

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2397

Introduced by

Senators Enget, Sorvaag, Sickler

Representative Kempenich

1 A BILL ~~for an Act to amend and reenact subdivision f of subsection 4 of section 24-02-37.3,~~
2 ~~subsection 4 of section 54-27-19.4, subdivision c of subsection 4 of section 57-51.1-07.7, and~~
3 ~~subdivision b of subsection 6 of section 57-51.1-07.8 of the North Dakota Century Code,~~
4 ~~relating to the definition of non-oil-producing county for purposes of the flexible transportation~~
5 ~~fund, legacy earnings township aid fund, municipal infrastructure fund, and county and township~~
6 ~~infrastructure fund; to provide an effective date; and to declare an emergency.~~for an Act to
7 create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code,
8 relating to a limited exemption for development incentive wells; to amend and reenact sections
9 57-51-02.6, 57-51-05, and 57-51.1-01 of the North Dakota Century Code, relating to the
10 temporary exemption for oil and gas wells employing a system to avoid flaring, an exemption
11 from gross production tax for gas produced from certain enhanced oil recovery projects, and the
12 definition of development incentive well; and to provide an effective date.

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

14 ~~SECTION 1. AMENDMENT.~~ ~~Subdivision f of subsection 4 of section 24-02-37.3 of the North~~
15 ~~Dakota Century Code is amended and reenacted as follows:~~

16 ~~f. For purposes of this subsection, "non-oil-producing county" means a county that~~
17 ~~received no allocation of funding or a total allocation of less than five million~~
18 ~~dollars under subsection 2 of section 57-51-15 in had average annual oil~~
19 ~~production of fewer than ten million barrels based on the average annual oil~~

1 ~~production in the three-year period ending with the most recently completed~~
2 ~~even-numbered fiscal year before the start of each biennium.~~

3 ~~— **SECTION 2. AMENDMENT.** Subsection 4 of section 54-27-19.4 of the North Dakota~~
4 ~~Century Code is amended and reenacted as follows:—~~

5 ~~— 4. For purposes of this section, "non-oil-producing county" means a county that received~~
6 ~~no allocation of funding or a total allocation of less than five million dollars under~~
7 ~~subsection 2 of section 57-51-15 in~~~~had average annual oil production of fewer than ten~~
8 ~~million barrels based on the average annual oil production in the three-year period~~
9 ~~ending with the most recently completed even-numbered fiscal year before the start of~~
10 ~~each biennium.~~

11 ~~— **SECTION 3. AMENDMENT.** Subdivision c of subsection 4 of section 57-51.1-07.7 of the~~
12 ~~North Dakota Century Code is amended and reenacted as follows:~~

13 ~~— c. "Non-oil-producing county" means a county that received no allocation of funding~~
14 ~~or a total allocation of less than five million dollars under subsection 2 of section~~
15 ~~57-51-15 in~~~~had average annual oil production of fewer than ten million barrels~~
16 ~~based on the average annual oil production in the three-year period ending with~~
17 ~~the most recently completed even-numbered fiscal year before the start of each~~
18 ~~biennium.~~

19 ~~— **SECTION 4. AMENDMENT.** Subdivision b of subsection 6 of section 57-51.1-07.8 of the~~
20 ~~North Dakota Century Code is amended and reenacted as follows:~~

21 ~~— b. "Non-oil-producing county" means a county that received no allocation of funding~~
22 ~~or a total allocation of less than five million dollars under subsection 2 of section~~
23 ~~57-51-15 in~~~~had average annual oil production of fewer than ten million barrels~~
24 ~~based on the average annual oil production in the three-year period ending with~~
25 ~~the most recently completed even-numbered fiscal year before the start of each~~
26 ~~biennium.~~

27 ~~— **SECTION 5. EFFECTIVE DATE.** This Act becomes effective on July 1, 2025.~~

28 ~~— **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.~~

29 **SECTION 1. AMENDMENT.** Section 57-51-02.6 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **57-51-02.6. Temporary exemption for oil and gas wells employing a system to avoid**
2 **flaring.**

3 Gas is exempt from the tax under section 57-51-02.2 for a period of two years and thirty
4 days from the time of first production if the gas is:

- 5 1. Collected and used at the well site to power an electrical generator that consumes ~~at~~
6 ~~least seventy-five percent of the~~ gas from the well; or
- 7 2. Collected at the well site by a system that intakes at least seventy-five percent of the
8 gas and natural gas liquids volume from the well for beneficial consumption by means
9 of compression to liquid for use as fuel, transport to a processing facility, production of
10 petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over
11 fifty percent of the propane and heavier hydrocarbons, or other value-added
12 processes as approved by the industrial commission.

13 **SECTION 2. AMENDMENT.** Section 57-51-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **57-51-05. Payment of tax on monthly basis - When tax due - When delinquent -**
16 **Payment by purchaser - By producer - How casinghead gas taxed - Exemptions.**

- 17 1. The gross production tax on oil or gas, ~~as herein provided~~, must be paid on a monthly
18 basis. The tax on oil is due and payable on the twenty-fifth day of the month
19 succeeding the month of production. The tax on gas is due and payable on the
20 fifteenth day of the second month succeeding the month of production. If the tax is not
21 paid as required by this section, it becomes delinquent and must be collected as
22 provided in this chapter. The penalty does not apply if ninety percent of the tax due
23 has been paid with the monthly return and the taxpayer files an amended monthly
24 return and pays the total tax due within sixty days from the original due date. The
25 commissioner, upon request and a proper showing of the necessity ~~therefor~~for an
26 extension, may grant an extension of time, not to exceed fifteen days, for paying the
27 tax and when the request is granted the tax is not delinquent until the extended period
28 has expired. Any taxpayer who requests and is granted an extension of time for filing a
29 return shall pay, with the tax, interest at the rate of twelve percent per annum from the
30 date the tax was due to the date the tax is paid.

- 1 2. On oil or gas produced and sold, the gross production tax ~~thereon~~ must be paid by the
2 purchaser, and the purchaser is authorized to deduct in making settlement with the
3 producer or royalty owner, the amount of tax paid; provided, ~~that~~ in the event oil
4 produced is not sold but is retained by the producer, the tax on the oil not sold must be
5 paid by the producer, including the tax due on royalty oil not sold; provided further, that
6 in settlement with the royalty owner the producer has the right to deduct the amount of
7 the tax paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the
8 time the tax becomes due with the amount of the tax paid.
- 9 3. Gas when produced and utilized in any manner, ~~except when used for fuel or~~
10 ~~otherwise used in the operation of any lease or premises in the drilling for or~~
11 ~~production of oil or gas therefrom, or for repressuring thereon,~~ must be considered for
12 the purpose of this chapter, as to the amount utilized, as gas actually produced and
13 saved, except gas:
- 14 a. Used for fuel or otherwise used in the operation of any lease or premises in the
15 drilling for or production of oil or gas from the lease or premises, including
16 repressuring on the lease or premises; and
- 17 b. Produced from an enhanced oil recovery project utilizing the injection of gas,
18 either alone or in combination with other fluids, for the purpose of testing the
19 feasibility of enhanced oil recovery operations on a temporary basis for one or
20 more spacing units or employing enhanced oil recovery operations for an
21 extended or indefinite period of time on a field-wide basis through unitization of
22 the reservoir that produces oil and gas. The exemption under this subdivision
23 applies to all enhanced oil recovery projects created and established by the
24 industrial commission after June 30, 2025, and for any gas produced after the
25 date of first production following initial injection of gas until all gas injected as part
26 of the enhanced oil recovery project has been recovered from the reservoir being
27 tested or unitized.
- 28 4. All calculations of the gross production tax on oil or gas, including production,
29 distribution, and claims for credit or refund, are based on the month of production and
30 must be credited to that month.

1 **SECTION 3. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-51.1-01. Definitions for oil extraction tax.**

4 For the purposes of this chapter:

- 5 1. "Average daily production" of a well means the qualified maximum total production of
6 oil from the well during a calendar month period divided by the number of calendar
7 days in that period, and "qualified maximum total production" of a well means that the
8 well must have been maintained at the maximum efficient rate of production as
9 defined and determined by rule adopted by the industrial commission in furtherance of
10 its authority under chapter 38-08.
- 11 2. "Development incentive well" means, as determined and certified by the industrial
12 commission, a well:
- 13 a. Spud after June 30, 2025, which:
- 14 (1) Is drilled within the geographical boundaries of a spacing unit established by
15 the industrial commission and is producing oil or gas; or
- 16 (2) Has a bottom hole location that penetrates a stratigraphic interval other than
17 the spaced, producing stratigraphic interval which is located within the
18 geographical boundaries of the producing spacing unit;
- 19 b. That utilizes a new or innovative drilling or completion technique that constitutes
20 a technical advancement beyond current industry standards; and
- 21 c. That is designed and anticipated to, more likely than not, increase production or
22 the ultimate recovery of oil or gas from the well.
- 23 3. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at
24 an angle of at least eighty degrees within the productive formation of at least three
25 hundred feet [91.44 meters].
- 26 ~~3.4.~~ "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid
27 hydrocarbons that are recovered from gas on the lease incidental to the production of
28 the gas.
- 29 ~~4.5.~~ "Property" means the right which arises from a lease or fee interest, as a whole or any
30 designated portion thereof, to produce oil. A producer shall treat as a separate
31 property each separate and distinct producing reservoir subject to the same right to

1 produce crude oil; provided, that such reservoir is recognized by the industrial
2 commission as a producing formation that is separate and distinct from, and not in
3 communication with, any other producing formation.

4 ~~5.6.~~ "Qualifying secondary recovery project" means a project employing water flooding. To
5 be eligible for the tax exemption provided under section 57-51.1-03, a secondary
6 recovery project must be certified as qualifying by the industrial commission and the
7 project operator must have obtained incremental production as defined in subsection 3
8 of section 57-51.1-03.

9 ~~6.7.~~ "Qualifying tertiary recovery project" means a project for enhancing recovery of oil
10 which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as
11 amended through December 31, 1986, and includes the following methods for
12 recovery:

- 13 a. Miscible fluid displacement.
- 14 b. Steam drive injection.
- 15 c. Microemulsion.
- 16 d. In situ combustion.
- 17 e. Polymer augmented water flooding.
- 18 f. Cyclic steam injection.
- 19 g. Alkaline flooding.
- 20 h. Carbonated water flooding.
- 21 i. Immiscible carbon dioxide displacement.
- 22 j. New tertiary recovery methods certified by the industrial commission.

23 It does not include water flooding, unless the water flooding is used as an element of
24 one of the qualifying tertiary recovery techniques described in this subsection, or
25 immiscible natural gas injection. To be eligible for the tax exemption provided under
26 section 57-51.1-03, a tertiary recovery project must be certified as qualifying by the
27 industrial commission, the project operator must continue to operate the unit as a
28 qualifying tertiary recovery project, and the project operator must have obtained
29 incremental production as defined in subsection 3 of section 57-51.1-03.

30 ~~7.8.~~ "Restimulation well" means a previously completed oil or gas well that, following
31 completion and production of oil, has been treated with an application of fluid under

1 pressure for the purpose of initiating or propagating fractures in a target geologic
2 formation to enhance production of oil. The term does not include a well that:

- 3 a. Has less than sixty months of production or is producing more than one hundred
4 and twenty-five barrels of oil per day reported to the industrial commission before
5 completion of the restimulation treatment;
- 6 b. Is part of a qualifying secondary recovery project, qualifying tertiary recovery
7 project, or stripper well or stripper well property as defined under this section; or
- 8 c. Is drilled but not completed and does not have a record of oil production reported
9 to the industrial commission.

10 ~~8.9.~~ "Royalty owner" means an owner of what is commonly known as the royalty interest
11 and shall not include the owner of any overriding royalty or other payment carved out
12 of the working interest.

13 ~~9.10.~~ "Stripper well" means a well drilled and completed, or re-entered and recompleted as
14 a horizontal well, after June 30, 2013, whose average daily production of oil during any
15 preceding consecutive twelve-month period, excluding condensate recovered in
16 nonassociated production, per well did not exceed ten barrels per day for wells of a
17 depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of
18 a depth of more than six thousand feet [1828.80 meters] but not more than ten
19 thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more
20 than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations,
21 and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048
22 meters] in the Bakken or Three Forks formation.

23 ~~10.11.~~ "Stripper well property" means wells drilled and completed, or a well re-entered and
24 recompleted as a horizontal well, before July 1, 2013, on a "property" whose average
25 daily production of oil, excluding condensate recovered in nonassociated production,
26 per well did not exceed ten barrels per day for wells of a depth of six thousand feet
27 [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six
28 thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters],
29 and thirty barrels per day for wells of a depth of more than ten thousand feet [3048
30 meters] during any preceding consecutive twelve-month period. Wells which did not
31 actually yield or produce oil during the qualifying twelve-month period, including

1 disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for
2 the purpose of determining whether the stripper well property exemption applies.

3 **SECTION 4.** A new subsection to section 57-51.1-03 of the North Dakota Century Code is
4 created and enacted as follows:

5 a. The first three hundred thousand barrels of oil produced during the first thirty-six
6 months after completion from a development incentive well that has been
7 certified as a qualified well by the industrial commission are exempt from the tax
8 under section 57-51.1-02.

9 b. For purposes of the exemption under this subsection:

10 (1) An operator seeking certification of a well as a development incentive well
11 shall meet the burden of demonstrating to the industrial commission that the
12 well meets the criteria under subsection 2 of section 57-51.1-01.

13 (2) The industrial commission may not certify more than:

14 (a) One development incentive well per spacing unit which meets the
15 criteria in paragraph 1 of subdivision a of subsection 2 of section
16 57-51.1-01; and

17 (b) One development incentive well per spacing unit which meets the
18 criteria in paragraph 2 of subdivision a of subsection 2 of section
19 57-51.1-01.

20 c. The tax exemption under this subsection does not apply to a well located within
21 the exterior boundaries of a reservation, a well located on trust properties outside
22 reservation boundaries as defined in section 57-51.2-02, or a straddle well as
23 defined in section 57-51.1-07.10 located on reservation trust land, unless a tribe
24 makes an irrevocable election to opt-in to the tax exemption by providing written
25 notice to the tax commissioner. If a tribe provides notice of its election to opt-in to
26 the tax exemption, the tax commissioner shall apply the tax exemption beginning
27 in the month of production after the notice is received by the tax commissioner.

28 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
29 June 30, 2025.