over by June 1, we are not going to know what real effect this had. This hasn't been a good enough experiment yet to test it, is that a fair statement?

Ron Ness -- I believe you are exactly right. (meter 19:27-20:04)

Sen. Laffen -- I think I could explain what we mean by the deal is the deal but I would have to draw on the board, if that would be okay?

Sen. Cook -- Have at it.

Sen. Laffen goes to the white board and does a drawing to explain his definition of the details of the deal.

Sen. Cook -- Well I think there was some discussion too about the incentive, taking the sunset off during the waining minutes of all of the discussion last session.

Sen. Triplett -- I'll just say that I think that Sen. Laffen is over-analyzing what Mr. Ness might have meant.

Sen. Cook -- I still enjoyed the drawing.

Sen. Dotzenrod -- It's a good drawing and I follow his logic there. There's a couple problems though with it, one is that what has happened is that the effective rate has gone up but it is primarily because we are getting more and more Bakken wells in the system and as we get more and more of those, the initial production that comes out of those is large and we've had a lot of high-priced oil so the collections have been up and the rate, the average rate, is up because of that. Another thing is the idea that we are going to change that curve by not having the little trigger, the little trigger really hasn't affected any of our history. (meter 23:28-25:54)

Sen. Cook -- Do you know what our effective rate is projected to be this next year?

Sen. Dotzenrod -- I know the 11.5 when you take the 5 & and 6.5 that we are about a point below that.

Sen. Cook -- 6.1.

Sen. Dotzenrod -- Oh, yeah, when the trigger goes on. We are going to have a low rate. I don't think this is an appropriate time for us to be starting to mess with that.

Sen. Cook -- I don't think it is an appropriate time, either. It's the wrong time to try to be changing rates, but having oil revenue swing from close to \$9 billion down to close to \$2 billion. That's some big swings for a state to build some budgets on. There would be a lot of wisdom in having some stability in that state oil revenue.

Sen. Dotzenrod -- Is this bill going to contribute to that?

Sen. Cook -- No. This bill is not going to contribute to that. This bill is going to keep us on the swings and that's part of the deal. That's where we are at.

Sen. Triplett -- Would you see these incentives being part of the analysis that we would be doing, assuming our tax incentive analysis makes it through the House?

Sen. Cook -- Our tax incentive. I just concurred with it this morning. It made it.

Sen. Triplett -- With no changes?

Sen. Cook -- The only change they did was they added to the bill the amendment that we should have added to it and we put it on another bill. It's a clean bill. Best job they did.

Sen. Triplett -- I can't remember the deal of it, are these included in the things that we are going to ask Pew to help us study?

Sen. Cook -- I would say these are not included. This is what I would call tax policy not tax incentives.

Sen. Triplett -- That's what I was thinking too, although I'm not sure from my conversation with Mr. Ness, just now, I'm not sure that there is going to be very much to study because if it's really just a couple of months and not an awfully lot happened, it's hard to figure out what the real value of it is.

Sen. Cook -- There is always value to the state of North Dakota, in my mind, and I've studied it as much as anybody has. Senator Triplett, you've studied it. There is value, in my mind, to the state to take out these curves. There is value, in my mind, to have a more stable source of oil revenue. The oil industry will tell you that they see some value in taking out the swings of the tax rate. There is value to them to have a stable tax rate policy.

Sen. Triplett -- I think that working toward some stability is not a bad idea in the long run. I know that we are getting a little off our topic here, but I think if we had done what you wanted to do 2 years ago, the oil industry would be in here absolutely screaming for other additional exemptions. If we had taken the top off and the bottom had fallen out as far as it has fallen out, they would have been back.

Sen. Cook -- It wouldn't be Ron Ness. He would have been fired.

Sen. Triplett -- Somebody, employed by the petroleum council, would be in here demanding, begging, pleading, saying they were going to leave if we didn't give them...

Sen. Cook -- And we could sit here and say we made a deal last year.

Sen. Triplett -- Exactly. You know the pressure that can come to bear. I don't actually feel bad about where we are right now. We got a lot of money in when the times were good and now if the big trigger helps them weather the bad times, I'm cool with that. I think we have the ability to work around it. For this little trigger I'm more inclined in extending it for 2 years or not more than 4 years just because I think there is some question about whether it is even worth it. (meter 29:52-30:44)

Sen. Bekkedahl -- The other point, I think, that is important, and I agree with what Sen. Triplett is saying, it hasn't been a necessary tool for the industry to use yet, but the reason that I would like to see it continue for the 4 year period is that the industry's awareness has been raised as to what is happening and I don't want to use the term "jumpy", but when the big trigger does come off, and this could potentially come into effect, this could be a balancer to the industry keeping going because if they see 1 month or 2 months of price reductions, they may get nervous and start shutting things down and not wait for the 5 months. This potentially could keep a little balancing act for the industry to keep moving. From my perspective from the industry's side that I see in Williston, it would be good for our community and I think it would be good for the state to have this as a tool for them to not jump ship because they will be much more aware of these things after what's happened now.

Sen. Cook -- The news when I walked in that door yesterday morning at 9 was that the rig count hit 100. Before I walked out it was below 100. It's 98. We will try to get this out of here today.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1437
3/25/2015
Job #25402

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1437.

Sen. Cook -- Any other questions on that?

Sen. Bekkedahl -- I would move adoption of the amendments 02001.

Sen. Oehlke -- Seconded

Sen. Dotzenrod -- I think I understand these amendments. It looks to me like it does 2 things: it moves the date back another 2 years, and it says that any time the big trigger goes off, you can't implement this small trigger until a period of 12 months has gone by. Is there something else in there that I am missing or is that the 2 things?

Sen. Cook -- From the bill as it came to us, the engrossed bill?

Sen. Dotzenrod -- The amendments that we have in front of us now. The motion to amend. I think it does 2 things. I think it changes the date 2 years and it gets that 12 months after the big trigger.

Sen. Cook -- It also removes that repealer. Section 2 repeals this small trigger if the big trigger ever was to kick in. It repeals it permanently. It removes that one also. It does 3 things.

Sen Dotzenrod -- Okay.

Sen Cook -- Any other questions or discussion?

Roll call vote on motion to amend 02001 to HB1437 Roll call vote 6-1-0. Carried.

Sen. Cook -- We have before us HB1437, as amended.

Sen. Bekkedahl -- I would move a do pass, as amended, to engrossed HB1437.

Sen. Oehlke -- Seconded.

Sen. Triplett -- Maybe a little repetitive of what I said before but I think, assuming this passes in this form and gets out of conference committee, we should commit to having some kind of follow-up with the industry, in terms of trying to figure out if it mattered and to the extent that it mattered. Obviously, if this first period of 4 or 5 months is not enough to analyze it, then to pay attention after a couple of years and try to figure out if it made a difference. Since a representative of the petroleum council is in the room and is taking notes, maybe we could just bring it up in a study resolution, sometime later, similar to your idea about the economic incentives, that if we are going to do tax policy, we all should have a better understanding of whether it is working or not.

Sen. Cook -- There is one thing about this particular tax policy that makes it unique from all of these economic development ones we have, this one is the most scrutinized tax policy in the state. It's watched constantly by many people and gets news print all the time. You are right. We need to keep our eyes on it. We need to have dialogue. We need to know what it is doing. It wouldn't hurt to be in a formal setting either.

Sen. Dotzenrod -- If I understand the small trigger, if it goes into effect, in order to get that small trigger to come off again, oil has to go over \$70/barrel.

Sen. Cook -- Yes.

Sen. Dotzenrod -- I view this as more or less a semi-permanent feature, if we pass it. It has a 4 year life-span so it won't be semi-permanent forever but within the 4 years, I think it is very likely to be semi-permanent. I'm going back to what we heard from the Moody's that North Dakota has a very high likelihood of keeping the oil industry, even during a downturn because we have this very attractive feature of our law that puts that big trigger in and works to the advantage of the oil industry in a fairly dramatic way. We are the only state that does that. I don't see any reason why, with that in place, that we feel compelled to have to do this. I will be voting against this. I do think that we've got this 2 tiered system and I don't know that we really need to do this on top of it.

Sen. Triplett -- I am agreeing with Sen. Dotzenrod except that my inclination is to vote for this but just to make a record so that I am not accused of reneging on my deal if we come back 2 or 4 years from now. To the extent that we think this matters to the industry and that we think it's something that would be worth making permanent or semi-permanent, it may be that we adjust the numbers next time around. We were very careful to pick these numbers, the \$55 and the \$70, when we put this in place, based on the cost of drilling a well at the time. Now that the oil industry has realized a significant benefit from the efficiencies that they have developed over time, one way of thinking about this would be to adjust the numbers downward so that the trigger mechanism was still there but that the dollars matched more nearly the cost of production going forward. If we do look at it again, in 2 years or 4 years, that would be my inclination is that we would look at it from it being

really an incentive based around the new reality. Right now, we are too much in a state of flux to even suggest a different set of numbers.

Sen. Bekkedahl -- Just to carry on what Sen. Triplett is talking about, one of the things that you will find as this play matures and develops, the real best wells are now being drilled early in the play. They are in areas where they can cash flow those wells because they have production that is higher at the lower price. This will become important because as the rigs stand up again and we get more work as the price rebounds, it's the perimeter play, where the wells are non-commercial now and will become more commercial with this type of policy in place because it will sustain the industry into going into perimeter play again. I agree, we need to stand back and look at how effective it was and why it was effective or if it was not effective. That's why the 2019 date is important.

Sen. Cook -- I keep thinking what has to happen on everybody's part to make the oil industry successful here in North Dakota at \$65 & \$70 oil. We all have to take a look at that. There needs to be some ways of bringing the cost of drilling down.

Sen. Laffen -- I had a conversation with somebody in one of the big oil companies the other day and asked that exact question that Connie asked, what do these tax incentives really mean to them. I was surprised by how simple the answer was. I'm in business myself and I can tell you that when times are bad and you get down to zero and you are trying to trim costs and all you have left are people, which is where they are at right now, a 6.5% credit really just equates to 6.5% less people that they are going to let go. Nobody wants to lose their people and so you don't shed any more than you have to. This really just gives them that cushion at the bottom.

Sen. Cook -- I'm going to get way off on a tangent here. When you were at NCSL last summer in Minneapolis, did you go to that guy that talked about Winston Churchill?

Sen. Dotzenrod -- I missed that.

Sen. Cook -- Winston Churchill was asked what he thought of capitalism. (Imagine the question is what do you think of oil and then I will give you the answer that Winston Churchill gave). As close as I can get, Winston said, some people look at the oil industry and they see a cougar that needs to be shot and killed before it devours us all; others see a big fat cow that we will milk and milk and milk with the hopes that it never gets dry. I see it as the horse that day after day pulls the plow of our economy. That can fit for the oil industry. That is the discussion that we need to have: how do we look at the oil industry in this state? Is it a cow, is it a cougar, or is it the horse that pulls the plow?

Sen. Dotzenrod -- Those are good thoughts because I think everyone in the state has benefited from the oil industry. It doesn't matter which corner of the state you live in. Everyone has benefited from the industry being healthy. I think there are some real legitimate questions though. What we heard from the industry, when oil was \$100/barrel, the tax policies didn't worry them because everybody was making money but when you get into this situation, and the headline story in today's Tribune is a lot about how the industry is realigning to try to bring down costs, look at more efficiencies so we are not sure where we are going to end up and how long it is going to stay low. (meter 12:07-13:10)

Sen. Cook -- Sooner or later we've got to have a good policy in place that, despite the volatile nature of this oil industry, we can predict to some degree what our own future is going to be. Even with a good team of horses you have to have a harness and some reins on it. You've got to control it.

Roll call vote on do pass, as amended, HB1437. 6-1-0. Carried

Carrier: Sen. Bekkedahl

TJ

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1437

Page 1, line 3, remove "to repeal subsection 9 of section 57-51.1-03 of the North"

3/25/15

Page 1, remove line 4

Page 1, line 5, remove "horizontal wells;"

Page 1, line 12, replace "2017" with "2019"

Page 1, after line 16, insert:

"a."

Page 1, line 19, after "dollars" insert ", but the rate reduction under this subsection does not become effective if at any time during the preceding twelve months the exemption under subsection 3 was effective for the completion of any new horizontal well"

Page 1, line 19, after the period insert:

"b."

Page 1, line 21, after the period insert "The rate reduction under this subsection is ineffective for any month the exemption under subsection 3 is effective for the completion of any new horizontal well."

Page 2, remove lines 4 and 5

Page 2, line 6, replace "Section 1 of this" with "This"

Page 2, line 7, remove "Section 2 of this Act is effective on the first day of any month"

Page 2, remove lines 8 and 9

Renumber accordingly

Date: 3-25-15Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1437**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: 15.0932.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By: Sen. Bekkedahl Seconded By: Sen. Oehlke

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1Absent 0

Floor Assignment _____

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

Date: 3-25-15Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1437**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: 15.0932.02001 Title. 03000

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Bekkedahl Seconded By Sen. Oehlke

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1Absent 0Floor Assignment Sen. Bekkedahl

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

REPORT OF STANDING COMMITTEE

HB 1437, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1437 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "to repeal subsection 9 of section 57-51.1-03 of the North"

Page 1, remove line 4

Page 1, line 5, remove "horizontal wells;"

Page 1, line 12, replace "2017" with "2019"

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"a."

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Page 2, line 7, remove "Section 2 of this Act is effective on the first day of any month"

Page 2, remove lines 8 and 9

Renumber accordingly

2015 CONFERENCE COMMITTEE

HB 1437

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1437
4/7/2015
25880

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to extending the date to qualify for the triggered oil extraction tax rate reduction for new horizontal wells.

Minutes:

Attachment #1

Chairman Owens: I'd like to ask the senate for their thought process for adding this particular amendment to this bill.

Senator Bekkedahl: Part of our discussion of all the amendments is the senate didn't like the repeal provision that took the trigger off anytime the large trigger was enacted. That was in the first section of the bill lines 3-5 on page one. On line 12 we changed the date for wells within the time frame of 2019 versus 2017. This would give industry more time for planning and give the state an opportunity to better judge the effectiveness in that time frame if and when the small trigger was enacted. On lines 19-22 we added the provision that the rate reduction doesn't become effective if anytime during the preceding 12 months the exemption under subsection three was effective for the completion of any new horizontal well. That prevents immediate jumping from trigger to trigger. It gave the ability for the state to collect taxes at the time of the effectiveness or the coming off of the big trigger and gave a 12 month window for the state to collect taxes before the little trigger could enable after that date; it's a delayed provision. On page two lines 1-3 the rate reduction is ineffective for any month the exemption under subsection three is effective for the completion of a new horizontal well which is the big trigger precedence in the bill. When the big trigger is on the little trigger is not in effect. On lines 10-15 it's the repeal section removal described in section one.

Chairman Owens: We looked at those amendments in the house and they didn't pass. Part of the objections was that it was unclear and is still unclear to me if that just postponed the two or not. My focus at the time was that out of all the time we've had the small trigger in effect we didn't need it and now it's going to expire when in theory we could need it. It's a non-player if the big trigger is activated. If the goal was to keep drilling and keep people working then if the big trigger reset the little trigger would still be there as an incentive. I'd like to ask the tax department about the effects of the two rates. I keep reading it as if the

rate reduction of this subsection does not become effective. Does it just postpone the 18 months?

Kevin Schatz, Tax Commissioner's Office: The way it would be administered now is if the small trigger was in effect but the large trigger kicked in then the large trigger would take effect because it would be more beneficial.

Senator Cook: The rate reduction under this subsection does not become effective if at any time during the preceding 12 months the exemption under subsection three was effective. So if the big trigger kicks in it has to kick out and be out for 12 months before this little trigger can kick in again.

Chairman Owens: Do we automatically assume that if it's already in effect it would have to turn off at that point for the big trigger? Does it just postpone it or does the clock keep ticking on the original 18 months? When the big trigger gets back off and you have 12 months to wait then the remainder of the 18 months starts over again for the little trigger if the price is hovering in that range? The way the original bill was once they drill the well and it becomes eligible it's eligible for the trigger. If the small trigger kicks in the clock starts from that time for the first 18 months then if it happens it happens and if it doesn't it doesn't. Is that the way it operates now?

Kevin Schatz: That's correct. It goes from the first day of production, 18 months, 75,000 barrels or \$4.5 million, whichever comes first.

Chairman Owens: If the big trigger is on then it turns off there isn't going to be any drilling for 12 months because they know if they drill and they start a new well that produces even though the big trigger is off but the little trigger could qualify, it's not going to kick in and the trigger isn't going to be there for that 12 months following that. It seems to defeat the purpose of having it. Does it just postpone it if this is in law?

Kevin Schatz: Right now the statute states from the date of first production so that's when the clock starts ticking.

Senator Cook: I think you would probably want Mr. Walstad here to explain this. Are you alright with moving from 2017 to 2019?

Chairman Owens: We're still debating that among ourselves. We wanted to force the review again on 2017. There were a couple bills last session to try and get rid of the triggers before all this happened. Since they didn't pass and this was going to expire anyway we were just going to leave it alone but the sense of the trigger is to keep people working and keep people drilling so we were going to keep it at 2017 to force the issue back in to the next session.

Senator Cook: We made a decision last year that we were going to move forward with triggers in place. Now we need to make sure the triggers work. I don't think we ever had any good experience or testing of the triggers to see if they do what we want them to do when we first put them in there. We thought it would take four years to figure that out.

Chairman Owens: We've never really tested them but we are about to. If there are no further comments I will see about talking with Mr. Walstad to make sure we both understand exactly how he wrote that. We will reschedule. We don't normally take public testimony during a conference committee but I understand there is someone here who would like to address the group.

Elgin Crows Breast, Three Affiliated Tribes: Distributed written testimony. See attachment #1.

Chairman Owens: I was aware of this issue. Because of the ramifications of the tribe being a sovereign nation and dealing with the state I already spoke with the Attorney General and asked for a ruling first to see where we stand. They are working on that now to the best of my knowledge. I started this back when it first passed the house. At this time I haven't heard anything.

Elgin Crows Breast: I carry a lot of weight with the grass roots people as a young leader for our people. We see these things in our grasp and are looking forward to helping a lot of our people that are addicted to drugs. It's a statewide problem since the oil boom has moved in. I'm really concerned about it. Money doesn't solve all the problems but it helps quite a bit. I hope you take a look at our situations human to human. We want good things for you and I hope you want good things for us. We are out there struggling. The government is short-handed for both of us and we are trying to do the best we can with what little we have. We help with prayers for everyone.

Chairman Owens: We will adjourn and reschedule.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1437
4/13/2015
26066

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Minutes:

Attachment #1

Chairman Owens: I understand Senator Bekkedahl has brought some examples of the current law. Could you explain this?

Senator Bekkedahl: Distributed trigger effective tax rate examples; see attachment #1.

Kevin Schatz, Tax Commissioner's Office: Explained the attachment. I prepared these examples based on conversations with Mr. Walstad and Senator Bekkedahl on the interpretation of engrossed HB 1437. The small and large trigger overlap in certain situations so we prepared some examples that would explain the four different scenarios that we could think of. Example one is the well was completed when the small trigger is in effect before the large trigger makes the incentives effective. The small trigger would be effective from the first date of production. The tax rate on the OET would be two percent. When the large trigger would kick in at a later time within that 18 months the tax rate would go to zero. The large trigger makes the OET incentive and exemption for 24 months when it's in effect. If the large trigger came off in November which would be after five months the tax rate would go back to two percent until the well that qualified for the small trigger reaches one of those three requirements on the last line then it would go to six and a half percent.

Senator Cook: Any part of those 18 months counted during the five months that the large trigger is on?

Kevin Schatz: In all situations the 18 months or 24 months requirement goes from date of production.

Senator Cook: Regardless?

Kevin Schatz: Yes. In example two the well is completed after the large trigger makes the incentives effective. When that large trigger makes the incentives effective a well drilled after that point gets 24 months. A well that has been previously drilled, if it had any of the 24 months left from the completion date, it would get an exemption for the remaining period

of those 24 months. In that situation the oil extraction tax rate would be zero. If the large trigger makes the incentives ineffective again the tax rate on those wells would go to six and a half percent. The small trigger incentives then would not apply. In example three a well is completed after the large trigger makes the incentives ineffective and the price was below \$55 within that 12 month period the 18 months and the three requirements would not apply within that 12 month period after the large trigger made the incentives ineffective. In example four if a well was completed over 12 months after that large trigger made the incentives ineffective and the price was below \$55 then it would go back to the small trigger and would take effect for the 18 months for either one of those three requirements, whichever comes first. The rate would be two percent until that 18 month period or one of the other two met and then it would go to six and a half percent.

Chairman Owens: In example number three the large trigger is not on but it was on previously, we're in that 12 month window, the short trigger is available in the 12 month window and they start production during that 12 month window. It's above \$55 but below \$70. Since it's in that 12 months it won't go on, the small trigger won't become active and it will never become active even for months after the 12 month period is over. Am I reading that correct?

Kevin Schatz: That's correct.

Senator Cook: Are these four examples for current law today or for 1437 as it left the house or 1437 as it left the senate?

Kevin Schatz: This is for engrossed bill 1437 version 3000.

Senator Cook: All four examples?

Kevin Schatz: All four examples.

Senator Bekkedahl: The language in the bill that's important to remember in all these scenarios is the date the well is completed or production starts. That is determined by the Division of Mineral Resources. That date is then passed on to the tax department in using all these calculations. The trigger is effective or not effective but the most important part is when the well was completed by that basis.

Kevin Schatz: We rely on the completion date as published by the North Dakota Industrial Commission on their data base.

Chairman Owens: Does anyone have anything to add at this point?

Senator Bekkedahl: I was attempting to give some clarity to the different scenarios that could happen with HB 1437 version before us. You had questions on the 12 month window and how that affects it. Did you get your question answered relative to what is presented here?

Chairman Owens: I think so. I'm still conceptualizing but it's all relative to the same point. I'm just going to take some time and make sure I have it down pat and see if I don't come

up with a different understanding of it. If so, I will go ask the tax department. Are there any other questions now? I will close the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1437
April 24, 2015
26408

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature

Mary Brucker

Minutes:

No attachments

Chairman Owens: What would you like to do with this bill?

Representative Toman: Made a motion for the House to accede to the Senate amendments.

Senator Cook: Second.

Roll call vote: 5 yes 1 no 0 absent

Motion carried.

4-24-15

Date: --

Roll Call Vote #: "Enter Vote #" /

2015 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1437 as (re) engrossed

House Finance and Taxation Committee

Action Taken ☒ HOUSE accede to Senate Amendments
☐ HOUSE accede to Senate Amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Toman Seconded by: Sen. Cook

Representatives	4/7	4/13	4/24	Yes	No	Senators	4/7	4/13	4/24	Yes	No
Chairman Owens	✓	✓	✓	✓		Senator Bekkedahl	✓	✓	✓	✓	
Representative Toman	✓	✓	✓	✓		Senator Cook	✓	✓	✓	✓	
Representative Strinden	✓	✓	✓		✓	Senator Dotzenrod	✓	✓	✓	✓	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier no carrier Senate Carrier no carrier

LC Number 15.0932 . 02001 of amendment

LC Number 03000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1437, as engrossed: Your conference committee (Sens. Bekkedahl, Cook, Dotzenrod and Reps. Owens, Toman, Strinden) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1255-1256 and place HB 1437 on the Seventh order.

Engrossed HB 1437 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

HB 1437

Introduced by

Representatives Froseth, Hanson, Onstad, Streyle, Zubke

Senators Bekkedahl, Bowman, O'Connell, Unruh

1 A BILL for an Act to amend and reenact subsection 9 of section 57-51.1-03 of the North Dakota
2 Century Code, relating to extending the date to qualify for the triggered oil extraction tax rate
3 reduction for new horizontal wells; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 9 of section 57-51.1-03 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 9. The first seventy-five thousand barrels or the first four million five hundred thousand
8 dollars of gross value at the well, whichever is less, of oil produced during the first
9 eighteen months after completion, from a horizontal well drilled and completed after
10 April 30, 2009, and before July 1, 2015~~2019~~, is subject to a reduced tax rate of two
11 percent of the gross value at the well of the oil extracted under this chapter. ~~A well
12 eligible for a reduced tax rate under this subsection is eligible for the exemption for
13 horizontal wells under subsection 3, if the exemption under subsection 3 is effective
14 during all or part of the first twenty-four months after completion.~~

15 a. The rate reduction under this subsection becomes effective on the first day of the
16 month following a month for which the average price of a barrel of crude oil is
17 less than fifty-five dollars but the rate reduction under this subsection cannot
18 become effective if during the preceding twelve months the exemption under
19 subsection 3 was effective for the completion of any new horizontal well.

20 b. The rate reduction under this subsection becomes ineffective on the first day of
21 the month following a month in which the average price of a barrel of crude oil
22 exceeds seventy dollars. The rate reduction under this subsection is ineffective
23 for any month the exemption under subsection 3 is effective for the completion of
24 any new horizontal well.

1 | _____ If the rate reduction under this subsection is effective on the date of completion of a
2 | well, the rate reduction applies to production from that well for up to eighteen months
3 | after completion, subject to the other limitations of this subsection. If the rate reduction
4 | under this subsection is ineffective on the date of completion of a well, the rate
5 | reduction under this subsection does not apply to production from that well at any
6 | time.

7 | **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
8 | June 30, 2015.

15.0932.01001
Title.

Prepared by the Legislative Council staff for
Representative Froseth
February 3, 2015

HB 1437
2-4-15
#2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 11, overstrike "A well"

Page 1, overstrike lines 12 and 13

Page 1, line 14, overstrike "during all or part of the first twenty-four months after completion."

Page 1, line 14, after the period insert:

"a."

Page 1, line 16, after "dollars" insert "but the rate reduction under this subsection cannot become effective if during the preceding twelve months the exemption under subsection 3 was effective for the completion of any new horizontal well"

Page 1, after line 17, insert:

"b."

Page 1, line 19, after the period insert "The rate reduction under this subsection is ineffective for any month the exemption under subsection 3 is effective for the completion of any new horizontal well."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 3, after the semicolon insert "to repeal subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to the triggered oil extraction tax rate reduction for new horizontal wells;"

Page 1, line 10, replace "2019" with "2016"

Page 1, line 11, overstrike "A well"

Page 1, overstrike lines 12 through 14

Page 1, after line 24, insert:

"SECTION 2. REPEAL. Subsection 9 of section 57-51.1-03 of the North Dakota Century Code is repealed."

Page 2, line 1, replace "This" with "Section 1 of this"

Page 2, line 2, after the period insert "Section 2 of this Act is effective on the first day of any month after June 2015, if on that day the exemption under subsection 3 of section 57-51.1-03 is effective for a horizontal well drilled and completed on that day."

Renumber accordingly

Subject:

Senator Cook and Members of the Senate Finance & Tax committee. For the record I am Rep. Glen Froseth, from District 4, mostly oil country.

HB1437 as amended, extends for the next biennium, the exemption of 4 ½% of the oil extraction tax on new horizontal wells for the first 75,000 barrels of oil, or the first \$4,500,000 of gross value during the first 18 months of production. The extension will run until July 1, 2017.

Section 2 repeals Subsection 9 of section 57-51.1-03 of the ND CC, which will repeal this extraction tax exemption if the large trigger goes into effect, at which time all of the extraction tax is removed.

Chairman Cook and committee, I urge a Do Pass on HB1437.

Thank you.



House Bill 1437
Testimony of Ron Ness
Senate Finance and Taxation Committee
March 17, 2015

Senator Cook and members of the committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council (NDPC) represents more than 500 companies directly employing 65,000 employee in North Dakota in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of House Bill 1437.

As many of you may recall, we have had this discussion before. HB 1437 is solely about keeping a deal, if the tax code we have is what we are staying with HB 1437 just keeps things the same.

My testimony from SB 2236 last session:

If these exemptions were triggered on there would be about a \$2.1 billion negative fiscal impact to the state in the next biennium. The concept of the bill is to eliminate this revenue uncertainty and fix the rate at a flat amount so the state and industry can better project income and the tax revenues.

(It appears we missed the projected impact of the trigger by 50% or more)

Last session, we ended-up with a bill that resulted in tax increases of a couple hundred million dollars for our industry (stripper tax changes and the elimination of five year extraction tax incentive on tribal lands) we agreed to one of the provisions to provide more revenue to the Three Affiliated Tribes. In addition, I understand the tax withholding provision in that bill has proven much more valuable than anticipated. Times have changed and the anticipated \$9 billion of oil tax revenues next biennium have been dropped nearly in half. We believe HB 1437 is an issue of tax fairness. The little trigger when implemented under similar circumstances in 2009 was done to provide industry an incentive to continue operating during challenging economic times. Today is a challenging time. The oil industry is a significant part of North Dakota's economy and the small trigger provides capitol to encourage operators to continue producing oil which creates jobs, generates tax revenue and royalties, and drives our economy. It's the barrels of oil that generate the true revenue, not the tax rate. If no oil is produced there is no tax revenue.

We urge you to extend this incentive by four years instead of two and give this bill a Do Pass recommendation.

2.2
HB 1431
3.18.15



Share of State



	Petroleum Industry	State Total		Share of State Total	
		Private	Public	Private	Public
Employment		359,415	427,109		
Direct	55,137			15.3%	12.9%
Secondary	26,403			7.3%	6.1%
Salaries/Wages (billions \$)	\$6.285	\$17,518	\$20,407	35.9%	30.8%
GDP (billions \$)	\$8.818	\$49,772		17.7%	
Personal Income (billions \$)	\$9.282	\$38.471		24.1%	

Impact per Rig



- ❧ \$40 million in-state expenditures
- ❧ \$1.60 additional secondary business per \$1 of direct
- ❧ \$105 million direct and secondary impact
- ❧ \$1.4 million --- sales and use, personal income, corporate taxes
- ❧ 177 direct and secondary jobs



2.3
118.1431
3.18.15

2A
14B 1A 37
3-18-15



Impact per Well



- ❧ \$860,000 in-state expenditures (maintenance & transportation)
- ❧ \$1 additional secondary business per \$1 of direct
- ❧ \$1.7 million direct and secondary impact
- ❧ \$23,500 --- sales and use, personal income, corporate taxes, and property taxes
- ❧ \$324,000 severance taxes
- ❧ 2.4 direct and secondary jobs

March 24, 2015

1.
3.25-15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1437

Page 1, line 3, remove "to repeal subsection 9 of section 57-51.1-03 of the North"

Page 1, remove line 4

Page 1, line 5, remove "horizontal wells;"

Page 1, line 12, replace "2017" with "2019"

Page 1, after line 16, insert:

"a."

Page 1, line 19, after "dollars" insert "but the rate reduction under this subsection cannot become effective if at any time during the preceding twelve months the exemption under subsection 3 was effective for the completion of any new horizontal well"

Page 1, line 19, after the period insert:

"b."

Page 1, line 21, after the period insert "The rate reduction under this subsection is ineffective for any month the exemption under subsection 3 is effective for the completion of any new horizontal well."

Page 2, remove lines 4 and 5

Page 2, line 6, replace "Section 1 of this" with "This"

Page 2, line 7, remove "Section 2 of this Act is effective on the first day of any month"

Page 2, remove lines 8 and 9

Renumber accordingly

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1437

Introduced by

Representatives Froseth, Hanson, Onstad, Streyle, Zubke

Senators Bekkedahl, Bowman, O'Connell, Unruh

1 A BILL for an Act to amend and reenact subsection 9 of section 57-51.1-03 of the North Dakota
2 Century Code, relating to extending the date to qualify for the triggered oil extraction tax rate
3 reduction for new horizontal wells; ~~to repeal subsection 9 of section 57-51.1-03 of the North~~
4 ~~Dakota Century Code, relating to the triggered oil extraction tax rate reduction for new~~
5 ~~horizontal wells~~; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Subsection 9 of section 57-51.1-03 of the North Dakota
8 Century Code is amended and reenacted as follows:

- 9 9. The first seventy-five thousand barrels or the first four million five hundred thousand
10 dollars of gross value at the well, whichever is less, of oil produced during the first
11 eighteen months after completion, from a horizontal well drilled and completed after
12 April 30, 2009, and before July 1, 2015~~2017~~2019, is subject to a reduced tax rate of
13 two percent of the gross value at the well of the oil extracted under this chapter. A well
14 ~~eligible for a reduced tax rate under this subsection is eligible for the exemption for~~
15 ~~horizontal wells under subsection 3, if the exemption under subsection 3 is effective~~
16 ~~during all or part of the first twenty-four months after completion.~~

17 a The rate reduction under this subsection becomes effective on the first day of the
18 month following a month for which the average price of a barrel of crude oil is
19 less than fifty-five dollars but the rate reduction under this subsection cannot
20 become effective if at any time during the preceding twelve months the
21 exemption under subsection 3 was effective for the completion of any new
22 horizontal well.

23 b. The rate reduction under this subsection becomes ineffective on the first day of
24 the month following a month in which the average price of a barrel of crude oil

1.3
HB 1437
3-25-15

exceeds seventy dollars. The rate reduction under this subsection is ineffective for any month the exemption under subsection 3 is effective for the completion of any new horizontal well.

If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

~~**SECTION 2. REPEAL.** Subsection 9 of section 57-51.1-03 of the North Dakota Century Code is repealed.~~

SECTION 2. EFFECTIVE DATE. ~~Section 1 of this~~ This Act is effective for taxable events occurring after June 30, 2015. ~~Section 2 of this Act is effective on the first day of any month after June 2015, if on that day the exemption under subsection 3 of section 57-51.1-03 is effective for a horizontal well drilled and completed before or on that day.~~



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes * Fort Berthold Indian Reservation

**Testimony of Elgin Crows Breast
Mandan, Hidatsa and Arikara Nation**

**North Dakota Legislature Conference Committee Hearing
Testimony on HB1437, Relating to extending the date to qualify for the triggered oil
extraction tax rate reduction for new horizontal wells**

April 7, 2015

Good afternoon Senators and Representatives, my name is Elgin Crows Breast. I am here today on behalf of the Mandan, Hidatsa and Arikara Nation (MHA Nation) of the Fort Berthold Indian Reservation. Thank you for the opportunity to testify.

As you likely know, our Fort Berthold Reservation sits in the middle of the Bakken Formation; the largest continuous oil deposit in the lower 48 states. In less than 6 years, oil and gas production in the Bakken made North Dakota the second highest producing state in the Nation. Only Texas produces more. Importantly, more than one-third of North Dakota's oil reserves are underneath the Reservation, and the wells there account for about one-third of North Dakota's daily oil production.

The 2013 Three Affiliated Tribes Tax Agreement with the State of North Dakota is an enforceable contract, providing both parties with rights and obligations that arise under the Tax Agreement. Under the 2013 Tax Agreement, the Tribes agreed not to levy their own separate tax on oil and gas production, in exchange for the State's promise to collect and remit 50% of the total State and Tribal taxes assessed and collected to the MHA Nation. Both parties specifically agreed that they would not "adjust, raise, or lower the production and extraction taxes on oil and gas activities within the exterior boundaries of the Fort Berthold Reservation during the term of the Agreement."¹

¹ 2013 Tax Agreement, paragraph (E)(3).

In making the Tax Agreement, both parties bargained for the application and/or exemption from specific tax exemptions contained in the North Dakota Century Code based on the specific terms contained in each tax exemption. The specific terms contained in each tax exemption are, and were, critically important to each party for the exact reason that this memorandum has become necessary—each provision has the capability of resulting in a massive increase or decrease in tax revenue. The Tribes agreed to the temporary application of § 57-51.1-03(9) with the assurance that the exemption would expire on July 1, 2015 and with the assurance that the extraction tax rate would remain at 6.5% for both wells located on and off trust lands, as stated in the statutory provision. Therefore, the State cannot, by subsequent legislation, impair its obligation to perform under the Tax Agreement without being in breach of the contract.

Furthermore, the imposition of HB 1437's extension to wells within the boundaries of the Reservation is a modification to the Tax Agreement. Under the express terms of the Tax Agreement, modifications are strictly prohibited except by written approval signed by the party against whom the modification is sought.² Thus, imposition of HB 1437 to any wells within the Reservation would violate the Tax Agreement, as well as the Contracts Clause of the U.S. Constitution.

To address this fundamental problem, the MHA Nation asks that this Conference Committee fully support the Nation's request for a specific exclusion be inserted in the text of HB 1437 that will remove the provision's potential application to wells located within the exterior boundaries of the Fort Berthold Indian Reservation.

As written, this bill ignores the Tribes' wishes with little or no consultation with the Tribe as to the bill's language. The Tax Agreement between the State of North Dakota and the MHA Nation is a contract between two sovereigns and is subject to the terms of the Contracts Clause of the U.S. Constitution found at article I, section 10, clause 1. It is the position of the MHA Nation that the actions of the State Legislature on HB 1437 violate the Contracts Clause. Consequently, I urge you to exclude all wells located within the exterior boundaries of the Fort Berthold Indian

² 2013 Tax Agreement, paragraph I.

Reservation from the effects of HB 1437's trigger provision.

If section 57-51.1-03(9)'s tax incentive is extended, it would have an immediate and long-lasting negative economic impact across the MHA Nation and the State of North Dakota. In the short-term, the loss in revenue would reduce the amount of important social services that the government is currently able to provide to its citizens, lead to the deterioration of tribal infrastructure that is necessary to oil and gas development, and cause the Tribe to reduce the number of tribal employees dedicated to the energy sector. These effects would in turn lead to a further decline in future oil and gas production within the Reservation due to longer waiting periods for necessary permits and Tribal approval and the inability of companies to access and develop their leases due to inadequate infrastructure.

The Nation has estimated that it needs \$4.664 billion to manage energy development on the Reservation over the next thirty years to develop governing infrastructure, maintain infrastructure, and to invest in community needs that support the oil and gas industry, such as housing and local law enforcement. Moreover, over 60% of the Tribes' budget comes from the oil and gas tax revenues. If HB 1437 becomes law and is applied to wells on fee lands within the Reservation, it is estimated that it will cost the Tribes \$24,300,000 in lost tax revenue between July 1, 2015 and July 1, 2017. The Tribes simply cannot afford to allow the HB 1437 tax incentive

We also ask this Conference Committee take a step back to look carefully at the social, legal, and practical impacts that oil and gas development has had on our Reservation. We are dealing with a societal explosion which none of the federal or state agencies that serve the MHA Nation have the practical ability to address. For example, today, the BIA openly admits that it needs additional federal employees to address our expanded needs, but because it has no additional office space, and no ability to acquire it, they cannot hire. The Office of Justice Services recognizes that we need more police officers in our community, but its funding limitations can offer no solution, even though local crime has skyrocketed. The BIA's own reports reveal that our tribal courts, which have not seen any real increase in federal dollars for the last six years, are now being forced to dismiss thousands of cases each year because they lack the practical ability to handle them. Further, along with oil and gas development comes heroin, meth, human trafficking

Testimony of the MHA Nation**April 7, 2015
Page 4 of 4**

and prostitution - all of which my community has never experienced before, yet we are having to pay for the related services with little or no help from the federal and state governments.

These are the things that keep our government up at night. This is more than a simple tax provision to the Three Affiliated Tribes. As a result, the MHA Nation has had to, and continues to, step in and fund these services out of our own tribal funds, which, as previously stated, is largely composed of revenue derived from oil and gas taxes. Any decrease in our oil and gas tax revenue will have a direct impact on the citizens of North Dakota, both on and off the Reservation.

We need your support for an amendment that will help the MHA Nation continue to provide these crucial government services within the Reservation by excluding all wells located within the exterior boundaries of the Reservation from the application of HB 1437.

Thank you for your consideration of this important issue. I am available to answer any questions you may have.

HB 1437
4-13-15
1

HB1437 - Trigger Effective OET Tax Rate Examples

Example 1:

Well is completed when small trigger is in effect before large trigger makes incentives effective

Description	OET Rate
Small trigger takes effect 2/1/2015	
Well is completed 2/1/2015	2%
Large trigger makes incentives effective 6/1/2015	0%
Large trigger makes incentives ineffective on 11/1/2015	2%
75,000 barrel, \$4.5 mil, or 18 months is met	6.5%

Example 2:

Well is completed after large trigger makes incentives effective

Description	OET Rate
Small trigger takes effect 2/1/2015	
Large trigger makes incentives effective 6/1/2015	
Well is completed 6/1/2015	0%
Large trigger makes incentives ineffective on 11/1/2015	6.5%
75,000 barrel, \$4.5 mil., or 18 months is met	NA

Example 3:

Well is completed after large trigger makes incentives ineffective and price was below \$55 within 12 months

Description	OET Rate
Large trigger makes incentives ineffective on 11/1/2015	
Trigger price drops below \$55 for 12/2015	
Well is completed 1/1/2016	6.5%
75,000 barrel, \$4.5 mil., or 18 months is met	NA

Example 4:

Well is completed over 12 months after large trigger makes incentives ineffective and price was below \$55

Description	OET Rate
Large trigger makes incentives ineffective on 11/1/2015	
Trigger price drops below \$55 for 12/2016	
Well is completed 1/1/2017	2.0%
75,000 barrel, \$4.5 mil., or 18 months is met	6.5%