2009 HOUSE FINANCE AND TAXATION

HB 1235

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1235**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7814

Committee Clerk Signature	Jan Prindle

Minutes:

Chairman Belter opened the hearing of HB 1235.

Representative Skarphol: This bill brings about changes in oil and gas tax law. It simplifies the law, leaves in place the exemptions for strippers, secondary and tertiary recovery, and establishes a tax rate of 10% versus the 11.5%. It lowers the extraction tax by 1.5% and it also puts in place and makes permanent the tax holiday for all horizontal wells. It also puts in place some additional caveats that were not incorporated two years ago. When we put in place a 75,000 barrel limitation nobody anticipated oil being at $140 per barrel. This equates to about $10 million in tax exemptions. I don't think any of us envisioned that. I think what we envisioned was probably a $3 million exemption that would cost the drilling at the time. In having this drafted, it puts in place $4.5 million limitation on the tax holiday for horizontals or a 75,000 barrel limit. Additionally it changes it from a 24-mo holiday to a 36-mo holiday for those wells that don't reach any one of those goals.

Chairman Belter: Are you having Counsel draw up a chart that lays out this bill.

Representative Skarphol: I have not. I suspect that there may be others following me that may have charts that address those issues.

Senator David O'Connell, District 6: This is a good starting tool as I'm sure you going to have different ideas.

Representative Glen Froseth, District 6: We have some information on what an incentive will do. The Bakken incentive we passed two years ago—it worked. It has put a price tag on it but if it hadn't been for those incentives we wouldn't have the development we are experiencing today. I believe that they do work. I think we should take a serious look at this bill and do some modification on that program and continue with the development that we have seen over the past year.

John Askvig, North Dakota Education Association, testified in opposition of the bill. **(Attachment 1)**

Ron Ness, president of the ND Petroleum Council, testified in opposition of the bill. **Attachment 2)** Our members feel very strongly that this is a significant increase at the wrong time. We would encourage you to really evaluate the impact and look more at our recommendations on the fourth column of our chart.

Representative Froseth: Could you give us a little history on the trigger? When was the last time the price of oil got below the trigger pricing and the extraction tax came off.

Ness: I believe October 1, 2004, the incentives triggered off and the tax rate went to 11.5%. He distributed a paper showing what every well meant to ND in 2008 based upon $80 oil. **(Attachment 2.A)** You can see that a well over its lifetime of 32 years will generate about $43 million in gross revenue and pay $4.5 million in taxes. The attachment shows an average. The costs have changed drastically. In 2003 the average cost for drilling a well was $1.8 million; in 2008 it was $5.4 million. If you put a payout dollar figure into statute, it doesn't address the growing cost or the reducing cost going forward. We think staying with a barrel percentage is a better idea.

Chairman Belter: You made the comment about the cost of drilling a well in the past versus the current cost. Have not gotten a lot more efficient and getting a lot more oil per dollar invested?

Ness: Certainly the Bakken is all about getting more efficient in reducing your drilling cost, but thus far the drilling costs have continued to escalate even though the productivity seems to be improving.

Representative Froelich: When you use these comparable figures, did you say 2003?

Ness: Yes, we track this every year. I can go back and look at those.

Representative Froelich: In 2003 how many horizontal wells were drilled?

Ness: The number of horizontal wells is still pretty high. The difference was that the ability to reach them out several hundred yards; now you are going out two miles plus. It's the fracturing technology that has changed. That wasn't being done in 2003.

Representative Froelich: How many did you have in 2003?

Ness: I'll pull our facts and figures book and we'll be able to figure that out.

Representative Winrich: I'm trying to understand your comment that this is a significant increase of taxes on the oil industry as compared to the fiscal note we have the tax department which shows a reduction in revenue in the 2009-11 biennium. Why isn't revenue increased.

Ness: When you get the February 9 revenue forecast. One of the determining factors is going to be there. Whether the oil tax incentives trigger off during the next biennium or they trigger on. The fiscal note is based upon the current budget revenues in November which did not assume that oil prices were going to dip below the point where the incentives are going to trigger back on. Our view is that is going to happen. That's why we would see that as a significant tax increase. That is the difference here. Predictability is very difficult—there is a huge swing either way. We feel those incentives at lower prices are there for a good reason—to keep that activity going.

Robert Harms, president, Northern Alliance of Independent Producers, spoke in opposition of HB 1235. **(Attachment 3)** Our concern is that at $27 or $20 per barrel of oil, only the very sweetest of the sweet spots in the Bakken are going to continue to be developed. Our challenge this morning is to figure out what the correct tax policy is for ND to encourage and help that industry along to continue to develop and invest in ND as it has in the past. We believe that if you exclude McKenzie, Dunn, and Mountrail Counties, we need $56 oil to break even. Fifty percent of the wells we drill won't return the investment it took to drill the well in the first place. We all face a challenge to get the policy correct.

Representative Froelich: To vary a bit from the bill—you said something about Fort Berthold Reservation. Isn't there a discrepancy that the fee lands actually get a higher tax break than the trust property?

Harms: That's correct. That was part of the legislation that was passed in the last session.

Lynn Helms, director, Department of Mineral Resources, provided information on definitions. **(Attachment 4)**

Representative Drovdal: Would you explain to the Committee the difference between that $47.66 and what ND prices are?

Harms: Historically ND has gotten less for its oil than the NYMEX price because of distance from markets and transportation. We are in particularly tough situation right now because our pipelines and refinery are full. We hit that in October. We are shipping crude by rail. There's a whole basket of crisis out there. Yesterday NYMEX closed at $45.73. If you have a contract to sell ND sweet crude to the Tesoro refinery, you got $36.23—that's the best price you can get in ND. If you have sour crude oil (more than .5% sulfur) that has to go down the pipeline either to Denver or St Paul to be refined by those who can handle it, that price was $23.50. If you have to haul it to put it on a rail car, you will get $20.50 per barrel.

Representative Drovdal: When we first put on the triggers, we used West Texas price as a trigger guideline. That isn't the price we are getting as you pointed out. Currently we have heard there is an about 35% - 40% between that price and ND prices. Why are we using West Texas prices?

Harms: We had a twenty-five year history when we put this trigger in place of a $2.50 per barrel difference. That was the long-term average. Today's oil markets are nothing like the markets when the trigger was put in. It's volatile—all over the map. Crude purchasers take advantage of that volatility to discount ND crude oil whenever there is a shortage of transportation capacity. In 2010, there will be added 50,000 barrels per day of capacity. We will then have surplus capacity again. We'll see those differentials collapse very quickly.

Representative Drovdal: In order to have honest figure here, will you tell us what the West Texas was when there was a $2.50 difference?

Representative Harms: It would have been in the $25 - $30 range.

Representative Froelich: In the last 6 months that horizontal wells have been producing, what is the average production?

Harms: I can't give you that off the top of my head, but I can get that for you. I can give you a number for the last 12 months. The average is 625 barrels a day. The huge amount of money invested in technology is paying off. Two years ago it was more like 250 barrels a day.

Representative Skarphol: With regard to the 10% tax rate that I included in this bill, it was an attempt to be revenue neutral. I'm certainly not married to it. If it were the wishes of this Committee to be creative, I suggest your suggestions be advantageous to the oil industry when prices were low and advantageous to the state general fund when prices were high.

Representative Weiler: What's the decline rate?

Harms: I assume you are talking about the typical horizontal well. To date there are 70 rigs running and 68 are drilling Bakken wells. So we might as well just talk about Bakken wells. The first year decline is around 60%. The second year decline is about 35%. Then it goes on a long 10% decline rate to the end of its life.

Chairman Belter: Some of the definitions you gave us today—it would be well if you put those on paper for us.

Chairman Belter closed the hearing of HB 1235.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1235**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: February 4, 2009

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Committee Clerk Signature

Minutes:

Vice Chairman Drovdal: Do want to explain the amendments, Representative Froehlich?

Representative Froseth: This is the bill that will change the tax structure of wells. The production tax will stay exactly the same, the first 5%; but it will remove the trigger on the extraction tax. Keep in mind that this is just the extraction tax portion of what we have—not the production tax. This is the 6½% extraction tax. Page 4, section 2, imposition of oil extraction tax, it changes that 6½% to 3.75%. That would be a high of 8.75% on all new oil production. The old production, like the secondary and tertiary recovery wells, will remain at 5%. It will remove all the exemptions we have in the law now. Some wells are exempt for 24 months, some for 18 months, some are exempt for up to 60 months and it will remove all that. It will be one rate and will handle all oil equally. If you look at the amendment on page 10, lines 12 through 21, it leaves in the exemptions of the initial production that some oil and wells had imposed under this chapter for 60 months. It includes the oil located within the boundaries of an Indian reservation if the well was drilled and completed on lands held in trust in the US for the Indian tribe or an individual Indian and if the well was drilled and completed on lands held by Indian tribes if the interest was in existence on August 1, 1997. Those are agreements that are presently in place and agreements that have been made with the state and the tribes so we are not messing with them at all. On page 10, section 5 now instead of 4, this is the incentive for new production. The first 75,000 barrels of oil for the first $4.5 million, whichever is less during the first eighteen months of completion from the oil revenue created, is subject to a reduced rate of 2%. That means there would be a 7% rate on that new production on new wells for the first eighteen months until that well has produced $4.5 million worth of income.

Vice Chairman Drovdal: The wells that are currently out there if the trigger kicks in if the crude oil prices stay where they are at now, by the current law, three months from now, if the prices stay where they are at, all the oil is going to drop to 5%. If we pass this bill and the price stays where it is at, 8 3/4% is where those wells would be.

Representative Froseth: If you look at line 11 on page 2 and replace June with April. It has an emergency clause so if this passes with the emergency clause, it would go into effect immediately. They expect the trigger will go on in May and all revenue taxed on all oil will drop to 5%. If this passes with the emergencv clause, it will be in effect by the time the price of oil drops down to where the trigger goes on.

Representative Belter: When you say 5%, you are just talking about the production tax?

Representative Froseth: Just the production tax if the price stays where it is now and the trigger goes on, all taxes will drop to 5% on every well. If this is passed with the emergency clause, it will be at 8.75%. In talking with the oil industry.....We couldn't get a fiscal note on this in time. They have calculated it to be revenue neutral. They are taking into consideration the trigger is going to go on the 1st of May. Then it will be down to 5%. Even if the price comes up, it will be 5% for the next five months.

Vice Chairman Drovdal: I have a **motion to accept the amendments from Representative Froseth and a second from Representative Grande.**

Representative Froelich: I haven't really had a chance to digest the amendments. I think I brought the point up before that there are some specialties in the tax code today that deal with oil. I talked with Mr. Walstad and he said he was waiting for some charts. He says the Tax Department has a chart that compares reservation land, fee land, trust land and off-reservation land. He said there are some discrepancies. We talked about unifying this stuff and getting rid of some of the exemptions that are not really doing a lot. Without a fiscal note or even a variable fiscal note, I don't think I can support this.

Vice Chairman Drovdal: It does leave in the agreement between the state and the tribes that they made last year. It was taken out of the original bill.

Representative Froelich: I understand that, but I was involved with the writing of that tribal agreement. Mr. Harms and Mr. Burnstein and I have talked about this at great length. There is incentive now on the reservation because of the way it is written to drill on non-Indian land because the drilling companies were given a better break on non-Indian land. In actuality, we are incentivizing to drill on non-Indian land. They were going to get to that and adjust that. I just talked to Mr. Walstad today and he said, "We are going to fix some of these things."

Chairman Drovdal: You are correct that if this is an amendment coming in that we didn't have a full hearing on it, but we will have a full hearing before we are done. There were inequities before they signed the agreement which were far worse. Hopefully, the agreement adjusted some. There are inequities all over. You can't argue that point, but if the crude oil trigger kicks on, there are going to be really big inequities. This actually closes the inequity down because the minimum tax would be 8¾% after the first eighteen months or seven if the trigger kicks on, it will be 5% and an even greater inequity to the tribe.

Representative Froelich: Mr. Chairman, may I rebut that? I agree with you that if that trigger kicks in, the state will lose a ton of money; but once we replace that trigger with 8 3/4% and the trigger would go off for five months, the trigger is going to lose a ton of money that way compared to what they are getting today. Without a fiscal note, I have a real hard time. Five months from now when the trigger goes back on, then we are back into the way. The tribe deal is a whole different deal. The tribe and the state didn't negotiate that because if you look in here, the initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixteen months on the reservation. That was what was done before; that is not the negotiation they did this last summer. (10:02)

Vice Chairman Drovdal: Any other discussion?

Representative Pinkerton: I thought that the oil interests were opposed to the original bill. Oh, so with the amendments, they are no longer opposed? Actually the current tax system seems fairly fair to me. When the price drops, the loss of that 6½% seems to be incentive. I think that is why the bill was originally drawn up that way in that the co-cost to the state, while the percentage is there, the price is so low it is realistically $30 a barrel or IMAX $48. It is not a large number of dollars involved. When the price is back up around $60 a barrel, which is what the Governor's economic data shows, then that 3½% difference between this bill and the 2.75% is a much larger number of dollars. The percentages and the dollars have to work together. I just talked to some folks at Marathon. I think our oil industry and they told about three rigs now (inaudible). They agree that both for the state and the oil industry that we are better off staying with our current formula. I will oppose this bill and the amendments.

Representative Froseth: Could I request we either hold this for a few minutes or take a break? Chairman Belter had to go to judiciary and I am due there ten minutes ago.

Vice Chairman Drovdal: We won't vote until you come back. I would like to follow up on Representative Pinkerton's motion. We did visit with the oil company a couple of times. They are not sure this is saving a lot of money because they are sure it is going to drop down to the

5% tax or with this bill a 7%. They just continue to argue that 11½% is one of the highest in the nation and needs to be adjusted. They are willing to work with us. It also helps the North Dakota budget because we have less fluctuation in our tax coming from oil revenue which is fixed at 8¾% other than brand new wells. That will help the ND budget a bit better. You can look at this in many ways—how it benefits and how it doesn't. Any other comments?

Representative Froelich: I agree with you. There are many ways to look at it. I have studied North Dakota and other states. We give a lot of exemptions, not only in oil but a lot of other things like Representative Grande said; but if you study this, there are a lot of things we give exemptions for in oil that other states don't allow. I will give you just one example with stripper wells. No other state says you can have a stripper well forever. You can argue this thing back and forth, but what we have to do is what is in the best interest of the state and what is going to make the state the most money. Once this oil is out of the ground, it is gone. Our grandkids and great grandkids are not going to have that opportunity.

Vice Chairman Drovdal: We will take a 20 minute break.

Upon resuming;

Vice Chairman Drovdal: I call for a voice vote on amendment .0202. All those in favor signify by saying "aye". **The amendments were adopted. (2 nays).**

Representative Kelsh: I would like to offer a second amendment and that would be on page 4, line 20 that we replace 6 1/2% with 5 ½% instead of the 3.75% currently amended.

Vice Chairman Drovdal: On the amendments replace 3.75% with 5.5% so that would be a ½% increase—no a 1% decrease. We have a **motion to further amend HB 1235 on page 4, line 20 to go from 3.75% to 5.5%.** Representative Kelsh, we have to put the 5 in too because we took that out. We have a **second from Representative Froelich.** Any more discussion? **(5:49)**

Representative Weiler: What is the purpose of this?

Representative Kelsh: I would support the bill removing the trigger if we protected the state a little bit more by lowering it, keeping it at a level where we are still competitive with other states, but still protecting the state revenue stream.

Vice Chairman Drovdal: If we did that and passed this bill, all current wells, if the price trigger did kick in, instead of going to 5%, if we pass this, they would go to 10.5%. In other words, they would go from 11.5% to 10.5%.

Representative Headland: Mr. Chairman, I think the trigger is gone.

Vice Chairman Drovdal: I am trying to compare with current language, but the trigger would be gone. You are right. We passed that. I stand corrected. Any more discussion? (inaudible). Hearing no more discussion, I call for a voice vote on the amendment to amend the bill further. **Motion fails.** We now have 1235 before us as amended. I have a motion by **Representative Grande** to **"do pass as amended" and a second from Representative Brandenburg.** Any further discussion?

Representative Kelsh: To me, this seems unusual that we don't have a fiscal note and yet we have to vote today because we have to get bills out that have a fiscal vote. Yet we are voting on an amended bill that does not have a fiscal note. I question that process.

Vice Chairman Drovdal: I agree with you to quite a degree because we cannot request a fiscal note because of the legislative process until amended and the bills have to be out today so we are behind the eight ball on this. The intent was to be kind of revenue neutral and we weren't sure if 8.75% or 9% or 8 ½% was revenue neutral. I think when this gets to appropriations, they will have a fiscal note because they deal with the money. We deal with the policy that we think needs to be changed and that is what we are actually telling them.

They deal with the money part of it. I don't know if that helps your conscience or not. You are right.

Representative Kelsh: I am not blaming anyone on the committee, but I think gets rushed and we are voting on things we don't really know what effect it will have on the budget.

Vice Chairman Drovdal: Point well taken. I think we are all concerned about that. We have been trying to get fiscal notes for quite awhile, but I will assure you we will have another look at it, maybe not in committee but we will have another look at it. **A roll call "do pass as amended" on HB 1235 resulted in 7 ayes, 5 nays, 1 absent/not voting. Representative Froseth will carry the bill. It was his amendment.**

Representative Kelsh: I would like to request a **minority report on the amendment that we defeated.**

Vice Chairman Drovdal: That is just granted, isn't it? Make a note on this that a minority report needs to be prepared on the defeated amendment on 5.5% on the voting sheet.

(A discussion followed on the specifics of a minority report.)

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1235**

House Finance and Taxation Committee

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Hearing Date: February 11, 2009

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Committee Clerk Signature

Minutes:

Chairman Belter: Committee members, we won't act on HB 1235 this morning, but I believe Representative Froseth has amendments.

Representative Froseth: Would you like to have Cathy explain these.

Kathryn Strombeck, Research Analyst: I am referring to a set of amendments 90099 on February 2. Basically, they don't line up with the original bill so please, Representative Froseth, correct me if I am making any incorrect assumptions here. What I believe they do are three major things: they remove the current law trigger provisions in the oil extraction tax, they reduce the overall oil extraction tax rate from 6.5% or any of the trigger rates to a 6.275% and there is a new well provision similar to what you enacted last session for the Bakken Formation. This time it is for all new wells, which is a reduction from the fixed 3.75% rate to 2% so an additional 1.75% rate reduction on new wells for the first 75,000 barrels or the first \$4.5 million worth of gross value or the first eighteen months. As you all know, we just did a new forecast and presented in on Monday. In that forecast, we are assuming the trigger provisions in current law do, in fact, retrigger, and they retrigger starting the last month of the current biennium and the first seven months of the next biennium. There is an assumption of eight months of triggered incentives. What this has done basically is reduce the revenue forecast by about $76 million so the amendments we are talking about here remove those provisions so you start right off the bat with a positive $76 million to the state in total. That is not just the state general fund; that is total revenue by removing the trigger provisions. If you have a copy of the memo, that is the very top thing in that little table at the bottom of the amendment on the bill.

Representative Froseth: Kathy, will you say that again.

Kathy Strombeck: The trigger assumptions that we have right now in the brand new forecast are that the incentives would trigger back on in May, which would be June revenue, so the final month of the current biennium, the incentives would be triggered on and would remain triggered on for the first seven months of the next biennium. That is a reduction or incentive if you will to the oil industry totaling about $76 million. It is a loss in total revenues of $76 million. The provisions of this amendment repeal all that and give a revenue positive of that same $76 million. That is the first key feature in this amendment. The second one, which is really the big one with the fiscal impact that makes the most difference, is the 3.75% oil extraction tax rate. That is shown in the second line, $13 million in the current fiscal year because it does have an emergency clause on the amendments, which does make sense since we are scheduled to trigger in the current biennium and the emergency clause would prevent it triggering and then have it immediately going away. The emergency clause makes sense, but it does have a negative $13.8 million fiscal hit in the current biennium, as well as $253.8 million in the next biennium. The rate reduction provision is really a big fiscal component to this amendment. The final feature is the new well 2% rate, which is only an additional 1.75% down from the fixed 3.75% in the amendment. That is expected again to have a little tiny impact on the current fiscal year and a bigger impact of $18.8 million in the biennium.

Representative Froseth: That would be once the trigger period...

Kathy Strombeck: The trigger is May through January; but in terms of the new well, basically we took the trigger away. That is the first thing we did in this fiscal analysis is remove that trigger. The amendments of this bill remove that trigger entirely. That's really not on the table anymore, but it raises the overall forecast by $76 million.

Representative Froseth: That comes into play after January 1st, 2010.

Kathy Strombeck: Actually no. The whole thing would become effective on May 1. Any production after May 1, any new wells after May 1 would be subject to a holiday, the 2% rate. All oil extraction tax rates, including on all existing production, would become 3.75% and the trigger, which in the current law and in the forecast is assumed to trigger, doesn't in fact trigger. It goes away completely.

Representative Froseth: The new 2% reduced rate after the triggers go off; this $18.8 million would be the reduction from the 8 3/4% rate to the 7% rate for the balance of the biennium.

Kathy Strombeck: That is all 25 or 26 months, not just after the trigger because the trigger is no longer in there. From that day forward, you are correct. It is an additional 1.75% reduction on new wells.

Representative Headland: What assumption are they using as far as production number of barrels? Are they expecting production to increase?

Kathy Strombeck: Yes, production goes from 205,000 barrels to 225, 000 barrels throughout the biennium in increments every six months or so. We worked with Lynn Helms to determine that. The price I think you probably recall is assumed to be about $49 for the first year of the biennium and about $59 for the second year of the biennium.

Representative Headland: Your assumption is that the trigger is off. What impact will it have on these numbers if the trigger stays on? I am assuming it would have quite a different...

Kathy Strombeck: The current law incentives go away in this bill so the trigger on–trigger off is no longer a discussion; they just go away. Under current law, if you don't pass this bill or don't do anything, it becomes a point of forecast right of $77-78 million current law incentive to the industry but for each month that the trigger remains on over and above what we forecast, there is about an additional $8½ to $9 million benefit to the oil industry under current law for each month the forecast is off.

Representative Froelich: The first question is with the trigger. Is that incremental or does it just drop right away? My understanding is it goes away.

Kathy Strombeck: I am not sure what you are meaning by incremental. In fact, what it does is it brings the 4% rate back in place immediately for all production that is at least 24 months old. It also brings in a complete oil extraction holiday for all production that is within the first 24 months if it comes from a horizontal well and either 12 or 15 months, I am not sure which, if it comes from a vertical well. It isn't really incremental; it is kind of immediate; but it depends on how old the well is.

Representative Froelich: There is a variation so that 6½% is just not going to run away from everything so there are a lot of variations in there.

Kathy Strombeck: That is correct. There is a little portion of production that has to be production from wells drilled before April 27, 1987, 23 years ago, and those wells would still pay 6½% a month; they are stripper properties.

Representative Froelich: You are familiar with the tribe and the state agreement last year. That also would have a bearing on this because the tribe and the state signed 11½%. Now I don't know if there is anything in the trigger; but if there is anything in that agreement about the trigger.....

Kathy Strombeck: I would have to check on that. Actually I am not sure. They are probably more aware of that than I am.

Representative Froelich: My point is that we are going to have problems; well we have problems on the reservation already. Now we are going to have trust properties on the reservation at 11½% tax, the trigger goes on right across the line over on the non-reservation lands and it could drop down to as low as 5%, correct? That gets into a whole other scenario. Mr. Chairman, I think I ought to quit and defer discussion to committee.

Representative Froseth: On that agreement between the tribes and the state, I don't remember the provisions of that bill, but are those agreements ongoing or were they just to make one tax and then the agreement goes off or is it an ongoing negotiation?

Kathy Strombeck: I believe it was for 24 months. I believe production covered under this current agreement states that production beyond those 24 months probably needs to be covered by a different agreement or reverts back.

Representative Froseth: So if there is no new agreement made, it just stays where it is at then at 11½%?

Kathy Strombeck: That is correct.

Representative Froelich: That is the complicated part of this whole issue. The state can tax 5% if it is Indian land or non-Indian land; that's the law. If the agreement goes away, the tribes could charge any tax they want on Indian land—any tax. Am I correct? That is why this agreement was such a big deal because the state and the tribe came together and said the maximum tax we will charge is 11½%. That is the 6 ½% plus the 5%. Now that is just on Indian land. We have a glitch in the old law that says, for lack of a better term, white land is only charged 5% on the reservation. You have a big discrepancy there. We are actually giving the oil companies an incentive to drill on non-Indian land which is probably a little bit touchy on the constitution. I have a lot of numbers here, but it is still really not simple.

Representative Weiler: A question for Representative Froelich. Didn't the tribes agree to that last session? That is what they agreed to.

Representative Froelich: They had to agree to that part of it because the white land on the reservation was locked in by statute. The government couldn't negotiate it. It was a bone of contention because now you have two different sets of pieces of property—white land and Indian land. The tribe could negotiate the Indian land; but because of our current statute, they could not negotiate 6½% white land. I don't know if I am explaining this properly. I have information here to explain it.

Chairman Belter: That is an issue for another day.

Representative Froelich: I tend to disagree with you there because if we don't fix this problem on the reservation, it is going to blow up. When the tribes and the state don't renew an agreement, we are back to where we were five years ago. Am I not right? Two years ago.

Representative Froseth: There isn't much that we can do other than renew the authority for the Governor to negotiate with the tribes for a new tax agreement. Isn't that right? We can't do that legislatively in this committee.

Representative Froelich: I hate to belabor the fact, but yes we can because we have it in the code that says we cannot go above 5% royalty on the reservation. The Governor can't change that; that is where his hands are tied. We need to release his hand and say okay, tax on the reservation should all be the same. Part of this bill is dealing with that.

Chairman Belter: Representative Froelich, my suggestion would be that that is probably a hearing all in itself, isn't it?

Representative Froelich: I believe if you had industry here, they would agree with me.

Chairman Belter: We have to act on this bill today. Do you have amendments prepared?

Representative Froelich: I have some amendments on another issue, but.

Representative Froseth: Just a suggestion that that should probably be taken to leadership and go through the delayed bill process.

Representative Froelich: It fits in this bill right here.

Chairman Belter: We have this information from Kathy and we are not going to act on this bill this morning. We will be acting on it this afternoon after we finish legislative session. I believe this is the final bill that we have to deal with in our committee. We will recess until after session.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1235**

House Finance and Taxation Committee

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Hearing Date: February 11, 2009

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Minutes:

Chairman Belter: We have a motion to reconsider HB 1235 from Representative Drovdal and a second from Representative Weiler. By a voice vote, the **motion to reconsider HB 1235 carried.** We have HB 1235 in front of us. What are your wishes?

Representative Froseth: I would like to offer hog house amendments. I didn't have these amendments officially drafted because this bill has been going back and forth. I would like to keep this vehicle because there could be some changes in oil pricing before the end of the session. It sounds like the extraction tax trigger is going to be triggered so that 6½% extraction tax will come off. We don't know how long it will stay off, but we may want to take a look at it again before we leave the session. I would like to have an amendment that would only change an incentive for the first 75,000 barrels of oil. On page 2 of the amendment, section 5.

Vice Chairman Drovdal: Your motion is to strike everything with the exception of section 5 of the .0203 amendment. The only thing left of the .0203 amendment is section 5.

Representative Froseth: This will give incentive to new oil production and it will only be in effect when the extraction tax is on. It is expected to come on and then it will reduce extraction tax 2% so there will be a total of 7% of new oil production on the first 75,000 barrels up to 18 months or the first $4.5 million gross value at the well. It is limited like the one we did before with total production of the first 75,000 barrels. That could have amounted to a lot more than $4.5 million.

Chairman Belter: On horizontal wells only?

Representative Froseth: No, all of them. There are other formations they are going into now like below the Bakken formation. This incentive might help that. Another reason behind this is that the price of being a feasible well in different areas varies so much. In Mountrail County, they are drilling wells in the Bakken Formation and they can recover oil at North Dakota price of $20 per barrel for the amount of wells they are covering and make that a feasible productive well. In Burke County, the price of oil has to reach somewhere in the $80-95 per barrel range to make that type of well feasible because of less production and quality of oil. Each county has a different breaking price on oil. I think the exploration in Mountrail County will continue because they have paid some huge prices for wells and leases in that area. This will probably spur some production in Burke County, Dunn County, and Ward County. I would move that amendment.

Chairman Belter: We have a motion from Representative Froseth to move his amendments and a second from Representative Wrangham. Any discussion?

Representative Weiler: First of all, I don't know what the timetable is to get an official fiscal note of the bill he came down here with—not the amendment but the bill 1235. I think the fiscal note is a joke and I don't think it is going to be anywhere near that high. I think that somehow we have to start moving towards one rate and forget this trigger stuff. This is ridiculous. We need to go to a flat rate no matter what the price is. I like the bill that we had in front of us so I am going to resist the motion.

Representative Pinkerton: Talking about the amendment, these numbers from Kathy Strombeck, the incentive is worth $41 million through November of this year. Of the 224 wells that qualify, only 39 have reached their cap of 75,000 barrels so it is difficult to know how much that incentive will grow. When we saw the fiscal note last time, I think it was about $10 million. I think we should be happy that it is $41 million as far as state income is concerned, but it is difficult to go back to my consumers and say that they should continue to pay $4 gas. I think the industry has pretty much perfected their system of drilling horizontal wells. There are always improvements to be made, but it would seem to be to help somebody perfect a system that would encourage development. I just don't know if we should continue that incentive, particularly in the face of the trigger probably going in. It just doesn't seem reasonable so I would oppose this.

Representative Froseth: In response to Representative Weiler's concern, I don't know when the present tax structure was put into place. I don't know that I can remember when the triggers came on so the oil companies got the benefit of the 5% production with the 6½% extraction tax going away. I think it did back in the 80s, but now the oil companies are right on the brink of having that 6½% extraction tax go away for about 8 months. I kind of feel like we owe it to them to have 6½% tax go away for awhile because they have been paying up to 11½%, which is one of the highest in the nation. Now we are talking about jerking that rug right out from under them when they are about ready to get a big tax break. I don't know that that is really fair either. We are satisfied as long as they are paying 11½%, but now we're on the threshold of going down to 5%, are we being fair with them to start changing the tax structure? I agree with you that eventually we will come up with one flat rate, but I don't think now is the time. Maybe the next session would be the proper time to do that.

Representative Drovdal: I am not sure how to respond on this. We did put the solution in last time and it was successful. Thank goodness it was successful because we have got more than $1.2 billion in the treasury and a lot of it came because of the oil activity and also because the price of oil went to $145 a barrel, which nobody expected. That is why we are facing the fiscal note on this. Part of the reason we considered this is because two Democratic representatives were saying that this was what should be done—it should be continued on. I am really surprised Minot doesn't recognize the importance of continuing to push to make sure that the oil companies will continue to drill even if the prices go up to $100 to $200. We are putting on the $1.5 cap, which we didn't before, and that protects the state. That would actually lower the $41 million by considerable dollars. We, in the legislature, really need to get around to addressing it pretty soon. This doesn't do it. (inaudible). Things may look a lot different before we get done, but I think for now I would like to see this continue on. We are going to vote on this more than one time.

Representative Froelich: We can debate the incentive or amendments all we want; but no matter what we do, we have to be mindful of a couple of things. There are other factors involved in this; counties and cities are all going to come in on the same bill. It is not just a general fund bill.

Representative Drovdal: This doesn't touch production tax.

Representative Froelich: No but there are other things that fall into other places too.

Representative Pinkerton: We in this committee have often times looked at whether when we spent these dollars for incentives, they would actually cause an increase. I certainly believe that the incentive we set up last time was well worth the money, but now I question, with the incentives built into the bill already (the trigger), whether it will be worthwhile. Will there be a lot more drilling because of it or will drilling only occur when the price comes back up? You have to think that these wells mostly produce when--what were we told that production drops 60% in the first year? If I were in the oil business, whether I got this incentive or not, I would perhaps be reluctant to do the drilling when the price is as low as it is currently.

I am certainly no expert, but I don't believe that the incentive is going to produce the reward we got last time.

Chairman Belter: Any other discussion? If not, we have a **motion to accept the Froseth amendments** and we will take a roll call vote resulting in **7 ayes, 6 nays, 0 absent. The motion carries.** We have 1235 before us. We have a motion got a **"do pass as amended" and be rereferred to appropriations** from Representative Brandenburg and a second from Representative Froseth. A roll call vote resulted in **8 ayes, 5 nays, 0 absent. Representative Froseth will carry the bill.**

FISCAL NOTE

Requested by Legislative Council
03/20/2009

Amendment to: Reengrossed HB 1235

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1235 Second Engr with Senate Amendments creates a new well incentive for oil production that occurs from a new horizontal well drilled and completed after April 30, 2009 during any periods when current law incentives are "triggered off", and oil prices (West Texas Intermediate) are below $55.

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.*

HB 1235 Second Engrossment with Senate Amendments creates a new well incentive by imposing a reduced oil extraction tax rate of 2% for production from a new horizontal well drilled and completed after April 30, 2009, beginning with a period when current law incentives are "triggered off" and the price of oil is below $55. The incentive for each well is limited to the first $4.5 million in gross value, the first 75,000 barrels of oil produced, or the first 18 months after completion, whichever occurs first.

This incentive would not be in effect during any time when the current law incentives are "triggered on". In effect, this bill creates a second price trigger, enabling new horizontal wells to recieve a reduced oil extraction tax rate of 2%. This new trigger would stay in effect until prices rise to $70 and above. At that point, this incentive would become ineffective, except for wells having already been drilled and completed during a "triggered on" period. These wells would retain their reduced rate incentive until they produce for 18 months, gross $4.5 million, or 75,000 barrels, or become classified as a stripper well.

The fiscal impact of HB 1235 Second Engrossment with Senate Amendments is zero relative to the official Legislative Council revised February forecast. This forecast assumes the current law incentives trigger off at a time when prices are above $55 and are assumed to continue to escalate through the rest of the biennium. If this occurs, the new trigger mechanism in this bill would not trigger on, and this incentive would not become effective. If oil prices and revenue fall below forecast, this incentive would become effective providing tax relief to new wells.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

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

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	03/23/2009

FISCAL NOTE

Requested by Legislative Council
03/10/2009

REVISION

Amendment to: Engrossed
HB 1235

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				($49,800,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1235 Second Engrossment creates a new well incentive for oil production that occurs from a new horizontal well drilled and completed after April 30, 2009 during any periods when current law incentives are "triggered off".

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.*

HB 1235 Second Engrossment creates a new well incentive by imposing a reduced oil extraction tax rate of 2% for production from any new horizontal well drilled and completed after April 30, 2009. The incentive for each well is limited to the first $4.5 million in gross value, the first 75,000 barrels of oil produced, or the first 18 months after completion, whichever occurs first.

Generally, this incentive would not be in effect during any time when the current law incentives are "triggered on" as the current law incentives are more beneficial to the oil industry than those contained in this bill. Therefore, the negative fiscal impact is calculated to occur only during the final 15 months of the 2009-11 biennium, when the current law incentives are assumed to trigger back off due to rising oil prices. This is consistent with the February 2009 Legislative Council forecast.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The fiscal impact of HB 1235 Second Engrossment is estimated to total -$49.8 million. This impact is expected to reduce permanent oil tax trust fund revenues by an estimated $29.9 million, and resources trust fund and education fund revenues by $9.9 million each.

This fiscal impact assumes 20 new qualifying wells are drilled each month with average production of 300 BOPD for the first year, declining 50% per year. The provisions of the bill limit the incentive to 75,000 barrels for each well, which is assumed to occur on the average during the third quarter of production for each new well.

This fiscal note was revised to tie in to the Legislative Forecast assumptions about oil prices and to provide more detail about the new well assumptions.

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

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

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	03/10/2009

FISCAL NOTE

Requested by Legislative Council
02/20/2009

Amendment to: Engrossed
HB 1235

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				($57,000,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1235 Second Engrossment creates a new well incentive for oil production that occurs from a new well drilled and completed after April 30, 2009 during any periods when current law incentives are "triggered off".

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.*

HB 1235 Second Engrossment creates a new well incentive by imposing a reduced oil extraction tax rate of 2% for production from any new horizontal well drilled and completed after April 30, 2009. The incentive for each well is limited to the first $4.5 million in gross value, the first 75,000 barrels of oil produced, or the first 18 months after completion, whichever occurs first.

Generally, this incentive would not be in effect during any time when the current law incentives are "triggered on" as these current law incentives are more beneficial to the oil industry than those contained in this bill. Therefore, the negative fiscal impact is calculated to occur only during the final 15 months of the 2009-11 biennium, when the current law incentives are assumed to trigger back off due to rising oil prices. This is consistent with the February 2009 Legislative Council forecast.

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

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

The fiscal impact of HB 1235 Second Engrossment is estimated to total -$57 million. This impact is expected to reduce permanent oil tax trust fund revenues by an estimated $34.2 million, and resources trust fund and education fund revenues by $11.4 million each.

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

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

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	03/09/2009

FISCAL NOTE

Requested by Legislative Council
02/16/2009

Amendment to: HB 1235

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues		$5,840,000		($99,210,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engrossed HB 1235 makes substantial changes to the oil extraction tax. Primarily, the bill removes the oil price trigger, lowers the oil extraction tax rate, and provides an incentive for new horizontal and vertical wells.

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.*

Sections 2 and 3 remove the oil price trigger. This is expected to increase total oil extraction tax revenues by $8.705 million in the current, 2007-09 biennium, and +$66.970 million in the 2009-11 biennium. This is consistent with the trigger assumptions in the new February 2009 forecast, which assumes current law incentives "trigger on" for 8 months beginning with June 2009 revenues.

Section 2 also lowers the oil extraction tax rate from 6.5% to 5%. This rate reduction reduces oil extraction tax revenues by an estimated $2.7 million in the current, 2007-09 biennium, and $106 million in the 2009-11 biennium. This estimate assumes approximately 120 million barrels in the biennium would receive a rate reduction of 1.5%, and is based on the forecasted oil price averaging $59 per barrel.

Section 3 of the bill also grants two new well incentives with a rate reduction from 5% to 2% for the first 75,000 barrels produced from a new well or $4.5 million in gross value, or 18 months (36 months for a horizontal well) whichever comes first. These new well provisions will reduce oil extraction tax revenues by an estimated $165,000 during the 2007-09 biennium, and by $60.180 million in the 2009-2011 biennium. This estimate assumes new well production will gradually occur throughout the biennium, and will total 34 million barrels. The impact was computed based on the existing forecasted price averaging $59 per barrel, and calculated as a 3% rate reduction (from 5% to 2%).

The impact of Engrossed HB 1235 affects the permanent oil tax trust fund (60% of the impact), the resources trust fund (20% of the impact) and funds distributed according to Article X of Constitution (20% of the 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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	02/16/2009

FISCAL NOTE
Requested by Legislative Council
01/12/2009

Bill/Resolution No.: HB 1235

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				($175,300,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1235 makes substantial changes to the oil extraction tax. Primarily, the bill removes the oil price trigger, lowers the oil extraction tax rate, and provides an incentive for new horizontal wells.

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 2 removes the oil price trigger. This is assumed to have no fiscal impact in the 2009-11 biennium, because the current forecast (prepared in November 2008) does not assume oil prices fall low enough long enough for the incentives to re-trigger at any time during the next 30 months. If the new legislaive forecast - which is being prepared in Jan/Feb 2009 does assume the incentives re-trigger, the trigger removal provisions contained in this bill will have a significant positive impact on biennial revenues.

Section 2 also lowers the oil extraction tax rate from 6.5% to 5%. When the incentives are "triggered off", as they are currently, and as they are assumed to remain throughout the 2009-11 biennium, this rate reduction reduces oil extraction tax revenues by an estimated $112 million in the 2009-11 biennium. This estimate assumes approximately 120 million barrels in the biennium would recieve a rate reduction of 1.5%, and is based on the forecasted oil price averaging $62 per barrel.

The new subdivision 4 at the end of Section 3 of the bill grants a new well incentive with a rate reduction from 5% to 2% for the first 75,000 barrels produced from a new horizontal well. This will reduce oil extraction tax revenues by an estimated $63.3 million in the 2009-2011 biennium. This estimate assumes new well production will gradually occur throughout the biennium, and will total 34 million barrels. The impact was computed based on the exisiting forecasted price averaging $62 per barrel, and calculated as a 3% rate reduction (from 5% to 2%).

The impact of HB 1235 affects the permanent oil tax trust fund (60% of the impact), the resources trust fund (20% of the impact) and funds distributed according to Acticle X of Constitution (20% of the 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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	01/26/2009

90099.0202 Prepared for Representative Forseth
Title. February 2, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 2, remove the second "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 3, line 1, overstrike ""Horizontal well" means a well with a horizontal displacement of the well bore"

Page 2, overstrike lines 2 and 3

Page 2, line 4, remove "3."

Page 2, line 7, replace "4." with "3."

Page 2, line 13, replace "5." with "4."

Page 2, line 24, replace "6." with "5."

Page 3, line 21, replace "7." with "6."

Page 3, line 24, replace "8." with "7."

Page 4, line 20, replace "five" with "three and seventy-five hundredths"

Page 5, line 14, overstrike "**Exemptions from oil**" and insert immediately thereafter "**Oil**" and after "**tax**" insert "**exemptions and rate reductions**"

Page 10, replace lines 12 through 31 with :

"~~8.~~ 4. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

a. The well is located within the boundaries of an Indian reservation;
b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.

~~9.~~ 5. The first seventy-five thousand barrels of oil produced or the first four million five hundred thousand dollars of gross value at the well, which is ever is less, during the first eighteen months after completion, from a ~~horizontal~~ well drilled and completed ~~in the Bakken formation~~ after ~~June 30, 2007, and before July 1, 2008~~ April 30. 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under this subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty four months after completion.~~"

Page 11, line 2, replace "June" with "April"

Page 11, after line 2, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2/4/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House **FINANCE AND TAXATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90099.0202

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Froseth Seconded By ~~Headland~~ Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Voice

Total (Yes) ____________ No ____________

Absent ____________

Floor Assignment ____________

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

Amendments Approved

Date: 2/4/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House **FINANCE AND TAXATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amend

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Kelsh Seconded By Froelich

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Void

Total (Yes) ________ No ________

Absent ________

Floor Assignment ________

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

3.75 % to 5.5 %

p.4 L 20 replace 5% w/ 5.5 %

1% Decrease off current law

Motion Fails

90099.0205
Title.0400

Adopted by the Finance and Taxation Committee - Minority Report
February 6, 2009

VR
2/6/09
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 2, remove the second "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 2, line 1, overstrike ""Horizontal well" means a well with a horizontal displacement of the well bore"

Page 2, overstrike lines 2 and 3

Page 2, line 4, remove "3."

Page 2, line 7, replace "4." with "3."

Page 2, line 13, replace "5." with "4."

Page 2, line 24, replace "6." with "5."

Page 3, line 21, replace "7." with "6."

Page 3, line 24, replace "8." with "7."

Page 4, line 20, after "five" insert "and one-half"

Page 5, line 14, overstrike "**Exemptions from oil**" and insert immediately thereafter "**Oil**" and after "**tax**" insert "**exemptions and rate reductions**"

Page 10, replace lines 12 through 31 with:

"~~8.~~ 4. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

a. The well is located within the boundaries of an Indian reservation;

b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or

c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.

~~9.~~ 5. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a

2 of 2

~~horizontal~~ well drilled and completed ~~in the Bakken formation~~ after ~~June 30, 2007, and before July 1, 2008~~ April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~"

Page 11, line 2, replace "June" with "April"

Page 11, after line 2, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Minority Report

Date: February 4, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House **FINANCE AND TAXATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Grande Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Representative Froelich		✓
Vice Chairman David Drovdal	✓		Representative Kelsh		✓
Representative Brandenburg	✓		Representative Pinkerton		✓
Representative Froseth			Representative Schmidt		✓
Representative Grande	✓		Representative Winrich		✓
Representative Headland	✓				
Representative Weiler	✓				
Representative Wrangham	✓				

Total (Yes) 7 No 5

Absent (1) Froseth

Floor Assignment Representative Scott Kelsh

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

REPORT OF STANDING COMMITTEE (MINORITY)

HB 1235: Finance and Taxation (Rep. W. Belter, Chairman) A **MINORITY** of your committee (Reps. Froelich, S. Kelsh, Pinkerton, Schmidt, Winrich) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee.**

Page 1, line 2, remove the second "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 2, line 1, overstrike ""Horizontal well" means a well with a horizontal displacement of the well bore"

Page 2, overstrike lines 2 and 3

Page 2, line 4, remove "3."

Page 2, line 7, replace "4." with "3."

Page 2, line 13, replace "5." with "4."

Page 2, line 24, replace "6." with "5."

Page 3, line 21, replace "7." with "6."

Page 3, line 24, replace "8." with "7."

Page 4, line 20, after "five" insert "and one-half"

Page 5, line 14, overstrike "**Exemptions from oil**" and insert immediately thereafter "**Oil**" and after "**tax**" insert "**exemptions and rate reductions**"

Page 10, replace lines 12 through 31 with:

"~~8.~~ 4. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

a. The well is located within the boundaries of an Indian reservation;

b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or

c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.

~~9.~~ 5. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a ~~horizontal~~ well drilled and completed ~~in the Bakken formation~~ after ~~June 30, 2007, and before July 1, 2008~~ April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~"

Page 11, line 2, replace "June" with "April"

Page 11, after line 2, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

The reports of the majority and the minority were placed on the Seventh order of business on the calendar for the succeeding legislative day.

90099.0204
Title.0300

Adopted by the Finance and Taxation
Committee - Majority Report
February 6, 2009

VR
2/6/09
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 2, remove the second "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 2, line 1, overstrike ""Horizontal well" means a well with a horizontal displacement of the well bore"

Page 2, overstrike lines 2 and 3

Page 2, line 4, remove "3."

Page 2, line 7, replace "4." with "3."

Page 2, line 13, replace "5." with "4."

Page 2, line 24, replace "6." with "5."

Page 3, line 21, replace "7." with "6."

Page 3, line 24, replace "8." with "7."

Page 4, line 20, replace "five" with "three and seventy-five hundredths"

Page 5, line 14, overstrike "**Exemptions from oil**" and insert immediately thereafter "**Oil**" and after "**tax**" insert "**exemptions and rate reductions**"

Page 10, replace lines 12 through 31 with:

"~~8.~~ 4. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

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c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.

~~9.~~ 5. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a

~~horizontal~~ well drilled and completed ~~in the Bakken formation~~ after ~~June 30, 2007, and before July 1, 2008~~ April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~"

Page 11, line 2, replace "June" with "April"

Page 11, after line 2, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Majority Report

Date: February 4, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House **FINANCE AND TAXATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90099.0204 - [redacted]

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Grande Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Representative Froelich		✓
Vice Chairman David Drovdal	✓		Representative Kelsh		✓
Representative Brandenburg	✓		Representative Pinkerton		✓
Representative Froseth			Representative Schmidt		✓
Representative Grande	✓		Representative Winrich		✓
Representative Headland	✓				
Representative Weiler	✓				
Representative Wrangham	✓				

Total (Yes) 7 No 5

Absent (1) Froseth

Floor Assignment Representative Froseth

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

Rerefer to Appropriations

REPORT OF STANDING COMMITTEE (MAJORITY)

HB 1235: Finance and Taxation (Rep. W. Belter, Chairman) A **MAJORITY** of your committee (Reps. Belter, Drovdal, Brandenburg, Grande, Headland, Weiler, Wrangham) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee.**

Page 1, line 2, remove the second "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 2, line 1, overstrike ""Horizontal well" means a well with a horizontal displacement of the well bore"

Page 2, overstrike lines 2 and 3

Page 2, line 4, remove "3."

Page 2, line 7, replace "4." with "3."

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Page 10, replace lines 12 through 31 with:

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Page 11, line 2, replace "June" with "April"

Page 11, after line 2, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

FDate: 2/11/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken To reconsider HB 1235

Motion Made By Drovdal Seconded By Weiler

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Rep .Rod Froelich		
Vice Chairman David Drovdal			Rep.Scot Kelsh		
Rep.Mike Brandenburg			Rep.Louis Pinkerton		
Rep. Glen Froseth			Rep.Arlo Schmidt		
Rep. Bette B. Grande			Rep. Lonny Winrich		
Rep. Craig Headland					
Rep. Dave Weiler					
Rep. Dwight Wrangham					
Voice					

Total (Yes) No

Absent

Bill Carrier

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

Motion carried.

Adopted by the Finance and Taxation Committee
February 11, 2009

VR
2/12/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 2, remove the second "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 5, line 14, overstrike "**Exemptions from oil**" and insert immediately thereafter "**Oil**" and after "**tax**" insert "**exemptions and rate reductions**"

Page 10, replace lines 19 through 26 with:

"~~9.~~ 4. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a ~~horizontal~~ well drilled and completed ~~in the Bakken formation~~ after ~~June 30, 2007, and before July 1, 2008~~ April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~"

Page 10, line 27, replace "4." with "5."

Page 11, line 2, replace "June" with "April"

Page 11, after line 2, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2/11/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Froseth .0207 amendment

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Froseth Seconded By Wrangham

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Representative Froelich		✓
Vice Chairman David Drovdal	✓		Representative Kelsh		✓
Representative Brandenburg	✓		Representative Pinkerton		✓
Representative Froseth	✓		Representative Schmidt		✓
Representative Grande	✓		Representative Winrich		✓
Representative Headland	✓				
Representative Weiler		✓			
Representative Wrangham	✓				

Total (Yes) 7 No 6

Absent 0

Floor Assignment

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

Reconsider

Date: 2/11/09

Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Brandenburg Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Representative Froelich		✓
Vice Chairman David Drovdal	✓		Representative Kelsh		✓
Representative Brandenburg	✓		Representative Pinkerton		✓
Representative Froseth	✓		Representative Schmidt		✓
Representative Grande	✓		Representative Winrich		✓
Representative Headland	✓				
Representative Weiler	✓				
Representative Wrangham	✓				

Total (Yes) 8 No 5

Absent 0

Floor Assignment Froseth

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

Rerefer to Approp.

REPORT OF STANDING COMMITTEE

HB 1235: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1235 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 5, line 14, overstrike "**Exemptions from oil**" and insert immediately thereafter "**Oil**" and after "**tax**" insert "**exemptions and rate reductions**"

Page 10, replace lines 19 through 26 with:

"~~9.~~ 4. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a ~~horizontal~~ well drilled and completed ~~in the Bakken formation~~ after ~~June 30, 2007, and before July 1, 2008~~ April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~"

Page 10, line 27, replace "4." with "5."

Page 11, line 2, replace "June" with "April"

Page 11, after line 2, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2009 HOUSE APPROPRIATIONS

HB 1235

2009 HOUSE STANDING COMMITTEE MINUTES

HB 1235

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: **February 17, 2009**

Recorder Job Number: 9622

Committee Clerk Signature	Joan Prindle

Minutes:

Chairman Svedjan opened the hearing of 1235. This bill comes from Finance and Tax Committee.

Rep. Froseth, District 6, approached the podium and distributed amendment .0301 (Attachment A) which makes the bill a hog house. It is an incentive for drilling in a horizontal formation. The incentive is for the 75,000 barrels or the first $4.5 million of gross value at the well, whichever is less, for the first 18 months of production after completion. It carries an emergency clause and goes in to effect April 30, 2009. New production is subject to 2% of the gross value of the extraction tax. The oil industry feels the trigger may soon go off and they will lose the tax incentive. Testimony from Ron Ness was also distributed (Attachment B).

Chm. Svedjan: Your committee has not had a change to look at this since it became a hog house?

Rep. Froseth: This bill was rereferred to our Committee and we took this action to hog house the bill. There was a mix-up and we didn't get a draft until this morning—but it did have Committee approval.

Chm. Svedjan: Your committee has weighed in on this.

Rep. Froseth: Yes, on a vote of 8 to 5.

Rep. Williams: **You** said this is only in the Bakken formation; however I see a line drawn through the formation. Perhaps that the only place we are having horizontal drilling?

Chm. Svedjan: You are suggesting striking "the Bakken Formation.?"

Rep. Froseth: This applies to all horizontal wells.

Rep. Williams: Is the horizontal drilling primarily in the Bakken formation?

Rep. Froseth: Not necessarily. Most are horizontal. We didn't specify the Bakken because there are two formations under the Bakken that meet the horizontal technology.

Rep. Williams: When this originally came in was it primarily for the Bakken?

Rep. Froseth: Two years ago it was but things have changed a lot since then. There is now drilling in the Two Forks formation so we did not want this specific to the Bakken

Rep. Hawken: Since this is a hog house, can we assume the $99 million on the fiscal note is no longer accurate?

Rep. Froseth: We were told in Committee the fiscal note would be $39 million. If the trigger goes off, this will have no effect whatsoever. It must be almost impossible to calculate a fiscal note at this point.

Rep. Hawken: What would be the effect on the Common Schools Trust Fund and the Foundation Aid Stabilization Fund and the money that goes to the water? Those are all things are affected. Before we vote on this I would really like to know how it affects those entities, because it does.

Chm. Svedjan: (Read from the fiscal note the impact on these funds. See FN)

Rep. Froseth: I calculate it at: If this trigger price goes on or off again, the average savings on a well would $168,750 if the 75,000 barrels is in effect at a price of $50 per barrel. I used an average of $50 per barrel. That would bring in $3.75 million on the first 75000 barrels. The tax would amount to $168,750 per well. Who knows how many wells will be drilled with this incentive.

Rep. Berg: I would like an accurate fiscal note on this. I don't think it's as expensive as it says here.

Rep. Skarphol: I think the best guess is $39 million for the fiscal note. That's strictly a guess. What this incentive is endeavoring to do is keep the rigs drilling horizontal wells in ND. Without it we may see less activity or we may see the same activity but sometimes we have to make a small investment to get more development.

Rep. Williams: In October in 08 we had 98 rigs drilling in ND. Today we have 65 and it's estimated we might lose another 20 before the price of oil stabilizes and shows a turnaround. In 2007 we were the 9th largest producing oil state. Today we are the 5th. We have gone from 3600 producing wells in 2007 to 4200 producing wells in 2009. That last incentive worked greatly. There were about 200 new wells drilled last year. With the price of oil the oil companies are starting to back away. There are leases in Mountrail that I don't think they will walk away from. They expect the horizontal drilling play to move north into Burke County and west into Divide County and circle that whole that whole northwest area. I think without some kind of incentive in the couple of years they might just pull out and wait until the price comes back to where it's profitable for them. The cost of drilling those wells is not going to change that's why I think it is important that we offer some type of incentive at this time.

Rep. Skarphol: I move amendment .0301 to HB 135.

Rep. Wald: Second.

Chm. Svedjan: We have a call in to the tax department to see if Strombeck could come down and address this fiscal note.

Rep Williams: Sections 2 and 3 remove the oil price trigger.

Rep. Froseth: That's why I question this fiscal note.

Rep. Nelson: Two sessions ago we passed a bill to lower the extraction tax in the Bakken Formation because we were at a disadvantage to Montana at that time. Is Montana doing something similar? Are we creating more of an advantage for the Bakken and others? How would the tax rates pass within the Bakken formation with the passage of this bill?

Rep. Froseth: The only change would be that any new production from horizontal drilling would have a reduced rate of 2% on the extraction tax. Rather than a 6.5% rate, it would be a 2% rate. They have an 18-month timeframe to drill and take advantage of the incentive. I don't think it will entice rigs away from other states. Montana has a total rate of 9% and we have a total rate of 11.5% when the price of oil is over $48.50 per barrel. That's why we needed those two years ago to get the oil companies to move from MT to ND. Now the situation has changed. The price of oil has dropped down and the oil companies are not willing to sink wells into land and pull out $30 oil. That's why we need an incentive to keep the rigs that are here active and keep them exploring.

Rep. Nelson: Is it safe to say it's based on $59 per barrel price. If it goes up to $100 per barrel, the fiscal note should be higher than what is reflected?

Rep. Froseth: That's why the cap is there.

Rep. Delzer: I agree with the 75k barrels. Not sure I agree with the $4.5 million figure you come up with. It might be better capping that at half the cost of the well. If you had $100 oil what would the exemption amount to?

Rep. Froseth: It would be $262,500.

Rep. Delzer: If that's the case, I don't see why we need the $4.5 million cap.

Rep. Skarphol: When we put the 75 barrel limit in place two years ago, oil was $40 per barrel and we figured $3 million in drilling costs. When oil went to $140 per barrel, they got an exemption of $10.5 million in drilling costs. I think that was too much. When this was introduced it was with the caveat that the $4.5 million would be in place. If you think that is too high that's fine but I hope we leave some type of limit on it because I think giving that kind of exemption when oil goes up is inappropriate. This is based on $60 oil and that seems to be the number that most of the industry believes you have to have in order to have these wells be economical. I have no issue with reducing it, but I think we should keep some cap in place.

Rep. Froseth: That's exactly how it works.

Rep. Onstad: I am going back to the fiscal note. The language that is being adopted is similar to HB 1262 that failed and it's been put here as part of the hog house. That's based on $62 per barrel oil and that's $94 million. You are going to look at about $95 million as a fiscal note.

Rep. Froseth: That would be a good thing. I think the price is low. Everyone would be happy if it would stabilize somewhere between the $60 and $80 range.

Rep. Berg: This is getting more complicated than it needs to. The 75,000 barrels came from when we used to have 24 month exemption. It didn't matter if the well was a gusher or a dribbler—they got 24 months. This says "whichever is less." The $4 million is based on $60 per barrel. If the price is up there we know they are going to be successful and they don't need this incentive for as long. When we put this back in, there would be a negative impact on our GF for wells drilled between April 30 and the end of this biennium. If the trigger falls then we go back to the reduced tax of 3%. Are there limiters on the production tax?

Rep. Skarphol: Production tax does not have any exemptions.

Rep. Berg: On new wells if we are below the target price for five months, how do we treat a new well?

Rep. Froseth: They would pay the production tax only, for as long as the trigger is in place.

Rep. Delzer: My question is whether the $4.5 million is too high. We need a cap definitely.

Rep. Froseth: I understand your point and if you want to do something with the cap you can do that. I think it is reasonable the way it is and I think it would work. I don't think we will be hurt by it at all if it keeps the oil companies working.

Kathryn Strombeck, Office of the Tax Commissioner approached the podium to discuss the Fiscal note. I think we have most of the hog house in the first engrossment. It looks like you have combine both vertical and horizontal wells in here. The holiday component in the first engrossment was a negative $165.0 for the current biennium and negative $60,180,000 for the biennium. That would be more or less the same I believe on this hog house amendment.

Rep. Skarphol: Does that include vertical wells?

Ms. Strombeck: They didn't make a distinction between the two. The assumption is 60 new well per quarter. The price of oil is $49 in fiscal '10 and $69 for fiscal '11—an overall average of $59.

Rep. Skarphol: Did you calculate with the trigger on and the trigger off?

Ms. Strombeck: In the engrossment the trigger is removed. In the forecast we have assumed the trigger comes on for the very last month of the current biennium and the first seven months of the next biennium. This fiscal note will be quite different when you leave the trigger in place.

Rep. Hawken: Could you also do the Resource Water Trust Fund and the Common Schools Trust and Foundation Aid Stabilization so we have accurate figures on that as well.

Rep. Skarphol: The effects on the Water Resource Trust Fund and the schools fund are going to take place regardless of what we do with this incentive if the price of oil is low.

Ms. Strombeck: That is correct

Rep. Berg: The fiscal note dated 2.16.09, Section 3 grants two new well incentives from 5% to 2%. Aren't we going from 6.5 to 2?

Ms. Strombeck: I'm not sure how the hog house will react to the trigger.

Rep. Berg: Where you have Section 3 you are talking about a rate reduction from 5.5% to 2%

Ms. Strombeck: In the engrossment you are not. It seems you are not addressing the rate at all in this amendment. You are imposing a 2% rate on a new well. During a triggered environment, a new well would be exempt. There is some question as to how this would work during those 8 months triggered on. So there needs to be some sort of language that would dovetail these more effectively.

Rep Delzer: If the trigger goes off and any wells that drilled during the time the trigger is off, do they go back on when the trigger switches or are they exempt for 24 months.

Strombeck: They are exempt for 24 mo. when the triggers are on. When the triggers go off they go up to 6.5%. If the triggers come back on and they are still within their 24 months, they will get whatever is left.

Rep. Berg: We are assuming the trigger off and we will go to the lower rate where you get 24 months of no tax. It would seem that if we address that so it is more consistent, that may soften the fiscal note during this biennium

Ms. Strombeck: I think that would be correct. I was wrong on the $60 million. There needs to be some way for these to mesh.

Rep. Berg: We want to create an incentive. Our tax code is like this (up and down). These businesses want some stability. If we can dovetail these things so it will not have the fiscal impact but there is a consistent playing field that might make more sense.

Rep. Skarphol: The hog house merely goes into the in the existing law and makes the first $4.5 million of gross value and deletes the fact that it is the Bakken only and adds any well drilled after 30. There are no subtle changes. I don't see that there needs to be any dovetailing. It just sets the limit at $4.5 million.

Ms. Strombeck: I agree except for the fact that if they trigger on on that date, there would be no oil extraction tax for 24 months—and then you have this bill that says you have 2% tax for the first $4.5 million in gross value. That seems to be contradictory.

Rep. Skarphol: Would that not be the case with the statute as it is now?

Ms. Strombeck: Yes but we didn't reach that. Now it is likely that the incentives will trigger on.

Chm. Svedjan: Two questions: Fiscal note and whether to meld these together.

Rep. Wald: This has got to be a win-win. If the rigs keep declining this is all a moot point. The idea is to keep them here and keep them exploring. I don't know how you can lose.

Chm. Svedjan invited Ron Ness to the podium.

Ron Ness, President, North Dakota Petroleum Council: This bill is an attempt to flatten the tax structure as we saw in 2007. We have so many barrels at the top rate of the tax structure now that gets hard to do that now. You are teetering on the trigger on, trigger off thing. (39:00) When the Governor's budget came out and said the incentives would be triggered on beginning May 1 for 8 months into the next biennium, it threw that in to a tailspin. What the Committee tried to do was hog house back in the Bakken tax incentive for any new well. If we see a jump in prices, it resets everything for 5 months even though the price may have not have jumped enough to improve the economic scenario outside of Mountrail County. This incentive is only in place when those incentives are not triggered on. I believe the amendment is accurate. It reinstates a Bakken-type tax incentive. It does provide a protection against very high oil prices. It's around $39 million. If a well is not drilled the funds you talked about will not receive anything. We need an overhaul with this tax structure but it becomes very difficult when you are dealing with type of dollars we are dealing with right now.

Chm. Svedjan: I find that very helpful

Rep. Meyer: If we pass this with the exemptions triggered on, you will not be paying an additional 2%? This doesn't supersede the exemptions that are triggered on?

Mr. Ness: When the incentives are triggered on, this bill is not in effect.

Rep. Meyer: Where is the language that states that?

Mr. Ness: The last sentence in the amendment .0301.

Rep. Berg: When the price is low for 5 months and it triggers and every new well only pays for 24 months, regardless of what they produce. Would it make sense to take this amendment and say here is what we are going to do for all new wells—forget about the trigger? The trigger was slipped in a conference committee as an afterthought and I think it is coming back to haunt the industry. Would the industry be interested in a flat excise tax? Or a flat rate for new wells no matter what the price of oil is?

Mr. Ness: the trigger was put in place in 1987 and it was restructured in 2001. Last session when the price was high, but when that swing comes it is big. Not only does the state get 130% less tax, you get it a much smaller dollar figure. Every time we do this we end up with a complicated tax code. I don't think the industry is supportive of a tax increase on May 1. Industry believes the rate is going to 5% on May 1. The only way we are going to do this is to set a point in time out there and say on July 1, 2012, this is what the tax rate will be. It will be flatter and easier. Every time we do this have this discussion, we do this we end up with a tax code that is unbelievably complicated not only for the state but the industry. The industry believes the rate is going to 5% on May 1.

Rep. Berg: There are 8 months when it's off and 16 months when it is on. My thought was you are not going to lower the rate when there is no projection that we are going to be triggered off.

Mr. Ness: That's why you would have to do this long term.

Rep. Berg: (to Strombeck) What would be the blended rate be if it were set?

Ms. Strombeck: I'll look that up and get it to you.

Rep. Skarphol: The original bill had a flat rate. We eliminated any reference to the extraction tax. It's something that could be looked in the Senate.

Chm. Svedjan: We have a motion on the floor. It sounds to me that this is acceptable to the industry. We don't have an accurate fiscal not that relates to the hog house. I could hold the bill until we receive the revised fiscal note.

A voice vote was taken to accept amendment .0301 to HB 1235.

The amendment was adopted.

Rep. Berg: My reason for voting no is that we need to know the fiscal note.

Chm. Svedjan: **We will hold the bill until we get the fiscal note**.

Later in the same bill the Chairman Svedjan opened discussion of HB 1235.

Chm. Svedjan distributed a memo from Kathryn Strombeck (Attachment C).

Rep. Froseth approached the podium to discuss Ms. Strombeck's memo. The memo states that it will have an impact of $65 million. That equates to a loss of $39 million to the Permanent Oil Trust Fund and a loss of $13 million each to the Water and Education funds.

She based her projection on 22.5 million barrels of oil which would equate to 300 new wells in the projected time when the trigger would come on.

Rep. Skarphol: She used $49 a barrel and $69 a barrel in doing this calculation. I asked her that based on your projections for oil if you predict $800 million in revenue to the State, what your resources trust fund and the common schools trust fund receive. She said $58 million net. Without these incentives they would have received $71 million. It's not like we're stealing all the money.

Chm. Svedjan: Do you think the projections on the production side and price side are a little rich?

Rep. Froseth: I hope she's right on the production side. She is doing an average of $59 per barrel. Your guess is as good as mine.

Rep. Berg: Are there any other bills dealing with oil and gas that deal with this extraction tax out there?

Rep. Skarphol: I think this is the only one left

Rep. Froseth: I believe we have 1224 which deals with the distribution of funds to counties and cities but we haven't taken that up on the floor. In the Committee we wanted to keep this bill alive. We don't know what's going to happen with the price of oil. We would like to see it survive.

Rep. Wald: This morning you were given a handout from Ron Ness. This is based on $80 oil, but if you divide that in half, can we afford not to do this? If we're going to keep these rigs drilling in ND, I don't think we can afford not to do this. **I Move a Do Pass as amended**

Rep. Skarphol: Second.

A roll call vote was taken: Yes: 22, No: 2, Absent 1 (Kerzman)

HB 1235 as amended by 90099.0301 was passed.

90099.0301
Title.0400

Prepared by the Legislative Council staff for
Representative Froseth
February 17, 2009

VR
2/18/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1235

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax rate reduction for horizontal wells; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

9. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed ~~in the Bakken formation~~ after ~~June 30, 2007, and before July 1, 2008~~ April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.

SECTION 2. EFFECTIVE DATE. This Act is effective for wells drilled and completed after April 30, 2009.

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

Renumber accordingly

Date: 2/17/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

Full House Appropriations Committee

Day 31

☐ Check here for Conference Committee

Legislative Council Amendment Number 90099.0301

Action Taken Adopt amendment .0301

Motion Made By Skarphol Seconded By Wald

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glassheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Voice Vote - carries

Date: 2/17/09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

Full House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .0301

Action Taken Do Pass as Amended by .0301

Motion Made By Wald Seconded By Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber		✓
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew	✓		Rep. Kerzman		
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson		✓			
Rep. Wieland	✓				

Total (Yes) 22 No 2

Absent 1

Floor Assignment Rep. Frosth

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

REPORT OF STANDING COMMITTEE

HB 1235, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (22 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1235 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax rate reduction for horizontal wells; to provide an effective date; and to declare an emergency.

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

Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HB 1235

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/10/2009

Recorder Job Number: 10585

Committee Clerk Signature	Carrie Wennage

Minutes:

Chairman Cook: Opened the hearing on HB 1235.

Representative Bob Skarphol, District 2: Testified as sponsor and in support of the bill. (Explained the bill and explained what the House Finance and Tax committee did)

2.27 **Chairman Cook:** If I am reading this right, then if the price per barrel were above $60, it would be the 75,000 barrel cap that would play in. If it is under $60 per barrel then it would be the other way around, then the $4.5 million limitation would apply?

Representative Skarphol: Yes.

3.05 **Representative Glen Froseth, District 6:** Testified as sponsor and in support of the bill. As was already said, this bill is drastically different from what was introduced in the House. This is basically the same incentive that was offered two years ago for horizontal drilling. The incentive bill that we passed two years ago was very successful in bringing companies into North Dakota and in developing the Bakken formation. There is a new fiscal note that brought it down considerably. A reduction of 4.5% of the extraction tax, so it would be at 2% when the when the trigger is off. If the trigger is on this bill has no effect at all. It would amount to about $168,000 per well, at the average production of about $59 per barrel. It isn't a big savings to the oil company, but it is probably enough incentive to get them to stay in North Dakota.

6.55 **Chairman Cook:** Just for your information the new fiscal note is at $49,800,000.

Senator Triplett: You said that you think that the Bakken exemption we did last time was very effective in drawing companies to North Dakota. Do you have anything to back that up?

Representative Froseth: I don't have any hard evidence to back that up. I think that others that are here to testify might have those figures.

Senator Triplett: Do you really think it will make any difference to the oil companies now with the prices as low as they are?

Representative Froseth: It will have even more of an effect to entice them to come or stay in the state the way I look at it. Their profit margins are cut pretty thin right now.

9.06 **Ron Ness, North Dakota Petroleum Council:** See Attachment #1 for testimony in support of the bill as amended.

15.25 **Senator Triplett:** I supported your bill two years ago and I think that we will not have a problem with this one. May I suggest that you provide us with charts that have a layer with the price over the top of that as well?

Ron Ness: We can do that, and we recognize that prices affect things greatly.

Senator Triplett: Testimony on page 3 is very helpful, but I want to understand that the sixteen new wells will each take $4.5 million in taxes. Are you building into that the assumption that they will get the exemption that we are talking about here or are you not?

Ron Ness: That $4.5 million comes off the previous page which is a document that shows what a well means to the state of North Dakota which we did at the end of December when it was based on $80 per barrel. No one knows what he price per barrel will be.

Senator Triplett: Could you recalculate this in regards to if we pass this bill?

Ron Ness: Certainly.

Senator Triplett: To the extent that you know the answer, where in the price structure do you think the tax incentive is the most helpful, do you think it will make a difference?

Ron Ness: At low oil prices, low taxes really matter. At the current price of crude oil I don't know that this bill alone is going to be critical, but it sends a message to attract capital. It is one of the flaws in our trigger mechanism; there is a big delay and it is a slow process. Alone, I don't think anything alone will work. Incentives in this industry work.

Senator Triplett: The end date issue, do you think that notion of putting an end date gives more incentive?

Ron Ness: I think in retrospect that the end date on that incentive was it just so happened that the end date coincided with extremely high prices so it didn't have an impact when it ended. Certainly, had the scenarios been different it would have.

21.57 **Vice Chairman Miller:** What is a relative price for Bakken crude right now?

Ron Ness: I would guess around $39 to $42 dollars. Keep in mind North Dakota is getting about a $6-$10 reduction to the price.

Senator Oehlke: On the fiscal note, do you feel the incentive is going to create enough activity so that the difference in volume will help make that up over the next biennium?

Ron Ness: You are talking about the extraction tax; I think we can only learn from recent history. In the end the net gain for them was the tens of millions.

Senator Oehlke: How many states have resources of this type of potential?

Ron Ness: I think most state gas is more prevalent. The Bakken is a tremendous resource but it is challenging. If we find another Bakken location in the state it guarantees continued revenue to the state.

26.10 **Senator Hogue:** If you could explain, this has an emergency clause on it, but it only applies to wells completed after April 30th, 2009, what the purpose of the emergency measure is?

Ron Ness: The original bill was a flattening mechanism. That was put in there so that you did not have, the triggers are expected to kick in May 1 and the new bill would be effective July 1st. In the House appropriations the emergency provision was left on and I think it makes since because of the price fluctuations. We don't want to wait two months; we want to stimulate this activity now. That is why it was originally put on there so that we didn't have multiple rates.

Senator Hogue: I suppose now you would avoid having that rate for wells completed after April 30th and before July 1st?

Ron Ness: Essentially if the incentives trigger on it has no impact, this bill would have no impact. If they don't trigger on, it would have an immediate impact.

28.10 **James Cron, Chief Engineer, Ward Williston Oil Company:** Testified in support of the bill. This business climate is the worst that I have seen in my 20 year career. This incentive would help us to develop in the state. We live in the world of stripper wells and this incentive bill preserves the stripper tax that we hold near and dear because it helps us stay alive for now. It incentivizes me enough so that potentially if I see an increase in pricing that I have the opportunity to drill some horizontal wells. I have some stuff permitted and we intend to drill horizontal wells and want to do that this year. We want to preserve jobs. Steel prices are 58% higher than they were a year ago. Low oil prices and high material prices are hurting us and we need this incentive. North Dakota does have a high tax rate. We need to come out with some middle ground so that it works out for all parties.

33.05 **Senator Triplett:** Will these incentives make a difference for you right now, or when in the price structure does this help?

James Cron: In the absence of triggers this would help. The triggers would help greatly as well. If I can get up somewhere into the $38 range for the base price on crude that maybe I can use this incentive and it would be enough. I am still crunching on capital costs. This would get the attention of my senior management with these incentives.

Vice Chairman Miller: What is your biggest producing well and what is your average?

James Cron: It is about 4.5 barrels per day, largest 33 barrels.

35.15 **Senator David O'Connell, District 6:** Testified in support of the bill. We need incentives for the oil industry, and this is a good start.

36.35 **Steve Klein, President, Great Northern Energy:** Testified in support of the bill. We act as a lease broker to the companies that drill the wells. We want to keep jobs in the state. (Gives some facts and figures on employees) The current economic downturn has affected our employment. We do want to encourage companies to expand and drill more wells.

39.38 **Senator Triplett:** Are there other things that matter in making decisions aside from the incentives like the general regulatory climate in the state?

Steve Pine: Yes, gives examples of Colorado running companies out of their state because of some of the legislation they are passing there.

Senator Dotzenrod: You have operated in a number of different places and you want incentives, is there another example of another state you could reference?

Steve Pine: North Dakota is the most proactive state and that is why I think we are going to succeed here in North Dakota where others will not. North Dakota is a leader on that issue.

42.50 **Robert Harms, President, Northern Alliance of Independent Producers:** See Attachments #2, #3, #4 for testimony included and proposed amendment.

57.00 **Chairman Cook:** Earlier Senator Triplett asked the question on how we sell this to the other members, just talk to me briefly, we heard two bills this morning, one is dealing with the impact that the oil industry has on counties and the other one is this bill. Do you want to speak to how we balance this? We are pulling on both ends.

Robert Harms: If we don't have some kind of price recovery, there is not going to be as much impact out there as we think. Granted the production continues and we have the trucks, but to see our rig count go from 98 down to 52, that is a direct result of $35 oil. Companies will continue to develop the leases and contracts that they have, but they are not going to continue to invest in the Bakken when we have seen $35 oil. The concern is what to take care of first, you have to take care of the industry that generates the revenue or do you take care of the impacts? I think the answer to that is clearly the former.

Senator Triplett: Concerning the triggers, do you have a comment on that considering the industry at large?

Robert Harms: That is why I included on page 1 of my testimony the projection of what the state, OMB, and economy.com expect. They expect that we will have an average price of $59 in the coming biennium. I hope they are right. If the prices stay where they are this bill has no effect. I think at the predicted price this bill will make a big impact and would do a lot of good.

Senator Triplett: When is the price high enough that they would have drilled no matter what our price was?

Robert Harms: I think that when they hit that $100 everybody didn't care.

Senator Triplett: So the $50 to the $70 price range is where it really matters?

Robert Harms: I think so.

1.02.12 **Tom Luttrell, Senior Vice President, Continental Resources, Inc.:** See attachments #5 and # 6 for testimony in support of the bill. 1.08.11 Chairman Cook:

1.08.55 **Mike Armstrong, Dickenson Resident:** Testified in support of the bill. (Gives information on personal experience with oil industry) We need to send a strong message to the industry that we are an oil friendly state.

1.11.00 **Chairman Cook:** Further testimony? (no)

Chairman Cook: Closed hearing on HB 1235.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 11058 and 11061

Committee Clerk Signature	Carie Winings

Minutes:

Chairman Cook: Reopened discussion.

Senator Bob Stenehjem, District 30: See Attachment #1 for amendments proposed. It would reduce the fiscal note drastically.

3.10 **Ron Ness, North Dakota Petroleum Council:** Explained that the amendment would provide a window, the previous bill basically anytime when the triggers were not off, you would have had that 7% incentive. This provides the 7% incentive only when the price in a proceeding month is less than $55. That is the west Texas price, not the North Dakota price which is the big difference here. That would be in place until the price in the previous month exceeds $70. The legislative forecast you have is very flat for oil. It is either on or off. The $49 million fiscal note, we said that it is what it is. This bill doesn't get you to that $53 so it really has a zero fiscal note. The window for this in the event that we end up in a situation like we were, like we have been in since December, the prices have been high and they start escalating downward. Under this bill, this incentive would have kicked on January 1st because December was the first month the price averaged below $50. This is to carve something into that window. This is a vastly narrower window than the one we have before you.

Chairman Cook: Is there still a need for this other amendment that created a section 4?

Ron Ness: That was the amendment that Bob offered that would set the top rate at 9%.

Chairman Cook: Committee your wishes?

Senator Anderson: The rate reduction is effective when a barrel of crude oil exceeds $55, is that right? And then it is no longer effective if it exceeds $70, am I missing something?

Senator Triplett: That is what it says.

Chairman Cook: It would be in effect between $55 and $70.

Senator Dotzenrod: If you have a rate below $55 then there is no rate reduction?

Senator Oehlke: Then it goes below the trigger and there is no extraction tax.

Discussion: A discussion occurred on where the west Texas rates were and why we use them.

Senator Triplett: Clarifies what would happen to the first 75,000 barrels with this amendment.

Vice Chairman Miller: Is there concern with using different benchmarks, isn't there a need to use one?

Chairman Cook: West Texas is our standard. We have been using it.

Ron Ness: In the existing law, the trigger price is West Texas intermediate minus 2.50.

12.34 **Senator Triplett:** We would want there to be a smooth transition in this.

Ron Ness: This bill will not apply when the trigger incentives are in place. This is a buffer mechanism for a situation like we are in today.

Senator Triplett: Does this amendment provide for a smooth transition?

Ron Ness: I think it does.

Chairman Cook: Does anyone have questions for John Walstad?

Senator Triplett: Does this amendment make a smooth transition between the triggers are in place and them coming off?

John Walstad, Legislative Council: In most scenarios the answer is probably yes. There are some pricing situations where it may have somewhat of a hitch. We already have a trigger provision in our law that is very likely to trigger on or off, the trigger will cause a 24 month exemption to come into play that is not currently in play for a new horizontal wells. That is based on a five consecutive month price calculation. This would be based on a one month calculation and the pricing here is different, it doesn't necessarily match up with what is in law now. There may be some price points that fall between those numbers and just on one side or the other and I don' t know if you can say that it is a perfectly seamless situation.

16.53 **Chairman Cook:** Give me an example.

John Walstad: Gives an example.

18.15 **Chairman Cook:** So the scenario that would cause a bump in the road would be if oil spiked up over $50 kicking this one on and then dropped down and stayed below it.

John Walstad: Correct.

Chairman Cook: But that would go away as soon as soon as the triggers kicked on or off.

John Walstad: Correct. It would be working in two trigger scenarios. This reduction may trigger in and if oil prices stay down for a five month period then the 24 month exemption then again would become in play.

Chairman Cook: You are saying that a mistake was made when they drafted this; you should have also had a point where it kicked off when it dropped back below?

John Walstad: No, this does kick off. This does have a different kick off point than the one we have in law now. This one kicks off when the price exceeds $70. It could kick on again if the price after being above $70 went below $50 again. This would re-trigger this provision.

19.43 **Senator Triplett:** The amendment says $55. Is there any point in which the oil prices would be at 5% gross production and 0 on the extraction tax and then there would be a gap here that we are not covering and they would leap up to 11.5% before this kicks in and then they would drop back down again to the 7% under this new proposal. Are you covering the gap?

John Walstad: I think that that could happen.

Senator Triplett: Why don't we pick a different number then on the bottom side?

John Walstad: I didn't pick the numbers. In the first sentence it should read if the price is less than $55.

Senator Triplett: That takes care of my concerns.

John Walstad: I now understand that this is to be per well not for everyone. I need to fix this up to have it read per well pertaining to the 75,000 barrels, not for everybody.

Chairman Cook: The 75,000 is law today?

John Walstad: It was until last year. That was a one year provision in 2007.

Discussion: A discussion occurred between committee members and John Walstad on how to fix this and when that occurs what will happen for each well.

Chairman Cook: When can we get that?

John Walstad: 30 minutes.

Chairman Cook: Get started.

Job 11061 starts here.

John Walstad: Explains amendments 90099.0403 (See Attachment #1)

Committee: Clarifies exactly what these amendments would do.

Senator Triplett: Moved amendments 90099.0403

Senator Oehlke: Seconded.

A voice vote was taken: Yea 6, Nay 0, Absent 1 (Senator Hogue).

Motion passed.

Chairman Cook: Your wishes?

Senator Triplett: Moved a Do Pass As Amended.

Senator Oehlke: Seconded.

Chairman Cook: Discussion? (no)

A Roll Call Vote was taken: Yea 6, Nay 0, Absent 1 (Senator Hogue).

Senator Miller will carry the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/18/2009

Recorder Job Number: 11162

Committee Clerk Signature	Carrie Winings

Minutes:

Chairman Cook: Reopened the discussion on HB 1235. We had to bring this bill back into committee and reconsider our actions due to some concerns from Kathy Strombeck.

John Walstad, Legislative Council: Explained the new amendments (Attachment #1) brought to the committee.

4.30 **Senator Triplett:** This language then gives a comfort level for writing a zero fiscal note?

John Walstad: That is my understanding.

Senator Triplett: That is based on the expectation from OMB and everyone else that oil prices are not going to get above $70 any time in the upcoming biennium.

John Walstad: That is correct. Based on where they anticipate pricing is going to be during the next couple of years.

Chairman Cook: Any further questions?

Senator Triplett: Motioned to reconsider our actions.

Senator Anderson: Seconded.

A voice vote was taken: Yea 7, Nay 0, Absent 0.

Senator Triplett: Moved to reconsider the amendment.

Senator Anderson: Seconded.

A voice vote was taken: Yea 7, Nay 0, Absent 0.

Chairman Cook: We now have a clean a bill.

6.45 **Senator Triplett: Moved a do pass on amendment .0404.**

Senator Anderson: Seconded.

Chairman Cook: Any discussion?

A voice vote was taken: Yea 7, Nay 0, Absent 0.

7.32 **Discussion:** Senator Dotzenrod and Chairman Cook then discussed exactly how the bill will work with the amendments just added.

10.52 **John Walstad, Legislative Council:** Appeared before the committee and explained how the amendments will work.

Chairman Cook: Clarified that it was all new horizontal well and clarified the triggers.

12.37 **Discussion:** A discussion continued between Senator Dotzenrod and John Walstad explaining scenarios and who would qualify as well as the date parameters. Also explaining how the triggers will come off and on.

17.44 **Chairman Cook:** So when a company is looking at risk and reward and it takes a few months to start and complete a well, sometimes less, the key is to get them to pull the trigger today, and say that they are going to make this investment and start this well, complete this well and produce 75,000 barrels of oil because there is a price incentive that they can take advantage of.

John Walstad: That is correct.

Chairman Cook: That is the whole purpose of this. To see all these rigs that are drilling wells don't all of the sudden pack up and leave the state. We want to see some steady type of production of oil activity in North Dakota.

John Walstad: That is my understanding as well.

Chairman Cook: That is what we have to be thinking about as we deal with this tax policy to give it favorable consideration.

John Walstad: The concern would be by setting up these timelines are we creating a situation where there is an incentive to delay the completion of a well.

Chairman Cook: I understand that also.

John Walstad: I think the only place where that exists is if I complete a well on April 30th, if I am a smart operator, I would probably wait and complete it on May 1st.

Senator Triplett: Once that time period passed they would not have that situation again because everyone would know what the rules are.

John Walstad: That is correct. My only advantage in that would be to lock in this possibility if the trigger exemption does go away. It wouldn't be a huge incentive; it is only 75,000 barrels here and the 24 month exemption is going to be in play for probably at least 5 months.

20.24 Senator Hogue: I missed the part about the revised fiscal note; I gathered it was based on the assumption that oil would not exceed $75 a barrel during the effective dates of the bill?

John Walstad: I am not clear on that. I think Kathy Strombeck could answer that better. It is my understanding that the expected rise in oil prices for the next biennium is such that the triggering $55 number here will not trip so it would have zero effect.

Senator Triplett: Going back to the top part of the amendment, the first sentence on line 15, the rate reduction under this section becomes effective on the first day of the month following a month for which the average price of a barrel of crude is less than $55, that sort of implies that it had to be more than $55 before it triggers.

John Walstad: I guess you might get that impression from reading it, the language actually says that if in this month the price was less than $55 then the first of the succeeding month this thing becomes effective. When the emergency clause here kicks this in on May 1, what you would look at is the price for April. It wouldn't require that the price go above $55 and then come below $55.

Chairman Cook: That is what I understand.

23.50 **Senator Dotzenrod:** In looking at the fiscal note, you interpretation was that the $55 based on projections doesn't really trip?

John Walstad: I did say that, I wouldn't swear to that.

Senator Dotzenrod: It seems to me that if we get these triggers to drop that price down under current law on May 1st, and then the way that they come back on again is to have 5 months above what our current trigger price is, and it seems to me that the projections that we have include some of that, maybe they don't. Don't the projections that go out for the next biennium include a period of time when we rise above that?

John Walstad: There is a little window there between that triggering number we have now and $55. If I am reading what they are telling me, for five months we will be above $48 but not above $55 under the current projection. Which would get rid of the 24 month exemption but not trigger this one into play, and that is why the fiscal note is zero.

Chairman Cook: Do we want to talk to Kathy Strombeck?

Senator Triplett: Yes, I am getting more confused the more we talk.

Chairman Cook: Closed the discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/18/2009

Recorder Job Number: 11207

Committee Clerk Signature	Carie Winings

Minutes:

Chairman Cook: Reopened discussion on HB 1235.

Kathy Strombeck, Research Analyst, Office of the Tax Commissioner: Appears before the committee to explain how the fiscal impact goes to zero due to the new amendments. (Due to the emergency clause, this version creates dueling effective dates and by doing that and assuming that the forecasted prices are right, the fiscal note goes to zero)

2.49 **Senator Hogue:** I noticed the existing law has a window of 2 years and this amendment doesn't seem to have one. Am I right?

Kathy Strombeck: Actually the final two lines of the new amendment make the act effective until 2009. We still have that same 2 year window.

Senator Dotzenrod: Right now we are not in any of the triggers and we are currently collecting 6.5%.

Kathy Strombeck: That is true except there are a number of types of production that are not paying 6.5% extraction tax, the biggest is stripper production.

Senator Dotzenrod: But on these horizontal wells that have been producing the large volumes of oil, those wells are collecting the 6.5% and 5% right now?

Kathy Strombeck: That is true except for those that are still sharing a portion of the Bakken exemption enacted last session.

Senator Dotzenrod: Excluding them, the others are 6.5%, so when this trigger does work the existing one, on May 1st, all of the wells out there will go to zero.

Kathy Strombeck: Actually those that are within the first 24 months of operation will go to zero oil extraction tax; they will still pay the 5% gross production tax. Except for, there is a component that never enjoyed any incentive at all, and that is a very small component production from prior to 1987 when the first series of incentives were enacted.

Senator Dotzenrod: So when does the third fiscal year start.

Kathy Strombeck: July 1st.

Senator Dotzenrod: So you are projecting on May 1st a substantial majority is going to go to a zero on the 6.5%?

Kathy Strombeck: Zero or 4%. Most production will be subject to some incentive on May 1st. It will be zero if it is a horizontal well drilled within 24 months it will be zero if it is worked over within 15 months, there is a one year, and there are many different qualifiers. Production that is older than 24 months but newer than 1987 will be subject to a 4% oil extraction tax rate effective May 1st.

Senator Dotzenrod: So the fiscal note then, when July 1st starts, we are going to be at a pretty reduced level on the extraction tax on that date. You are saying that for the 24 months after that you don't anticipate being above the triggers for a consecutive five month period?

Kathy Strombeck: We do assume that the incentives trigger back off; that we will be higher than the trigger point for five months. The current law incentives are assumed in the forecast to only be on between 8 and 10 months depending on which forecast you look at. The current law incentives will be on for however long it takes to hit that five months. In the forecast we are assuming 8 to 10 months. When those incentives go off, the price is assumed to be above the $55 incentive in this bill. Hence this bill. If that is a reality, this bill will have no fiscal impact.

Senator Dotzenrod: If it is above $55, aren't we going to be at a tax that is below 6.5%?

Kathy Strombeck: With this bill we are having a 2% if the new wells that are drilled at the close of the existing incentive are drilled at a price below $55. That is assumed to not happen. If we are drilling wells at the close of the current law incentive at $60, they are going to pay 11.5%.

Senator Dotzenrod: That is below $70.

Kathy Strombeck: That is below $70, but it is above $55.

Senator Dotzenrod: But between $55 and $70 isn't that a 2% tax?

Kathy Strombeck: The new wells need to be drilled and completed at a rate below five for this to kick in. If that happens between $55 and $70 this is in effect. At $70 this goes away. So if the new well is being drilled at the close of the existing law incentive at $60, this does not happen. It is not below $55.

Senator Dotzenrod: So between $55 and $70 you are getting a reduction in tax?

Kathy Strombeck: Right, the well needs to be drilled at a point where the actual prices are below $55.

Senator Dotzenrod: So you are going by completion date?

Kathy Strombeck: Yes.

9.02 **Senator Oehlke:** Reads from the amendment and explains.

Senator Hogue: I want to understand the taxation of the horizontal wells in the Bakken. Is it correct that after the 1st 24 months of a horizontal well it is subject to the oil extraction tax unless it is a work over or a re-entry regardless of the trigger price?

Kathy Strombeck: It is subject to the oil extraction tax at the end of the 24 months, the difference is what that oil extraction tax rate would actually be. If we have current law incentives still triggered on that rate would be 4%, if we have our current law incentives triggered off right at that 24 months, then it becomes subject to the full 6.5%. So as long as those incentives are triggered on, the new horizontal wells will get a 24 month holiday followed by a 4% rate.

Senator Anderson: Who is going to keep track of all of the wells?

Kathy Strombeck: We have staff that does that.

Senator Triplett: this was done because a zero fiscal note was requested?

Kathy Strombeck: I believe that is the case.

Chairman Cook: Do we have this right now?

Kathy Strombeck: Yes I believe we do.

Chairman Cook: Any further questions?

Senator Oehlke: Moved a Do Pass As Amended.

Vice Chairman Miller: Seconded.

Chairman Cook: Any further discussion? (no)

A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.

Senator Oehlke will carry the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/18/2009

Recorder Job Number: 11208

Committee Clerk Signature	

Minutes:

Chairman Cook: Reopened the discussion on HB 1235.

Ron Ness, North Dakota Petroleum Council: Asked the committee to reconsider their actions to add a 3 year sunset to the bill.

Senator Triplett: Why would you ask us to put a sunset date on that would move us into the middle of the next biennium?

Chairman Cook: I think he did ask Senator Stenehjem that and he said 2012.

Ron Ness: You are correct. I believe he asked you the same thing.

Chairman Cook: He did and it slipped my mind.

Discussion: A discussion occurred between the committee members and Ron Ness about why they would/should do that and what the benefits would be as well as where it would leave them if things needed to be changed in the future.

2.50 **Chairman Cook:** What do you think the chances are that this bill will go to conference committee?

Ron Ness: If this 3 year sunset goes on, I will ask the House Finance and Tax committee to concur. If it does not I will ask for a conference committee.

Senator Triplett: Moved to reconsider actions.

Senator Anderson: Seconded.

A Voice vote was taken: Yea 7, Nay 0, Absent 0.

Chairman Cook: Now the bill is before us as amended.

Senator Triplett: Moved to amend the amendment, Page 1 line 17, 2011 to 2012.

Vice Chairman Miller: Seconded.

Chairman Cook: Any discussion?

Senator Hogue: I am opposed to the motion. I think we will have ample time to review this in the next session.

Chairman Cook: You understand how the budget for the next biennium would be put together and by having this into the next year that is going to have to show up in the next budget as far as income and expenses?

Senator Dotzenrod: I felt at the time we considered amending the bill in such a way to adopt Senator Stenehjem's suggestion and to go to a two year bill, I thought that was a pretty good way to move this thing along to make sure we have enough support. I think by going that extra year, to me I don't know if it convinces me. I am opposed to it as well.

Chairman Cook: I don't see any harm in extending it out another year.

Senator Triplett: I don't think we compromise ourselves by giving another year because we can if we don't like it change it again next time around. The reason for doing it is the weird way we ask our tax department to write fiscal notes. It is a black and white way that does not consider all of the ups and downs or possibilities. This just cuts the potential note in half for the next time around.

Senator Oehlke: Gives an analogy.

Senator Dotzenrod: The method by which we do most of the business in the legislature is two years at a time. To me it makes more sense to do it in that way.

Chairman Cook: My guess is that it has been done before and if not it will probably be done again.

Senator Hogue: I think we need to control our own destiny and I think if you put that eleven on there to twelve and we come back and we want to review this in 2011 and we want to change it because it hasn't worked, then all of the sudden we will be accused of fixing taxes on the industry. I think by leaving it 2011 we retain some flexibility for the next legislative session.

Chairman Cook: Any other discussion?

A Roll Call Vote was taken: Yea 5, Nay 2, Absent 0.

Motion passed.

Senator Oehlke: Moved a Do Pass As Amended.

Senator Triplett: Seconded.

Chairman Cook: Any further discussion?

Senator Oehlke: Comment.

A Roll Call vote was taken: Yea 5, Nay 1, Absent 1 (Senator Hogue).

Senator Oehlke will carry the bill.

#1

90099.0402
Title.

Prepared by the Legislative Council staff for
Senator Stenehjem
March 16, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1235

Page 1, line 3, after the semicolon insert "to provide an expiration date;"

Page 1, line 15, after the period insert "The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil exceeds fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars."

Page 1, line 16, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 1, line 17, after "2009" insert ", and is effective for taxable events occurring through June 30, 2011, and is thereafter ineffective"

Renumber accordingly

#\

90099.0403
Title.

Prepared by the Legislative Council staff for
Senate Finance and Taxation
March 16, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1235

Page 1, line 3, after the semicolon insert "to provide an expiration date;"

Page 1, line 15, after the period insert "<u>The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.</u>"

Page 1, line 16, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 1, line 17, after "2009" insert ", and is effective for taxable events occurring through June 30, 2011, and is thereafter ineffective"

Renumber accordingly

Date: 03/16/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Amendments

Legislative Council Amendment Number 90099.0403

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Senator Triplett Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	—	—	Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 6 No 0

Absent

Floor Assignment

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

Date: 03/16/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Re-Refer to Appropriations

Action Taken ☒ Do Pass ☐ Do Not Pass ☑ As Amended

Motion Made By Senator Triplett Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	—	—	Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 6 No 0

Absent 1 (Hogue)

Floor Assignment Senator Miller

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

Date: 03/18/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Reconsider Action

Action Taken ☐Do Pass ☐Do Not Pass ☐Amended

Motion Made By Senator Triplett Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller – Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in favor

Total: Yes 7 No 0

Absent 0

Floor Assignment

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

Date: 03/18/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Reconsider Action on Amendments

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Triplett Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller – Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in favor

Total: Yes 7 No 0

Absent 0

Floor Assignment

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

#1

90099.0404
Title.0500

Prepared by the Legislative Council staff for
Senate Finance and Taxation
March 18, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1235

Page 1, line 3, after the semicolon insert "to provide an expiration date;"

Page 1, line 15, after the period insert "The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time."

Page 1, line 16, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 1, line 17, after the period insert "However, if on May 1, 2009, the exemptions under subsection 3 of section 57-51.1-03 have been reinstated, this Act does not become effective until the first day of the month when the exemptions under subsection 3 of section 57-51.1-03 become ineffective, by operation of the trigger price provision in subsection 3 of section 57-51.1-03. This Act is effective for taxable events occurring through June 30, 2011, and is thereafter ineffective."

Renumber accordingly

Date: 03/18/09

Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee Amendment

Legislative Council Amendment Number .0404

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Triplett Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller – Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in favor

Total: Yes 7 No 0

Absent 0

Floor Assignment

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

Date: 03/18/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Senator Oehlke Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

Date: 03/18/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee Reconsider our Motion

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Triplett Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller – Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in favor

Total: Yes 7 No 0

Absent

Floor Assignment

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

Date: 03/18/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee .0404

☐ Check here for Conference Committee Amend the Amendment

Legislative Council Amendment Number Pg 1 line 17 -> 2011 to 2012

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod		✓
Sen. David Hogue		✓	Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 5 No 2

Absent 0

Floor Assignment

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

Date: 03/18/09

Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1235

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Senator Oehlke Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod		✓
Sen. David Hogue	—	—	Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 5 No 1

Absent 1 (Hogue)

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

HB 1235, as reengrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Reengrossed HB 1235 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to provide an expiration date;"

Page 1, line 15, after the period insert "<u>The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.</u>"

Page 1, line 16, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 1, line 17, after the period insert "However, if on May 1, 2009, the exemptions under subsection 3 of section 57-51.1-03 have been reinstated, this Act does not become effective until the first day of the month when the exemptions under subsection 3 of section 57-51.1-03 become ineffective, by operation of the trigger price provision in subsection 3 of section 57-51.1-03. This Act is effective for taxable events occurring through June 30, 2012, and is thereafter ineffective."

Renumber accordingly

2009 TESTIMONY

HB 1235

Testimony 1
January 27, 2009

Josh Askvig
North Dakota Education Association
Testimony on HB1235

Mr. Chairman, members of the committee my name is Josh Askvig with the North Dakota Education Association. I appreciate the chance to testify on House Bill 1235 this morning. The NDEA opposes HB1235.

Our opposition is based the fiscal impact that this legislation would have on the Common School Trust Fund and the Foundation Aid Stabilization Fund. As you know, this bill would reduce the oil extraction tax from 6 ½ percent to 5 %. Also, it would grant a new well a rate reduction from 5% to 2% for the first 75,000 barrels produced from a new horizontal well. In total, the cost of this legislation is $175,300,000. Of this reduction 20% of it would come from education purposes. This bill could cost the Common School Trust Fund $17,530,000 and the Foundation Aid Stabilization Fund another $17,530,000 for a total of $35,060,000. These funds would have otherwise gone to enhancing the education of this state's future.

While admittedly, the trigger removal could be beneficial if the trigger were tripped. At the current projections, the trigger would not be tripped and the state would be losing revenues that would be used for enhancing our state's future.

Again, Mr. Chairman and members of the committee thank you for the time. We ask that, at this time, you give this bill a Do Not Pass Recommendation. I would be happy to answer any questions.

Testimony 2

NORTH DAKOTA PETROLEUM COUNCIL

Ron Ness
President

Marsha Reimnitz
Office Manager

120 N. 3rd Street • Suite 200 • P.O. Box 1395 • Bismarck, ND 58502-1395
Phone: 701-223-6380 • Fax: 701-222-0006 • Email: ndpc@ndoil.org

House Bill 1235

House Finance & Taxation Committee

January 27, 2009

Chairman Porter and Members of the Committee. My name is Ron Ness. I am the President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 160 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. Our members produced nearly 80% of the oil produced in North Dakota in 2008.

I appear before you today in opposition to HB 1235. As drafted, this bill represents a significant tax increase for our industry at a time when attracting capital and maintaining the current level of oil activity and employment is becoming more difficult each day. At today's level of drilling activity (70 rigs @ $70,000 per day), the oil industry is investing nearly $5 million per day in research, developing, and tapping the Bakken and other oil and gas resources in North Dakota. We don't want to discourage this investment; the entire state realizes that the Bakken is a game-changer for our state's future. Just look at our economic situation compared to our neighboring states with similar economies except for their lack of oil resources. The oil industry invested $1.5 billion in direct drilling expenditures in 2007, and paid nearly $400 million in royalties and nearly $400 million in oil production taxes in fiscal year 2008.

The attached chart lays out the current oil tax structure, the oil tax structure when the incentives trigger on, the changes proposed by HB 1235, and the proposed changes this bill would need in order for us to support the bill. In addition, the effective date of this bill is July 1, 2009. We believe that the oil tax incentives will trigger back in place on May 1, 2009. If passed as amended, we would suggest that an emergency clause be placed on the bill in order to eliminate further complications of the state's oil tax.

HB 1235 has the components of what a flat tax should look like. It sets a stable and predictable rate and provides reasonable incentives to stimulate investment. However, 10% is too high of a tax rate and industry would not support giving up major tax reductions that we feel will be back in place in May. We urge you to oppose the bill as drafted and take our recommendations under consideration.

NORTH DAKOTA - GROSS PRODUCTION & OIL EXTRACTION TAX SCHEDULE

	CURRENT STRUCTURE		HOUSE BILL 1235	NDPC POSITION
	TRIGGER OFF	TRIGGER ON		
BASE TAX RATE	11.5%	9.0%	10.0%	8.0%
OIL FROM SECONDARY OR TERTIARY UNIT QUALIFIED PRIOR TO 07/01/91	11.5%	9.0%	10.0%	8.0%
NON-INCREMENTAL OIL FROM SECONDARY OR TERTIARY - QUALIFIED AFTER 07/01/91	11.5%	9.0%	10.0%	8.0%
STRIPPER WELLS <10 BOPD 0' - 6,000' <15 BOPD 6,000' - 10,000' <30 BOPD >10,000'	5.0%	5.0%	5.0%	5.0%
NEW VERTICAL WELL 15 MONTH EXEMPTION	11.5%	5% (15 MONTHS)/9%	10.0%	6% FOR 1ST 50,000 BBL - 24 months
NEW HORIZONTAL WELL 24 MONTH EXEMPTION	11.5%	5% (24 MONTHS)/9%	10.0%	-
NEW HORIZONTAL WELL DRILLED AFTER 06/30/09	-	-	7% FOR 1ST 75,000 BBL OR 1ST $4.5MM GROSS VALUE DURING 1ST 36 MONTHS	6% FOR 1ST 75,000 BBL - 24 months
WORKOVER PROJECT OVER $65,000 OR INCREASE PRODUCTION BY 50% MUST BE LESS THAN 50 BOPD PRIOR - 9 MONTH EXEMPTION	11.5%	5% (9 MONTHS)/9%	10.0%	8.0%
INCREMENTAL OIL FROM SECONDARY RECOVERY PROJECT CERTIFIED AFTER 07/01/91 - 5 YEAR EXEMPTION	5% (5 YRS) / 11.5%	5% (5 YRS) / 9%	5% (5 YRS) / 10%	5% (5 YRS) / 8%
TERTIARY - 10 YEAR EXEMPTION	5% (10 YRS) / 11.5%	5% (10 YRS) / 9%	5% (10 YRS) / 10%	5% (10 YRS) / 8%
TWO-YEAR INACTIVE WELL 10 YEAR EXEMPTION	11.5%	5.0%	10.0%	8.0%
HORIZONTAL RE-ENTRY 9 MONTH EXEMPTION	11.5%	5.0%	10.0%	8.0%
NEW WELL ON INDIAN RESERVATION FEE LAND ON INDIAN RESERVATION - 60 MONTH EXEMPTION	5% (5 YRS) / 11.5%	5% (5 YRS) / 9%	10.0%	8.0%

- The future is bright for the oil and gas industry in North Dakota. There is a huge amount of oil and gas still in the ground in areas that have not been explored. New technologies new discoveries, and new work in older fi have vastly increased both the odds of finding oil and the efficiency of producing it.

AND NATIONALLY.......

- The biggest source of energy in the United States in 2007 was petroleum, supplying 41% of our nation's energy. Next is natural gas at 23%, coal 22%, nuclear 8%, and renewables 6%.
- The average drilling rig count in the U.S. for 2007 was 1,649. The all-time high was 4,530 in 1981.
- U.S. crude oil production in 2007 was 5.1 million barrels per day, up slightly from 2006.
- Total petroleum imports averaged 12.3 million barrels per day for 2007, up 10% from 2006.
- The U.S. imported 60% of its total oil needs in 2007. The largest importers to the U.S. are Canada with 11.3%, Mexico with 8.3%, Saudi Arabia with 7.1%, Venezuela with 6.8% and Nigeria with 5.4%. Iraq supplied the U.S. with 2.6% of its oil in 2006. Collectively, OPEC countries supplied about 26.7% of our nation's daily oil needs. Saudi Arabia was the worl largest producer of oil in 2007, at 12.6%.

All data is from latest year available.
For sources or additional information, contact:

North Dakota Petroleum Council
Box 1395, Bismarck ND 58502

Offices at:
120 North 3rd Street, Suite 200
Bismarck, ND 58501 — (701) 223-6380
www.ndoil.org

Ron Ness
President

NORTH DAKOTA PETROLEUM COUNCIL

Marsha Reimnitz
Office Manager

NORTH DAKOTA OIL & GAS INDUSTRY

FACTS & FIGURES

NORTH DAKOTA PETROLEUM COUNCIL

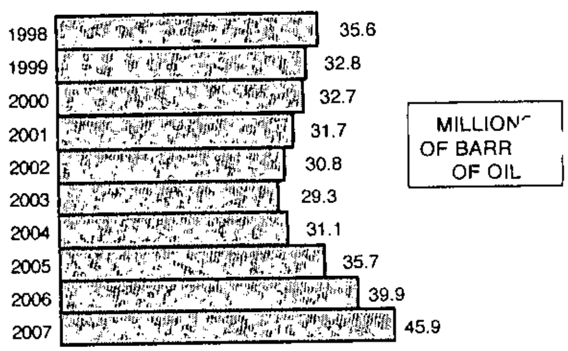
2008 EDITION

NORTH DAKOTA PETROLEUM COUNCIL

North Dakota's Oil Patch Stats for 2007

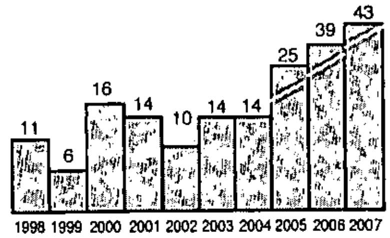
- North Dakota is the eighth largest oil producing state. The state's average production was more than 123,000 barrels of oil per day in 2007, totaling nearly 45 million barrels for the year, up over 5.1 million from 2006.
- All-time production of crude oil in North Dakota amounts to more than 1.6 billion barrels.
- At the end of 2007, there were 3,868 wells capable of producing oil and gas in North Dakota. The average North Dakota well produced approximately 28 barrels per day.
- During 2007, 70.8 billion cubic feet of natural gas was produced and 52 billion cubic feet of natural gas was processed in North Dakota.

ANNUAL CRUDE OIL PRODUCTION
(BARRELS)
IN NORTH DAKOTA



- The drilling rig count, which is a prime barometer for measuring new oil and gas activity, averaged 43 rigs a day in 2007. The peak year for drilling rigs was 1981, with an average monthly rig count of 119. The all-time high was in October of 1981 with 146 rigs operating.

Average Number of Drilling Rigs



- There were 494 drilling permits issued during 2007, up 146 from last year. Approximately 335 wells were completed during the year.
- Horizontal, or directional, drilling accounted for 76% of the new wells drilled in 2007 and accounted for 69% of the state's total oil production.
- The success ratio for new wells in existing fields in 2007 was 99% and for wildcat wells it was 94%. A wildcat well is a new well drilled at least one mile from existing production. The overall industry success rate for new wells in North Dakota for 2007 was 98%.
- The deepest vertical well drilled last year in North Dakota was 15,180 feet. The average depth for a North Dakota well in 2007 was 16,061. The longest horizontal well drilled last year in North Dakota was 21,726 feet.
- The average cost of completing an oil well in North Dakota was approximately $4.7 million during 2007. The average cost of completing a well in 2006 was nearly $4.1 million.

Where The Oil Comes From

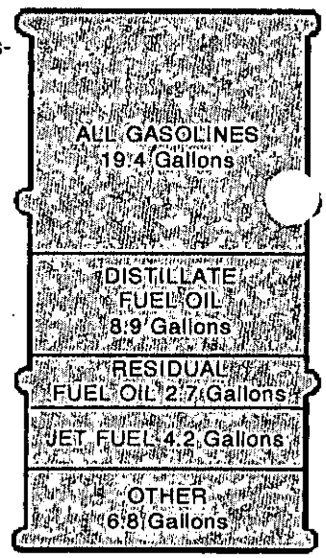
- There were 16 counties in the state in 2007 with commercial oil production. Oil and gas exploration has occurred at some point in every county in the state except Traill County.
- Bowman County was the top-producing county in 2007 accounting for 39% of the state's oil production. The other top-

Responsible Development on Public Lands

- The oil and gas industry in North Dakota h· explored and drilled the grasslands for 53 years and has a proven track record of being able to produce oil without disrupting the environment or wildlife.
- The industry, in cooperation with the Forest Service, has reclaimed over 700 wells and 280 miles of roads in the national grasslands. This represents 5,300 acres returned to vegetation after the oil and gas reserves were depleted.
- Over 17% of the state's oil production and nearly 18% of the state's producing wells are on the grasslands.

Refining and Transportation

- The state's only crude oil refinery is at Mandan. It has a daily capacity of about 60,000 barrels.
- There are ten natural gas processing plants operating in western North Dakota. They are located near Tioga, Ambrose, Killdeer, Lignite, Rhame, Gorham, Arnegard, Trotters, Marmarth and Ray.
- The ten natural gas processing plants processed enough natural gas in 2007 to heat 627,000 households for one year. Over 40% of the homes in North Dakota use natural gas as their primary heating fuel.



AVERAGE GALLONS OF PRODUCT DERIVED FROM EACH BARREL OF CRUDE OIL
(42 Gallons in a Barrel)

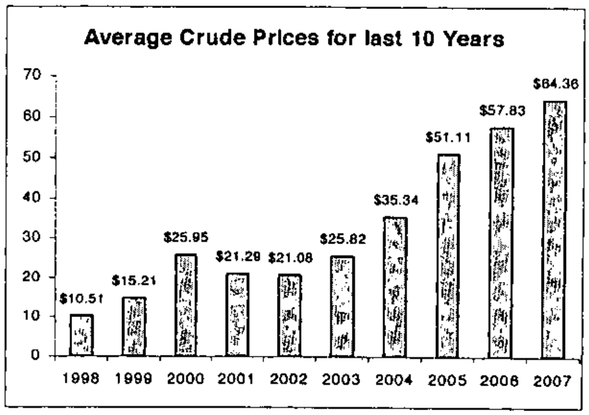
Gasoline – Consumption & Taxes

lorth Dakotans pay 23 cents state tax and 14.8 cents federal tax on each gallon of gasoline and diesel fuel they buy.

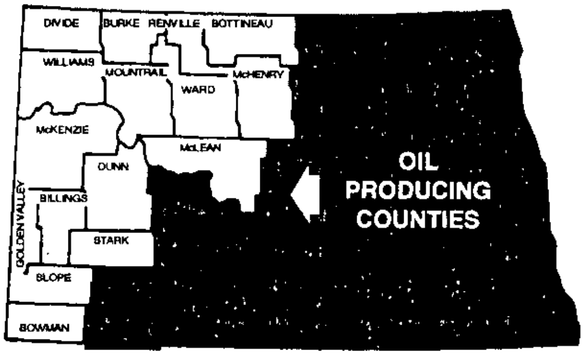
- North Dakotans used nearly 362 million gallons of gasoline in 2007, and almost 466 million gallons of diesel fuel.
- Gasoline and special fuels taxes raised almost $140 million in tax revenue during 2007, up $20 million from the previous year. These funds are used primarily for road construction.

History

- Oil was discovered on April 4, 1951 near Tioga in Williams County. That well, the Clarence Iverson #1, produced more than 585,000 barrels of oil over 28 years.
- Prior to the discovery of oil in 1951, 64 wells had been drilled in the state dating back to 1910. Since 1951, another 14,886 wells have been drilled in North Dakota.
- The average crude oil posted price for North Dakota in 2007 was $64.36 per barrel. That 'epresents $6.53 a barrel increase from the 2006 average.



producing counties were McKenzie, Billings, Williams and Mountrail.

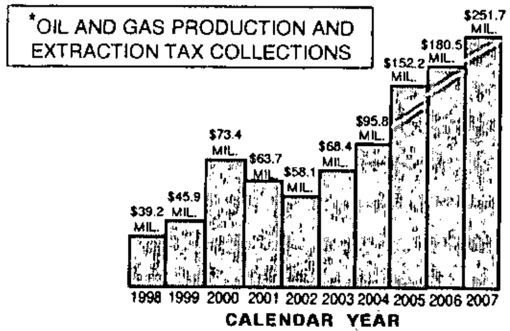


OIL PATCH EMPLOYMENT

- The state averaged more than 6,600 North Dakotans at work in the oil patch in fiscal year 2006-2007. This represents a 16% increase in oilfield employment. Peak oil field employment occurred in late 1981, when more than 10,000 people were working in the oil patch.
- Each drilling rig results in approximately 120 direct and indirect jobs.
- Other sectors of the petroleum industry include refineries, gas plants, pipelines, retail gasoline stations, wholesalers, and transporters. The industry altogether employed approximately 14,500 people in North Da' 'a in 2007.
- Job Service North Dakota reports that in 2006 the average yearly wage in the oil and gas extraction industry was $70,422. That wage is 125% above the statewide average wage of $31,316!

OIL TAX REVENUES HIGH IN 2007

- Higher crude oil prices in 2007 led to huge tax collections for the State of North Dakota. Counties, schools, and cities also benefited from increased oil and gas tax collections. Production tax revenues for 2007 were more than $251.7 million representing a 39% increase from 2006.



* Total collections reflect all revenue paid by the industry, including the counties' share of the 5% production tax and the trust fund portion of the 6.5% extraction tax.

- All-time oil tax revenues to the state are well over $2 billion.
- The average production and extraction tax paid on crude oil in 2007 was 8.86%. The tax rate on crude oil varies between 5% and 11.5% depending upon the type of well.
- The oil and gas industry paid $17.2 million in taxable sales and purchases in 2007, up 107% from 2006.
- The tax on natural gas for calendar year 2007 was 15.3 cents per thousand cubic feet (mcf). In 2007, the state collected more than $7.7 million in natural gas taxes.
- Over the past 55 years, the State of North Dakota has received more than $545 million from oil and gas leases, bonuses, royalties and rentals on state land. During 2007, more than $7.5 million went to the Lands and Minerals Trust and over $35.3 million to the Board of University and School Lands Trust.
- U.S. Forest Service administered lands in the Little Missouri National Grasslands provided oil and gas revenues of $28.8 million during fiscal year 2007. Of that amount, one-fourth, or $7.2 million, was returned to McKenzie, Billings, Golden Valley and Slope Counties for schools and roads. In addition, Bureau of Land Management administered land produced more than $27.5 million during fiscal year 2007. Half of that amount, $13.7 million, was returned to the state's general fund and is the first money expended for education statewide.

2A

What Does Every New Oil Well Mean to North Dakota? based on 2008 info and $80 oil

Same handout to given Senate.

A Typical North Dakota Oil Well drilled in 2008 will produce for 31 Years.

- If economical, additional secondary recovery efforts can be made to extend the life of the well.

In Those 31 Years, an Average 2008 Oil Well:

- Produces over 525,000 barrels of oil (45 barrels of oil per day)
- Generates $43.5 million in gross revenue
- Pays $4,533,000 in taxes:
  - Oil production tax - $1,976,000
  - Extraction tax - $2,247,000
  - Sales tax - $150,000
  - Gas production tax - $70,000
  - Corporate Income Tax - $90,000
- Pays royalties to mineral owners of $5,433,000
- Pays salaries and wages of $1,552,000
- Has operating expenses of $1,440,000

The average cost of completing a well in North Dakota in 2006 was $5.4 million.

Oil and gas development accounts for a major portion of the business for RECs in western North Dakota – as much as 75% in some instances.

Road contractors, electricians, welders, service companies, trucking companies, and many other local businesses and communities in western North Dakota rely on the oil industry for their livelihood.

About 34% of the gross value from a well is returned to the local economy in taxes, wages, and other expenses, which helps keep the local economy running, the government operating, and helps reduce your tax burden.

Testimony 3

January 27, 2009

House Finance and Tax Committee

Testimony OPPOSED to HB 1235

Northern Alliance of Independent Producers

The Northern Alliance of Independent Producers is an oil producers trade association representing over 60 members operating in the Dakotas and Montana. We represent only the producers perspective. Collectively, our members spent well in excess of $1 billion drilling oil wells in North Dakota last year. (Which doesn't include their investment in pipelines, gas plants, and transportation facilities).

THE STRUCTURE OF THE BILL: HB 1235 is in our view one of the most important tax policy bills in the 2009 Legislation Session. The basic structure of the bill is correct (addressing maximum tax rates, triggered tax rates, and incentives to continue exploration). But, we cannot support the bill in its current form, and will suggest some amendments.

ECONOMIC IMPACT OF OIL AND GAS:

Extraction and production taxes alone are estimated at $800 million this biennium. (Scattered throughout the budget, in general funds, common schools trust fund, foundation aid stabilization fund, water resources trust fund, oil impact, cities/counties, oil and gas research fund and the permanent oil trust fund).

The Governor's budget projects $562 million in the oil trust fund by June 2009, $300 million of which is proposed to fund property tax relief as recommended by the Governor.

In discussions with members of the executive branch, we estimate that the industry represents approximately 25% of the general fund itself (through sales, royalties, personal and corporate income tax). In a 2005 study, NDSU concluded that the oil industry represented $3.9 billion in gross business volume. (cf. coal at $3.56 billion and wheat at $1.8 billion).

<u>Current Economics of North Dakota Producers:</u>

Current rig count has gone from 88 to 71 today. (A 20% decline)

Capital expenditure budgets for 2009 have been reduced. (Many of the companies have seen similar declines—Hess, Continental Resources, Encore, Marathon….all signaled significant capital expenditure reductions ranging from 15 to 27% reductions in face of world economics and price declines that will not support the current level of development).

Price of $147 a barrel, to current price of $45.09. (But, North Dakota producers are getting far less—top at $125, and North Dakota posting at Plains Marketing was $27 and $20 for ND sweet and sour crude oil respectively yesterday). Recent posting is attached. This price differential signals one of the defects of the current structure with triggered tax rates based upon NYMEX.

ANALYSIS OF THE BILL:

The top rate: 10% is too high. The industry has complained for years, that the tax rate in North Dakota makes us less competitive than we can or should be. We consistently rank as 2-3rd highest in nation. Here is why we should reduce the top rate to 8%:

a.) Preserves more revenue for mineral owners and producers across the State

b.) Lower rate will make North Dakota more competitive and nurture even more exploration, if and when prices recover.

The Trigger: The effect of Section 2 is a tax hike. (When we have companies, stacking rigs, looking for more attractive investment, laying off people, now is not the time to impose a tax increase on an industry that is experiencing historic lows). The bill should be modified to leave current exemptions and incentives in place, and avoid the tax increase that Section 2 represents.

Fort Berthold Indian Reservation: (P.10 Line 14) The net effect is to raise taxes in all price scenarios (above or below trigger tax rates). This will create even greater disincentives on fee lands on FBIR, and in the words of one of our members "will decimate" exploration on the FIBR.

Bakken/Horizontal incentives: In 2007 the legislature provided a modest incentive to spur continued growth in the Bakken. The incentive was well received by the industry, and was a positive policy signal from North Dakota, that helped encourage more development. Rig counts more than doubled following the Bakken incentive moving from 39 to 88 in 2008. No doubt price was also a factor in increasing the rig count.

Adjust this section of the bill (P. 10, Line27) to provide 100,000 barrel tax rate of 2% without regard for capital recapture or time limitations.

We believe this bill can be one of the key instruments for helping keep the oil industry strong in these difficult times with the suggested changes. But, without them we must oppose the bill.

PLAINS MARKETING, L.P.

CRUDE OIL PRICE BULLETIN 2009-016
(CANCELS AND SUPERSEDES 2009-015)

PLAINS MARKETING, L.P. • 333 CLAY • P.O. BOX 4648 • HOUSTON, TEXAS 77210-4648 • (713) 646-4100

Effective 7:00 A.M. January 26, 2009, subject to change without notice and subject to its division orders and other contracts, Plains Marketing, L.P. will pay the following prices per barrel of 42 U.S. gallons each adjusted for American Petroleum Institute (API) gravity for merchantable quality virgin crude oil and condensate delivered for its account into the custody of its authorized carrier or receiving agency.

1/26/09

	PRICE ($/BBL)	POSTED GRAVITY API	GVT. ADJ. SCALE[1]
TEXAS			
West Texas Intermediate - Area #1	41.75 •	40.0-44.9	1
West Texas Intermediate - All Other Areas	42.25 •	40.0-44.9	1
West Texas Sour	33.80 •	34.0-44.9	4
West Central Texas	42.25 •	40.0-44.9	1
North Texas Sweet	42.25 •	40.0-44.9	1
North Texas (Cooke & Grayson) Sweet	42.25 •	40.0-44.9	2
North Texas (Cooke & Grayson) Sour	34.25 •	40.0-44.9	3
East Texas Field	41.75 •	Flat	Flat
East Texas (Other than E. TX. Field)	41.75 •	40.0-44.9	1
East Texas Sour	31.00 •	34.0-44.9	4
East Texas Light Sour	34.25 •	34.0-44.9	4
East Texas Condensate	38.25 •	40.0-44.9	1
Texas Upper Gulf Coast	36.25 •	40.0-44.9	1
Texas Central Gulf Coast (Giddings)	36.25 •	40.0-44.9	1
South Texas Light (Sweet)	36.25 •	40.0-44.9	1
South Texas Heavy	36.00 •	29.0-44.9	5
South Texas Sour	30.75 •	34.0-44.9	4
Texas Panhandle	41.75 •	40.0+	15
NEW MEXICO			
New Mexico Intermediate	42.25 •	40.0-44.9	1
New Mexico Sour	33.80 •	34.0-44.9	4
LOUISIANA			1
North Louisiana	41.50 •	40.0-44.9	1
Central Louisiana Sweet	41.75 •	40.0-44.9	1
North Louisiana LCT	42.50 •	Flat	Flat
Central Louisiana LCT	42.00 •	Flat	Flat
North Louisiana Condensate	38.00 •	40.0-44.9	
South Louisiana Light Sweet (Onshore)	41.00 •	40.0-44.9	2
Ferriday Area	42.00 •	Flat	Flat
South Louisiana Eugene Island (Onshore)	37.75 •	40.0-44.9	2
South Arkansas and North Louisiana Sour	35.50 •	34.0-44.9	4
MISSISSIPPI			
Mississippi Light Sweet	41.00 •	40.0-50.0	7
Mississippi Light Sour	31.80 •	34.0-44.9	4
COLORADO			
Colorado Southeastern	35.75 •	40.0-44.9	12
D-J Basin	28.30 •	40.0-44.9	1
Colorado Western	25.83 •	40.0-44.9	3
UTAH			
Black Wax	30.45 •	40.0-44.9	3
ILLINOIS			
Illinois Sweet	35.50 •	30.0-44.9	11
INDIANA			
Indiana Sweet	35.50 •	30.0-44.9	11
KANSAS			
Kansas Common	34.00 •	40.0-44.9	2
Eastern Kansas Common	30.78 •	40.0-44.9	2
Eastern Kansas Common Special	26.23 •	40.0-44.9	2
Northwestern Kansas Sweet	34.50 •	40.0-44.9	2
Southwestern Kansas Sweet	34.60 •	40.0-44.9	2
Central Kansas Sweet	35.00 •	40.0-44.9	2
NEBRASKA			
Nebraska Western	28.30 •	40.0-44.9	1
Nebraska Intermediate	32.25 •	40.0+	14
NORTH DAKOTA			
Williston Basin Sweet	27.33 •	40.0-44.9	1
Williston Basin Sour	20.43 •	40.0-44.9	6
OKLAHOMA			
Domestic Sweet (Cushing)	42.25 •	40.0-44.9	2
Oklahoma Sweet	42.25 •	40.0-44.9	2
Oklahoma Sweet Special	37.50 •	40.0-44.9	2
Oklahoma Sweet-Central	42.25 •	40.0-44.9	2
Western Oklahoma	36.75 •	40.0-44.9	2
Oklahoma Panhandle	36.25 •	40.0-44.9	2
Oklahoma Sour	29.25 •	40.0-44.9	3
WYOMING			
Wyoming Southwestern Area	25.83 •	40.0-44.9	3
Wyoming Sweet other Areas	27.58 •	40.0-44.9	1
Wyoming General Sour	21.08 •	40.0-44.9	8
Wyoming Asphaltic Sour	25.33 •	40.0-44.9	8

1 The gravity adjustment scale and other terms are set forth on Page 2.

• Indicates a price change

4

House Bill 1235
House Finance and Taxation Committee

January 27, 2009

Testimony of Lynn D. Helms, Director

The Industrial Commission's Department of Mineral Resources has jurisdiction over many of the oil and gas extraction tax exemptions affected by this bill. Following are some definitions to assist the committee in it's deliberations:

Secondary or Tertiary Unit: This is a master agreement between all individual owners in a secondary or tertiary project that sets out how costs and revenues will be shared on every barrel of oil and cubic foot of gas produced regardless of which well(s) it is extracted from.

All oil and gas wells initially just use the natural pressure in the oil or gas reservoir to produce. This pressure depletes quickly at first then slower and slower, typically resulting in only 1-20% of the oil in the reservoir being produced. Once a unit is formed water can be pumped into the reservoir to force more oil and gas out. This is called secondary recovery and typically results in 35-50% of the oil in the reservoir being produced. Tertiary recovery is when expensive fluids like carbon dioxide, high pressure air, sodium hydroxide, etc. are pumped into the reservoir to change the oil properties so it will flow easier. This can result in production of 50-75% of the oil in the reservoir.

Non-incremental oil: This is the oil that the wells in a unit would have produced if the secondary or tertiary recovery process had never been used. It is calculated by industrial commission staff using computer simulations and curve fitting programs.

Workover: Is a major repair project to increase an oil or gas well's production. It can involve equipment repair, pumping stimulation fluids into the oil or gas reservoir, adding new producing zones, etc. Under current law the workover must cost more than $65,000 to qualify for a tax exemption.

Oil Extraction Tax: This is the 6.5% tax imposed in 1981 by Measure 6. There are many extraction tax reductions and exemptions. The stripper well (low rate producing wells qualified by the industrial commission), incremental secondary and tertiary production, and wells drilled on the Fort Berthold reservation exemptions are always in effect. All other exemptions or reductions are on or off based on a trigger price. If the monthly average West Texas Intermediate (WTI) crude oil price published in the Wall Street Journal (NYMEX) minus $2.50 stays below $47.66 for 5 consecutive months the exemptions and reductions are in effect. If that price stays above $47.66 for 5 consecutive months the exemptions and reduction are **not** in effect. The average price for the month of December 2008 was below the trigger price so the clock began ticking. It is expected that the incentives and reductions will go into effect in May 2009. Based on the attached NYMEX crude oil price strip through June 2011, the trigger price ($47.66+2.50=$50.16) is likely to be exceeded in August 2009 and the tax incentives and reductions likely will go off in January 2010. For your information I am also providing the various per barrel oil prices posted for WTI and North Dakota crude oil for 1/27/09:

NYMEX WTI = $41.58, North Dakota Sweet = $32.08, North Dakota Sour = $19.25, North Dakota rail shipment = $16.18.

Commodity Futures Price Quotes For

NYMEX Crude Oil (Light)

Click for Chart	Open	High	Low	Last	Time	Sett	Chg	Vol	Sett	OpInt	Option
Mar 09	-	-	-	41.58 *	Jan 27, 18:34	-	-	308439	41.58	-	Call Put
Apr 09	45.70	45.70	45.70	45.70	Jan 28, 08:59	-	0.80	116304	44.90	-	Call Put
May 09	-	-	-	47.18 *	Jan 27, 18:33	-	-	53779	47.18	-	Call Put
Jun 09	49.60	49.60	49.20	49.20	Jan 28, 09:23	-	0.50	38661	48.70	-	Call Put
Jul 09	-	-	-	49.86 *	Jan 27, 18:31	-	-	14737	49.86	-	Call Put
Aug 09	-	-	-	50.71 *	Jan 27, 18:32	-	-	8670	50.71	-	Call Put
Sep 09	-	-	-	51.49 *	Jan 27, 18:36	-	-	-	51.49	-	Call Put
Oct 09	-	-	-	54.91 *	Jan 27, 18:37	-	-	-	52.24	-	Call Put
Nov 09	-	-	-	54.65 *	Jan 27, 18:35	-	-	-	52.98	-	Call Put
Dec 09	54.40	54.40	54.40	54.40	Jan 28, 09:19	-	0.69	20202	53.71	-	Call Put
Jan 10	-	-	-	54.35 *	Jan 27, 18:36	-	-	-	54.35	-	Call Put
Feb 10	-	-	-	54.94 *	Jan 27, 18:33	-	-	-	54.94	-	Call Put
Mar 10	-	-	-	55.48 *	Jan 27, 18:34	-	-	-	55.48	-	Call Put
Apr 10	-	-	-	55.97 *	Jan 27, 18:31	-	-	-	55.97	-	Call Put
May 10	-	-	-	56.44 *	Jan 27, 18:32	-	-	-	56.44	-	Call Put
Jun 10	-	-	-	56.88 *	Jan 27, 18:36	-	-	-	56.88	-	Call Put
Jul 10	-	-	-	57.32 *	Jan 27, 18:34	-	-	-	57.32	-	Call Put
Aug 10	-	-	-	57.76	Jan 27,	-	-	-	57.76	-	Call Put

				*	18:37						
Sep 10	-	-	-	58.49 *	Jan 27, 18:34	-	-	-	58.17	-	Call Put
Oct 10	-	-	-	58.87 *	Jan 27, 18:35	-	-	-	58.57	-	Call Put
Nov 10	-	-	-	58.96 *	Jan 27, 18:32	-	-	-	58.96	-	Call Put
Dec 10	-	-	-	59.32 *	Jan 27, 18:36	-	-	7664	59.32	-	Call Put
Jan 11	-	-	-	59.67 *	Jan 27, 18:33	-	-	-	59.67	-	Call Put
Feb 11	-	-	-	60.74 *	Jan 27, 18:31	-	-	-	60.02	-	Call Put
Mar 11	-	-	-	61.06 *	Jan 27, 18:32	-	-	-	60.37	-	Call Put
Apr 11	-	-	-	65.06 *	Jan 27, 18:37	-	-	-	60.71	-	Call Put
May 11	-	-	-	61.41 *	Jan 27, 18:37	-	-	-	61.02	-	Call Put
Jun 11	-	-	-	61.31 *	Jan 27, 18:35	-	-	-	61.31	-	Call Put

HB1235

Pinkerton, Louis

From: Strombeck, Kathy L.
Sent: Monday, January 26, 2009 5:46 PM
To: Pinkerton, Louis
Subject: Bakken incentive

Good evening Rep. Pinkerton;

I understand you were looking for the fiscal impact of the Bakken incentive passed last session. Here are the statistics through November 2008:

224 wells qualified
8,915,537 barrels of production subject to reduced rate to-date (this continues to grow)
$41,033,222 cost of incentive through November (this too continues to grow)
39 wells have reached the 75,000 cap
Average incentive per well that has hit its cap: $346,032

I hope this helps. Please let me know if you have any additional questions or comments.

Good luck with the oil bills being heard in your committee tomorrow!

Kathy

Kathryn L. Strombeck
Research Analyst
Office of Tax Commissioner
1.328.3402
rombeck@nd.gov

STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

Memorandum

To: Representative Froseth

From: Kathryn Strombeck, Research Analyst

Date: February 11, 2009

Subject: Fiscal Impact of Proposed Amendments to HB 1235 (90099.0202)

At your request, I have estimated the approximate fiscal impact of a possible set of amendments to HB 1235. It appears the amendments have three major components affecting the oil extraction tax. These three features are: (1) removal of the trigger provisions and all the corresponding tax incentives that would "trigger" under current law; (2) the imposition of a "fixed" oil extraction tax rate of 3.75 percent; and (3) an additional rate reduction to 2 percent for new wells for the first 75,000 barrels, the first $4.5 million in gross value, or the first 18 months, whichever comes first.

I have computed the approximate fiscal impact of this amendment based on the new February 9, 2009 Forecast. It is important to note that, in this new forecast, the current incentives are expected to "re-trigger on" for a period of 8 months beginning with June 2009 revenues (May 2009 production). The re-triggering of the incentives is expected to benefit the oil industry by reducing oil extraction taxes by an estimated $75.675 million. This incentive is now factored into the forecast, and requires no legislative action.

Because this forecast assumes a re-triggering of existing incentives, the repeal of the trigger provisions in these proposed amendments is revenue positive to the state in an amount totaling $75.675 million. The other provisions of the amendments grant additional tax breaks to the oil industry, and the estimated amounts are shown below:

	FY 09	FY 10	FY 11	2009-11 Biennium
Removal of the Trigger	+$8.705 M	+66.970 M		+66.970 M
3.75% OET Rate	-$13.855 M	-$103.355 M	-$150.436 M	- $253.791 M
New Well 2% Rate	-$0.509 M	-$5.094 M	-$13.785 M	-$18.879 M
Total	-$5.659 M	-$41.479 M	-$164.221 M	-$205.699 M

Attachment B
2/17/09

NORTH DAKOTA PETROLEUM COUNCIL

Ron Ness
President

Marsha Reimnitz
Office Manager

120 N. 3rd Street • Suite 200 • P.O. Box 1395 • Bismarck, ND 58502-1395
Phone: 701-223-6380 • Fax: 701-222-0006 • Email: ndpc@ndoil.org

House Bill 1235

House Appropriations Committee

February 17, 2009

Chairman Svedjan and Members of the Committee, my name is Ron Ness. I am the President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 160 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. Our members produced over 80% of the oil in North Dakota in 2008.

OIL INDUSTRY FACTS:

JANUARY 2007	**FEBRUARY 2009**
ND 9th largest oil producing state	**5th**
ND produces 113,000 barrels of oil per day	**215,000 barrels per day**
42 rigs drilling new wells	**65 drilling rigs (98 in Oct. '08)**
3,600 producing oil wells	**4,200 producing wells**

OIL INDUSTRY FACTS:

2007 INDUSTRY ECONOMIC IMPACT STUDY FACTS:

- **Oil industry paid $519 million in taxes in 2007**
- **$8.2 Billion impact on North Dakota's economy in 2007**
- **Industry paid over $400 million in royalties in 2007**
- **Employed 7,719 direct employees and supported over 38,000 indirect jobs**

The question asked in the 2007 Legislature was "What can be done to not only maintain this incredible economic growth but expand our state's oil production to 150,000 or 200,000 barrels of oil per day?" The question before the 2009 legislature should be "How we maintain this incredible economic growth and keep this Bakken Play rolling. Last session, the legislature went to work and passed several bills that incentivized pipeline infrastructure, created the Pipeline Authority to facilitate pipeline construction, and passed a Bakken tax incentive. These efforts were successful, the Bakken Play has taken-off and the State of North Dakota has reaped the benefits.

The Bakken tax incentive passed last session was successful by any measurement. There were a number of reasons that lead to the explosion of Bakken development but the positive message you sent to industry and investors that North Dakota is open for business and we support your investment in the Bakken was an essential piece of the puzzle. The Bakken continues to face many challenges.

Bakken Challenges:

- Oil Prices
- Challenging Geology
- High Cost Oil Play - $70,000 per day drilling costs
- Pipelines at Capacity
- Lack of Investment Capital
- Housing/Workforce/Infrastructure

Stimulating economic activity and investment works, just look at what Washington is trying to do to kick-start the economy. The past two-years have shown that oil development can set our state apart from others and bring great prosperity to our citizens. We all know the potential of the Bakken and what it can mean to our state if it continues to be productive. This bill is another small piece to keep the "Bakken Rockin". Current economics do not support investment in the Bakken and the high costs of exploration have made virtually every other oil formation too expensive for the expected rate of return.

The Petroleum Council supports HB 1235 and strongly supports encouraging activity in all producing formations not just the Bakken. Jobs, revenues, and economic development happen when a well is drilled in any formation. The Economic Impact Study results indicated that oil development is a leading economic driver for our state. The Bakken, other than in parts of Mountrail County, is still economically challenged, especially under the current price and cost environment. If HB 1235 can keep a few rigs operating, the state will get a return on its investment.

We urge you to support this bill.

#\

NORTH DAKOTA PETROLEUM COUNCIL

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President

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House Bill 1235

Senate Finance & Tax Committee

March 10, 2009

Chairman Cook and members of the Committee, my name is Ron Ness. I am the President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 160 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. Our members produced over 81% of the 62 million barrels of oil produced in North Dakota in 2008. Petroleum Council members also account for 75% of the 600 wells drilled in North Dakota in 2008. In addition, we represent many oil field service companies, pipeline companies, refiners, and others who employ thousands of workers in North Dakota. We appear in support of HB 1235.

Top Five Reasons To Pass HB 1235:

1. Bakken Fever - successful Bakken development can be a game-changer for our state's future. How many states have a resource with this type of potential?
2. Technology Just Gets Better - The best technology to date suggests we can recover 1% to 2% of the oil in the Bakken. If we can develop the technology to double or triple the recovery to just 5%, it will have enormous impacts on our state.
3. What's Next? - The Three Forks is a complete unknown resource with tremendous potential.
4. Where's the Money? At the peak of oil activity in November 2008 with 98 rigs operating, industry was investing nearly $1 billion per quarter into exploring and researching the best techniques to develop the Bakken. This does not include the spending on building infrastructure, such as gas plants and pipelines. Finding money, or credit, is a major challenge.
5. Strike While the Bakken is Hot – keep the rigs and workers while they are here.

The Bakken tax incentive passed last session was successful by any measurement. <u>There were a number of reasons that led to the explosion of Bakken development, but the positive message you sent to industry and investors that North Dakota was open for business and we support your investment in the Bakken was an essential piece of the puzzle.</u> Some might say that bill cost the state millions of dollars, but we all know the return on those millions has likely been billions and has helped position our state where it is today. The Bakken Play took-off in 2007 and the State of North Dakota has reaped the benefits. A large share of our state's current budget situation is based upon the success of the Bakken. However, the Bakken continues to face many challenges including:

- Volatile Oil Prices
- High Cost Oil Play - $70,000 per day drilling costs
- Lack of Investment Capital
- Challenging Geology
- Pipelines at Capacity
- Housing/Workforce/Infrastructure

Current economics do not support investment in the Bakken, and the high costs of exploration have made virtually every other oil formation too expensive for the expected rate of return. Stimulating economic activity and investment is the big talk in Washington and across the country as they try to kick-start the economy. Congress is spending billions with no guarantees that the economy will be stimulated or jobs will be created. The past two years have shown that oil development can set our state apart from others and bring great prosperity to our citizens. **We all know the potential of the Bakken and what it can mean to our state if it continues to be productive.** To accomplish that, we must attract capital to keep rigs operating to improve and develop new technologies and expand the productive areas of the Bakken and Three-Forks. This will result in more oil being produced and lead to more investment in infrastructure and business growth; all of which keep people employed and keep our economy humming. Incentives like HB 1235, will help attract attention and investment from across the nation and world which will create jobs and stimulate the North Dakota economy.

Oil Exploration Creates Economic Stimulus:

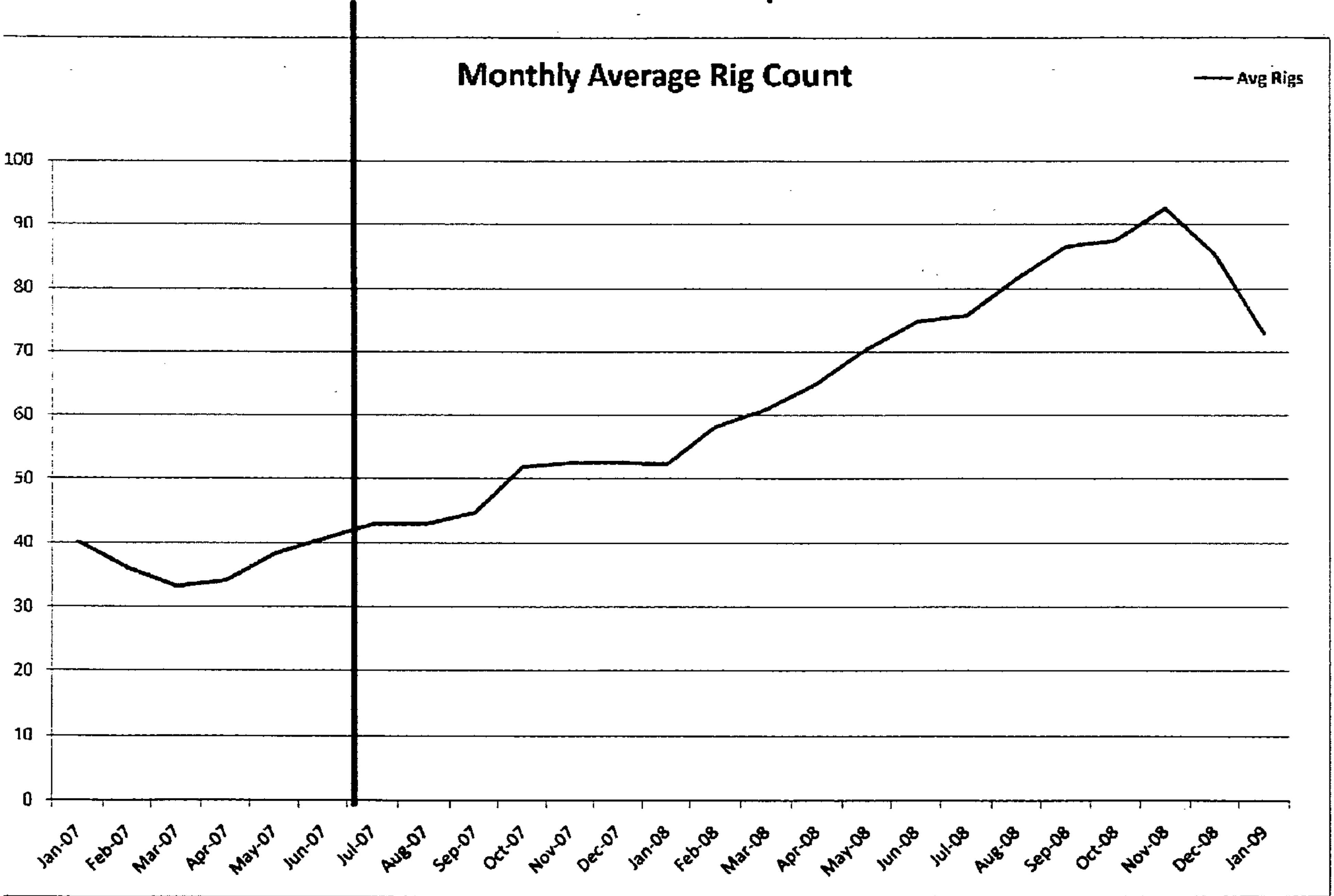
- New High-Wage Jobs – industry created 2,500 from 2005–2007 and many more in 2008
- Business Growth -- new businesses have opened in Minot, Stanley, Williston, Killdeer etc.
- Housing – when rigs are running, you can't find a hotel room or house in western ND
- Air Traffic – all western airports have seen substantial increases in boarding's
- Students – for the first time in decades, schools in western ND decades report an increase
- Wealth Creation -- $400 million paid in 2007–2008 might have been double
- Taxes – industry paid $520 million in 2007, maybe $800 million in biennium
- Economic Impact - $8.2 billion in 2007 – doubled the impact from 2005

The Petroleum Council supports HB 1235 and strongly supports encouraging activity in all producing formations, not just the Bakken as provided for in this bill. Jobs, tax revenues, and economic development happen when a well is drilled in any formation. The 2007 Economic Impact Study results indicate that oil development is a leading economic driver for our state. The Bakken, other than in parts of Mountrail County, is still economically challenged, especially under the current price and cost environment.

Each new well drilled in 2008 will pay nearly $4.5 million in tax over the life of the well. If HB 1235 can keep, or stimulate, just 14 new wells over the next two years, the state will collect the tax revenue over the life of these new wells. For example: If two drilling rigs keep working and they drill eight wells per year, each new well costs $6 million to drill, industry has invested/stimulated the economy with $96 million in new investment. Those 16 new wells will each pay $4.5 million in taxes which is $72 million in tax revenue (greater than the $65 million fiscal note on this bill). Sixteen new wells represent just 2% of the wells drilled in the past two years. Therefore, if HB 1235 encourages additional investment and results in just 16 new wells that wouldn't otherwise have been drilled the state wins and this bill will be the best investment of the session.

We urge you to support this bill.

Bakken Tax Incentive Implemented



Attachment C
2/17/09

STATE OF NORTH DAKOTA

OFFICE OF STATE TAX COMMISSIONER

Cory Fong, Commissioner

Memorandum

To: Chairman Svedjan
Members of House Appropriations

From: Kathryn Strombeck, Research Analyst

Date: February 17, 2009

Subject: Fiscal Impact of Proposed Amendments to Eng HB 1235 (90099.0301)

At your request, I have estimated the approximate fiscal impact of amendments to Eng. HB 1235. These amendments impose a reduced oil extraction tax rate of 2 percent on all new wells drilled after April 30, 2009, during any time when the existing incentives are not triggered on. The amendments to Eng. HB 1235 limit the amount of incentive allowed each well by providing the reduced rate on the first $4.5 million in gross value, or within the first 18 months of production, whichever comes first.

Mr. Ness and certain members of your committee were correct in their assertion that these amendments do work well with existing law. When current incentives are "triggered on," the appropriate oil extraction tax rate will be zero as provided in current law. When current incentives trigger back off, as oil prices rise, this bill will allow the remainder of the 75,000 barrel limit, or the $4.5 million in gross value to continue to be subject to a 2 percent oil extraction tax rate, until these limits are met.

I have computed the approximate fiscal impact of this amendment based on the price and production assumptions contained in the new February 9, 2009 Forecast. It is important to note that, in this new forecast, the current incentives are expected to "re-trigger on" for a period of 8 months beginning with June 2009 revenues (May 2009 production), and reducing oil extraction taxes by an estimated $75.675 million in the last month of the current biennium, and the first seven months of the 2009-11 biennium.

There is assumed to be no impact to this bill during the time the current incentives are triggered on – including no impact in the current biennium due to the emergency clause. When current incentives "trigger off," as assumed to occur in early calendar year 2010, the provisions of this bill would impose a 2 percent oil extraction tax rate on production from new horizontal wells, and reduce oil extraction tax revenues by an estimated $65.003 million in the final 17 months of the biennium. (The -$65 million impact would reduce state general fund/permanent oil tax trust fund revenues by $39 million, and resources trust fund and education fund revenues by $13 million each.)

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VOLUME III ISSUE I

Oil & Gas TIDBITS

NORTH DAKOTA PETROLEUM COUNCIL

We Keep North Dakota Going Strong

Oil & Gas Economic Impacts Double in North Dakota

Increased Oil & Gas Activity Benefits the State

North Dakota State University researchers recently announced that the oil and gas industry doubled its total business activity from $3.9 billion in 2005 to $8.22 billion in 2007, making it one of the state's largest industries. This study, a follow-up to the 2005 study, was funded by the North Dakota Petroleum Council with grant support from the Oil and Gas Research Council.

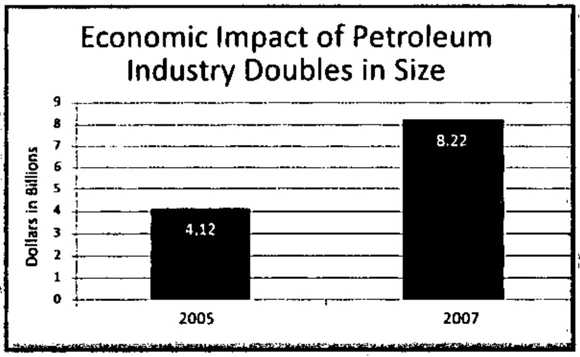
"This study confirms the ever-growing contribution and significant impact that the oil and gas industry has on North Dakota," said Ron Ness, President of the North Dakota Petroleum Council. "The petroleum industry is a leading economic driver for North Dakota, second only to agriculture, in terms of benefiting our residents through jobs creation, tax relief and total business activity."

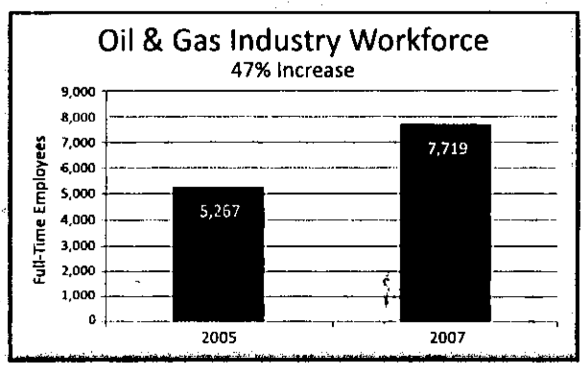
The study shows that the petroleum industry created nearly 2,500 new jobs between 2005 and 2007, going from a total of 5,267 to 7,719 full-time employees (47% increase). These jobs generated an estimated $1.46 billion in direct personal income in 2007. Furthermore, the study reveals that the industry created secondary employment impacts sufficient to support 38,500 full-time jobs.

The entire state also benefits from the taxes generated from the growth in oil and gas activity. The industry has created tremendous wealth in the state by paying $400 million in royalty payments.

"Our researchers have conducted numerous impact studies of other business sectors in North Dakota, and we've yet to see such phenomenal growth in jobs and expenditures in just two years," said NDSU Economist Dean Bangsund.

The study shows that the petroleum industry paid $519.8 million in state and local taxes in 2007. These taxes were used to provide property tax relief and support for a variety of programs and services including education, water development, and centers of excellence funding. These taxes have also contributed significantly to the state's budget surplus.





To learn more about the North Dakota oil and gas industry, visit www.ndoil.org.

Did You Know?

- Overall business activity increased from $4.12 billion in 2005 to $8.22 billion in 2007 (99% increase).
- Direct impacts increased from $1.57 billion in 2005 to $3.10 billion in 2007 (98% increase).
- Indirect impacts increased from $2.55 billion in 2005 to $5.12 billion in 2007 (101% increase).
- The petroleum industry paid $519.8 million in state and local taxes in 2007.
- The petroleum industry paid $400 million in royalties, with 54% being paid to North Dakota residents.
- The petroleum industry created nearly 2,500 new jobs between 2005 and 2007.
- From 2005 to 2007, the number of active wells in North Dakota increased from 3,391 to 3,759 (10.8% increase)

OIL CAN! build goodwill in North Dakota

Comparing the Oil and Gas Industry from 2005 to 2007

The Numbers Behind State Revenue and Jobs

The economic impact study shows that the petroleum industry's direct economic impacts increased from $1.57 billion in 2005 to $3.10 billion in 2007 (98% increase). The indirect impacts increased from $2.55 billion in 2005 to $5.12 billion in 2007 (101% increase).

Direct economic impacts are defined as the initial or first-round effects of a project, program, or activity. Secondary economic impacts result from subsequent rounds of spending and re-spending that occur within an economy. The gross business volume of $8.22 billion is then established by combining the direct economic impacts and the secondary economic impacts. These figures don't include the dollars generated by the sale of retail gasoline or the distribution of fuel oil.

"Maintaining North Dakota's positive business climate is important to continue to attract the capital necessary to further develop the Bakken formation," said Rick Ross, Vice President of Operations, Whiting Oil & Gas, and Chairman of the North Dakota Petroleum Council.

"The industry is facing many challenges, such as commodity prices, pipeline capacity, challenging geology and high costs of drilling. While we are likely to see highs and lows in a commodity-based business, a healthy business climate will allow the industry to move forward in the future."

While this study is a snapshot in time, it clearly indicates that in recent years the petroleum industry's investment in exploration and production of oil and natural gas has had a significant impact on North Dakota's economy. In 2008, 600 wells were drilled in North Dakota, nearly doubling the 336 wells drilled in 2007. Due to technological advancements and the world-class potential of the Bakken and Three Forks formations, the oil and gas industry in North Dakota will continue to be a leader in driving the state's economy forward.

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KEY SEGMENTS OF THE PETROLEUM INDUSTRY

	Exploration	Extraction	Transportation & Processing	Totals
	Drilling & Locating Oil Reserves	Bringing Oil & Gas to the Surface	Moving Oil & Gas from Pumps to Processing Centers and Oil Refining & Natural Gas Processing	
Direct Impacts	$1.536 billion	$1.308 billion	$262 million	$3.106 billion
Secondary Impacts	$2.721 billion	$1.956 billion	$445 million	$5.122 billion
Gross Business Volume	$4.258 billion	$3.264 billion	$707 million	$8.229 billion
Direct Employment	7,140 full-time jobs		579 full-time jobs	7,719 full-time jobs
Secondary Employment	38,500 full-time jobs			
Tax Revenues	$108 million	$393 million	$19 million	$520 million

North Dakota Petroleum Council
PO Box 1395
Bismarck, ND 58502-1395

#2

Northern Alliance of INDEPENDENT PRODUCERS

PO Box 2422 • Bismarck, North Dakota 58502-2422 • Phone 701-224-5037 • Fax 701-224-5038 • email NProducers@aol.com

March 10, 2009

Senate Finance and Tax Committee
Testimony in SUPPORT of HB 1235
Northern Alliance of Independent Producers

The Northern Alliance of Independent Producers is an oil producer's trade association. We represent the perspective of 60 producers operating in the Dakota's and Montana. Not including investment in pipelines, gas plants, and transportation facilities our members spent well in excess of $1 billion drilling oil wells in North Dakota last year.

DESIRED RESULT

The Northern Alliance of Independent Producers supports HB 1235 and the incentive it now contains. We want to see the bill amended to lower North Dakota's top tax rate from 11.5% to 9% for production from new wells. If you make these changes the industry will respond and will bring more investment, more jobs, and more prosperity to our state.

North Dakota has two taxes on gross revenues of oil and gas: the gross production tax of 5% and the extraction tax of 6.5%, which was passed in 1980. The February 9, 2009 revenue forecast predicts that low oil prices will persist through fall of 2009, and should recover by February 2010 to an average price of $59 (bringing back our top tax rate of 11.5%). Assuming the forecast to be close, HB 1235 tax incentive and long term tax policy changes makes good sense for our state.

(Historically, prices have not recovered quickly, as reflected in the attached chart).

THIS IS WHAT OIL AND GAS PRODUCTION TAXES CONTRIBUTE TO OUR STATE:

-extraction/production taxes: $794 million this biennium. 07-09 distributions include:
-general funds: $ 71 million
-common schools trust fund, $ 37.7 million
-foundation aid stabilization fund, $ 37.7 million
-water resources trust fund, $ 75.4 million*
(*2005-07: $25.82 million; 2007-09 projection was: $41 million)
-and the permanent oil tax trust fund (POTTF) $475 million

(Uses of the POTTF are attached)

Property tax relief:
Property tax relief for many North Dakota citizens will also be provided from these funds. The February 9, 2009 revised forecast projected $427 million POTTF revenue, $300 million of which the Governor proposed for property tax relief, leaving a balance of $602 million on 6/30/2011.

Based upon 2007 data, NDSU concluded that the oil industry has doubled in economic volume since 2005, and represented $8.2 billion in gross business volume. ($3.9 billion in 2005--cf. coal at $3.56 billion and wheat at $1.8 billion). The study also shows 46,000 jobs (direct and indirect) from the industry.

TODAY: Loss of rigs means loss of jobs and loss of revenue:

Current rig count has gone from 98 to 52 today (a 47% decline). Each rig represents approximately 120 jobs (direct/indirect).

Reduced capital expenditure budgets for 2009 by 15-30%. (Hess, Continental Resources, Encore, Marathon.... have all signaled significant reductions in face of world economics and price declines that will not support the current level of development).

Price of $147 a barrel, to current price of $47.00 on NYMEX. (North Dakota producers are getting far less than NYMEX—top at $125 in 2008. Current posting at Plains Marketing was $33 and $31 for ND sweet and sour crude oil respectively yesterday. Tesoro posted $38). Recent posting is attached. This price differential signals one of the defects of the current structure with triggered tax rates based upon NYMEX.

Production has gone from 215,000 bopd to most recent 187,000 bopd (January 2009).

We sampled 10 brokerage firms, who have laid-off over 400 landmen.

WHY THE BILL AND AMENDMENTS ARE IMPORTANT:

Incentives work:

North Dakota will benefit by passing the bill and the amendment. Incentives work. That was demonstrated following passage of the 2007 incentive.

Average Rig Count July, 2007	41	
Average Rig Count July, 2008	75	(see attached NDIC tables)

Montana had the same experience when it passed its horizontal well incentive (.5% for 18 months and top rate of 9%) in 1991 as reflected in the attached table. Oklahoma had similar experience in 2006 with the Woodford shale ($1/5^{th}$ size of the Bakken).

Tax policy matters:

The long term benefit of changing the tax policy only for new wells will also benefit North Dakota to be more competitive among the 38 states that produce oil and gas. Tax policy matters to companies that make multi-million dollar investment decisions. We compete with New Mexico, Oklahoma, Texas, Wyoming and West Virginia. (And we can see in the attached chart, the migration of investment through rig counts when ND levied the extraction tax of 6.5%).

CONCLUSION:

HB 1235 and the proposed amendment will send positive investment signals to the industry so that we can continue to seek new development in the Bakken at any price. Incentives and long term fair tax policy will mean more production, more jobs, better jobs and more money – not just circulating in ND BUT coming to ND. Having a substantial oil play in ND is only part of the equation; we're still competing with 37 other oil and gas producing states.

We don't know what price will do, or when and some may ask if a 2-4% tax incentive will make any difference. At $100------probably not, but at $50-60 per barrel these incentives will help to make the Bakken economic, which at current prices it is not. We are asking North Dakota to make an investment in an industry that helps to generate enormous wealth and resources for our state. It will be good for the water community, education, North Dakota mineral owners and the state as a whole and ask for that the amendment be adopted and for a DO PASS on HB 1235.

Robert W. Harms

President

Northern Alliance of Independent Producers

Permanent Oil Tax Trust Fund

Permanent Oil Tax Trust Fund

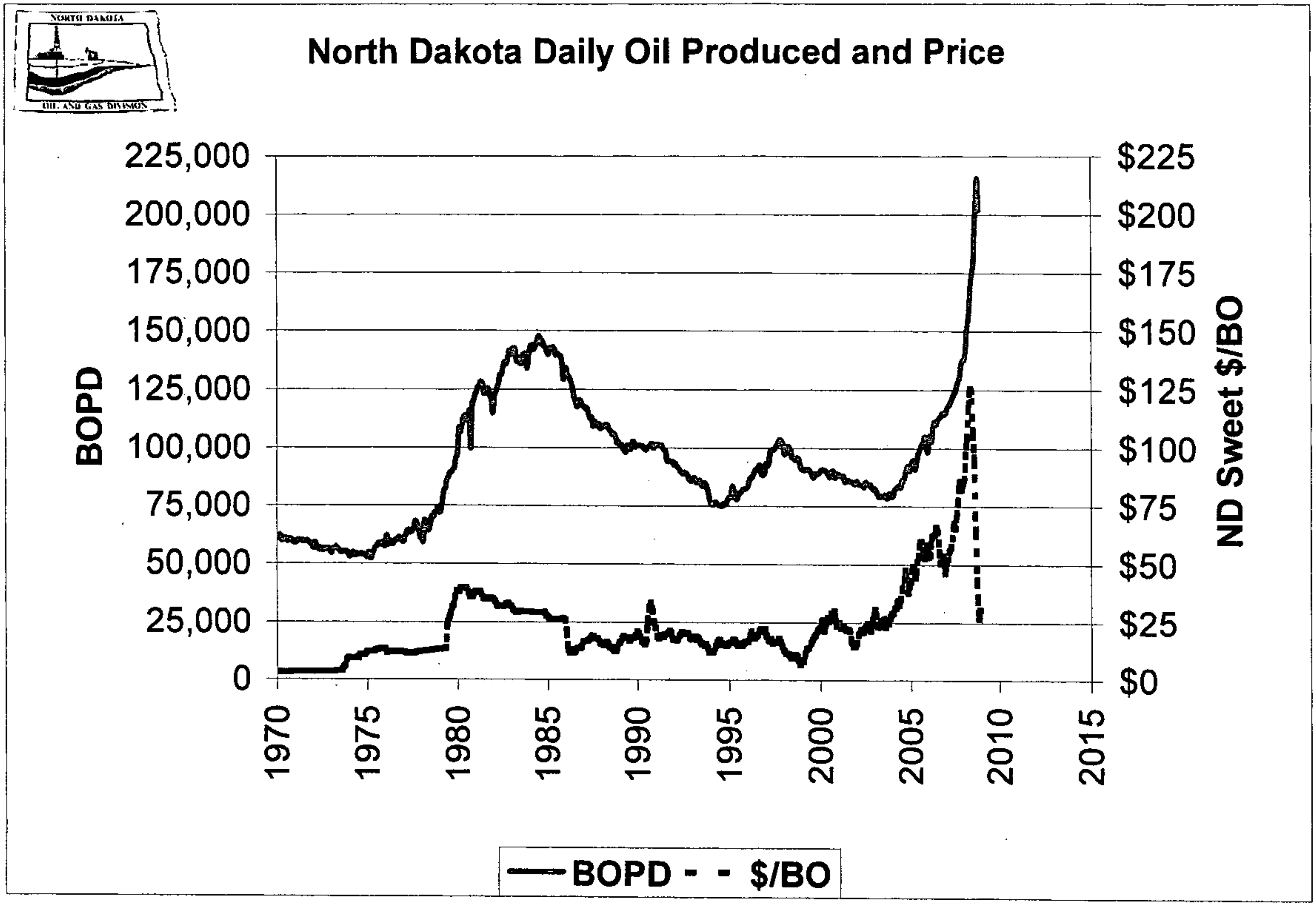
Status Statement

	2005-2007		2007-2009	
Beginning Balance		$50,369,096 [1]		$135,177,443
Revenue		165,426,167 [2]		146,017,945 [3]
Expenditures and Transfers:				
Appropriation for Peace Garden Music Camp	($350,000)			
Appropriation for Centers of Excellence	(16,000,000)		($15,000,000)	
Additional appropriation for Centers of Excellence	(5,300,000)			
Department of Human Services MMIS	(3,667,820)			
Higher education			(7,783,315)	
Grants to tribal colleges			(700,000)	
Veterans Home facility			(6,483,226)	
Agricultural research and extension			(750,000)	
Transfer to the general fund	(55,300,000)		(115,000,000)	
Total Expenditures and Transfers		(80,617,820)		(145,716,541)
Ending Balance		$135,177,443		$135,478,847

1 Actual July 1, 2005, beginning balance. All other amounts shown are estimates.

2 Estimated oil extraction and production taxes in excess of the current statutory cap of $71.0 million (North Dakota Century Code 57-51.1-07.2), based on actual collections through April 30, 2007 and the May 2007 legislative revenue forecast for the remainder of the biennium.

3 Estimated oil extraction and production taxes in excess of the current statutory cap of $71.0 million (North Dakota Century Code 57-51.1-07.2), based on the May 2007 legislative revenue forecast.



North Dakota Daily Oil Produced and Price
BOPD
225,000
200,000
175,000
150,000
125,000
100,000
75,000
50,000
25,000
0
ND Sweet $/BO
$225
$200
$175
$150
$125
$100
$75
$50
$25
$0
1970
1975
1980
1985
1990
1995
2000
2005
2010
2015
BOPD
$/BO

PLAINS MARKETING, L.P.

CRUDE OIL PRICE BULLETIN 2009-044
(CANCELS AND SUPERSEDES 2009-043)

PLAINS MARKETING, L.P. • 333 CLAY • P.O. BOX 4648 • HOUSTON, TEXAS 77210-4648 • (713) 646-4100

Effective 7:00 A.M. March 6, 2009, subject to change without notice and subject to its division orders and other contracts, Plains Marketing, L.P. will pay the following prices per barrel of 42 U.S. gallons each adjusted for American Petroleum Institute (API) gravity for merchantable quality virgin crude oil and condensate delivered for its account into the custody of its authorized carrier or receiving agency.

	PRICE ($/BBL)	POSTED GRAVITY API	GVT. ADJ. SCALE[1]
TEXAS			
West Texas Intermediate - Area #1	41.50 *	40.0-44.9	1
West Texas Intermediate - All Other Areas	42.00 *	40.0-44.9	1
West Texas Sour	35.50 *	34.0-44.9	4
West Central Texas	42.04 *	40.0-44.9	1
North Texas Sweet	41.70 *	40.0-44.9	1
North Texas (Cooke & Grayson) Sweet	42.00 *	40.0-44.9	2
North Texas (Cooke & Grayson) Sour	36.00 *	40.0-44.9	3
East Texas Field	41.50 *	Flat	Flat
East Texas (Other than E. TX. Field)	41.50 *	40.0-44.9	1
East Texas Sour	32.75 *	34.0-44.9	4
East Texas Light Sour	36.00 *	34.0-44.9	4
East Texas Condensate	38.00 *	40.0-44.9	1
Texas Upper Gulf Coast	35.50 *	40.0-44.9	1
Texas Central Gulf Coast (Giddings)	35.50 *	40.0-44.9	1
South Texas Light (Sweet)	35.50 *	40.0-44.9	1
South Texas Heavy	35.25 *	29.0-44.9	5
South Texas Sour	30.00 *	34.0-44.9	4
Texas Panhandle	41.50 *	40.0+	15
NEW MEXICO			
New Mexico Intermediate	42.00 *	40.0-44.9	1
New Mexico Sour	35.50 *	34.0-44.9	4
LOUISIANA			1
North Louisiana	41.25 *	40.0-44.9	1
Central Louisiana Sweet	41.50 *	40.0-44.9	1
North Louisiana LCT	42.25 *	Flat	Flat
Central Louisiana LCT	41.75 *	Flat	Flat
North Louisiana Condensate	37.75 *	40.0-44.9	
South Louisiana Light Sweet (Onshore)	40.75 *	40.0-44.9	2
Ferriday Area	41.75 *	Flat	Flat
South Louisiana Eugene Island (Onshore)	37.50 *	40.0-44.9	2
South Arkansas and North Louisiana Sour	36.00 *	34.0-44.9	4
MISSISSIPPI			
Mississippi Light Sweet	40.75 *	40.0-50.0	7
Mississippi Light Sour	33.50 *	34.0-44.9	4
COLORADO			
Colorado Southeastern	35.50 *	40.0-44.9	12
D-J Basin	30.55 *	40.0-44.9	1
Colorado Western	31.58 *	40.0-44.9	3
UTAH			
Black Wax	30.20 *	40.0-44.9	3
ILLINOIS			
Illinois Sweet	37.25 *	30.0-44.9	11
INDIANA			
Indiana Sweet	37.25 *	30.0-44.9	11
KANSAS			
Kansas Common	33.75 *	40.0-44.9	2
Eastern Kansas Common	30.21 *	40.0-44.9	2
Eastern Kansas Common Special	25.66 *	40.0-44.9	2
Northwestern Kansas Sweet	34.25 *	40.0-44.9	2
Southwestern Kansas Sweet	34.35 *	40.0-44.9	2
Central Kansas Sweet	34.75 *	40.0-44.9	2
NEBRASKA			
Nebraska Western	30.55 *	40.0-44.9	1
Nebraska Intermediate	32.00 *	40.0+	14
NORTH DAKOTA			
Williston Basin Sweet	33.08 *	40.0-44.9	1
Williston Basin Sour	31.18 *	40.0-44.9	6
OKLAHOMA			
Domestic Sweet (Cushing)	42.00 *	40.0-44.9	2
Oklahoma Sweet	42.00 *	40.0-44.9	2
Oklahoma Sweet Special	37.25 *	40.0-44.9	2
Oklahoma Sweet-Central	42.00 *	40.0-44.9	2
Western Oklahoma	36.50 *	40.0-44.9	2
Oklahoma Panhandle	36.00 *	40.0-44.9	2
Oklahoma Sour	29.00 *	40.0-44.9	3
Oklahoma Condensate	40.32 *	Flat	Flat
Oklahoma Condensate Light	39.48 *	Flat	Flat
WYOMING			
Wyoming Southwestern Area	31.58 *	40.0-44.9	3
Wyoming Sweet other Areas	34.08 *	40.0-44.9	1
Wyoming General Sour	32.83 *	40.0-44.9	8
Wyoming Asphaltic Sour	31.58 *	40.0-44.9	8

1 *The gravity adjustment scale and other terms are set forth on Page 2.*

* Indicates a price change

INDUSTRIAL COMMISSION OF NORTH DAKOTA
OIL & GAS DIVISION
2008 MONTHLY STATISTICAL UPDATE

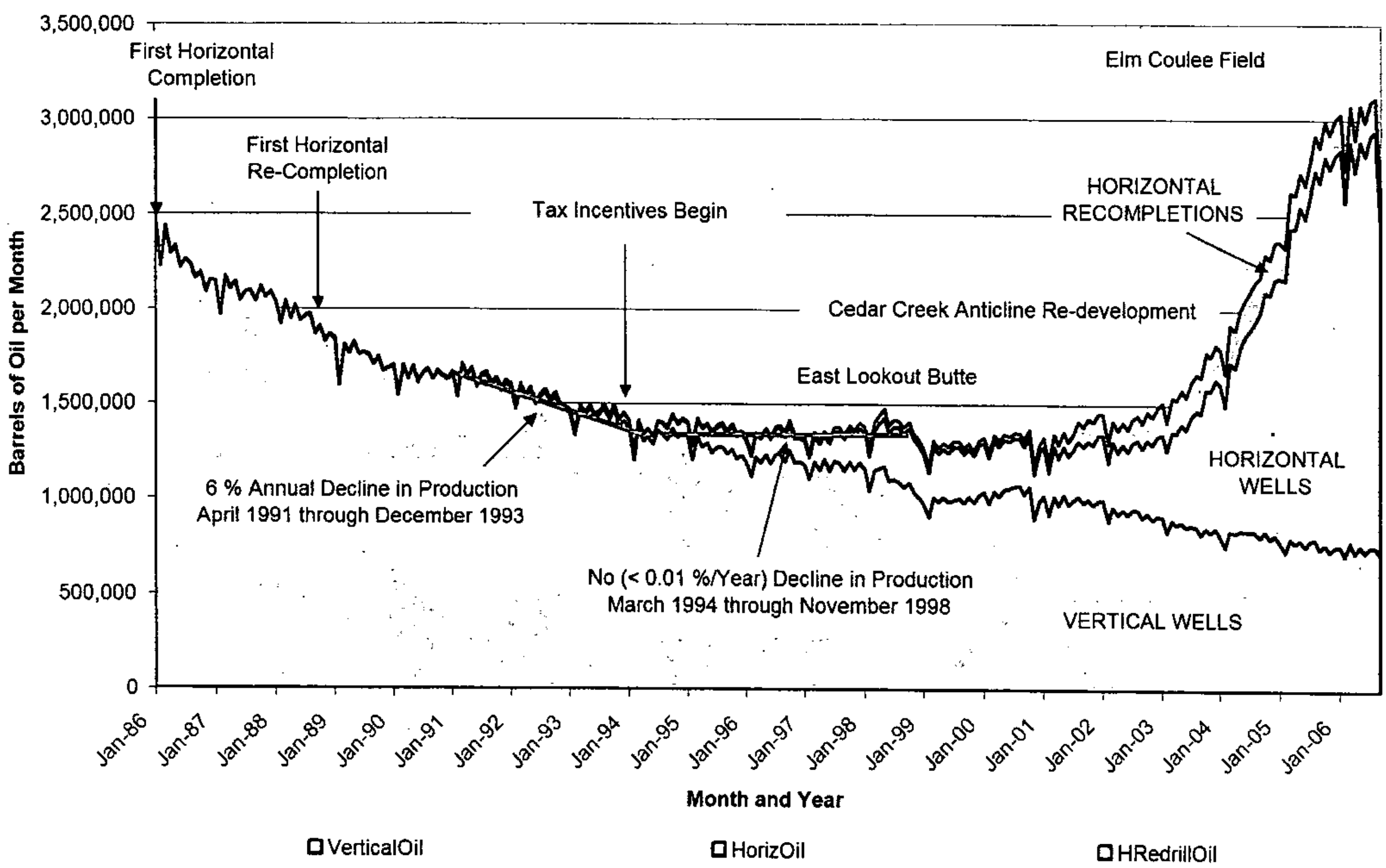
Month	Monthly Oil Production	Wells Producing	Average Daily Production	Permits Dev	Ext	WC	Total	Spuds	Average Rig Count
Jan	4,266,914	3,880	137,642	33	1	33	67	45	53
Feb	3,997,554	3,871	142,770	27	19	3	49	40	59
Mar	4,457,610	3,934	143,794	53	4	18	75	50	61
Apr	4,521,621	3,998	150,721	43	36	8	87	52	65
May	4,849,059	4,030	156,421	43	5	20	68	57	71
Jun	4,986,540	4,059	166,218	51	31	2	84	70	75
Jul	5,364,159	4,119	173,037	40	2	37	79	63	76
Aug	5,571,045	4,166	179,711	41	9	20	70	71	82
Sep	5,696,908	4,203	189,897	68	5	23	96	73	87
Oct	6,325,685	4,245	204,054	66	27	5	98	71	88
Nov	6,471,512	4,284	215,717	48	6	16	70	73	92
Dec	6,267,516	4,271	202,178	54	15	34	103	55	86
Totals	62,776,123		171,989	567	160	219	946	720	75

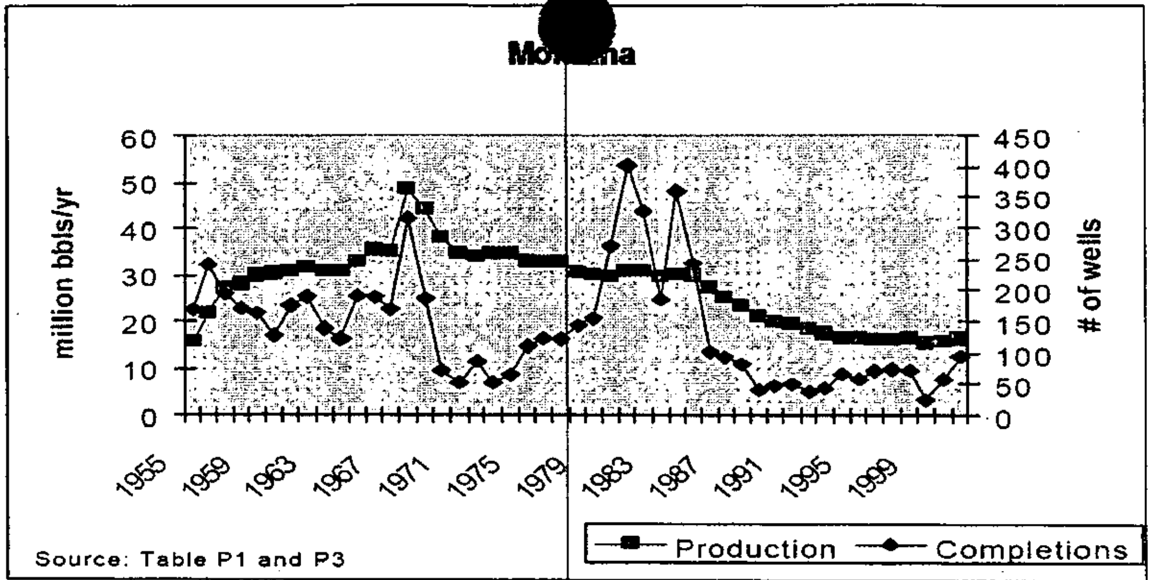
Updated: February 18, 2009

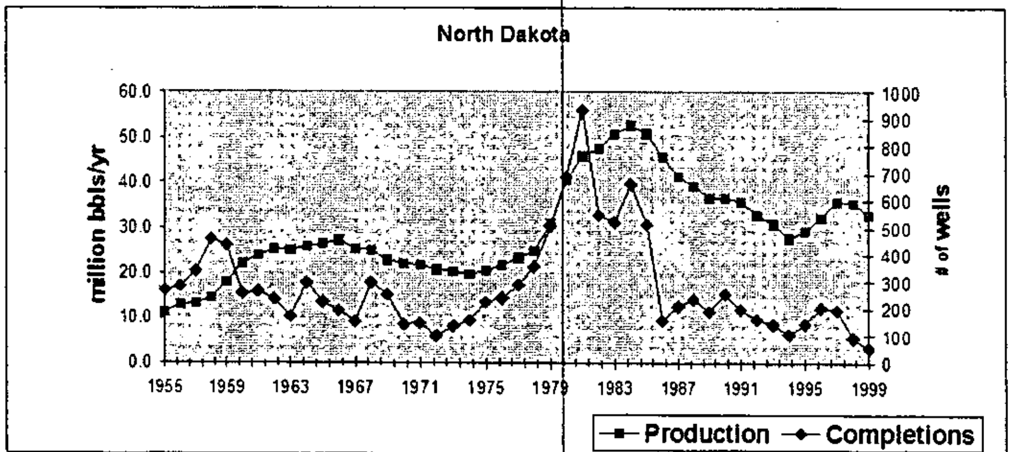
INDUSTRIAL COMMISSION OF NORTH DAKOTA
OIL & GAS DIVISION
2007 MONTHLY STATISTICAL UPDATE

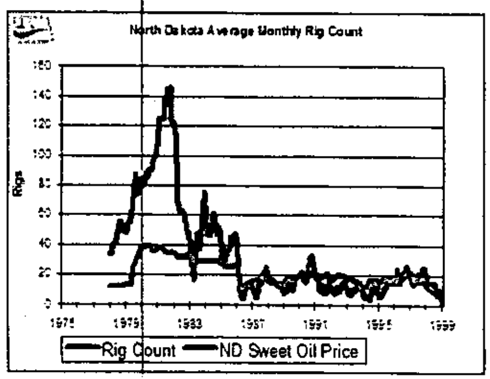
Month	Monthly Oil Production	Wells Producing	Average Daily Production	Permits Dev	Permits Ext	Permits WC	Permits Total	Spuds	Average Rig Count
Jan	3,566,131	3,660	115,036	22	2	7	31	32	41
Feb	3,268,089	3,636	116,717	10	4	8	22	18	37
Mar	3,660,949	3,677	118,095	14	3	13	30	23	33
Apr	3,560,384	3,684	118,679	26	4	3	33	29	35
May	3,736,628	3,697	120,536	25	6	15	46	33	39
Jun	3,670,946	3,752	122,365	12	4	9	25	38	40
Jul	3,833,398	3,765	123,658	28	2	12	42	44	41
Aug	3,866,114	3,786	124,713	22	8	20	50	35	43
Sep	3,812,652	3,820	127,088	27	3	13	43	38	46
Oct	4,006,933	3,835	129,256	36	3	21	60	42	53
Nov	3,923,122	3,840	130,771	41	4	16	61	41	53
Dec	4,216,637	3,868	136,021	33	2	16	51	34	52
Totals	45,121,983		123,622	296	45	153	494	407	43

HORIZONTAL AND VERTICAL PRODUCTION BY MONTH, 1986 THROUGH SEPTEMBER 2006




Mo[...]na
million bbls/yr
# of wells
Production
Completions
Source: Table P1 and P3


North Dakota
million bbls/yr
# of wells
Production
Completions


North Dakota Average Monthly Rig Count
Rigs
Rig Count
ND Sweet Oil Price

#3

Northern Alliance
of INDEPENDENT PRODUCERS

March 10, 2009

Senate Finance and Taxation Committee
ND Senate
State Capitol
Bismarck, North Dakota 58505

Re: ND Oil Industry HB 1235, reduce tax rate of 11.5%

Dear Chairman Cook and Members of the Committee,

We are writing to encourage your support and amendment of HB 1235 to reduce the tax rate of 11.5% on North Dakota oil producers and mineral owners. The long term need for this policy change is very important to North Dakota and the industry that employs so many people.

Last year the members of our organization (NAIP) spent in excess of $1 billion drilling for wells in North Dakota, and millions of additional dollars for pipelines, gas plants and similar equipment. We have responded to America's need for more oil that is produced in our country rather than rely on foreign oil that contributes so heavily to our trade deficit. But, if we want to be less dependent on foreign oil, then we need to get our domestic public policy correct not just in Congress but in the states. North Dakota's tax policy is one such change that is necessary. North Dakota's top rate of 11.5% is one of the highest in the nation, which makes the state less competitive to other states in the nation. (For example, Montana has a 9% tax and 18 month holiday at .5% tax). The ND tax impedes new investment for drilling rigs, and new pipeline construction that would reduce the price discounts that pipeline constraints have created.

The Bakken is an attractive resource that we hope to develop for our companies, and the people of North Dakota, but it remains a challenge for a host of reasons:

- Price discounts range from $14 to as high as $35 in the past 2 years resulting from pipeline constraints. That problem is exacerbated by MT and SD, hosting the Keystone XL pipeline which is not available to domestic producers and unfairly denies access to other markets.
- Infrastructure needs remain, in terms of roads, gathering systems and major pipelines.
- Manpower and workforce issues, (companies have laid off hundreds of employees in North Dakota in view of dramatic price declines that currently threaten the Bakken).

- Although the resource is significant, it remains a challenging formation to produce, often times proving un-economic.

- Tax policy of 11.5% on gross revenues detracts from more aggressive investment.

We are as subject to market forces and economics as anyone. We are hopeful that prices will rebound to more normal levels in the long-term, but can only guess as to when that might happen. In the meantime, we urge you to amend HB 1235 to reduce the top tax rate in North Dakota to 8.75% and resolve this public policy issue that has plagued North Dakota for years. We cannot stress enough how important this is to your state, to our industry and frankly as part of America's challenge in meeting its own energy needs. We have attached a chart that shows the impact of this tax policy change in 1981, years before the price decline which shows a dramatic shift of rigs from North Dakota to Montana as a direct result of tax policy. It needs to be fixed.

We look forward to visiting further with you on this very important topic.

Sincerely,

/S/ James E. Powers, Manager
Denver Mineral & Royalty Company

/S/ Harold Hamm, CEO
Continental Resources, Inc.

/S/ George Solich, President
Cordillera Energy Partners II

/S/ Kevin Treadway, V. Pres.
Encore Acquisition Co.

/S/ Mike Armstrong, President
The Armstrong Corp.

#4

Sixty-first
Legislative Assembly
of North Dakota

Proposed Amendment to: **REENGROSSED HOUSE BILL NO. 1235**

Page 1, line 18 insert: Section 4. AMENDMENT: a new Section to Chapter 57-51.1 to provide: Notwithstanding any section of this chapter, the extraction tax rate for oil produced for any well drilled and completed after April 30, 2009 after the application of any incentives provided in this chapter shall not exceed four percent.

#5

Testimony of Tom Luttrell
in support of HB 1235
March 10, 2009

Good morning, my name is Tom Luttrell, I am a Sr. Vice President of Continental Resources, Inc.

Mr. Chairman and committee members thank you for this opportunity to speak with you in support of HB 1235.

Our company has been drilling wells in North Dakota since the early 1990's. We have seen the oil and gas business in your state change a lot over the years.

One area of significant change has been an increase in "off the top" reductions in the bottom line oil price that producers actually receive to recoup drilling, leasing and other expenses and to use for re-investment in more leasing and drilling.

Landowner royalty rates have increased from the traditional 12.5% level to 18.75% or more in some areas.

Marketing and transportation costs now range from 10% to 35%, and those impairments may only continue increasing due to limited pipeline access and Canadian oil imports among other factors.

North Dakota's 11.5% total tax rate on production (among the highest in the nation) is a very onerous "off the top" burden added to these others.

Of course a more competitive tax rate and incentives help North Dakota better vie for exploration company's investment.

But also a lower tax rate and incentives directly fuel more activity - a fact that has been repeatedly demonstrated in North Dakota from the mid-1990's drilling in Bowman County through the most recent Bakken play.

Exploration companies take the lower tax and incentive money and re-invest it. That accelerates development and provides for new exploration which generates more revenue through additional production, drilling activity and leasing to feed your economy and increase tax income.

450

And as you know, those investments are big. Our Company alone invested over ~~$600~~ million in 2008 for drilling wells, leasing and seismic surveys in North Dakota.

In recent years, North Dakota has been blessed to have the Bakken shale play develop. It renewed enthusiasm among your in-state oil and gas operators and also caused other large out of state companies to "discover" exploring for oil and gas in your state.

Hundreds, maybe thousands of well paying jobs have been created for your citizens.

But times are tough in the oil field as you know. The Bakken play is not self-sustaining. The technological advances and exploration initiatives that caused the play to happen in the first place must continue to evolve to further expand development.

Your state has many other exploration opportunities in addition to the Bakken that can be explored if the industry enthusiasm for investment can be sustained.

As you move forward in this legislative session you have the timely opportunity to address legislative changes needed to move the oil and gas business not only through these tough times, but to modernize North Dakota's oil and gas tax structure and thereby hopefully propel the activity forward for decades to come.

Please consider the positive impact that HB 1235 will have and vote its approval.

lower tax rate

Thank you.

When are incentives ~~most~~ beneficial?

Incentives have compounding effect because 1. reduce economics of reinvestment - they obviously matter

Incentives matter. 2. When prices matter

Other more developed areas know that other states Okla.
Okla - 24 months 7% Montana

#6

Continental
RESOURCES

March 9, 2009

Senate Finance and Taxation Committee
ND Senate
State Capitol
Bismarck, North Dakota 58505

Re: ND Oil Industry HB 1235

Dear Chairman Cook and Members of the Committee:

I am writing to ask for your support and amendment of HB 1235 to reduce the tax rate of 11.5% on North Dakota oil producers and mineral owners. This policy change is very important to North Dakota's energy industry, and consequently the state.

Independent producers like Continental Resources have provided critical leadership in the exploration and development of North Dakota's energy resources, providing jobs to thousands of residents, as well as important tax and royalty revenues. In 2008, we and other producers invested more than $1 billion drilling in the state, as well as additional capital expenditures for pipelines and infrastructure.

Until energy prices collapsed in late summer, we were rapidly accelerating our drilling programs. However, as an unconventional play, the Bakken Shale requires horizontal drilling and high-pressure fracture-stimulation to harvest economically. With crude oil prices more than $100 below their 2008 peak, we have seen a rapid decline in operated drilling rigs in the play. Even if we see prices begin to recover from the low current level, drilling will be only marginally economic.

This has an unfortunate impact on us all – independent producers, North Dakota royalty owners and the state treasury. It also negatively affects U.S. security and trade balances, since less drilling of domestic resources will increase the country's dependence on foreign sources of crude oil for transportation fuels.

Consequently, a favorable and realistic change in North Dakota's tax policy at this time is critically important. The current top rate of 11.5% is one of the highest in the nation. It constrains new investment in drilling and infrastructure improvements, such as additional pipeline capacity that is desperately needed in the region.

The Bakken is an attractive resource that we hope to develop for many years to the benefit of the people of North Dakota, but it remains a challenge for a host of reasons. Price discounts have ranged from $14 to as high as $35 in 2007 and 2008, reflecting a severe lack of takeaway capacity in North Dakota, South Dakota and Montana. This

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problem has been worsened by projects such as the Keystone XL pipeline, that were approved without being required to provide access to U.S. producers.

Along with more pipeline capacity, we need to continue investing in roads, gathering systems and other infrastructure.

Finally, the dramatic decline in drilling programs has cost the state jobs and valuable expertise and this will make it much more difficult to re-accelerate drilling when crude oil prices begin to improve.

In this context, the state's current tax policy of 11.5% on gross revenues is yet another significant hurdle that discourages investment in North Dakota and which will impede re-acceleration of drilling programs when prices begin to improve.

Consequently, I urge that you amend HB 1235 to reduce the top tax rate in North Dakota to 8.75%.

Sincerely,

Harold Hamm
Chairman and Chief Executive Officer
Continental Resources, Inc.

HH:kob