

Introduced by

Representatives Keiser, Kreun, Schmidt

1 A BILL for an Act to create and enact a new chapter to title 57 of the North Dakota Century  
2 Code, relating to imposition of a water extraction tax; to provide a penalty; and to provide an  
3 effective date.

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

5 **SECTION 1.** A new chapter to title 57 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **Imposition of water extraction tax - Industrial use.**

8 There is imposed an excise tax, to be known as the "water extraction tax", upon the activity  
9 in this state of extracting water from an aquifer below the surface of the earth. The rate of tax is  
10 eleven and one-half percent of the gross value at the well of the water extracted for industrial  
11 use.

12 **Valuation of water - Alternatives - Exceptions.**

13 The gross value at the well for water is the price paid for the water under an arm's-length  
14 contract between the producer and the purchaser less, when applicable, transportation costs  
15 associated with moving the water from the point of extraction to the point of sale under the  
16 contract. In the absence of an arm's-length contract, the gross value at the well for water is  
17 established by the first applicable of the following methods:

- 18 1. The price paid under an arm's-length contract, to which the person paying the tax is a  
19 party, for the purchase or sale of water of like kind, character, and quality, in the same  
20 aquifer or, if none, in a nearby aquifer, less, when applicable, transportation costs  
21 associated with moving the water from the point of production to the point of sale.  
22 2. The price paid under an arm's-length contract, between parties other than the person  
23 paying the tax, for the purchase or sale of water of like kind, character, and quality, in

1           the same aquifer or, if none, in a nearby aquifer, less, when applicable, transportation  
2           costs associated with moving the water from the point of extraction to the point of sale.  
3        3. The value determined by consideration of the market price relevant in valuing water of  
4           like kind, character, and quality, in the same area or in a nearby area, less, when  
5           applicable, adjustments for transportation costs to reflect the differential between the  
6           value at the point of extraction and the value at the location reflected in the market  
7           price.

8           **Water extraction tax to be in lieu of other taxes.**

9           The payment of the water extraction tax under this chapter is in lieu of all ad valorem taxes  
10       by the state and political subdivisions upon any property rights attached to or inherent in the  
11       right to extracting water from an aquifer below the surface of the earth.

12        **Payment of tax on monthly basis - When tax due - When delinquent - Payment by**  
13        **purchaser - By producer.**

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

26        2. On water extracted and sold, the tax must be paid by the purchaser, and the  
27        purchaser is authorized to deduct in making settlement with the producer, the amount  
28        of tax paid. However, if water is extracted and is not sold but is retained by the  
29        producer, the tax on the water not sold must be paid by the producer.

1       3. All calculations of the water extraction tax, including production, distribution, and  
2       claims for credit or refund, are based on the month of production and must be credited  
3       to that month.

4       **Tax paid to commissioner - Statements by person paying tax - Statements by**  
5       **producer.**

6       1. The water extraction tax must be paid to the commissioner and the person paying the  
7       tax shall file with the commissioner at the time the tax is required to be paid a  
8       statement on forms prescribed by the commissioner. The commissioner may require a  
9       purchaser to file the statement or report by electronic data interchange or other  
10       electronic media.

11       2. On or before the twenty-fifth day of the next succeeding month after extraction, any  
12       person engaged in the extraction of water within this state shall file with the  
13       commissioner a statement upon forms prescribed by the commissioner. The  
14       commissioner may waive the requirement that a producer file a well production report.  
15       A waiver by the commissioner of the requirement to file a well production report does  
16       not release the producer from any obligation to remit the tax under this chapter. A  
17       waiver does not release the producer from any duty or obligation to maintain  
18       production records for inspection by the commissioner.

19       3. Reports from either the purchaser or producer, as the case may be, are delinquent  
20       after the last day fixed for their filing, and every person required to file a report is  
21       subject to a penalty of twenty-five dollars per day for each property upon which the  
22       person fails or refuses to file the reports. The penalties prescribed in this section are  
23       for failure to file reports and are in addition to any other applicable penalty and  
24       constitute a lien against the assets of the person failing or refusing to file the reports.  
25       The penalties prescribed in this section must be collected in the same manner as  
26       water extraction taxes and must be apportioned as other water extraction tax  
27       penalties; provided, that the commissioner may, for good cause shown, waive any  
28       penalties imposed under this section.

29       4. The tax commissioner may prescribe alternative methods for signing, subscribing, or  
30       verifying a return filed by electronic means, including telecommunications, that shall

1           have the same validity and consequence as the actual signature and written  
2           declaration for a paper return.

3           **Powers of commissioner.**

4           The commissioner has power to require any person engaged in water extraction and the  
5           agent or employee of such person, or purchaser of such water, to furnish any additional  
6           information the commissioner deems to be necessary for the purpose of correctly computing the  
7           amount of the water extraction tax, and to examine the books, records, and files of such person,  
8           and has power to conduct hearings and compel the attendance of witnesses, the production of  
9           books, records, and papers of any person, and full authority to make any investigation or hold  
10          any inquest deemed necessary to a full and complete disclosure of the true facts as to the  
11          amount of water extraction from any well location, or of any company or other producer thereof,  
12          and as to the rendition thereof for taxing purposes.

13          **Commissioner shall compute tax on incorrect returns.**

- 14          1.   The commissioner may ascertain and determine whether a return required to be filed  
15          with the commissioner is a true and correct return of the taxable water extracted, and  
16          of the value thereof, of that person. If any person has made an untrue or incorrect  
17          return of the water extracted or value thereof, or has failed or refused to make a  
18          return, the commissioner shall under rules adopted by the commissioner, ascertain the  
19          correct amount of either, and compute the tax.
- 20          2.   The time to assess additional water extraction tax found due is three years after the  
21          due date of the original return or three years after the original return is filed, whichever  
22          period expires later. However, if there is a change in tax liability on any return by an  
23          amount in excess of twenty-five percent of the amount of tax liability reported on a  
24          return, any additional tax determined to be due may be assessed anytime within six  
25          years after the due date of the return or six years after the return was filed, whichever  
26          period expired later.
- 27          3.   If a taxpayer files an amended return, the tax commissioner has two years after the  
28          return is filed to audit the return and assess any additional tax attributable to the  
29          changes or corrections even though other time periods prescribed in this section for  
30          the assessment of tax may have expired. This section does not limit or restrict any

1           other time period prescribed in this section for the assessment of tax that has not  
2           expired as of the end of the two-year period prescribed in this section.

3           4. For periods in which the tax commissioner has waived the requirement that a producer  
4           file a well production report, the tax commissioner has three years after the due date  
5           of the purchaser's return or three years after the purchaser's return is filed, whichever  
6           period expires later, to assess the producer for additional tax found due. However, if  
7           there is a change in tax liability on the purchaser's return by an amount in excess of  
8           twenty-five percent of the amount of tax liability reported on a purchaser's return, any  
9           additional tax determined to be due may be assessed from the producer anytime  
10           within six years after the due date of the purchaser's return or six years after the  
11           purchaser's return was filed, whichever period expires later.

12           5. Any person that consents to an extension of time for assessment of tax must be  
13           presumed to have consented to a similar extension for refund.

14           **Proceedings and penalty on delinquency.**

15           When the water extraction tax becomes delinquent, there is imposed a penalty of five  
16           dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the  
17           rate of one percent per month on the tax due, for each calendar month or fraction thereof during  
18           which the delinquency continues, except for the month within which the tax became due, which  
19           must be collected in the manner provided. If any person fails to make any required report within  
20           the time prescribed by law for the report, the commissioner shall examine the books, records,  
21           and files of such person to ascertain the amount and value of such production to compute the  
22           tax, and the commissioner shall add the amount of any penalties accrued. The commissioner,  
23           for good cause shown, may waive the penalty or the interest provided by this section. Lien for  
24           tax - Preservation of lien - Satisfaction of lien.

25           1. The water extraction tax, penalty, and interest provided for in this chapter is a first and  
26           paramount lien against the purchaser's or producer's property as the case may be. If  
27           the tax, penalty, and interest is not paid, it may be recovered in any court of competent  
28           jurisdiction of the county where any such property, assets, and effects are located.

29           2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any  
30           property situated in this state, prior to the commissioner filing in the central indexing  
31           system maintained by the secretary of state, a notice of the lien provided for in this

1 section, takes free of, or has priority over, the lien. The commissioner shall index in the  
2 central indexing system the following data:

- 3 a. The name of the taxpayer.  
4 b. The name "State of North Dakota" as claimant.  
5 c. The date and time the notice of lien was indexed.  
6 d. The amount of the lien.

7 The notice of lien is effective as of eight a.m. of the first day following the indexing of  
8 the notice.

9 3. Upon the payment of tax, penalty, and interest, if applicable, or a penalty assessed  
10 under this chapter, as to which the commissioner has indexed a notice in the central  
11 indexing system, the commissioner shall index a satisfaction of the lien in the central  
12 indexing system.

13 4. The commissioner is exempt from the payment of the fees otherwise provided for by  
14 law for the indexing of the lien or satisfaction.

15 **Delinquent taxes - Sale of property.**

16 When any water extraction tax becomes delinquent, the commissioner shall issue warrants  
17 directed to the sheriff of any county wherein the same, or any part thereof accrued, for the  
18 collection of the tax, interest, and penalty; and the sheriff to whom the warrant is directed shall  
19 proceed to levy upon the property, assets, and effects of the person liable for such tax, and shall  
20 sell the same and make return thereof, as upon execution. The state, through the  
21 commissioner, is authorized to make bids at any such sale to the amount of tax, penalty, and  
22 costs accrued.

23 **Bond - Reports - Actions.**

24 The tax commissioner may require a sufficient bond from any person charged with the  
25 making and filing of reports and the payment of the water extraction tax imposed under this  
26 chapter. The bond must run to the state of North Dakota and must be conditioned upon the  
27 making and filing of reports as required by law, upon compliance with the rules of the  
28 commissioner, and for the prompt payment, by the principal therein, of all taxes justly due the  
29 state under this chapter. When any reports required have not been filed, or may be insufficient  
30 to furnish all the information required by the commissioner, the commissioner shall institute, in  
31 the name of the state of North Dakota upon relation of the commissioner, any necessary action

1 or proceedings in the courts having jurisdiction, to enjoin such person from continuing  
2 operations until such reports have been filed as required, and in all proper cases, injunction  
3 must issue without bond from the state of North Dakota. Upon showing that the state is in  
4 danger of losing its claims or the property is being mismanaged, dissipated, or concealed, a  
5 receiver must be appointed at the suit of the state.

6 **Penalty.**

7 Any person intentionally violating this chapter is guilty of a class A misdemeanor.

8 **Deposit of revenue.**

9 All money collected and received under this chapter must be deposited in the general fund  
10 in the state treasury.

11 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
12 June 30, 2013.