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Title.

Prepared by the Legislative Council
staff for Representative Dockter
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Sixty-ninth
Legislative Assembly
of North Dakota

## PROPOSED AMENDMENTS TO

## SENATE BILL NO. 2397

Introduced by

Senators Enget, Sorvaag, Sickler

Representative Kempenich

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   a. Used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas from the lease or premises, including repressuring on the lease or premises; and

   b. Produced from an enhanced oil recovery project utilizing the injection of gas, either alone or in combination with other fluids, for the purpose of testing the feasibility of enhanced oil recovery operations on a temporary basis for one or more spacing units or employing enhanced oil recovery operations for an extended or indefinite period of time on a field-wide basis through unitization of the reservoir that produces oil and gas. The exemption under this subdivision applies to all enhanced oil recovery projects created and established by the industrial commission after June 30, 2025, and for any gas produced after the date of first production following initial injection of gas until all gas injected as part of the enhanced oil recovery project has been recovered from the reservoir being tested or unitized.

4. All calculations of the gross production tax on oil or gas, including production, distribution, and claims for credit or refund, are based on the month of production and must be credited to that month.

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

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

For the purposes of this chapter:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.
2. "Development incentive well" means, as determined and certified by the industrial commission, a well:
   a. Spud after June 30, 2025, which:
      (1) Is drilled within the geographical boundaries of a spacing unit established by the industrial commission and is producing oil or gas; or
      (2) Has a bottom hole location that penetrates a stratigraphic interval other than the spaced, producing stratigraphic interval which is located within the geographical boundaries of the producing spacing unit;
   b. That utilizes a new or innovative drilling or completion technique that constitutes a technical advancement beyond current industry standards; and
   c. That is designed and anticipated to, more likely than not, increase production or the ultimate recovery of oil or gas from the well.
3. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].

~~3.~~4. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.

~~4.~~5. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

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

~~6.~~7. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

a. Miscible fluid displacement.
b. Steam drive injection.
c. Microemulsion.
d. In situ combustion.
e. Polymer augmented water flooding.
f. Cyclic steam injection.
g. Alkaline flooding.
h. Carbonated water flooding.
i. Immiscible carbon dioxide displacement.
j. New tertiary recovery methods certified by the industrial commission.

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

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

a. Has less than sixty months of production or is producing more than one hundred and twenty-five barrels of oil per day reported to the industrial commission before completion of the restimulation treatment;

b. Is part of a qualifying secondary recovery project, qualifying tertiary recovery project, or stripper well or stripper well property as defined under this section; or

c. Is drilled but not completed and does not have a record of oil production reported to the industrial commission.

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

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

~~10.~~11. "Stripper well property" means wells drilled and completed, or a well re-entered and recompleted as a horizontal well, before July 1, 2013, on a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

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

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

b. For purposes of the exemption under this subsection:

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

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

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

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

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

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