

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED 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 sections 57-06-17.1 and 57-39.2-04.14, subsection 3 of
2 section 57-51.1-03, and section 57-60-06 of the North Dakota Century Code, relating to a
3 property tax exemption for pipelines used for secure geologic storage, a sales and use tax
4 exemption for materials used for secure geologic storage, an oil extraction tax exemption for the
5 incremental production from tertiary recovery projects using carbon dioxide, and property
6 classification of secure geologic storage equipment for coal conversion tax purposes; and to
7 provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Section 57-06-17.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-06-17.1. Carbon dioxide pipeline exemption.**

12 Property, not including land, is exempt from taxation during construction and for the first ten
13 full taxable years following initial operation if it consists of a pipeline, constructed after 1996,
14 and necessary associated equipment for the transportation or storage of carbon dioxide for
15 secure geologic storage or use in enhanced recovery of oil or natural gas.

16 **SECTION 2. AMENDMENT.** Section 57-39.2-04.14 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-39.2-04.14. Sales and use tax exemption for materials used in compressing,
19 gathering, collecting, storing, transporting, or injecting carbon dioxide for secure
20 geologic storage or use in enhanced recovery of oil or natural gas.**

21 1. Gross receipts from sales of tangible personal property used to construct or expand a
22 system used to compress, gather, collect, store, transport, or inject carbon dioxide for
23 secure geologic storage or use in enhanced recovery of oil or natural gas in this state
24 are exempt from taxes under this chapter. To be exempt, the tangible personal

1 property must be incorporated into a system used to compress, gather, collect, store,
2 transport, or inject carbon dioxide for secure geologic storage or use in enhanced
3 recovery of oil or natural gas. Tangible personal property used to replace an existing
4 system to compress, gather, collect, store, transport, or inject carbon dioxide for
5 secure geologic storage or use in enhanced recovery of oil or natural gas does not
6 qualify for exemption under this section unless the replacement creates an expansion
7 of the system.

8 2. To receive the exemption under this section at the time of purchase, the owner of the
9 gas compressing, gathering, collecting, storing, transporting, or injecting system must
10 receive from the tax commissioner a certificate that the tangible personal property
11 used to construct or expand a system used to compress, gather, collect, store,
12 transport, or inject carbon dioxide for secure geologic storage or use in enhanced
13 recovery of oil or natural gas qualifies for the exemption. If a certificate is not received
14 before the purchase, the owner shall pay the applicable tax imposed by this chapter
15 and apply to the tax commissioner for a refund.

16 3. If the tangible personal property is purchased or installed by a contractor subject to the
17 tax imposed by this chapter, the owner of the gas compressing, gathering, collecting,
18 storing, transporting, or injecting system may apply to the tax commissioner for a
19 refund of the difference between the amount remitted by the contractor and the
20 exemption imposed or allowed by this section. Application for a refund must be made
21 at the time and in the manner directed by the tax commissioner and must include
22 sufficient information to permit the tax commissioner to verify the sales and use taxes
23 paid and the exempt status of the sale or use.

24 4. This chapter and chapter 57-40.2 apply to the exemption under this section.

25 **SECTION 3. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 3. a. The incremental production from a secondary recovery project which has been
28 certified as a qualified project by the industrial commission after July 1, 1991, is
29 exempt from any taxes imposed under this chapter for a period of five years from
30 the date the incremental production begins.

- 1 b. The incremental production from a tertiary recovery project which has been
2 certified as a qualified project by the industrial commission is exempt from any
3 taxes imposed under this chapter for a period of ten years from the date the
4 incremental production begins. Incremental production from a tertiary recovery
5 project from a horizontal well drilled and completed within the Bakken and Three
6 Forks formations which has been certified as a qualified project by the industrial
7 commission is not exempt from July 1, 2015, through June 30, 2017, and is
8 thereafter exempt from any taxes imposed under this chapter for a period of five
9 years from July 1, 2017, or the date the incremental production begins,
10 whichever is later.
- 11 c. The incremental production from a tertiary recovery project that injects more than
12 fifty percent carbon dioxide produced from coal and has been certified as a
13 qualified project by the industrial commission is exempt from any taxes imposed
14 under this chapter for a period of twenty years from the date the incremental
15 production begins or from the date the project is certified by the industrial
16 commission as meeting the fifty percent or more carbon dioxide produced from
17 coal injection requirement, whichever is later. To qualify for the exemption under
18 this subsection, the project must be located outside the Bakken or Three Forks
19 formations and must use carbon dioxide produced from coal. The incremental
20 production that has been certified by the industrial commission under this section
21 must be used to calculate the exemption under this subdivision.
- 22 d. The incremental production from a tertiary recovery project that injects more than
23 fifty percent carbon dioxide produced from coal and has been certified as a
24 qualified project by the industrial commission is exempt from any taxes imposed
25 under this chapter for a period of ten years from the date the incremental
26 production begins or from the date the project is certified by the industrial
27 commission as meeting the fifty percent or more carbon dioxide produced from
28 coal injection requirement, whichever is later. To qualify for the exemption under
29 this subsection, the project must be located within the Bakken or Three Forks
30 formations and must use carbon dioxide produced from coal. The incremental

1 production that has been certified by the industrial commission under this section
2 must be used to calculate the exemption under this subdivision.

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

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

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

- 1 (3) 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 before July 1, 1991, and where the industrial commission can establish an
4 accurate production decline curve, incremental production means the
5 difference between the total amount of oil produced from the unit during the
6 new secondary recovery project and the total amount of oil that would have
7 been produced from the unit if the new secondary recovery project had not
8 been commenced. For purposes of this paragraph, the total amount of oil
9 that would have been produced from the unit if the new secondary recovery
10 project had not been commenced includes both primary production and
11 production that occurred as a result of the secondary recovery project that
12 was in existence before July 1, 1991. The industrial commission shall
13 determine the amount of oil that would have been produced from the unit if
14 the new secondary recovery project had not been commenced in a manner
15 that conforms to the practice and procedure used by the commission at the
16 time the new secondary recovery project is certified.
- 17 (4) For purposes of determining the exemption provided for in subdivision b and
18 with respect to a unit where there has not been a secondary recovery
19 project, incremental production means the difference between the total
20 amount of oil produced from the unit during the tertiary recovery project and
21 the amount of primary production from the unit. For purposes of this
22 paragraph, primary production means the amount of oil which would have
23 been produced from the unit if the tertiary recovery project had not been
24 commenced. The industrial commission shall determine the amount of
25 primary production in a manner which conforms to the practice and
26 procedure used by the commission at the time the project is certified.
- 27 (5) For purposes of determining the exemption provided for in subdivision b and
28 with respect to a unit where there is or has been a secondary recovery
29 project, incremental production means the difference between the total
30 amount of oil produced during the tertiary recovery project and the amount
31 of production which would be equivalent to the average monthly production

1 from the unit during the most recent twelve months of normal production
2 reduced by a production decline rate of ten percent for each year. The
3 industrial commission shall determine the average monthly production from
4 the unit during the most recent twelve months of normal production and
5 must upon request or upon its own motion hold a hearing to make this
6 determination. For purposes of this paragraph, when determining the most
7 recent twelve months of normal production the industrial commission is not
8 required to use twelve consecutive months. In addition, the production
9 decline rate of ten percent must be applied from the last month in the
10 twelve-month period of time.

11 (6) For purposes of determining the exemption provided for in subdivision b and
12 with respect to a unit where there is or has been a secondary recovery
13 project and where the industrial commission can establish an accurate
14 production decline curve, incremental production means the difference
15 between the total amount of oil produced from the unit during the tertiary
16 recovery project and the total amount of oil that would have been produced
17 from the unit if the tertiary recovery project had not been commenced. For
18 purposes of this paragraph, the total amount of oil that would have been
19 produced from the unit if the tertiary recovery project had not been
20 commenced includes both primary production and production that occurred
21 as a result of any secondary recovery project. The industrial commission
22 shall determine the amount of oil that would have been produced from the
23 unit if the tertiary recovery project had not been commenced in a manner
24 that conforms to the practice and procedure used by the commission at the
25 time the tertiary recovery project is certified.

26 (7) For purposes of determining the exemption provided for in subdivisions c
27 and d, and with respect to a unit where a tertiary recovery project was in
28 existence, and where the industrial commission cannot establish an
29 accurate production decline curve, incremental production means the
30 difference between the total amount of oil produced from the unit during a
31 new tertiary recovery project and the amount of production which would be

1 equivalent to the average monthly production from the unit during the most
2 recent twelve months of normal production reduced by a production decline
3 rate of ten percent for each year. The industrial commission shall determine
4 the average monthly production from the unit during the most recent twelve
5 months of normal production and shall upon request or upon its own motion
6 hold a hearing to make this determination. For purposes of this paragraph,
7 in determining the most recent twelve months of normal production the
8 industrial commission is not required to use twelve consecutive months. In
9 addition, the production decline rate of ten percent must be applied from the
10 last month in the twelve-month period of time.

11 (8) For purposes of determining the exemption provided for in subdivisions c
12 and d, and with respect to a unit where a tertiary recovery project was in
13 existence, and where the industrial commission can establish an accurate
14 production decline curve, incremental production means the difference
15 between the total amount of oil produced from the unit during the new
16 tertiary recovery project and the total amount of oil that would have been
17 produced from the unit if the new tertiary recovery project had not been
18 commenced. For purposes of this paragraph, the total amount of oil that
19 would have been produced from the unit if the new tertiary recovery project
20 had not been commenced includes both primary production and production
21 that occurred as a result of the tertiary recovery project that was previously
22 in existence. The industrial commission shall determine the amount of oil
23 that would have been produced from the unit if the new tertiary recovery
24 project had not been commenced in a manner that conforms to the practice
25 and procedure used by the commission at the time the new tertiary recovery
26 project is certified.

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

30 **SECTION 4. AMENDMENT.** Section 57-60-06 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain**
2 **other taxes - Credit for certain other taxes.**

3 Each coal conversion facility and any carbon dioxide capture system located at the coal
4 conversion facility, and any equipment directly used for secure geologic storage of carbon
5 dioxide or enhanced recovery of oil or natural gas must be classified as personal property and
6 is exempt from all ad valorem taxes except for taxes on the land on which the facility, capture
7 system, or equipment is located. The exemption provided by this section may not be interpreted
8 to apply to tangible personal property incorporated as a component part of a carbon dioxide
9 pipeline but this restriction does not affect eligibility of such a pipeline for the exemption under
10 section 57-06-17.1. The taxes imposed by this chapter are in lieu of ad valorem taxes on the
11 property so classified as personal property.

12 **SECTION 5. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1, 2019.
13 Sections 1 and 4 of this Act are effective for taxable years beginning after December 31, 2018.
14 Section 2 of this Act is effective for taxable events occurring after June 30, 2019.