17.0347.03000

FISCAL NOTE

Requested by Legislative Council
03/23/2017

Amendment to: HB 1166

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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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 1166 First Engrossment with Senate Amendments removes and corrects statutory language to be consistent with current law.

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.*

Section 1 of HB 1166 First Engrossment with Senate Amendments provides clarification and clean up to obsolete and redundant statutory language. Section 2 deals with the oil extraction tax rate for production from tribal trust lands. The oil extraction tax rate requirement set forth in this bill is consistent with current practice. This bill has no fiscal impact.

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: 701.328.3402
Date Prepared: 03/23/2017

17.0347.02000

FISCAL NOTE
Requested by Legislative Council
01/05/2017

Amendment to: HB 1166

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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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 1166 removes the triggered oil extraction tax rate that would be imposed in times of high oil prices.

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.*

Section 1 of HB 1166 repeals the triggered 6% oil extraction tax rate that would be imposed during a time of sustained high oil prices exceeding approximately $85 per barrel for a period of three or more months. The provision that is being repealed in this bill was not anticipated to take effect any time during the 2017-19 biennium. Therefore there is no fiscal impact relative to this repeal.

The remainder of the bill provides clean-up and codifies what is currently in practice; it has no fiscal impact.

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: 701.328.3402

Date Prepared: 01/09/2017

17.0347.01000

FISCAL NOTE
Requested by Legislative Council
01/05/2017

Bill/Resolution No.: HB 1166

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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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 1166 removes the triggered oil extraction tax rate that would be imposed in times of high oil prices.

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.*

Section 1 of HB 1166 repeals the triggered 6% oil extraction tax rate that would be imposed during a time of sustained high oil prices exceeding approximately $85 per barrel for a period of three or more months. The provision that is being repealed in this bill was not anticipated to take effect any time during the 2017-19 biennium. Therefore there is no fiscal impact relative to this repeal.

The remainder of the bill provides clean-up and codifies what is currently in practice; it has no fiscal impact.

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: 701.328.3402

Date Prepared: 01/09/2017

2017 HOUSE FINANCE AND TAXATION

HB 1166

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1166
1/10/2017
26718

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the removal of triggered oil extraction tax rate changes.

Minutes: No attachments

Chairman Headland: Brought the committee back to order. This bill really doesn't pertain to the agreement. It is always good to understand the agreement but I don't think it has a place for what we're debating in this bill. North Dakota Legislature has the right and the ability to set our tax rates and that is what we're doing in this bill and that's all we're doing. With that, we're going to recess.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

1166
1/10/2017
26719

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to the removal of triggered oil extraction tax rate changes.

Minutes: Attachments #1,2,3

Chairman Headland: Opened hearing.

Representative Carlson: Introduced bill. Distributed information to the committee on a section of code 57-51.1-03.1 for stripper wells and also 2015 oil extraction tax rate information from 2015. See attachments 1-2. This bill and removal of that trigger does not lower any of the existing taxes. I objected to the part of the bill where if the price of oil were to exceed $90 a barrel the price of the tax would go to six percent. That is not good policy that if you make more you get taxed more. If the testimony that follows me says if we just cut our oil tax, then it's not right. I'm not sure how quickly we're going to see $90 oil where we would have our tax adjusted. Had we not removed the triggers and adjusted the rate in the 18 months of this biennium we would have lost in excess $800 million worth of revenue. We are already in a revenue shortfall. Because we lowered that tax and were able to collect that tax with no trigger in place, it put us in a lot more stable situation from an economic standpoint as we look at balancing our budget and funding our priorities. The oil tax is separated many ways into many buckets; water, infrastructure, disaster relief, etc. as well as being sent to the oil producing counties in that region of the state. Only $300 million of that money goes into the general fund. The stability we had with the bill last time was important. This reverse taxation is not good oil tax policy. I think this bill is the right thing to do at the right time. It is not reducing taxes; it is taking away a trigger that may or may not ever happen.

Chairman Headland: Any questions? We will now take supporting testimony on HB 1166.

Ron Ness, President of North Dakota Petroleum Council: I had the same questions on sections two and three and received the same information as Representative Carlson and they were technical corrections. The bill eliminates the high tax trigger at $90 a barrel. The House side wanted to take away those wild fluctuations in the tax revenues to the state of North Dakota by creating a flat tax when it was not triggered. A year ago, December 1, 2015, the much discussed oil tax trigger price would have hit the five ? threshold and the tax on oil on the extraction tax would have dropped to zero for any new well for the next 24 months. All the incentives would have come down and the tax would have gone from 11.5% to 9% on all existing wells and any well that had been drilled in the last 24 months the tax would have been zero until those wells reached a 24-month period. As a result, our data shows that the state today is collecting about $4 million extra per month. About $450 million in that 15-month period has been collected. The tax didn't really work out for the industry; we're paying now $40 million more per month. We can't have it both ways so it resulted in a significant tax increase which was very important to the state. It came at a time when the industry didn't need a tax increase. A 5% tax on new wells would put us in a very competitive situation. Oklahoma has a 2% tax for the first 24 months on any new rig, Texas has a rate of about 7%, and those are the places where we are competing today. The goal was to generate a flatter tax structure; one that is more predictable and reliable so you can make longer term plans. As it turned out it worked in the state's interest and it worked in the tribe's interest but did not work in the industry's interest because that tax trigger would still be on today and we would be paying zero on any new well and a top rate of 9% on all wells. We would love to see $90-barrel oil for long enough to have had this discussion in the past two years but it didn't turn out that way. When there is $90 oil we know that the coffers are full and raising the tax at that point is probably not good policy as you determined last session. This bill just eliminates the trigger at $90 if the price is above $90 for three months.

Chairman Headland: You mentioned Texas' tax rate at seven percent.

Ron Ness: Correct; seven percent.

Chairman Headland: Could you give the committee an idea of how many rigs are drilling in North Dakota compared to other states?

Ron Ness: In North Dakota there are about 41 rigs, about eight on the tribes, Continental Resources has 19 rigs in Oklahoma and four in North Dakota. Taxes matter. We are significantly impacted by our discounted rate of 15 percent. As you gain the three or four dollars off your discount those dollars are all taxed by North Dakota at 10% and I estimate that about $110 million a year in additional revenue to the state and the tribes with the Dakota Access Pipeline.

Chairman Headland: Are there any questions for Mr. Ness?

Representative Carlson: Some of you haven't been here in the past. It is difficult to predict revenue. For the 2013-15 biennium the price of oil ranged from $35 to $113 a barrel. There were times the trigger could be on and times the trigger could be off. The significance can only be highlighted by the consistency of what he said. When everybody talks about the price of oil at $53.50 we're taking a 15% discount on that and we tax on that discount. As we budget for the state of North Dakota we have to anticipate and look into the future how many barrels we'll produce. We have less production now and we're targeting 900,000 barrels a day instead of 1,000,000 barrels a day. We've targeted a price for the next biennium at $48 so if you take $53.50 minus 15% you'll figure out what we're actually taxing our oil on. Don't be confused thinking we're taxing on the price sold on the market today; we're taxing on the price we get as North Dakota with our discount. This has become a competitive world-wide market. It's tough to drill it here and it's tough to transport it out of here. I'm in full support of the access of the pipeline. The access of that pipeline will make 400,000-500,000 barrels a day; a lot of oil has a $3 less discount on it as it leaves the state. A consistent tax policy is important. You need to know what keeps us in the limelight so that honey hole we have which may be equally meshed down in the other states is easier to get that oil out there because they don't have the plight of the climate and distance conditions that we do. Competition is key. I believe there are over 900 wells waiting to be fracked but they are waiting to drill due to economics. This bill does nothing other than take a high price trigger off the oil. We need to continue our policy of 10% tax; it's high but I believe it's fair and it was passed on by legislature. Don't get caught up in the other issues.

Chairman Headland: Is there further testimony in support of HB 1166? Is there any opposition?

Mark Fox, Chairman MHA Nation: Distributed written testimony. See attachment #3. (Ended testimony at 29:25)

Chairman Headland: Your arguments in your testimony are relatively the same arguments in your testimony two years ago when we heard HB 1489. You make a lot of accusations here. You also threaten to leave the agreement as you did two years ago but for some reason you chose not to do so at that time. Would you convey to the committee your reasons for staying in the agreement?

Mark Fox: It has always been my hope, as in previous sessions, that we have an open door policy. Many tribes have a closed door policy where they don't even try to come to the legislature because they think no one will listen anyway. In 2011, rather than pulling out, even though there were members of the council that wanted to do that, we advocated to keep working with you and try to make changes. In 2013 we had some positive changes. Our council has had big discussions as of late and the majority of our council that we are not bluffing. Oil industry, please take that back; we are not bluffing. You will see that in the coming days that we are not. Do us a favor and say we'll change the tax rate for all the wells off the reservation but when it comes to Fort Berthold it will be the following and do that according to what we're asking for. All that billion dollars that you've taken from our reservation that you are unwilling to put back there to help our roads, to fight our crime, when you put that back then we'll have something to talk about. Right now a billion dollars out of our pocket doesn't give us the resources to do what we need to do. We are greatly discouraged by what is going on here. Open door policy is important to us and we are here. I don't mean any disrespect but when tribal nations in the state refuse to create a process in which you can talk and openly negotiate mutually together you're going to have situations arise in which conflicts occur and rise to high magnitude. Those conflicts can cost you a lot of money like it does on the Cannonball River. Don't close those doors. This is not the end; this is the beginning of what's going on in the United States and what's going on in the world. Recognize that. People of color are not here to be run over. There's going to be a change.

Chairman Headland: What was your level of oil activity on the reservation prior to the agreement?

Mark Fox: Prior to the agreement established in 2008?

Chairman Headland: Yes.

Mark Fox: There was none. The agreement that was established in 2008 some would say it opened the door for development. I can agree somewhat that it did but 2/3 of the tax revenue went to the state and 1/3 went to the tribes. As soon I came in 2010 I quickly worked with our council and that's why in 2011-13 we asked why we were getting the short end of the stick by getting less revenue. It was not a good agreement from the beginning. If we didn't get on with that at that time, then it would pass us by. Where is the best place to store oil? In the ground. One way or another if we have to have dual taxation on wells in Fort Berthold somebody will come and develop that. That equates to us having the necessary revenue to offset all these negative impacts to our people while the oil companies are making billions of dollars. It's a balance. You want production to continue on Fort Berthold and we want production to continue on Fort Berthold. We want responsible production, not harming our environment or ignoring our rules. In our estimation it is not balanced; it favors the oil companies. We don't have enough revenue today to deal with our issues that are impacting our nation and to cut that even further it will put us more behind.

Chairman Headland: What is your tax rate today?

Mark Fox: Our tax rate today from Fort Berthold?

Chairman Headland: What is your current tax on oil production being paid by oil companies?

Mark Fox: Oil companies are paying 10% to the state. The state is collecting it and taking out their administrative fees and sending 50% of that to the tribe.

Chairman Headland: What is the rate in this bill?

Mark Fox: The rate in this bill takes away an established rate of 1.5 percent. Despite what our honorable house leadership says in his car salesman pitch we don't buy into buying a higher tax because it's a more expensive car. Production and development costs are down so the ability to earn that revenue is larger. The revenues you walk away with are larger. I have no doubt in my mind all this time that 11% tax from 2015 forward would not have affected production at all. The only difference would have been is that you and we would have more revenue today.

Chairman Headland: Would you mind addressing the question as to the rate established in this bill?

Mark Fox: The rate on extraction tax went from six and a half percent to five percent.

Chairman Headland: What is your current rate? You just stated it was five percent production and five percent extraction which equals ten.

Mark Fox: Yes. We didn't do that; the state of North Dakota did that.

Chairman Headland: That's the rate that's being collected today.

Mark Fox: That's being collected by the state of North Dakota and split. We've never signed off on that agreement. We never agreed to that reduction from 11 ½ to ten percent. You're going to find out pretty quick where that other one and a half percent is going to go.

Chairman Headland: You would agree that the rate remains the same as the current production and extraction rate today. I would stick around, Mr. Fox, because we are going to address your concerns here. We're going to find out if North Dakota broke the agreement or if North Dakota has the ability to set the tax rate; which we believe we do.

Mark Fox: I recommend some of you grab a tax agreement. It says neither entity will lower, raise, or modify that tax rate without the agreement of the other.

Chairman Headland: Are there any questions for Mr. Fox?

Representative B. Koppelman: Do you know how much money you would have collected differently had the state not passed the bill in the last session?

Mark Fox: No. If the state had not addressed the trigger situation we would have pulled out of the agreement. The legislature in 2015 could have simply eliminated all the triggers. We had the discussion with leadership to make it 11% then they would gain a half percent and all triggers would be 11% forever, which is something we probably could have lived with as a tribal nation. That was refused. They said if the triggers kicked in we would have lost a lot of money but we wouldn't have because we would not have stayed in the agreement. I don't know what that number would have been but we went from $30 down to six dollars.

Representative B. Koppelman: On one hand I heard our chairman talk about the bill two years ago when you threatened to leave because you looked at it as a violation and you're telling me now that having not done it you would have left anyway. Now we're looking to make that fix permanent. You're saying oil price is twice as what it is now and you want to maintain that one percent extra which would really be half a percent of that one percent or you'll leave again. I don't see how that makes sense or how that is a genuine partnership. Can you please respond to that?

Mark Fox: I'm sorry you feel that way. We didn't create the big trigger little trigger. It was simply a provision in the original agreement of 2008 then later in 2013 so it's not like we came in and advocated with you and said we needed a big trigger and little trigger; those are archaic provisions. These need to be out of there. There should be no triggers at all. We also opposed a drop of 11 ½% to 10%, there's even talk of 9% again. We stand here before you today that the revenues we collect on Fort Berthold are not enough tax to offset the costs that we have to go through. We know in our experience that the price of a barrel of oil is going to rise. Contrary to previous testimony our belief is that industry doesn't get the free pass in helping us deal with those impacts to our reservation. The agreement said we agree that if they want to make changes to how the tax is assessed we have to do that mutually.

Representative B. Koppelman: I think a lot of members on the assembly voted for the bill. As I recall there was a point where there wasn't a trigger on the top end of this and I think that happened through amendments. The legislature agreed that it would be an archaic position with the provisions in the law but we both agreed at that time. I think this is a reasonable approach to having consistent tax policy.

Mark Fox: Do what you need to do with your wells off the reservation. You're able to collect taxes from wells that are on trust lands, which I think is a bad supreme court decision. You need to say you're exempting extraction tax collection by the state for trust lands on Fort Berthold because the money you take off from those wells you're not putting a dime back in addressing those issues on the trust lands. Do us a favor and don't put on an extraction tax on trust land on Fort Berthold. Trust land is land that is tied to the United States of America that has been set up for the trust benefit of the Native Americans and the tribes it serves.

Vice Chairman Dockter: Prior to 2013 was the split revenue with the state 80-20 then in 2013 it moved to 50-50?

Mark Fox: It was 80-20 on fee lands. Those wells that were being drilled on fee land had a five-year exemption. When they came under the exemption those fee wells on Fort Berthold then the state split 80-20; they kept 80 and the tribe got 20 percent. Every well that was drilled on Fort Berthold since 2008 on trust land, on day one, the state collected 50-50 and it remains that way today; no exemption was applied.

Vice Chairman Dockter: In 2013 when we passed that bill to make it 50-50 because one of the issues was that you need money to the oil impact. How much revenue has increased from that bill we passed in 2013? How much money have you put back in to infrastructure and other needs on the reservation?

Mark Fox: We had a study that was provided to you in 2013 that showed in the next 10 years we had an estimated $8 billion need for tax to deal with the infrastructure needs. In 2013-17 if the price of a barrel of oil had remained we estimated it was going to increase the tribe's share of nearly $300 million in a four-year period. Of all the tax revenue we get 100% of it is put into infrastructure and the needs of the government. We are collecting just a little over $100 million now; in the past two years we put $60 million to roads and maintenance of our transportation system.

Representative Ertelt: You had discussed two agreements, 2008 and 2013. Do you have those agreements that you referred to that we can reference?

Mark Fox: We have them and you have them. Our council agreed because it was a positive change to the split. Prior to 2013 the taxes collected were basically a 1/3 to 2/3 situation; the state collected $300 million and the tribe only collected $200 million. We came back and said if that continued on it would increase exponentially and the majority of development was on tribal trust land. In 2011 the previous gentleman recommended an 80-20 on tribal trust and you keep your 80-20 on fee land from the 2008 agreement and change that 80-20 where the tribe gets 80% and the state gets 20% because it was developed on trust land. That bill went down very badly. We've continued to work with leadership and we agreed to the 50-50 split on our wells on Fort Berthold.

Representative Hogan: Your idea of exempting MHA Nation trust land from state tax; has that ever been formally discussed in committee or have we ever looked at an amendment of the implications as to what would happen if that idea was put forward?

Mark Fox: I don't recall. In 2011-13 that may have been but in 2015 I don't think so. It has definitely been discussed in committee all year long. The tribe has been pushing hard on the federal government for a number of years to rectify the situation. Mr. Fox spoke of a similar case in Mexico. When it comes to trust land there shouldn't be any taxation because that land is being set up for the benefit of tribal members. It is being pulled away by the taxation system and then it can't benefit the tribal members.

Representative Hogan: What are the major unmet needs on tribal lands at this point related to oil production?

Mark Fox: Roads. For us to pave our roads it would cost us $4 million for one mile. We have a need for a minimum of 180 miles of roads that has to be met to specifications. Right now we are just able to maintain them. These are BIA roads and they aren't built for oil industry. We've had numerous deaths on our roads from oil industry traffic. You can't buy back or earn tax on a life. We also deal with the crime and you do as well. We put millions of dollars in law enforcement annually. We've had to take money we've earned from tax and royalty and put it towards that. That is not even 10% of our needs of what we're trying to address. We are opening a new law enforcement center and court house in March which is being paid for by the tribe at 100%; not a dime from the federal government and not a dime from the state government. We are planning to build a $25 million rehab facility in which we will not get a dime from either the federal or state government. I've got lots of ways to tell you what we do with our money.

Vice Chairman Dockter: What kind of funding and support does the BIA have on the reservation?

Mark Fox: It is very minimal. The federal government has been in a position of reductions. We supplement through our royalties and some of our taxes. We are now getting 2/3 less revenue than we got two years ago. We've had to makes cuts and it is very difficult to find areas where we can cut. I believe it is going to get worse. We are not going to rely on the federal government to help us.

Chairman Headland: Are there any other questions for Mr. Fox? Is there any other testimony in opposition? The committee has questions they would like answered. We will close the hearing to get those questions answered.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1166
January 25, 2017
27402

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the removal of triggered oil extraction tax rate changes.

Minutes:

No attachments.

Chairman Headland: Opened up for discussion.

Vice Chairman Dockter: MADE A MOTION FOR A DO PASS

Representative Grueneich: SECONDED

Chairman Headland: Any discussion?

Representative Hogan: I need to vote no because I don't think there is that much money flowing. This bill is almost a housekeeping piece because we didn't do the oil extraction tax correctly so we're trying to make the two sections of law similar to what we did yesterday. That part bothers me more than the over 90 trigger.

Chairman Headland: Could someone refresh my memory on what we are referring to here?

Representative Grueneich: The last time this was looked at it was recommended by the house at 9.5% and the senate wanted it at 1.5% so we ended up at 10.5 percent. It was done on the senate side. It's probably getting more in line to what it actually did.

Representative Olson: Representative Hogan is referring to section three of the bill and we were told this was a housekeeping issue. This had been overlooked in the bill that was passed last session. This had to match some other section in code which we changed but I'm not sure what the linkage is. This is similar to the use tax from yesterday and looking for the retroactivity in the other bill. I would like to get some answers about this. I'm worried that we have an obligation to have been collecting or remitting 6.5% rather than the 5% if they are operating under the assumptions of what legislative intent was rather than what was actually passed in the bill. I have a question of that section of the bill and what the purpose is.

Chairman Headland: I think it would have been preferred by all of us if this would have been put in a technical corrections bill versus into this bill.

Representative Hogan: If the law said 6.5% and we're under the tribal agreements, could the tribes claim the 6.5% due because they both have an agreement and the law?

Chairman Headland: Let's get some clarification from the tax department.

Vice Chairman Dockter: Withdrew motion

Representative Grueneich: Withdrew his second

Voice vote to withdraw motion: Motion carried.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1166
1/31/2017
27682

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the removal of triggered oil extraction tax rate changes.

Minutes:

No attachments

Chairman Headland: This is an oil trigger bill. There is some controversy with section 3. Section 3 doesn't change what the intent of the bill was which was to get rid of the trigger, it's just language in a different section that deals with the governor's agreement with the Three Affiliated Tribes. I'm told it really doesn't make a difference, our rate is our rate even though this refers to a rate in which the governor can negotiate. I don't believe the governor can negotiate a higher rate than the state rate.

Representative Olson: This section 3 refers to the section of code that didn't set a tax rate it just set a bargaining point.

Chairman Headland: Yes. My advice is to take a look at pulling section 3 out of the bill and passing it. I think we can do that with a simple intern amendment.

Vice Chairman Dockter: MADE A MOTION TO STRIKE OUT SECTION 3 LINES 21-26

Representative Olson: SECONDED

Representative Steiner: Technically it is clean-up language for something that needed the new number written in so I'm not sure why you're backing off cleaning up the language.

Chairman Headland: I've been told it's in another bill so it is not relevant to this bill.

ROLL CALL VOTE: 12 YES 0 NO 2 ABSENT

MOTION CARRIED TO ADOPT THE AMENDMENT

Chairman Headland: We have the amended bill before us.

Representative B. Koppelman: MADE A MOTION FOR A DO PASS AS AMENDED

Vice Chairman Dockter: SECONDED

Representative Hogan: In this committee we have consistently said the state can afford to give tax incentives to various people. I think this is a tax incentive. I think we should leave the increase in oil tax whether it triggers at $90 so I'm going to oppose this bill.

Vice Chairman Dockter: In this tax committee we have tried to be consistent and have no triggers and set a straight tax. This is good policy. If we don't do what we did last session the state would really be in a financial crunch more so than we are now.

Representative Hogan: We could have eliminated the triggers and not lowered the tax.

Chairman Headland: We always have the opportunity to change taxes.

Representative Hogan: When we get to $90 a barrel (inaudible)

Chairman Headland: Your objection is noted.

Representative B. Koppelman: I respectfully disagree with Representative Hogan. I don't believe removing a penalty on an industry is the same as giving a tax incentive. We have consistent taxation all the way up to $90 a barrel then because they're really making money we're going to squeeze you harder when in reality with dollars and cents we are all making a lot of money at $90 a barrel and we shouldn't need to raise the rate. To me, this is removing a penalty that was put in as opposed to being a tax break.

Representative Olson: If we ever get to $90 again it will probably be due to the devaluation of the dollar which will result in inflation of all prices.

Representative Ertelt: It would go up to 11%, not 11.5 percent. Based on our history at $90 a barrel generally there is more activity. While I don't necessarily agree with the rate overall all taxes should be lower. At the higher dollar per barrel there is more activity and more need for state services during that time. This has been evident over the past eight years. I'm going to stick with the trigger as is.

Chairman Headland: If you looked at our rates versus other states that have oil production we have a high rate overall. Anything else?

ROLL CALL VOTE: 11 YES 3 NO 0 ABSENT

MOTION CARRIED FOR A DO PASS AS AMENDED

Representative Grueneich will carry this bill.

1/31/17 DG

17.0347.01002
Title.02000

Adopted by the Finance and Taxation Committee

January 31, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1166

Page 1, line 1, remove "and subsection 3"

Page 1, line 2, remove "of section 57-51.2-02"

Page 3, remove lines 21 through 26

Renumber accordingly

Date: 1-31-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1166

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: Strike section 3 lines 21-26

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. Dockter Seconded By Rep. Olson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	AB	
Vice Chairman Dockter	✓		Representative Mitskog	AB	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment ____________

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

Motion passed.

Date: 1-31-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1166

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description:

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. Koppelman Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		**Representative Hogan**		✓
Vice Chairman Dockter	✓		**Representative Mitskog**		✓
Representative Ertelt		✓			
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Grueneich

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

REPORT OF STANDING COMMITTEE

HB 1166: 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 1166 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and subsection 3"

Page 1, line 2, remove "of section 57-51.2-02"

Page 3, remove lines 21 through 26

Renumber accordingly

2017 SENATE FINANCE AND TAXATION

HB 1166

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

House Bill 1166
3/14/2017
Job #: 29131

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Jana Bellamy

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 57-51.1-02 and 57-51.1-03.1 of the North Dakota Century Code, relating to the removal of triggered oil extraction tax rate changes; and to provide an effective date.

Minutes:

Attachments #: 1, 2, 3, 4

All Senators present.

Chairman Cook: Opened the public hearing on HB 1166.

(0:00:20-0:05:50) Representative Al Carlson, District 41: This is a simple bill, but it had a lot of ramifications to the way we finished our session last time. Handed out **attachments #1** and **#2**. Last session, introduced a bill that would remove all the triggers that were on the price of oil. If it went above the trigger number for 5 consecutive months than a trigger would come off and the tax would go back to normal. The bill introduced and passed, would get rid of the triggers and the tax became 5%. The triggers were all removed. Attachment #1 shows the revenue that was raised by the removal of the trigger and shows what a mess we'd be in today. The removal of that trigger is a tremendous number. Attachment #2 shows that in the forecast of oil trading, the price isn't anywhere near the $60 mark. It was really crucial that the trigger was gone. We'd have been below the trigger for the whole 2017-2019 biennium. I personally think it's bad tax policy, but it allowed us to lower our tax to a flat rate. Also stated that if the price of oil goes over $90 than the tax goes to 6%, we'd collected a total of 11%. If you make more, we'll take more, is a bad tax policy. The amendment being removed will take out the high end tax increase will probably never happen in the near future. This bill is in because I believe it's not good tax policy. There is some other clean up language in the bill that will need to be answered by someone else.

Senator Dotzenrod: As oil prices do get higher and higher, there's no reason for us to trigger on a higher rate. Our income tax system has graduated rates that go up as income goes up. The rates are bracketed that way. Why wouldn't we want to have something that's similar to that the way we impose our mineral resource taxes?

Representative Carlson: Tax policy shouldn't penalize success.

Senator Dotzenrod: Should there be another column that shows what the collections would be if we just repealed the trigger and left the rate alone? That would show actual collections at the 11% rate.

Representative Carlson: I'm building the case to make sense to do it. Until I introduced the bill last session, nobody did anything about the triggers which would have put us in an absolute disaster for the last biennium. The minority party didn't do anything with it, except offer an amendment.

Senator Dotzenrod: If the legislation had done nothing, we'd have a big mess. So you can make the argument, that if we only had the two choices, to do what the legislation did or do nothing. We certainly did the right thing by doing what we did. There was a third choice, we could have repealed the trigger and left the rate alone. As far as the difference between the two parties, when you are the majority there are responsibilities, the buck stops with the people in charge.

Representative Carlson: The point is, the majority had to make a responsible decision, and we felt that was the one. My only point for the revenue, as hard as we're doing for the budget this time had we not done something. There would be no talk of airport in Williston or adding additional flood protection money in Minot and Fargo, airport in Williston. Like it or not politically, it was the right thing to do something.

Chairman Cook: We've had our little sparing contest now and can move on. The point is, and the only point we need to concern ourselves with is we have before us with some policy before us. We can defeat the bill or amendment the bill.

(0:11:00-0:15:05) Ron Ness, President, North Dakota Petroleum Council: Appeared in support of HB 1166 with attachment #3.

Senator Dotzenrod: What is the consequence of striking workover?

Ron Ness: These were sections missed, when eliminated all of the exemptions. These were some provisions that were left in other parts of the statute. These are technical corrections that were going to go into the corrections bill, but thought they could be in here to be clearly understood. Sections where those exemptions were eliminated and some need to be removed.

Chairman Cook: We'll have Emily Thompson come down before we pass this out.

Tiffany Hodge on behalf of Chairman Mark Fox, MAH Nation. Handed out attachment #4 in opposition of HB 1166.

(0:17:35-0:26:50) Connie Triplett, Grand Forks: Appeared in opposition of HB 1166. Listened to the testimony from the house hearing. Relayed some of the remarks and historical information from the past session regarding triggered gas extraction tax bills. This is important for the relationship between the House and the Senate. Some negotiated in good faith, to hold the MHA nation with us on this bill. There is a reason that we put the reverse trigger on there. There was some misunderstanding on the members of the house confusing the triggers that were taken off, the triggers that were reduced as the prices went down. This is a reverse trigger that only goes into effect when the prices are good for everyone. It was done as a sign of respect for the MHA Nation, who wanted it to go in at $80, the petroleum council wanted it at $100. We settled at $90. This bill is about the power of relationship between the House and Senate and the Legislation and the MHA Nation. It's an important bill. The technical corrections can be handed in other bill.

It's a flawed analogy, it's not truly about income, it's a commodity. It's not created by the oil companies. They take it where they can find it. They make the best agreement they can. It's not about them creating something out of whole cloth and us taking something from them. When times are good, the fact that we choose to take an extra percent. I would urge you to kill this bill, it's presented in a bad spirit.

Chairman Cook: I'm not concerned with what happened two years ago. We have a bill with a policy before us and we should focus on this.

Chairman Cook: Closed the hearing on HB 1166.

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

House Bill 1166
3/21/2017
Job #: 29487

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Jana Bellamy

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 57-51.1-02 and 57-51.1-03.1 of the North Dakota Century Code, relating to the removal of triggered oil extraction tax rate changes; and to provide an effective date.

Minutes:

Attachment #1

All Senators present. Committee work on HB 1166.

(0:00:00-0:00:00) Senator Unruh: Handed out proposed amendments as a Christmas tree version **(attachment #1)** and walked through the changes being made.

Senator Laffen: Without this they may argue that they get to keep their full share.

Senator Unruh: The testimony the tribes gave us explained the section of the bill previously. They talk about the agreement and whether or not the agreement is being violated because we adjusted the extraction tax rate last session. With the adjustment in reduction, they haven't changed the agreement or pulled out of the agreement and still receiving half of the extraction tax revenues of the agreement. This clarifies the code so that continues to happen. The amendment does not change any revenues the tribes would be receiving from the oil extraction tax rate on tribal lands. Stays the same as it's been implemented since last session and puts it in the century code. Even if the upper trigger kicks in, they'll get half of the 6% instead of the 5%.

Senator Dotzenrod: The gray section was in the House bill to start with and it was taken out. Any reason why it was taken out?

Senator Unruh: This bill has two big parts to it. The first is the upper limit trigger and the tribal piece. I think the House prioritized that they wanted to deal with the upper limit trigger and I think it's important for us to clean up the tribal section of code. This reflects more the Senate's priorities. This is clean up language.

Senator Unruh moved to adopt amendments #17.0347.02002.

Senator Meyer seconded.

Senator Dotzenrod: This understanding that we have, the rate we're using. We get half of the properties described, it's not in this part of the code. That's a separate agreement we signed with them.

Chairman Cook: Yes.

Senator Dotzenrod: If we adopt these amendments, the first part, leaves the trigger in place. The second part doesn't really change the way we do things, but strikes from the code the 6.5%. Would the tribes position be that they want it left in there? Section 2, is there an argument that it has an effect. Would they view that as a statutory number they can hang their hat on?

Senator Unruh: It reflects current practice right now in the agreement and with the tax department.

Senator Dotzenrod: What we had in the testimony from the tribes, they're not happy with our move and not agreeing to it. I guess as a practical matter, it has no effect.

Chairman Cook: I think in a court of law it has no effect either if they were to argue it. It's clear elsewhere what the tax policy is.

Senator Unruh: The agreement would have to be updated if anything were to change regarding their revenues.

Vice Chairman Bekkedahl: This section 2, specifically relates to the trust land and trust properties. There's also fee lands and fee properties. It's been clear that that should be taxed where it is. It's been brought up, how should the trust lands be handled and this puts into code how the trust lands should be handled and I think this is an improvement.

Chairman Cook: What the tribes do is up to the tribes. I've meet with Mark Fox and he's indicated he wants a 100% of revenue generated from trust lands.

A voice vote was taken to adopt the amendments. Motion passed.

Senator Unruh moved a do pass on Engrossed HB 1166, as amended.

Vice Chairman Bekkedahl seconded.

Committee Discussion about referencing of negotiation authorities.

Roll Call Vote was taken: 6 ayes, 0 nays, 0 absent.

Motion passed.

Senator Unruh will carry the bill.

Prepared by the Legislative Council staff for Senator Unruh
March 20, 2017

CR 3/21/17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1166

Page 1, line 1, replace "sections 57-51.1-02 and" with "section "

Page 1, line 1, after "57-51.1-03.1" insert "and subsection 3 of section 57-51.2-02"

Page 1, line 2, replace "the removal of triggered oil extraction tax rate changes" with "filing requirements for oil extraction tax exemptions and rate reductions and the oil extraction tax rate attributable to revenue sharing agreements with tribal governing bodies"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 5

Page 3, after line 20, insert:

"**SECTION 2. AMENDMENT.** Subsection 3 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The state's oil extraction tax under chapter 57-51.1 ~~as applied~~<u>must apply</u> to oil and gas production attributable to trust lands on the reservation and on trust properties outside reservation boundaries ~~may not exceed six and one-half percent but may be reduced through negotiation between the governor and the tribal governing body~~."

Renumber accordingly

Date: 3-21-2017
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1166

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 17.0347.02002

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 Unruh Seconded By Meyer

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chair Brad Bekkedahl					
Senator Lonnie J. Laffen					
Senator Jessica Unruh					
Senator Scott Meyer					

Voice Vote

Total (Yes) ______ No ______

Absent ______ Motion Passed

Floor Assignment ______

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

Date: 3-21-2017

Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1166

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 17.0347.02002 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 Unruh Seconded By Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chair Brad Bekkedahl	X				
Senator Lonnie J. Laffen	X				
Senator Jessica Unruh	X				
Senator Scott Meyer	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Unruh

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

REPORT OF STANDING COMMITTEE

HB 1166, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1166 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections 57-51.1-02 and" with "section "

Page 1, line 1, after "57-51.1-03.1" insert "and subsection 3 of section 57-51.2-02"

Page 1, line 2, replace "the removal of triggered oil extraction tax rate changes" with "filing requirements for oil extraction tax exemptions and rate reductions and the oil extraction tax rate attributable to revenue sharing agreements with tribal governing bodies"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 5

Page 3, after line 20, insert:

"**SECTION 2. AMENDMENT.** Subsection 3 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The state's oil extraction tax under chapter 57-51.1 ~~as applied~~must apply to oil and gas production attributable to trust lands on the reservation and on trust properties outside reservation boundaries~~ may not exceed six and one-half percent but may be reduced through negotiation between the governor and the tribal governing body~~."

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1166

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1166
4/4/2017
29917

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the removal of triggered oil extraction tax rate changes.

Minutes:

No attachments

Vice Chairman Dockter: We would like someone to explain the changes on the Senate side.

Senator Unruh: We removed section 1 of the bill which keeps the upper trigger limit in place. We kept the original section 2 which is now section 1 that has some clean up language from what we passed last session regarding work-over rigs. We moved section 2, which was section 3 of the original bill, which the House had removed but we restored that section and clarified the language that was there. It eliminates the obsolete reference to the 6.5% extraction tax rate which can now only go as high as 6% and replaces it with language that clarified whatever the state tax extraction tax rate is, either the upper limit trigger kicks in or doesn't, applies on tribal lands. It reflects the current practice of the Tax Department and makes it consistent with current law providing clarity. Those were the changes from the Senate side.

Representative Grueneich: We would be back on tribal land?

Senator Unruh: Yes. We changed the language in section 2 which now would read "the state's oil extraction tax under chapter 57-51.1 must apply to oil and gas production attributable to trust lands…" It eliminates the last half of that sentence that referred to the 6.5% rate, which was language eliminated last session when we lowered the overall extraction tax rate from 6.5% down to 5 percent. Since we removed language that would have eliminated the upper trigger limit, this "must apply" language would allow for the extraction tax rate to increase to the 6% that's allowed with the upper trigger limit or stay at the 5 percent. Rather than having a number in code that has to be fixed every time when we make changes to the extraction tax rate, we would just have primacy language that says whatever the extraction rate is for all other properties in North Dakota that rate would apply to tribal lands as well.

Vice Chairman Dockter: There were comments about reviewing this. What about an amendment that says it takes effect in 2019?

Senator Unruh: Are you talking about section 1, the upper limit trigger?

Vice Chairman Dockter: Yes.

Senator Bekkedahl: The opportunity is always there to introduce a bill in the 2019 session without doing that.

Vice Chairman Dockter: We already have a bill before us so it's just as easy to put one on for 2019 also.

Senator Bekkedahl: You've seen the Senate's sentiments in the bill before us today and it does not include that language. I will defer to our chair.

Senator Unruh: I agree with Senator Bekkedahl. At this point we all felt pretty strongly about section 1. I don't know that there is a lot of wiggle room there.

Senator Dotzenrod: I objected to the language we added in section 2. It's modifying chapter 57-51.2 which is the agreement chapter. This section spells out the agreement with the state of North Dakota and the tribes. It takes out the ability of the governor to negotiate, it takes out the 6.5% language, and uses "must apply" so that is why I objected to it. If we're going to change the chapter that spells out the agreement between the tribes and the state, then it would seem like it should be done by mutual agreement between the tribes and the state. It doesn't really reflect what the current contract is. We have a contract signed in 2013 that says neither side will change the rate. It seems like what we have in section 2 is sort of in contrast in opposition to the contract we signed and also to the idea that the chapter is something that's an agreement between the state and the tribe. I objected to the idea that we would have section 2 there.

Vice Chairman Dockter: I understand that. Since 2013 the state has tried to negotiate with the tribes to sign a new agreement but the tribes haven't wanted to sign. I see why the Senate wanted to take that language out. I don't know the whole inner workings of that. There must be a reason why the tribe has not signed an agreement since 2013. We're already in 2017 so there must be a reason why they are not signing an agreement.

Senator Dotzenrod: When we had the hearing on HB 1166, this section was not part of the bill so there was no opportunity for the tribes or anyone else to come in and comment on it. This was added as an amendment later on and there was no public input or testimony. This is the chapter that governs the relationship between the state and the tribes. They weren't aware of this and it wasn't part of the bill. For that reason, they are making a one-sided approach to a mutual agreement.

Vice Chairman Dockter: Our House version did have that in and there was a hearing so they voiced their opinion.

Senator Dotzenrod: You had it in there for the hearing but then removed it after the hearing. That was probably sensible for you to do but we never had a hearing on our side on that section so after the hearing we added it in. It does appear there are issues with this section.

Senator Unruh: Our hearing wasn't as well attended as yours. We received testimony from the tribes on that section. There was testimony from Mark Fox. It didn't appear to me that the testimony had been changed from the House as it was presented to the Senate but I haven't seen what he presented to the House. This language clarifies what the current practice is; it doesn't take away any money the tribes are currently receiving. They receive half of what the state does on tribal lands and that rate now is 5%, so this doesn't take away the 6.5% that's in here because that's not what current practice is. We need clarity for development across the state of North Dakota to have an extraction tax rate that is applicable on all lands. This clarifies that current practice is codified. We're getting a bit distracted here with the two sections and they are two contentious sections as we've learned. We had a healthy floor debate on this and passed it out the way it is now back to section 1. I can have some conversations on delaying the implementation of eliminating the upper trigger limit. Right now I don't think that is something we're interested in.

Vice Chairman Dockter: I think that would be good if you would go back and have some discussions. I'll also have some discussions and then we'll have another meeting to decide on our differences. We will reschedule for tomorrow. Meeting adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1166
4/5/2017
29940

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the removal of triggered oil extraction tax rate changes.

Minutes:

No attachments

Vice Chairman Dockter: The issues we have before us are that the House would like to delay and take the trigger off at 2019. Also, the House understands that the cleanup must apply. Has the Senate changed their mind on what we discussed during the last meeting?

Senator Unruh: Our position remains the same.

Senator Dotzenrod: We didn't have a consensus on the Senate side. I didn't think section 2 was an appropriate thing for us to be doing without working with the tribe to amend it. I thought it was a one sided approach to a two sided agreement. The Senate deleted section 1 and left the section we have now keeping the trigger at $90. If you take section 2 out of the bill, then the bill is gone.

Vice Chairman Dockter: Any other comments? The Senate does not want to move what the House is looking for. Do we have any motions? We can accede and accept the Senate amendments.

Representative Grueneich: MADE A MOTION TO ACCEDE TO THE SENATE AMENDMENTS.

Senator Unruh: SECONDED

Vice Chairman Dockter: Is there any discussion?

ROLL CALL VOTE: 4 YES 2 NO 0 ABSENT

MOTION CARRIED

Vice Chairman Dockter: I want to thank everyone for your time. Meeting adjourned.

Date: 4/5/2017
Roll Call Vote #: 1

2017 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. HB1166 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: Representative Grueneich Seconded by: Senator Unruh

Representatives	4-4	4-5		Yes	No		Senators	4-4	4-5		Yes	No
Chairman Dockter	x	x		x			Senator Unruh	x	x		x	
Representative Grueneich	x	x		x			Senator Bekkedahl	x	x		x	
Representative Mitskog	x	x			x		Senator Dotzenrod	x	x			x
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier Rep. Dockter Senate Carrier Senator Unruh

LC Number _______________ . _______________ of amendment

LC Number _______________ . _______________ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1166, as engrossed: Your conference committee (Sens. Unruh, Bekkedahl, Dotzenrod and Reps. Dockter, Grueneich, Mitskog) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1172-1173 and place HB 1166 on the Seventh order.

Engrossed HB 1166 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1166

#1
HB 1166
1-10-17

2015 House Bill 1166

Section One

Pertains to the oil extraction tax rate and removes any triggered rate adjustments. The new language places the rate of tax at five percent of the gross value of the well.

Section Two

Pertains to the Industrial Commission's certification of qualifying well status that must be submitted to the Tax Commissioner to receive various oil extraction tax exemptions and rate reductions. The revisions in Section 2 eliminate obsolete cross references to rate reductions and exemptions that were eliminated by 2015 House Bill No. 1476. House Bill No. 1476 eliminated rate reductions for new wells, rate reductions and exemptions for work-over wells, rate reductions for various secondary or tertiary projects, and the exemption on production from a two-year inactive well. The same edits can be seen in Legislative Management's technical correction language in 2017 House Bill 1043.

Section Three

Pertains to the Three Affiliated Tribes oil and gas agreement. Section 57-51.2-02 lists the items an agreement under this Chapter 57-51.2 is subject to. Specifically, subsection 3 notes the highest rate of tax on production from trust lands on the reservation and on trust properties outside the reservation. The change in this section makes the highest allowable rate of tax uniform with the highest allowable rate of tax under the oil extraction tax chapter, which is now specified as 5 percent under section one of this bill.

#2
HB 1166
1-10-17

57-51.1-03.1. Stripper well, new well, ~~work-over,~~ and secondary or tertiary project certification for tax exemption or rate reduction - Filing requirement.

Commented [TEL1]: I left "new well" alone even though subsection 2 is being removed below because the rate reduction in sub 4 of section 57-51.1-03 also pertains to new wells.

Commented [TEL2]: Removed due to subsection 3 being deleted.

To receive the benefits of a tax exemption or tax rate reduction, a certification of qualifying well status prepared by the industrial commission must be submitted to the tax commissioner as follows:

1. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property or individual stripper well under subsection 2 of section 57-51.1-03, the industrial commissions certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's or stripper wells qualification period.
2. ~~To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 and a rate reduction on production from a new well under section 57-51.1-02, the industrial commissions certification must be submitted to the tax commissioner within eighteen months after a new well is completed.~~
3. ~~To receive, from the first day of eligibility, a tax exemption under subsection 4 of section 57-51.1-03 and a rate reduction for a work-over well under section 57-51.1-02, the industrial commissions certification must be submitted to the tax commissioner within eighteen months after the work-over project is completed.~~
4. To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 ~~and a tax rate reduction under section 57-51.1-02~~ on production from a secondary or tertiary project, the industrial commissions certification must be submitted to the tax commissioner within ~~the following time periods:~~
   a. ~~For a tax exemption, within~~ eighteen months after the month in which the first incremental oil was produced.
   b. ~~For a tax rate reduction, within eighteen months after the end of the period qualifying the project for the rate reduction.~~
5. To receive, from the first day of eligibility, a tax exemption or the reduction on production for which any other tax exemption or rate reduction may apply, the industrial commissions certification must be submitted to the tax commissioner within eighteen months of the completion, recompletion, or other qualifying date.
6. ~~To receive, from the first day of eligibility, a tax exemption under subsection 6 of section 57-51.1-03 on production from a two-year inactive well, the industrial commissions certification must be submitted to the tax commissioner within eighteen months after the end of the two-year inactive wells qualification period.~~

Commented [TEL3]: Subsection 3 of section 57-51.1-03, as it existed prior to 2015 HB 1476, was repealed. The prior subsection related to exemptions for initial production from vertical and horizontal wells.

Commented [TEL4]: The previous rate reduction for new wells under 57-51.1-02(1) was eliminated by 2015 HB 1476.

Commented [TEL5]: Subsection 4 of section 57-51.1-03, as it existed prior to 2015 HB 1476, was repealed. The prior subsection related to exemptions for production from work-over wells.

Commented [TEL6]: The previous rate reduction for work-over wells under Section 57-51.1-02(5) was eliminated by 2015 HB 1476.

Commented [TEL7]: The rate reduction for secondary or tertiary projects under the prior subsections 2-4 of section 57-51.1-02 were repealed by 2015 HB 1476.

Commented [TEL8]: The prior exemption under subsection 6 of section 57-51.1-03 was eliminated by 2015 HB 1476.

If the industrial commissions certification is not submitted to the tax commissioner within the eighteen-month period provided in this section, then the exemption or rate reduction does not apply for the production periods in which the certification is not on file with the tax commissioner. When the industrial commissions certification is submitted to the tax commissioner after the eighteen-month period, the tax exemption or rate reduction applies to prospective production periods only and the exemption or rate reduction is effective the first day of the month in which the certification is received by the tax commissioner.

HB 1166
#3 p. 1 of 4
1-10-17

House Bill 1166
House Finance and Taxation Committee
January 10th, 2017
Testimony of Mark Fox, Chairman MHA Nation

Mr. Chairman and members of the Committee, my name is Mark Fox and I am the Chairman of the Mandan Hidatsa and Arikara Nation. I oppose House Bill 1166 because it perpetuates an ongoing violation of the existing Tax Agreement between North Dakota and the MHA Nation and because it unnecessarily deprives the MHA Nation of critical tax revenue. In 2013 the state of North Dakota signed an agreement to share oil production and extraction tax revenue derived from the Fort Berthold Reservation 50-50 with the MHA Nation. At the time, the Extraction tax rate was 6.5%. Both parties specifically agreed not to raise or lower the tax rate for Reservation production. Despite its promise, just two years later North Dakota unilaterally reduced the extraction tax rate to 5% in 2015 with the proviso that the rate would be 6% if a trigger rate of $90 was reached. HB 1166 now seeks to eliminate the $90 trigger. HB 1166 would also amend NDCC section 57-51.2-02, which currently provides for an extraction tax rate of 6.5% on reservation production, by reducing the rate to 5%. This is another blatant violation of North Dakota's pledge in the 2013 Tax Agreement not to reduce the tax rate.

The MHA Nation has not agreed to the reduced rate. It was not necessary two years ago and it is not necessary now. I do not share the philosophy that tax cuts equal increased production. Oil production is driven by the price of oil. In the two years since the Legislature lowered the tax rate, production in North Dakota has not increased but in fact has decreased. Industry did not keep producing like it said it would. Today, as the price of oil continues to climb, so will production, but it won't be because of a 1.5% tax cut. Instead, because of the tax cut, North Dakota and the MHA Nation will continue to lose revenue, instead shifting the money toward Industry profits. Oil is a nonrenewable resource. Once it is produced and sold, it is gone forever. It can only be taxed once. Reducing the tax rate on a nonrenewable resource in favor of perceived short term production increases and at the expense of long term revenue for North Dakota is a questionable practice, to put it mildly.

We estimate that the MHA lost $16-20 million in 2016 as a result of the unlawful rate reduction, over 15% of our oil and gas tax revenue. This is a significant loss of revenue to the MHA Nation, a much bigger loss than that suffered by the state given that North Dakota collects oil and gas tax revenue from both on reservation and off reservation production. As far as I am concerned the MHA Nation is owed the revenue it lost under the existing Agreement. When we agreed to the tax sharing agreement, we agreed to share the extraction tax at 6.5%, not 5%.

I testified at length two years ago about the MHA Nation's sovereign right to tax economic activity within its boundaries. Because the threat of dual state and tribal taxation threatened oil production on the Reservation, the MHA Nation entered into the tax sharing agreement with North Dakota to remove the threat and stimulate production on the Reservation. We entered into this Agreement in good faith. We expected North Dakota to abide by its obligations under the Agreement. We are sorely disappointed that North Dakota failed to do so. The late Justice Hugo Black of the United States Supreme Court said, "Great nations, like great men, should keep their word." I believe the same statement applies to the state of North Dakota. That North Dakota failed to keep its word is the fault of its government, not its citizens.

Because North Dakota continues to violate its obligations under the Tax Agreement, the MHA Nation has several options. We can terminate the Agreement and reinstitute the tribal oil tax, likely at a higher rate. This will result in dual state taxation unless we successfully remove the scourge of dual state taxes by pursuing federal remedies. We can sue to enforce the existing Agreement. We can also collect what we are owed under the Agreement, the difference between 5 and 6.5%. We have not done so to date, primarily because of the low price of oil. However, now that prices have climbed above $50.00 per barrel, and in light of HB 1166, all options are again on the table.

A 1.5% reduction in the extraction tax does not hurt the state of North Dakota like it hurts the MHA Nation. In addition to its half of the oil and gas tax revenue from Reservation production, North Dakota collects all of the oil and gas taxes from production off the reservation. It also collects millions of taxes annually from other sources of economic activity on the Fort Berthold Reservation, most notably sales taxes, property taxes on pipelines, alcohol taxes, and lodging taxes. All of these tax sources have increased tremendously because of oil and gas production since 2008. Although North Dakota has enjoyed this huge revenue boost, it consistently refuses to reinvest that revenue back into Fort Berthold.

To date, the MHA Nation has not taxed sales, hotels, alcohol or pipelines though it clearly has the legal right to do so, because dual state and tribal taxation can hurt the tribal economy. However, because we must continue to pay for the costs that oil and gas activity has brought to Fort Berthold in the form of increased crime, illegal drug activity, hazardous spills, and the trucks that destroy our roads and endanger our people, to name a few, we can no longer afford to defray these governmental costs with 50% of the revenue that comes from the oil and gas taxes.

#3 p.4 of 4
HB 1166
1-10-17

Because nothing has been done to correct the unjust taxation system, there will be dual taxation at Fort Berthold.

If North Dakota continues to insist on permanently reducing the extraction tax to 5%, it should do so at its own expense, not ours. A better alternative than that proposed by HB 1166 is to simply exempt oil and gas extracted from trust land on the Reservation from the state extraction tax, to allow the MHA Nation to collect the tax free of the threat of dual taxation. Most objective observers would agree that this is a more just alternative. It would put the tax revenue where it belongs, with the MHA Nation. It would provide the revenue needed to mitigate the heavy impacts that Industry has brought to the Fort Berthold Reservation.

I oppose HB 1166, and I continue to urge the Legislature to adopt a more just system that will equitably reflect a tax revenue sharing mechanism that puts tax dollars where they are most needed, at Fort Berthold. Thank you.

pg 1

Attachment #1

HB 1166

3/14/2017

Calculation of Tax Savings from Oil Extraction Tax Rate Reduction and Repeal of Triggered Incentives

Production Period	Collection Period	Distribution Period	Actual Collections at 10% New Rate	Actual Barrels Sold	Actual Average Price	Estimated Triggered Collections	Estimated Savings Due to Trigger Repeal
Jan 16	Feb	Mar	$ 83,235,571	34,553,678	$ 24.09	$ 50,776,284	$ 32,459,287
Feb	Mar	Apr	$ 74,468,102	32,005,353	$ 22.07	$ 43,087,847	$ 31,380,255
Mar	Apr	May	$ 101,696,196	34,256,253	$ 29.85	$ 62,375,498	$ 39,320,698
Apr	May	Jun	$ 103,521,502	30,941,856	$ 33.61	$ 63,437,303	$ 40,084,199
May	Jun	Jul	$ 120,289,917	32,271,278	$ 38.50	$ 75,789,096	$ 44,500,821
Jun	Jul	Aug	$ 128,868,721	30,829,203	$ 41.64	$ 78,307,409	$ 50,561,312
Jul	Aug	Sep	$ 116,710,511	31,678,122	$ 38.24	$ 73,893,655	$ 42,816,856
Aug	Sep	Oct	$ 109,398,371	30,398,456	$ 37.27	$ 69,109,978	$ 40,288,393
Sep	Oct	Nov	$ 106,004,800	28,826,502	$ 37.31	$ 65,606,524	$ 40,398,276
Oct	Nov	Dec	$ 131,936,220	32,015,739	$ 43.01	$ 83,996,813	$ 47,939,407
Nov	Dec	Jan 17	$ 112,265,320	30,414,676	$ 38.38	$ 71,206,231	$ 41,059,089
Dec	Jan 17	Feb	$ 120,323,884	28,498,019	$ 43.94	$ 76,384,380	$ 43,939,504
Total			**$ 1,308,719,115**			**$ 813,971,018**	**$ 494,748,097**

ND Tax
NORTH DAKOTA

3/14/2017 HB 1166 450,000 Barrels Capacity Attachment #2 pg 1

\15-% ND
\12 - w/ DAPL

New York Mercantile Exchange (NYMEX) › Energy › CRUDE OIL (CL)

Market	Contract	Open	High	Low	Last	Change	Pct	Time
CL.J17.E	Apr 2017 (E)	53.69	53.80	52.57	52.66	-1.17	-2.18%	16:01
CL.K17.E	May 2017 (E)	54.16	54.26	53.03	53.10	-1.18	-2.18%	16:02
CL.M17.E	Jun 2017 (E)	54.52	54.62	53.36	53.45	-1.16	-2.13%	15:56
CL.N17.E	Jul 2017 (E)	54.82	54.87	53.64	53.71	-1.16	-2.12%	15:48
CL.Q17.E	Aug 2017 (E)	54.98	55.06	53.84	53.91	-1.14	-2.07%	15:56
CL.U17.E	Sep 2017 (E)	55.11	55.13	53.96	54.05	-1.09	-1.98%	15:46
CL.V17.E	Oct 2017 (E)	55.13	55.15	54.31	54.07	-1.10	-1.99%	set 11:29
CL.X17.E	Nov 2017 (E)	55.11	55.18	54.30	54.11	-1.06	-1.92%	set 11:16
CL.Z17.E	Dec 2017 (E)	55.08	55.21	54.07	54.16	-0.99	-1.80%	16:01
CL.F18.E	Jan 2018 (E)	54.97	55.18	54.11	54.20	-0.91	-1.65%	15:39
CL.G18.E	Feb 2018 (E)	54.95	54.95	54.77	54.13	-0.94	-1.71%	set 05:01
CL.H18.E	Mar 2018 (E)	54.90	55.10	54.07	54.12	-0.91	-1.66%	15:16
CL.J18.E	Apr 2018 (E)	56.16	56.36	55.82	54.11	-0.88	-1.60%	set 14:53
CL.K18.E	May 2018 (E)	55.22	55.22	55.22	54.09	-0.85	-1.55%	set 14:53
CL.M18.E	Jun 2018 (E)	54.85	54.96	54.01	54.10	-0.78	-1.42%	16:01
CL.N18.E	Jul 2018 (E)	55.75	55.90	55.75	54.02	-0.78	-1.42%	set 14:53
CL.Q18.E	Aug 2018 (E)	56.24	56.27	56.23	53.98	-0.74	-1.34%	set 14:53
CL.U18.E	Sep 2018 (E)	54.85	54.85	54.85	53.95	-0.71	-1.30%	set 14:53
CL.V18.E	Oct 2018 (E)	55.98	55.98	55.98	53.93	-0.68	-1.25%	set 14:53
CL.X18.E	Nov 2018 (E)	52.66	52.66	52.66	53.92	-0.66	-1.21%	set 14:53
CL.Z18.E	Dec 2018 (E)	54.58	54.59	53.77	53.97	-0.60	-1.10%	15:50
CL.F19.E	Jan 2019 (E)	54.88	54.88	54.82	53.85	-0.64	-1.17%	set 14:53
CL.G19.E	Feb 2019 (E)	53.99	54.00	53.99	53.79	-0.62	-1.14%	set 14:53
CL.H19.E	Mar 2019 (E)	53.29	53.30	53.29	53.75	-0.60	-1.10%	set 14:53
CL.J19.E	Apr 2019 (E)	53.71	53.71	53.71	53.71	-0.58	-1.07%	set 14:53
CL.K19.E	May 2019 (E)	53.69	53.69	53.69	53.69	-0.55	-1.01%	set 14:53
CL.M19.E	Jun 2019 (E)	53.95	53.95	53.91	53.69	-0.52	-0.96%	set 14:53
CL.N19.E	Jul 2019 (E)	53.67	53.67	53.67	53.67	-0.49	-0.90%	set 14:53
CL.Q19.E	Aug 2019 (E)	53.66	53.66	53.66	53.66	-0.47	-0.87%	set 14:53
CL.U19.E	Sep 2019 (E)	53.66	53.66	53.66	53.66	-0.45	-0.83%	set 14:53
CL.V19.E	Oct 2019 (E)	53.66	53.66	53.66	53.66	-0.43	-0.79%	set 14:53
CL.X19.E	Nov 2019 (E)	53.67	53.67	53.67	53.67	-0.42	-0.78%	set 14:53
CL.Z19.E	Dec 2019 (E)	53.98	54.15	53.47	53.66	-0.43	-0.79%	15:16

3/14/2017 HB 1166 Attachment #3 pg 1

NORTH DAKOTA
PETROLEUM
COUNCIL

100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395
701.223.6380 | ndpc@ndoil.org | www.NDOil.org

House Bill 1166
Testimony of Ron Ness
Senate Finance and Taxation Committee
March 14, 2017

Chairman Cook and members of the Senate Finance and Taxation Committee, my name is Ron Ness, president of the North Dakota Petroleum Council. Last year the North Dakota Petroleum Council represented more than 500 companies 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 1166.

As you know, NDPC has a large membership with companies that operate both on and off the Fort Berthold Indian Reservation (FBIR). While most all our companies support the removal of triggered oil extraction tax rate changes because of the certainty a flat tax provides industry, those companies that operate on FBIR Reservation also would like to encourage the State and the MHA Nation to work together on tax issues impacting industry in the future. As you know, oil production on FBIR currently accounts for about 17% of our state's oil production and we think that's a number that can increase. We think there is great value for the state and tribal leaders to engage in more dialog on consistent and mutually beneficial tax and regulatory policies. There is also the issue of unresolved mineral ownership under the Missouri River portion of Lake Sakakawea that is resulting in millions and millions of royalty payments being suspended. Discussion and a solution to that challenge can only benefit the state and tribe.

3/14/2017 HB 1166 Attachment #3

As has been NDPC's position for many years, fair, predictable and competitive oil tax rates is critical to attracting investment and continued long-term development in the Bakken. The resolution of the tax trigger last session did not turn-out favorable to the industry. However, we still believe it was the right thing to do and HB 1166 will address the only trigger left in the North Dakota oil tax structure. We support the change and think it's reasonable step-forward considering the outcome of the bill from the 2015 Legislature which has resulted in increased tax collection of over $500,000 million. Had that bill not passed, this session and North Dakota's financial situation would be much worse.

We urge a Do Pass on House Bill 1166. I would be happy to answer any questions.

House Bill 1166
Senate Finance and Taxation Committee
March 14, 2017
Testimony of Mark Fox, Chairman MHA Nation

Mr. Chairman and members of the Committee, my name is Mark Fox and I am the Chairman of the Mandan Hidatsa and Arikara Nation. I oppose House Bill 1166 because it perpetuates an ongoing violation of the existing Tax Agreement between North Dakota and the MHA Nation and because it unnecessarily deprives the MHA Nation of critical tax revenue. In 2013 the state of North Dakota signed an agreement to share oil production and extraction tax revenue derived from the Fort Berthold Reservation 50-50 with the MHA Nation. At the time, the Extraction tax rate was 6.5%. Both parties specifically agreed not to raise or lower the tax rate for Reservation production. Despite its promise, just two years later North Dakota unilaterally reduced the extraction tax rate to 5% in 2015 with the proviso that the rate would be 6% if a trigger rate of $90 was reached. HB 1166 now seeks to eliminate the $90 trigger. HB 1166 would also amend NDCC section 57-51.2-02, which currently provides for an extraction tax rate of 6.5% on reservation production, by reducing the rate to 5%. This is another blatant violation of North Dakota's pledge in the 2013 Tax Agreement not to reduce the tax rate.

The MHA Nation has not agreed to the reduced rate. It was not necessary two years ago and it is not necessary now. I do not share the philosophy that tax cuts equal increased production. Oil production is driven by the price of oil. In the two years since the Legislature lowered the tax rate, production in North Dakota has not increased but in fact has decreased. Industry did not keep producing like it said it would. Today, as the price of oil continues to climb, so will production, but it won't be because of a 1.5% tax cut. Instead, because of the tax cut, North Dakota

3/14/2017 HB 1166 Attachment # 4

and the MHA Nation will continue to lose revenue, instead shifting the money toward Industry profits. Oil is a nonrenewable resource. Once it is produced and sold, it is gone forever. It can only be taxed once. Reducing the tax rate on a nonrenewable resource in favor of perceived short term production increases and at the expense of long term revenue for North Dakota is a questionable practice, to put it mildly.

We estimate that the MHA lost $16-20 million in 2016 as a result of the unlawful rate reduction, over 15% of our oil and gas tax revenue. This is a significant loss of revenue to the MHA Nation, a much bigger loss than that suffered by the state given that North Dakota collects oil and gas tax revenue from both on reservation and off reservation production. As far as I am concerned the MHA Nation is owed the revenue it lost under the existing Agreement. When we agreed to the tax sharing agreement, we agreed to share the extraction tax at 6.5%, not 5%.

I testified at length two years ago about the MHA Nation's sovereign right to tax economic activity within its boundaries. Because the threat of dual state and tribal taxation threatened oil production on the Reservation, the MHA Nation entered into the tax sharing agreement with North Dakota to remove the threat and stimulate production on the Reservation. We entered into this Agreement in good faith. We expected North Dakota to abide by its obligations under the Agreement. We are sorely disappointed that North Dakota failed to do so. The late Justice Hugo Black of the United States Supreme Court said, "Great nations, like great men, should keep their word." I believe the same statement applies to the state of North Dakota. That North Dakota failed to keep its word is the fault of its government, not its citizens.

3/14/2017 HB 1166 Attachment #4

Because North Dakota continues to violate its obligations under the Tax Agreement, the MHA Nation has several options. We can terminate the Agreement and reinstitute the tribal oil tax, likely at a higher rate. This will result in dual state taxation unless we successfully remove the scourge of dual state taxes by pursuing federal remedies. We can sue to enforce the existing Agreement. We can also collect what we are owed under the Agreement, the difference between 5 and 6.5%. We have not done so to date, primarily because of the low price of oil. However, now that prices have climbed above $50.00 per barrel, and in light of HB 1166, all options are again on the table.

A 1.5% reduction in the extraction tax does not hurt the state of North Dakota like it hurts the MHA Nation. In addition to its half of the oil and gas tax revenue from Reservation production, North Dakota collects all of the oil and gas taxes from production off the reservation. It also collects millions of taxes annually from other sources of economic activity on the Fort Berthold Reservation, most notably sales taxes, property taxes on pipelines, alcohol taxes, and lodging taxes. All of these tax sources have increased tremendously because of oil and gas production since 2008. Although North Dakota has enjoyed this huge revenue boost, it consistently refuses to reinvest that revenue back into Fort Berthold.

To date, the MHA Nation has not taxed sales, hotels, alcohol or pipelines though it clearly has the legal right to do so, because dual state and tribal taxation can hurt the tribal economy. However, because we must continue to pay for the costs that oil and gas activity has brought to Fort Berthold in the form of increased crime, illegal drug activity, hazardous spills, and the trucks that destroy our roads and endanger our people, to name a few, we can no longer afford to defray these governmental costs with 50% of the revenue that comes from the oil and gas taxes.

3/14/2017 HB 1166 Attachment # 4

Because nothing has been done to correct the unjust taxation system, there will be dual taxation at Fort Berthold.

If North Dakota continues to insist on permanently reducing the extraction tax to 5%, it should do so at its own expense, not ours. A better alternative than that proposed by HB 1166 is to simply exempt oil and gas extracted from trust land on the Reservation from the state extraction tax, to allow the MHA Nation to collect the tax free of the threat of dual taxation. Most objective observers would agree that this is a more just alternative. It would put the tax revenue where it belongs, with the MHA Nation. It would provide the revenue needed to mitigate the heavy impacts that Industry has brought to the Fort Berthold Reservation.

I oppose HB 1166, and I continue to urge the Legislature to adopt a more just system that will equitably reflect a tax revenue sharing mechanism that puts tax dollars where they are most needed, at Fort Berthold. Thank you.

3/21/2017 HB 1166 Attachment #1 pg 1

17.0347.02002

Sixty-fifth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1166

Introduced by

Representatives Carlson, Dockter, Headland, Toman

A BILL for an Act to amend and reenact ~~sections 57-51.1-02 and~~ section 57-51.1-03.1 and subsection 3 of section 57-51.2-02 of the North Dakota Century Code, relating to ~~the removal of triggered oil extraction tax rate changes~~filing requirements for oil extraction tax exemptions and rate reductions and the oil extraction tax rate attributable to revenue sharing agreements with tribal governing bodies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**57-51.1-02. Imposition of oil extraction tax.**~~

~~There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax is five percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil exceeds the trigger price of ninety dollars for each month in any consecutive three-month period, then the rate of tax on oil extracted from all taxable wells is six percent of the gross value at the well of the oil extracted until the average price of a barrel of crude oil is less than the trigger price of ninety dollars for each month in any consecutive three-month period, in which case the rate of tax reverts to five percent of the gross value at the well of the oil extracted. By December thirty-first of each year, the tax commissioner shall determine an indexed trigger price under this section by applying to the current trigger price an adjustment equal to the percentage rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June~~

3/21/2017 HB 1166 Attachment #1

~~thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.~~

~~For purposes of this section, "average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed.~~

SECTION 1. AMENDMENT. Section 57-51.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03.1. Stripper well, new well, ~~work-over,~~ and secondary or tertiary project certification for tax exemption or rate reduction - Filing requirement.

1. To receive the benefits of a tax exemption or tax rate reduction, a certification of qualifying well status prepared by the industrial commission must be submitted to the tax commissioner as follows:

~~1.~~ a. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property or individual stripper well under subsection 2 of section 57-51.1-03, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's or stripper well's qualification period.

~~2. To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 and a rate reduction on production from a new well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after a new well is completed.~~

~~3. To receive, from the first day of eligibility, a tax exemption under subsection 4 of section 57-51.1-03 and a rate reduction for a work-over well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the work-over project is completed.~~

~~4.~~ b. To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 ~~and a tax rate reduction under section 57-51.1-02~~ on production from a secondary or tertiary project, the industrial commission's certification must be submitted to the tax commissioner within ~~the following time periods:~~

~~a.~~ ~~For a tax exemption, within~~ eighteen months after the month in which the first incremental oil was produced.

~~b.~~ ~~For a tax rate reduction, within eighteen months after the end of the period qualifying the project for the rate reduction.~~

~~5.~~ c. To receive, from the first day of eligibility, a tax exemption or the reduction on production for which any other tax exemption or rate reduction may apply, the industrial commission's certification must be submitted to the tax commissioner within eighteen months of the completion, recompletion, or other qualifying date.

~~6.~~ ~~To receive, from the first day of eligibility, a tax exemption under subsection 6 of section 57-51.1-03 on production from a two-year inactive well, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the two-year inactive well's qualification period.~~

2. If the industrial commission's certification is not submitted to the tax commissioner within the eighteen-month period provided in this section, ~~then~~ the exemption or rate reduction does not apply for the production periods in which the certification is not on file with the tax commissioner. When the industrial commission's certification is submitted to the tax commissioner after the eighteen-month period, the tax exemption or rate reduction applies to prospective production periods only and the exemption or rate reduction is effective the first day of the month in which the certification is received by the tax commissioner.

SECTION 2. AMENDMENT. Subsection 3 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The state's oil extraction tax under chapter 57-51.1 ~~as applied~~must apply to oil and gas production attributable to trust lands on the reservation and on trust properties outside reservation boundaries~~ may not exceed six and one-half percent but may be reduced through negotiation between the governor and the tribal governing body~~.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2017.