

Sixty-sixth  
Legislative Assembly  
of North Dakota

**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 amend and reenact subsection 3 of section 57-51.1-03 of the North Dakota  
2 Century Code, relating to an oil extraction tax exemption for the incremental production from  
3 tertiary recovery projects using carbon dioxide; and to provide an effective date.

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

5 **SECTION 1. 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

1           production begins or from the date the project is certified by the industrial  
2           commission as meeting the fifty percent or more carbon dioxide produced from  
3           coal injection requirement, whichever is later. To qualify for the exemption under  
4           this subsection, the project must be located outside the Bakken and Three Forks  
5           formations and must use carbon dioxide produced from coal. The incremental  
6           production that has been certified by the industrial commission under this section  
7           must be used to calculate the exemption under this subdivision.

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

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

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

- 1                   (2) For purposes of determining the exemption provided for in subdivision a and  
2                   with respect to a unit where a secondary recovery project was in existence  
3                   prior to July 1, 1991, and where the industrial commission cannot establish  
4                   an accurate production decline curve, incremental production means the  
5                   difference between the total amount of oil produced from the unit during a  
6                   new secondary recovery project and the amount of production which would  
7                   be equivalent to the average monthly production from the unit during the  
8                   most recent twelve months of normal production reduced by a production  
9                   decline rate of ten percent for each year. The industrial commission shall  
10                  determine the average monthly production from the unit during the most  
11                  recent twelve months of normal production and must upon request or upon  
12                  its own motion hold a hearing to make this determination. For purposes of  
13                  this paragraph, when determining the most recent twelve months of normal  
14                  production the industrial commission is not required to use twelve  
15                  consecutive months. In addition, the production decline rate of ten percent  
16                  must be applied from the last month in the twelve-month period of time.
- 17                  (3) For purposes of determining the exemption provided for in subdivision a and  
18                  with respect to a unit where a secondary recovery project was in existence  
19                  before July 1, 1991, and where the industrial commission can establish an  
20                  accurate production decline curve, incremental production means the  
21                  difference between the total amount of oil produced from the unit during the  
22                  new secondary recovery project and the total amount of oil that would have  
23                  been produced from the unit if the new secondary recovery project had not  
24                  been commenced. For purposes of this paragraph, the total amount of oil  
25                  that would have been produced from the unit if the new secondary recovery  
26                  project had not been commenced includes both primary production and  
27                  production that occurred as a result of the secondary recovery project that  
28                  was in existence before July 1, 1991. The industrial commission shall  
29                  determine the amount of oil that would have been produced from the unit if  
30                  the new secondary 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 new secondary recovery project is certified.

3                   (4) For purposes of determining the exemption provided for in subdivision b and  
4                   with respect to a unit where there has not been a secondary recovery  
5                   project, incremental production means the difference between the total  
6                   amount of oil produced from the unit during the tertiary recovery project and  
7                   the amount of primary production from the unit. For purposes of this  
8                   paragraph, primary production means the amount of oil which would have  
9                   been produced from the unit if the tertiary recovery project had not been  
10                  commenced. The industrial commission shall determine the amount of  
11                  primary production in a manner which conforms to the practice and  
12                  procedure used by the commission at the time the project is certified.

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

28                  (6) For purposes of determining the exemption provided for in subdivision b and  
29                  with respect to a unit where there is or has been a secondary recovery  
30                  project and where the industrial commission can establish an accurate  
31                  production decline curve, incremental production means the difference

1 between the total amount of oil produced from the unit during the tertiary  
2 recovery project and the total amount of oil that would have been produced  
3 from the unit if the tertiary recovery project had not been commenced. For  
4 purposes of this paragraph, the total amount of oil that would have been  
5 produced from the unit if the tertiary recovery project had not been  
6 commenced includes both primary production and production that occurred  
7 as a result of any secondary recovery project. The industrial commission  
8 shall determine the amount of oil that would have been produced from the  
9 unit if the tertiary recovery project had not been commenced in a manner  
10 that conforms to the practice and procedure used by the commission at the  
11 time the tertiary recovery project is certified.

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

28 (8) For purposes of determining the exemption provided for in subdivisions c.  
29 and d, and with respect to a unit where a tertiary recovery project was in  
30 existence, and where the industrial commission can establish an accurate  
31 production decline curve, incremental production means the difference

1                   between the total amount of oil produced from the unit during the new  
2                   tertiary recovery project and the total amount of oil that would have been  
3                   produced from the unit if the new tertiary recovery project had not been  
4                   commenced. For purposes of this paragraph, the total amount of oil that  
5                   would have been produced from the unit if the new tertiary recovery project  
6                   had not been commenced includes both primary production and production  
7                   that occurred as a result of the tertiary recovery project that was previously  
8                   in existence. The industrial commission shall determine the amount of oil  
9                   that would have been produced from the unit if the new tertiary recovery  
10                  project had not been commenced in a manner that conforms to the practice  
11                  and procedure used by the commission at the time the new tertiary recovery  
12                  project is certified.

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

16   **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2019.