

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1439

Introduced by

Representatives Porter, Delzer, Dockter, Headland, Howe, Mock, Pollert

Senators Cook, Dotzenrod, Meyer, Unruh, Wardner

1 A BILL for an Act ~~to create and enact section 47-31-09 of the North Dakota Century Code,~~
2 ~~relating to injecting substances for oil, gas, and mineral production;~~ to amend and reenact
3 sections 57-06-17.1 and 57-39.2-04.14, subsection 3 of section 57-51.1-03, and section
4 57-60-06 of the North Dakota Century Code, relating to a property tax exemption for pipelines
5 used for secure geologic storage, a sales and use tax exemption for materials used for secure
6 geologic storage, an oil extraction tax exemption for the incremental production from tertiary
7 recovery projects using carbon dioxide, and property classification of secure geologic storage
8 equipment for coal conversion tax purposes; and to provide an effective date.

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

10 ~~— **SECTION 1.** Section 47-31-09 of the North Dakota Century Code is created and enacted as~~
11 ~~follows:~~

12 ~~— **47-31-09. Injection of substances to facilitate production of oil, gas, or other**~~
13 ~~**minerals.**~~

14 ~~— This chapter may not be construed to limit the rights or dominance of a mineral estate to~~
15 ~~drill or recomplete a well under chapter 38-08. Injection or migration of substances into pore~~
16 ~~space for disposal operations, for secondary or tertiary oil recovery operations, or otherwise to~~
17 ~~facilitate production of oil, gas, or other minerals is not unlawful and, by itself, does not~~
18 ~~constitute trespass, nuisance, or other tort.~~

19 **SECTION 1. AMENDMENT.** Section 57-06-17.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-06-17.1. Carbon dioxide pipeline exemption.**

22 Property, not including land, is exempt from taxation during construction and for the first ten
23 full taxable years following initial operation if it consists of a pipeline, constructed after 1996,

1 and necessary associated equipment for the transportation or storage of carbon dioxide for
2 secure geologic storage or use in enhanced recovery of oil or natural gas.

3 **SECTION 2. AMENDMENT.** Section 57-39.2-04.14 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-39.2-04.14. Sales and use tax exemption for materials used in compressing,**
6 **gathering, collecting, storing, transporting, or injecting carbon dioxide for secure**
7 **geologic storage or use in enhanced recovery of oil or natural gas.**

- 8 1. Gross receipts from sales of tangible personal property used to construct or expand a
9 system used to compress, gather, collect, store, transport, or inject carbon dioxide for
10 secure geologic storage or use in enhanced recovery of oil or natural gas in this state
11 are exempt from taxes under this chapter. To be exempt, the tangible personal
12 property must be incorporated into a system used to compress, gather, collect, store,
13 transport, or inject carbon dioxide for secure geologic storage or use in enhanced
14 recovery of oil or natural gas. Tangible personal property used to replace an existing
15 system to compress, gather, collect, store, transport, or inject carbon dioxide for
16 secure geologic storage or use in enhanced recovery of oil or natural gas does not
17 qualify for exemption under this section unless the replacement creates an expansion
18 of the system.
- 19 2. To receive the exemption under this section at the time of purchase, the owner of the
20 gas compressing, gathering, collecting, storing, transporting, or injecting system must
21 receive from the tax commissioner a certificate that the tangible personal property
22 used to construct or expand a system used to compress, gather, collect, store,
23 transport, or inject carbon dioxide for secure geologic storage or use in enhanced
24 recovery of oil or natural gas qualifies for the exemption. If a certificate is not received
25 before the purchase, the owner shall pay the applicable tax imposed by this chapter
26 and apply to the tax commissioner for a refund.
- 27 3. If the tangible personal property is purchased or installed by a contractor subject to the
28 tax imposed by this chapter, the owner of the gas compressing, gathering, collecting,
29 storing, transporting, or injecting system may apply to the tax commissioner for a
30 refund of the difference between the amount remitted by the contractor and the
31 exemption imposed or allowed by this section. Application for a refund must be made

1 at the time and in the manner directed by the tax commissioner and must include
2 sufficient information to permit the tax commissioner to verify the sales and use taxes
3 paid and the exempt status of the sale or use.

4 4. This chapter and chapter 57-40.2 apply to the exemption under this section.

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

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

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

21 c. The incremental production from a tertiary recovery project that injects more than
22 fifty percent carbon dioxide produced from coal and has been certified as a
23 qualified project by the industrial commission is exempt from any taxes imposed
24 under this chapter for a period of twenty years from the date the incremental
25 production begins or from the date the project is certified by the industrial
26 commission as meeting the fifty percent or more carbon dioxide produced from
27 coal injection requirement, whichever is later. To qualify for the exemption under
28 this subsection, the project must be located outside the Bakken or Three Forks
29 formations and must use carbon dioxide produced from coal. The incremental
30 production that has been certified by the industrial commission under this section
31 must be used to calculate the exemption under this subdivision.

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

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

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

24 (2) For purposes of determining the exemption provided for in subdivision a and
25 with respect to a unit where a secondary recovery project was in existence
26 prior to July 1, 1991, and where the industrial commission cannot establish
27 an accurate production decline curve, incremental production means the
28 difference between the total amount of oil produced from the unit during a
29 new secondary recovery project and the amount of production which would
30 be equivalent to the average monthly production from the unit during the
31 most recent twelve months of normal production reduced by a production

1 decline rate of ten percent for each year. The industrial commission shall
2 determine the average monthly production from the unit during the most
3 recent twelve months of normal production and must upon request or upon
4 its own motion hold a hearing to make this determination. For purposes of
5 this paragraph, when determining the most recent twelve months of normal
6 production the industrial commission is not required to use twelve
7 consecutive months. In addition, the production decline rate of ten percent
8 must be applied from the last month in the twelve-month period of time.

9 (3) For purposes of determining the exemption provided for in subdivision a and
10 with respect to a unit where a secondary recovery project was in existence
11 before July 1, 1991, and where the industrial commission can establish an
12 accurate production decline curve, incremental production means the
13 difference between the total amount of oil produced from the unit during the
14 new secondary recovery project and the total amount of oil that would have
15 been produced from the unit if the new secondary recovery project had not
16 been commenced. For purposes of this paragraph, the total amount of oil
17 that would have been produced from the unit if the new secondary recovery
18 project had not been commenced includes both primary production and
19 production that occurred as a result of the secondary recovery project that
20 was in existence before July 1, 1991. The industrial commission shall
21 determine the amount of oil that would have been produced from the unit if
22 the new secondary recovery project had not been commenced in a manner
23 that conforms to the practice and procedure used by the commission at the
24 time the new secondary recovery project is certified.

25 (4) For purposes of determining the exemption provided for in subdivision b and
26 with respect to a unit where there has not been a secondary recovery
27 project, incremental production means the difference between the total
28 amount of oil produced from the unit during the tertiary recovery project and
29 the amount of primary production from the unit. For purposes of this
30 paragraph, primary production means the amount of oil which would have
31 been produced from the unit if the tertiary recovery project had not been

1 commenced. The industrial commission shall determine the amount of
2 primary production in a manner which conforms to the practice and
3 procedure used by the commission at the time the project is certified.

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

19 (6) For purposes of determining the exemption provided for in subdivision b and
20 with respect to a unit where there is or has been a secondary recovery
21 project and where the industrial commission can establish an accurate
22 production decline curve, incremental production means the difference
23 between the total amount of oil produced from the unit during the tertiary
24 recovery project and the total amount of oil that would have been produced
25 from the unit if the tertiary recovery project had not been commenced. For
26 purposes of this paragraph, the total amount of oil that would have been
27 produced from the unit if the tertiary recovery project had not been
28 commenced includes both primary production and production that occurred
29 as a result of any secondary recovery project. The industrial commission
30 shall determine the amount of oil that would have been produced from the
31 unit if the tertiary recovery project had not been commenced in a manner

1 that conforms to the practice and procedure used by the commission at the
2 time the tertiary recovery project is certified.

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

19 (8) For purposes of determining the exemption provided for in subdivisions c
20 and d, and with respect to a unit where a tertiary recovery project was in
21 existence, and where the industrial commission can establish an accurate
22 production decline curve, incremental production means the difference
23 between the total amount of oil produced from the unit during the new
24 tertiary recovery project and the total amount of oil that would have been
25 produced from the unit if the new tertiary recovery project had not been
26 commenced. For purposes of this paragraph, the total amount of oil that
27 would have been produced from the unit if the new tertiary recovery project
28 had not been commenced includes both primary production and production
29 that occurred as a result of the tertiary recovery project that was previously
30 in existence. The industrial commission shall determine the amount of oil
31 that would have been produced from the unit if the new tertiary recovery

1 project had not been commenced in a manner that conforms to the practice
2 and procedure used by the commission at the time the new tertiary recovery
3 project is certified.

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

7 **SECTION 4. AMENDMENT.** Section 57-60-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain**
10 **other taxes - Credit for certain other taxes.**

11 Each coal conversion facility and any carbon dioxide capture system located at the coal
12 conversion facility, and any equipment directly used for secure geologic storage of carbon
13 dioxide or enhanced recovery of oil or natural gas must be classified as personal property and
14 is exempt from all ad valorem taxes except for taxes on the land on which the facility, capture
15 system, or equipment is located. The exemption provided by this section may not be interpreted
16 to apply to tangible personal property incorporated as a component part of a carbon dioxide
17 pipeline but this restriction does not affect eligibility of such a pipeline for the exemption under
18 section 57-06-17.1. The taxes imposed by this chapter are in lieu of ad valorem taxes on the
19 property so classified as personal property.

20 **SECTION 5. EFFECTIVE DATE.** ~~This Act becomes~~Section 3 of this Act becomes effective
21 on July 1, 2019. Sections 1 and 4 of this Act are effective for taxable years beginning after
22 December 31, 2018. Section 2 of this Act is effective for taxable events occurring after June 30,
23 2019.