

**SENATE BILL NO. 2397
with House Amendments**

SENATE BILL NO. 2397

Introduced by

Senators Enget, Sorvaag, Sickler

Representative Kempenich

1 A BILL for an Act to create and enact a new subsection to section 57-51.1-03 of the North
2 Dakota Century Code, relating to a limited exemption for development incentive wells; to amend
3 and reenact sections 57-51-02.6, 57-51-05, and 57-51.1-01 of the North Dakota Century Code,
4 relating to the temporary exemption for oil and gas wells employing a system to avoid flaring, an
5 exemption from gross production tax for gas produced from certain enhanced oil recovery
6 projects, and the definition of development incentive well; and to provide an effective date.

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

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

10 **57-51-02.6. Temporary exemption for oil and gas wells employing a system to avoid**
11 **flaring.**

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

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

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

3 **57-51-05. Payment of tax on monthly basis - When tax due - When delinquent -**
4 **Payment by purchaser - By producer - How casinghead gas taxed - Exemptions.**

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

19 2. On oil or gas produced and sold, the gross production tax ~~thereon~~ must be paid by the
20 purchaser, and the purchaser is authorized to deduct in making settlement with the
21 producer or royalty owner, the amount of tax paid; provided, ~~that~~ in the event oil
22 produced is not sold but is retained by the producer, the tax on the oil not sold must be
23 paid by the producer, including the tax due on royalty oil not sold; provided further, that
24 in settlement with the royalty owner the producer has the right to deduct the amount of
25 the tax paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the
26 time the tax becomes due with the amount of the tax paid.

27 3. Gas when produced and utilized in any manner, ~~except when used for fuel or~~
28 ~~otherwise used in the operation of any lease or premises in the drilling for or~~
29 ~~production of oil or gas therefrom, or for repressuring thereon,~~ must be considered for
30 the purpose of this chapter, as to the amount utilized, as gas actually produced and
31 saved, except gas:

- 1 a. Used for fuel or otherwise used in the operation of any lease or premises in the
2 drilling for or production of oil or gas from the lease or premises, including
3 repressuring on the lease or premises; and
- 4 b. Produced from an enhanced oil recovery project utilizing the injection of gas,
5 either alone or in combination with other fluids, for the purpose of testing the
6 feasibility of enhanced oil recovery operations on a temporary basis for one or
7 more spacing units or employing enhanced oil recovery operations for an
8 extended or indefinite period of time on a field-wide basis through unitization of
9 the reservoir that produces oil and gas. The exemption under this subdivision
10 applies to all enhanced oil recovery projects created and established by the
11 industrial commission after June 30, 2025, and for any gas produced after the
12 date of first production following initial injection of gas until all gas injected as part
13 of the enhanced oil recovery project has been recovered from the reservoir being
14 tested or unitized.
- 15 4. All calculations of the gross production tax on oil or gas, including production,
16 distribution, and claims for credit or refund, are based on the month of production and
17 must be credited to that month.

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

20 **57-51.1-01. Definitions for oil extraction tax.**

21 For the purposes of this chapter:

- 22 1. "Average daily production" of a well means the qualified maximum total production of
23 oil from the well during a calendar month period divided by the number of calendar
24 days in that period, and "qualified maximum total production" of a well means that the
25 well must have been maintained at the maximum efficient rate of production as
26 defined and determined by rule adopted by the industrial commission in furtherance of
27 its authority under chapter 38-08.
- 28 2. "Development incentive well" means, as determined and certified by the industrial
29 commission, a well:
- 30 a. Spud after June 30, 2025, which:

- 1 (1) Is drilled within the geographical boundaries of a spacing unit established by
2 the industrial commission and is producing oil or gas; or
- 3 (2) Has a bottom hole location that penetrates a stratigraphic interval other than
4 the spaced, producing stratigraphic interval which is located within the
5 geographical boundaries of the producing spacing unit;
- 6 b. That utilizes a new or innovative drilling or completion technique that constitutes
7 a technical advancement beyond current industry standards; and
- 8 c. That is designed and anticipated to, more likely than not, increase production or
9 the ultimate recovery of oil or gas from the well.
- 10 3. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at
11 an angle of at least eighty degrees within the productive formation of at least three
12 hundred feet [91.44 meters].
- 13 ~~3.4.~~ "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid
14 hydrocarbons that are recovered from gas on the lease incidental to the production of
15 the gas.
- 16 ~~4.5.~~ "Property" means the right which arises from a lease or fee interest, as a whole or any
17 designated portion thereof, to produce oil. A producer shall treat as a separate
18 property each separate and distinct producing reservoir subject to the same right to
19 produce crude oil; provided, that such reservoir is recognized by the industrial
20 commission as a producing formation that is separate and distinct from, and not in
21 communication with, any other producing formation.
- 22 ~~5.6.~~ "Qualifying secondary recovery project" means a project employing water flooding. To
23 be eligible for the tax exemption provided under section 57-51.1-03, a secondary
24 recovery project must be certified as qualifying by the industrial commission and the
25 project operator must have obtained incremental production as defined in subsection 3
26 of section 57-51.1-03.
- 27 ~~6.7.~~ "Qualifying tertiary recovery project" means a project for enhancing recovery of oil
28 which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as
29 amended through December 31, 1986, and includes the following methods for
30 recovery:
31 a. Miscible fluid displacement.

- 1 b. Steam drive injection.
- 2 c. Microemulsion.
- 3 d. In situ combustion.
- 4 e. Polymer augmented water flooding.
- 5 f. Cyclic steam injection.
- 6 g. Alkaline flooding.
- 7 h. Carbonated water flooding.
- 8 i. Immiscible carbon dioxide displacement.
- 9 j. New tertiary recovery methods certified by the industrial commission.

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

17 7-8. "Restimulation well" means a previously completed oil or gas well that, following
18 completion and production of oil, has been treated with an application of fluid under
19 pressure for the purpose of initiating or propagating fractures in a target geologic
20 formation to enhance production of oil. The term does not include a well that:

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

28 8-9. "Royalty owner" means an owner of what is commonly known as the royalty interest
29 and shall not include the owner of any overriding royalty or other payment carved out
30 of the working interest.

1 ~~9-10.~~ "Stripper well" means a well drilled and completed, or re-entered and recompleted as
2 a horizontal well, after June 30, 2013, whose average daily production of oil during any
3 preceding consecutive twelve-month period, excluding condensate recovered in
4 nonassociated production, per well did not exceed ten barrels per day for wells of a
5 depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of
6 a depth of more than six thousand feet [1828.80 meters] but not more than ten
7 thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more
8 than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations,
9 and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048
10 meters] in the Bakken or Three Forks formation.

11 ~~40-11.~~ "Stripper well property" means wells drilled and completed, or a well re-entered and
12 recompleted as a horizontal well, before July 1, 2013, on a "property" whose average
13 daily production of oil, excluding condensate recovered in nonassociated production,
14 per well did not exceed ten barrels per day for wells of a depth of six thousand feet
15 [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six
16 thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters],
17 and thirty barrels per day for wells of a depth of more than ten thousand feet [3048
18 meters] during any preceding consecutive twelve-month period. Wells which did not
19 actually yield or produce oil during the qualifying twelve-month period, including
20 disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for
21 the purpose of determining whether the stripper well property exemption applies.

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

- 24 a. The first three hundred thousand barrels of oil produced during the first thirty-six
25 months after completion from a development incentive well that has been
26 certified as a qualified well by the industrial commission are exempt from the tax
27 under section 57-51.1-02.
- 28 b. For purposes of the exemption under this subsection:
- 29 (1) An operator seeking certification of a well as a development incentive well
30 shall meet the burden of demonstrating to the industrial commission that the
31 well meets the criteria under subsection 2 of section 57-51.1-01.

- 1 (2) The industrial commission may not certify more than:
- 2 (a) One development incentive well per spacing unit which meets the
- 3 criteria in paragraph 1 of subdivision a of subsection 2 of section
- 4 57-51.1-01; and
- 5 (b) One development incentive well per spacing unit which meets the
- 6 criteria in paragraph 2 of subdivision a of subsection 2 of section
- 7 57-51.1-01.
- 8 c. The tax exemption under this subsection does not apply to a well located within
- 9 the exterior boundaries of a reservation, a well located on trust properties outside
- 10 reservation boundaries as defined in section 57-51.2-02, or a straddle well as
- 11 defined in section 57-51.1-07.10 located on reservation trust land, unless a tribe
- 12 makes an irrevocable election to opt-in to the tax exemption by providing written
- 13 notice to the tax commissioner. If a tribe provides notice of its election to opt-in to
- 14 the tax exemption, the tax commissioner shall apply the tax exemption beginning
- 15 in the month of production after the notice is received by the tax commissioner.

16 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring after

17 June 30, 2025.