

FISCAL NOTE
Requested by Legislative Council
02/19/2019

Amendment to: SB 2312

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(28,700,000)		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties		\$(4,900,000)	
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2312 changes the allowable allocation of tax revenue from oil and gas production activity on a reservation in the state.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of engrossed SB 2312 changes the allocation of tax revenue allowed in a tribal-state agreement entered into with a tribe in this state with regard to oil and gas activity on tribal lands. The change allows revenue from new wells drilled and completed on tribal trust lands to be allocated 80% to the tribe, and 20% to the state. Revenue from new wells drilled and completed on tribal "fee" land is authorized to be allocated 80% to the state and 20% to the tribe. Previous agreements authorized a 50%-50% tribal-state split for revenue from oil and gas production activity on all tribal lands.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed SB 2312 may result in a new agreement between the State and Three Affiliated Tribes. If this occurs by the start of the 2019-21 biennium, the biennial fiscal impact is an expected reduction in oil and gas tax revenue totaling an estimated \$33.6 million, and a corresponding increase in tribal allocations of \$33.6 million.

The state's oil and gas tax revenue "buckets" expected to be impacted by the allocation change include the legacy fund, common schools trust fund, foundation aid stabilization fund, resources trust fund, and the strategic investment and improvements fund. The political subdivisions' allocation is expected to be reduced by an estimated \$4.9 million as shown in 1B above.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/20/2019

FISCAL NOTE
Requested by Legislative Council
02/12/2019

Amendment to: Engrossed SB 2312

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(28,700,000)		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties		\$(4,900,000)	
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2312 changes the allowable allocation of tax revenue from oil and gas production activity on a reservation in the state.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 3 of engrossed SB 2312 changes the allocation of tax revenue allowed in a tribal-state agreement entered into with a tribe in this state regarding oil and gas activity on tribal lands. The change allows revenue from new wells drilled and completed on tribal trust land to be allocated 80% to the tribe, and 20% to the state. Similarly, revenue from new wells drilled and completed on tribal "fee" land is authorized to be allocated 80% to the state and 20% to the tribe. Previous agreements authorized a 50%-50% split for revenue from production activity on all tribal lands.

Section 1 of engrossed SB 2312 removes the 'high-price' trigger, which would have increased the oil extraction tax rate from 5% to 6% if average oil prices exceeded \$90 per barrel for a consecutive three-month period. This section is expected to have no fiscal impact in the 2019-21 biennium; the price of oil forecasted for the entire biennium is well below the \$90 price that would trigger an oil extraction tax rate increase.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed SB 2312 may result in a new agreement between the State and Three Affiliated Tribes. If this occurs by the start of the 2019-21 biennium, the biennial fiscal impact is an expected reduction in oil and gas tax revenue totaling an estimated \$33.6 million, and a corresponding increase in tribal allocations of \$33.6 million.

The state's oil and gas tax revenue "buckets" expected to be impacted by the allocation change include the legacy fund, common schools trust fund, foundation aid stabilization fund, resources trust fund, and the strategic investment and improvements fund. The political subdivisions' allocation is expected to be reduced by an estimated \$4.9 million as shown in 1B above.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/13/2019

FISCAL NOTE
Requested by Legislative Council
02/19/2019

Revised
Amendment to: SB 2312

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(28,700,000)		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties		\$(4,900,000)	
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2312 changes the allowable allocation of tax revenue from oil and gas production activity on a reservation in the state.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 3 of engrossed SB 2312 changes the allocation of tax revenue allowed in a tribal-state agreement entered into with a tribe in this state regarding oil and gas activity on tribal lands. The change allows revenue from new wells drilled and completed on tribal trust land to be allocated 80% to the tribe, and 20% to the state. Revenue from new wells drilled and completed on tribal "fee" land is authorized to be allocated 80% to the state and 20% to the tribe. Previous agreements authorized a 50%-50% tribal-state split for revenue from production activity on all tribal lands.

Section 1 of engrossed SB 2312 removes the 'high-price' trigger, which would have increased the oil extraction tax rate from 5% to 6% if average oil prices exceeded \$90 per barrel for a consecutive 3-month period. This section is expected to have no fiscal impact in the 2019-21 biennium, as the price of oil is not expected to reach \$90 at any time during the biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed SB 2312 may result in a new agreement between the State and Three Affiliated Tribes. If this occurs by the start of the 2019-21 biennium, the biennial fiscal impact is an expected reduction in oil and gas tax revenue totaling an estimated \$33.6 million, and a corresponding increase in tribal allocations of \$33.6 million.

The state's oil and gas tax revenue "buckets" expected to be impacted by the allocation change include the legacy fund, common schools trust fund, foundation aid stabilization fund, resources trust fund, and the strategic investment and improvements fund. The political subdivisions' allocation is expected to be reduced by an estimated \$4.9 million as shown in 1B above.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/20/2019

FISCAL NOTE
Requested by Legislative Council
02/12/2019

Amendment to: Engrossed SB 2312

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(28,700,000)		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties		\$(4,900,000)	
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2312 changes the allowable allocation of tax revenue from oil and gas production activity on a reservation in the state.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 3 of engrossed SB 2312 changes the allocation of tax revenue allowed in a tribal-state agreement entered into with a tribe in this state regarding oil and gas activity on tribal lands. The change allows revenue from new wells drilled and completed on tribal trust land to be allocated 80% to the tribe, and 20% to the state. Similarly, revenue from new wells drilled and completed on tribal "fee" land is authorized to be allocated 80% to the state and 20% to the tribe. Previous agreements authorized a 50%-50% split for revenue from production activity on all tribal lands.

Section 1 of engrossed SB 2312 removes the 'high-price' trigger, which would have increased the oil extraction tax rate from 5% to 6% if average oil prices exceeded \$90 per barrel for a consecutive three-month period. This section is expected to have no fiscal impact in the 2019-21 biennium; the price of oil forecasted for the entire biennium is well below the \$90 price that would trigger an oil extraction tax rate increase.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed SB 2312 may result in a new agreement between the State and Three Affiliated Tribes. If this occurs by the start of the 2019-21 biennium, the biennial fiscal impact is an expected reduction in oil and gas tax revenue totaling an estimated \$33.6 million, and a corresponding increase in tribal allocations of \$33.6 million.

The state's oil and gas tax revenue "buckets" expected to be impacted by the allocation change include the legacy fund, common schools trust fund, foundation aid stabilization fund, resources trust fund, and the strategic investment and improvements fund. The political subdivisions' allocation is expected to be reduced by an estimated \$4.9 million as shown in 1B above.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/13/2019

FISCAL NOTE
Requested by Legislative Council
01/17/2019

Bill/Resolution No.: SB 2312

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(28,700,000)		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties		\$(4,900,000)	
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2312 changes the allowable allocation of tax revenue from oil and gas production activity on a reservation in the state.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of SB 2312 changes the allocation of tax revenue allowed in a tribal-state agreement entered into with a tribe in this state regarding oil and gas activity on tribal lands. The change allows revenue from new wells drilled and completed on tribal trust land to be allocated 80% to the tribe, and 20% to the state. Similarly, revenue from new wells drilled and completed on tribal "fee" land is authorized to be allocated 80% to the state and 20% to the tribe. Previous agreements authorized a 50%-50% split for revenue from production activity on all tribal lands.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2312 may result in a new agreement between the State and Three Affiliated Tribes. If this occurs by the start of the 2019-21 biennium, the biennial fiscal impact is an expected reduction in oil and gas tax revenue totaling an estimated \$33.6 million, and a corresponding increase in tribal allocations of \$33.6 million.

The state's oil and gas tax revenue "buckets" expected to be impacted by the allocation change include the legacy fund, common schools trust fund, foundation aid stabilization fund, resources trust fund, and the strategic investment and improvements fund. The political subdivisions' allocation is expected to be reduced by an estimated \$4.9 million as shown in 1B above.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/05/2019

2019 SENATE FINANCE AND TAXATION

SB 2312

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2312
2/6/2019
Job #32284

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-51.2-01 and subsection 5 of section 57-51.2-02 of the North Dakota Century Code, relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; and to provide an effective date.

Minutes:

Attachments: 8

Chairman Cook: Opened the hearing on SB 2312.

Vice Chairman Kannianen, District 4, Stanley: Introduced the bill. See attachment #1. The purpose of the bill is to create certainty in the tax environment. As you say, Mr. Chairman, good tax policy drives an economy, bad tax policy slows an economy and uncertain tax policy destroys an economy. Right now in the oil and gas industry, we have uncertain tax policy within the boundaries of Fort Berthold. We have seen the effects of that. This bill is seeking to create a new agreement between the state and the tribes that can be utilized by the industry to allow them to make those long term choices and investments. This is achieved by putting a tax policy that recognizes the differences in the types of land on the reservation; trust land and fee land. Right now, the tax is split evenly between the state and the tribes regardless of trust and fee land. This new split would recognize those differences. Trust land is land owned and help by the federal government for the benefit of the tribes and their future generations. No taxes are levied on these lands and the tribes have the primary responsibility for the infrastructure and development of those lands. Fee land is private land within the reservation that can be owned by a Native or a non-Native. Property taxes are assessed on the land and paid to the counties. The responsibility for that infrastructure lies with the states or the counties and townships. This bill would recognize those differences and distribute 80% of all the oil production and extraction taxes on trust land to the tribes and 80% of the oil taxes on the fee lands to the state. This would apply to prospective wells. The existing wells would keep the same 50/50 split. With that, as the development on trust land areas of the reservation has an outpace, the development on fee land, the bill comes with a fiscal note of about \$33 million. That means that with it being adjusted, the tribes would receive an additional \$33 million over the next biennium than they would if the current 50/50 would stay in place. This is something that I see as a positive and so do the tribes. Long term, both the state and the tribes benefit from this. The key sell is to understand that with certainty being

put into place, the tribes will benefit but the state will benefit from additional revenues as well with additional industry and development that would otherwise not take place with the current tax environment. This is an idea of everyone rising together. One example is that the number that is being used is \$16 million. That is what one additional rig would bring to the state. Two rigs would allow the state to break even. The long term projection is a benefit for all parties involved. This bill is important for that long term economic outlook for all parties. With that, I will stand for questions.

Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation: Testified in support of the bill. See attachment #2. This is a thing we have all worked very hard on. I would like to thank all of my council for all your help. I want to thank the committee again as well and the past interim committee has been substantial in getting where we are today. We really heard each other and all the comments and concerns we had. That dialogue exemplifies the way it should be and gives us the opportunity to talk about the issues and find common ground. We are very excited and hopeful about where we stand today. We have a lot of statistics about what we have done with the revenue and what we plan to do with it. I thank Senator Kannianen for leading this. He has been listening very well to us even before he become Senator and he has a genuine understanding of what we are going to talk about. He knows he can help others understand what we contend with as a government and not having the tax base necessary to continue oil and gas development. I want to share why we want the legislature to consider passing 2312. The first thing I also want to do is acknowledge our tribal partners we have. We have a strong commitment to that partnership. Fort Berthold is different. You talk about Indian country throughout the U.S. 30% of the nonrenewable resources in the country are in Indian country on trust lands within reservations. The goal is to get at the energy and to do that, you have to have good working partnerships. Here in ND between the state, tribe, and the industry, we have that great partnership. We are becoming a spotlight for the nation who wants to develop that 30% but do not quite know how to do it. They are going to be looking at ND and Fort Berthold and what we are doing together and want to make that happen for themselves as well. We will be in the spotlight on the national level. Our economies have always been intertwined. What we do on Fort Berthold impacts the state and what the state does with its economy, impacts our tribal nation and Fort Berthold. There is no ability to split that out and isolate it. The vast majority of our income is spent off the reservation. That interdependence in our economies is very strong. If we make a move like this, we will strengthen the opportunities and we will see continued growth. There are four things I want to bring up in regard to this bill. The first is that it shifts the tax revenue under the current agreement to distinguish between trust and fee lands. As Jordan said, there is a difference between trust and fee lands. Trust lands are historic in the federal/tribal relationship. The federal government has a responsibility to those lands as a title under the U.S. An example of that is this picture we have in the middle (see page 7 of his testimony). Prior to the oil and gas boom, if they were doing their job right in their relationship responsibility, they would've had a study done and said they need oil and gas in there. They would've got the roads ready. Before the oil boom took off, had they done that, we probably wouldn't have this major problem in this area. We have roads built 70 years ago that were not meant for 20 ton trucks. Immediately all our roads were torn apart. Our tribe was forced to construct and repair over \$120 million worth of roads. That is critical because when we put those roads in there not only do we benefit, but you benefit as well. It makes it a lot easier for that to come out of the ground and get to markets. We understand that partnership. In the last four years for construction, the federal government has appropriated to Fort Berthold to

repair and build roads, \$4 million. Right now, it takes over \$3million to build one mile of road on Fort Berthold to meet the needs of industry. We have a need to build nearly 200 miles. That math works out to be \$1.3 billion. A change in the tax structure will help us relieve some of that burden on an annual basis. We are trying to make Washington D.C. change some formulas. We have dedicated that in the past few years as you have seen \$120 million spent towards that. Our industry partners have put in millions as well. We understand the importance of having that artery to get that product to market. That is all dependent on the trust relationship. If under that trust relationship the federal government doesn't fulfill its responsibility, how is going to do that? We have to. When I say we I mean the state and the tribe, hence the tax agreement. The additional tax revenue creates opportunity for further development on Fort Berthold. All these things we have indicated with the tax revenues; housing shortage for people who want to come there to work. We are trying to alleviate the shortage of housing and are in the process of building. We have \$65 million spent. We are working on lots of infrastructure. We are growing very fast. We are looking at about \$750 million of infrastructure in housing alone. That will enhance our ability to have qualified and trained workers that can help with the oil and gas industry as well. We have housing infrastructure and water infrastructure. The critical importance is also water. You cannot frack wells without water. Our tribe had its own investment with no help from the federal government. If they aren't going to help us, we just ask that they get out of our way. Since we created section 17 water development incorporations, we have put in nearly \$30 million in constructing operations of line, water pits, and so that industry can acquire water for our cells. To put those in place, it costs a lot of money. We think in the next 10 years; we will be spending \$40-\$50 million to make sure water is available. We often sit down and look at schedules and try to balance to make it happen. If we have a tax change, that will go towards the infrastructure. At the end of the day, it relates to the improvements of the economy and infrastructure at Fort Berthold which has direct benefit to the state of ND. It exceeds any change in the split. The benefits will be received by us and the state. There will be more than one rig out there as we move forward with this. This will cause the economy to continue to flourish and grow. That brings me to the final point. We have an opportunity to reap the benefits of that dialogue, communication, and work. We are looking forward to finding this resolve so we can take some of that revenue and align it towards development on trust lands in which the federal government doesn't do that. For the first time since 2013, we will have an agreement that we have signed off on as well as the Governor that says this is how taxation is going to work in oil and gas in development on Fort Berthold if this passes. We do not have that today. We have the instability of having the changes to an agreement in 2015 that we did not approve and ratify. This bring stability to the process. We are excited about doing this. That is going to equate to the industries that we love it and are willing to consider further investment. We are not going to pull our dollars away. We are going to keep them in ND and on Fort Berthold. We are going to continue to do this development together. I strongly urge you to pass this bill. I commend you for your willingness to put that forward as well. I stand ready to address any questions you may have.

Senator Meyer: We are coming from a 50/50 split. Could you explain how you came to that 80/20 split as opposed to a 75/25 or 70/30 split?

Mark Landis: We use precedents. Going back to 2008, the first agreement was made between the three affiliated tribes and the state of ND. That precedent was set on fee lands even though we had a moratorium on extraction on Fort Berthold. Once it came off the

Moratorium, the fee wells were split 80/20. That was in favor of the state. That was in existence from 2008-2013. The tribes under the agreement, had their trust fund treated differently. The trust land, no moratorium, split 50/50 day 1 of production. That ended up creating an imbalance of revenues realized by both the state and the tribe. The tribe by 2013, had received \$100 million less than the state in that equation and that tax revenue split. We worked with the state and got it to a better split of 50/50. 80/20 was based on precedent. Part of the reason why I think the 20% comes into play is that we often talk and say we have responsibility for trust. We could go 100/0 but there are incidental costs to each of our governments that exist. We have to provide fire and environmental safety, law enforcement, and protect non-tribal members just as much as everyone else. That 20% is the give and take on incidental costs that each government might have for the other side.

Senator Patten: The uncertain tax policy is significant to the money generated both for the tribe and the impact of the state is significant as we look at this change. With the more stable tax policy, we will be looking at an increase in activity. That will benefit both and openly for the state potentially even more than we are getting in revenue. The tax policy isn't the only limiting factor that the industry is facing on the reservation. The primary other one would be flaring gas capturing as well as other aspects. Could you address the tribal efforts to deal with that and get the gas capture done more effectively than it is right now?

Mark Landis: If we flare gas, no one gets paid. It is a waste of a valuable resource. We along with the state, want to do everything we can do to gas capture. We want to create a market for that gas. We have handouts that talk about our energy infrastructure plans. We are looking at \$2 billion that we want processing. We may end up with one or more industry partners to capture that gas and create a market off the reservation. That is at the top of our agenda. We believe over the next ten years, it will be about \$2 billion worth of borrowing and putting into the ground. Not only do people not get paid when gas is burned into the air, but there are also environmental impacts. The more we capture the healthier we can be. With the increase of revenues, we are going to try to dedicate a significant portion to continue to enhance our oil and gas development and capture that gas and get it to market.

Chairman Cook: I understand the need for certainty. To make sure we do have certainty, the rate moving forward, regardless of production is 10%. Is that the certainty we have here?

Mark Landis: We have had discussion on it. I would have to sit down with my full council members. Certainly it is important. My council and executive committee has agreed that that is something we will strongly consider as part as this support for 2312.

Chairman Cook: There was a lot of uncertainty in the past year of the dispute over the rate and a tax levied by MHA nation of 3 quarters of a percent on the industry that was working up there. Is that going away?

Mark Landis: Our position is that if 2312 is passed, we are willing to sit down and talk about that option to relinquish that responsibility of the .75. We have assessed and sent out notices for payment. It is around \$28-\$30 million over a two-year period. We are willing to look at that as an option. If this does not pass, we are now only going to continue to assess 16 and 17 and we will be getting our 2018 assessments out as well.

Chairman Cook: As this moves through the process of getting the necessary votes needed in the Senate and the House, it may be awhile to put some of this to rest as for negotiated. It might be helpful to get the needed votes.

Mark Landis: We are willing to give you formal indications that we will consider those fondly. We look at it in the long term. Whether it is the 10% or the relinquishment of previous money owed, regardless of those things, we are trying to look long term and look at what is better. We both know that if we pull out of this dual taxation agreement, this number might drop even lower to the production that is going to occur. I think we are all trying to avoid that.

Chairman Cook: There is an agreement that has been drafted. How far away are we from getting your signature and the Governor's signature on that.

Mark Landis: I think we are very close.

Chairman Cook: I think so too. If we could get both of your signatures, we could turn this into a very simple bill. We would just go to Chapter 50-42 and the legislature would approve the agreement. Is there any chance we get that signed here before we have to pass this bill out?

Mark Landis: I think that is very possible. I can only answer for our side of the process. How that will work on your side, I have to trust that you will do that properly. I can't pronounce expertise on how that is going to impact if we preliminarily sign something and put it in that context. I do not know how they will react on the House side.

Chairman Cook: I am not going to worry about the House side. I have to worry about this side and this committee. I have to get it out of this committee and then I will to all I can to get it out of the Senate. If there is an easier way to do it, let's work together to find.

Mark Landis: I agree.

Ron Ness, President of the ND Petroleum Council: Testified in support of the bill. See attachment #3. I want to thank everyone for the study. I think that was key in getting us where we are today. I cannot emphasize enough, the importance of this bill. We have two companies that will testify today. We are talking 21% of the state's oil production which has recently dipped down to 15% or 16%. There are 10,000-15,000 jobs represented by that activity. We could've packed this room with people who wanted to testify in favor of this bill. When you bring a project in front of your board or investors, you have to lay out two scenarios to them. One is at tax rate A and one at tax rate B or tax rate AA. It is extremely challenging to get investments to move forward. The geology is great. The fiscal note shown here, will not be a concern. The pie will grow in terms of all economic activity and production. The other component in the gas capture. It is one thing for the producers. They have other options. We need to think about the midstream companies who are much like utilities that bring in these hundreds of millions of billions of dollars. We have spent 18 billion dollars on gas capture today. When you look inside the boundaries, am I going to put my investment in there? Or am I just going to size to fit to fit my contracts. They need to know the producer has the stability to continue to produce so I can build my bigger gas infrastructure. That will be a big part of this going forward. We think this bill will grow the mutually relationship and benefit to

all three parties. This is a win win win. It is time we move this forward. All these revenues will result as a benefit in the future.

Daubs Thompson, Vice President and Associate General Counsel Crestwood Midstream Partners LP: Testified in support of the bill. See attachment #4. Since 2013, Crestwood has invested nearly \$1.5 billion in the state of North Dakota. In 2019, we currently anticipate invest \$200 million in the state of ND. That pales in comparison to some of our peers. That is approximately 80-75 percent of our cap X for 2018 and 2019. We pride ourselves specifically on helping with the gas capture. Crestwood has two assets in the state of ND. We have our gathering and processing system. 640 miles of pipelines gather crude oil, natural gas, and produce water. The vast majority of those pipelines are located on Fort Berthold Indian reservation. The three affiliated tribes are our largest land owner. We have an excellent relationship with them that has allowed us to have exceedingly high gas capture rates. We also have a gas processing plant outside Watford City. It is currently processing 30 million cubic feet a day. We also have another gas processing plant immediately adjacent to that that is under construction and will be processing 120 million cubic feet a day. That makes a total processing capacity of 150 million cubic feet a day. I want to emphasize those two plants. It wasn't the most capitally expedient thing for Crestwood to put up two plants. We built the 30 million plant within 9 months because we knew we had a gas capture problem on the reservation. We knew that getting 30 million a day of processing capacity could solve that or at least be a big help to that almost immediately. We also have a second asset in the state of ND which is our rail hub in Epping, ND. That is a rail car translating facility. We load approximately 160,000 barrels of crude oil and NGLs per day. We have the ability to store 120,000 million barrels there a day. Crestwood is involved in all three components of the gas capture including the gathering and processing, and also the take away. I think this committee needs to know that we are in a customer driven business. We connect our system at the well head. We buy our product on the well head. We are the company that pays. We are the first purchaser. Under the current tax, we are the first purchaser which means we pay the tax. The producers do not. The producers having a stable tax environment is critical for Crestwood midstream. We do not invest unless our customers tell us they are going to invest. Having a stable tax rate for them is what motivates our investment. It is also important to note that we are a publically traded master limited partnership. We have assets in all major shale basins in the continental U.S. We believe that this bill is something we need to make the reservation remain competitive within our company. We have investors we need to answer to. We have assets outside of ND and Fort Berthold. As you have seen by our commitment here, we are dedicated to ND. We want to spend out capital in ND. Having a stable environment for our customers will allow us to do that. We have about 200 employees in the state of ND including their families. When we acquired our assets in 2013, there was a large transitional workforce. Our workforce now is 200 individuals and their families primarily based out of Watford City. Those individuals are of big benefit to ND. In 2018, we captured more that 86% of the gas in our system. That is entirely within the Fort Berthold Indian reservation. We see ourselves as part of the solution to that problem. We only see it getting better with the stable tax environment where our customers tell us when they are going to make a financial commitment to the reservation and likewise we will be making the same to service them. With that, I will be happy to answer any questions.

Zachary Weis, Marathon Oil Company: Testified in support of the bill. See attachment #5. Word for word (43:45)

Ryan Rauschenberger, State Tax Commissioner: Testified in support of the bill. See attachment #6.

Chairman Cook: Any further testimony in favor? Testimony opposed? Neutral? Hearing none we will close the hearing on SB 2312.

Additional testimony was given to the clerk. See attachment #7 and #8.

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2312
2/11/2019
Job #32507

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-51.2-01 and subsection 5 of section 57-51.2-02 of the North Dakota Century Code, relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; and to provide an effective date.

Minutes:

Attachments: 2

Chairman Cook: Called the committee to order on SB 2312.

Chairman Cook: There is really three issues that are trying to be worked out. I have amendments here. One is for the \$90 trigger that is on the current tax law right now. If oil gets to \$90 per barrel, there is a trigger that raises tax from 10% to 11%. That will come out in code. The other two issues are both going to have a financial impact. Before we make our final decision, we need to find out what the fiscal note is. We need to get this into appropriations. When Dee gets down here with the amendments, I would like to pass the bill out with the \$90 trigger removed, get this on the floor tomorrow as the 6th order, and come down here and have a brief discussion on it if we get the fiscal note. We could always amend it in appropriations before it comes back on the floor for final passage. We would certainly like to get this bill over to the House. We would like to get it over there in a shape that will pass so we can sign the agreement. One of the other two issues is that if they reclassify a well on trust or fee land, that well would then be considered a new well for the purposes of the agreement and be subject to the new oil split. We have had a lot of talk about the lateral extension of the wells. The other issue is that we have 122 wells that are located outside the reservation that actually drilled into the reservation. We have 77 wells that are drilled inside the reservation and the drill outside of the reservation. They would like the new wells that are drilled outside the reservation and drill in or vice versa, to proceed based on the amount of the spacing unit that is located either in or out. That is a little complicated. I am not sure if we can do it administratively. They are trying to figure out a fiscal note on that. This is an issue that has surfaced before. We have counties that have disputes. There are wells located in McKenzie county that drill into Dunn County. Dunn county would like to say they are stealing their oil. We have wells in ND that drill into MT. Montana says we are stealing their oil. Those are the two issues here.

Dee Wald, Office of State Tax Commissioner: Distributed proposed amendments. See attachment #1 and #2. I think we will work off the Christmas tree version. All this amendment does is get rid of the \$90 trigger. That is on page 1 in the grey box. It is overstriking that language and saying the rate of the tax is 5%. On page 3, we changed the effective date to make it an application. We added the effective date of July 1 because of the emergency clause. It is kind of complicated how that all works. It also says the wells it applies to.

Chairman Cook: The emergency clause is on section 2 and 3 which just changes the split.

Senator Dotzenrod: Is there an objective here? Is it just to simplify and keep it uncluttered?

Chairman Cook: It is for certainty. The rate is 10% and we all agree that that is what it is no matter what the price of oil is.

Senator Patten: This only applies to the wells on the reservation, correct?

Chairman Cook: No, it goes across the entire state.

Senator Dotzenrod: This has been a contentious thing. I think that my recollection is that when the boom was going on and we had a lot of activity, it seemed that even though we had a 6.5% oil extraction tax, there was no slowing down because of that tax. Essentially, everyone in the system was managing well because everyone was making money. When you get in the higher level of oil value, the tax rate doesn't act as a breaking mechanism and it doesn't slow things down. I guess you could argue that simplicity is great and we should try and get that out of there. However, I think I am going to resist it. I think that if there is a time when there is that activity going on and we do get up in that higher level, there will be prosperity in the state. It does seem somewhat appropriate to have that trigger in it. It would be nice to have the public weigh in. I am reacting without much preparation or thought.

Chairman Cook: I fully understand. My biggest concern for raising is that I fear us coming to an agreement in 2019 and then in 2021, someone from the House will put in a bill to remove the trigger which will result in them breaking the agreement. I did not want to have anything in here that would make it difficult for a long term agreement.

Senator Dotzenrod: I think I follow your logic. You are saying that if we can make this as clean as possible and have a straight 10% tax, then in the future, those things that might threaten to disrupt an agreement are removed.

Senator Patten: Moved to Adopt the Amendments.

Senator Meyer: Seconded.

Chairman Cook: Any Discussion?

A Voice Vote Was Taken.

Motion Carried.

Senator Meyer: Moved a Do Pass as Amended on SB 2312 and Rerefer to Appropriations.

Senator Patten: Seconded.

Chairman Cook: Again, there are two more possible amendments that could go on this if we get the fiscal notes. If it goes well, they will be put on in appropriations.

Chairman Cook: Any Discussion?

Senator Dotzenrod: I want to review the effect dates. You are saying sections 2 and 3 are effective for new wells after June 30. Section 1 looks like it is the same. That is two ways of saying the same thing. I am comparing section 4 to section 5.

Dee Wald: Sections 2 and 3 are specific to just the agreement. The agreement right now is that these rates would apply to new wells drilled after June 30. The effective date of section 1, which is the repeal of the trigger, applies to wells off and on the reservation.

A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent.

Motion Carried.

Vice Chairman Kannianen will carry the bill.

February 11, 2019

8/122

PROPOSED AMENDMENTS TO SENATE BILL NO. 2312

Page 1, line 1, replace the first "section" with "sections 57-51.1-02"

Page 1, line 4, remove "and"

Page 1, line 4, replace "an effective date" with "for application; and to declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax.

There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil.

The rate of tax is five percent of the gross value at the well of the oil extracted. ~~However, if the average price of a barrel of crude oil exceeds the trigger price of ninety dollars for each month in any consecutive three month period, then the rate of tax on oil extracted from all taxable wells is six percent of the gross value at the well of the oil extracted until the average price of a barrel of crude oil is less than the trigger price of ninety dollars for each month in any consecutive three month period, in which case the rate of tax reverts to five percent of the gross value at the well of the oil extracted. By December thirty first of each year, the tax commissioner shall determine an indexed trigger price under this section by applying to the current trigger price an adjustment equal to the percentage rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.~~

~~For purposes of this section, "average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed."~~

Page 2, line 17, replace "EFFECTIVE DATE" with "APPLICATION"

Page 2, line 17, replace "This" with "Sections 2 and 3 of this"

Page 2, line 17, replace "is" with "are"

Page 2, after line 20, insert:

"SECTION 5. EMERGENCY. Sections 2 and 3 of this Act are declared to be an emergency measure."

202

Renumber accordingly

Date: 2-11-19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2312

Senate	Finance and Taxation	Committee
--------	----------------------	-----------

☐ Subcommittee

Amendment LC# or Description: 19-0820-01001

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Patten Seconded By Meyer

[illegible]

Total (Yes) _____ No _____

Absent _____

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-11-19
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2312

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☒ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Meyer Seconded By Patten

Senators	Yes	No	Senators	Yes	No
Chairman Cook	<input checked="" type="checkbox"/>		Senator Dotzenrod	<input checked="" type="checkbox"/>	
Vice Chairman Kannianen	<input checked="" type="checkbox"/>				
Senator Meyer	<input checked="" type="checkbox"/>				
Senator Patten	<input checked="" type="checkbox"/>				
Senator Unruh					

Total (Yes) 5 No 0

Absent 1- Unruh

Floor Assignment Kannianen

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2312: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2312 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the first "section" with "sections 57-51.1-02"

Page 1, line 4, remove "and"

Page 1, line 4, replace "an effective date" with "for application; and to declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax.

There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil.

The rate of tax is five percent of the gross value at the well of the oil extracted. ~~However, if the average price of a barrel of crude oil exceeds the trigger price of ninety dollars for each month in any consecutive three month period, then the rate of tax on oil extracted from all taxable wells is six percent of the gross value at the well of the oil extracted until the average price of a barrel of crude oil is less than the trigger price of ninety dollars for each month in any consecutive three month period, in which case the rate of tax reverts to five percent of the gross value at the well of the oil extracted. By December thirty first of each year, the tax commissioner shall determine an indexed trigger price under this section by applying to the current trigger price an adjustment equal to the percentage rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.~~

~~For purposes of this section, "average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed."~~

Page 2, line 17, replace **"EFFECTIVE DATE"** with **"APPLICATION"**

Page 2, line 17, replace "This" with "Sections 2 and 3 of this"

Page 2, line 17, replace "is" with "are"

Page 2, after line 20, insert:

"SECTION 5. EMERGENCY. Sections 2 and 3 of this Act are declared to be an emergency measure."

Renumber accordingly

2019 SENATE APPROPRIATIONS

SB 2312

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2312
2/15/2019
JOB # 32826

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact Sections of the NDCC, relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; to suspend section 54-35-23 of the NDCC, relating to the tribal and state relations committee; to provide for a legislative management trial taxation issues committee; to provide for application; to provide an expiration date; and to declare an emergency.

Minutes:

1 Testimony of Senator Kannianen

Chairman Holmberg: called the Committee to order on SB 2312. Roll call was taken. All committee members were present. Becky Deichert, OMB and Adam Mathiak, Legislative Council were also present.

Senator Jordan Kannianen, District 4: testified in favor of SB 2312 and provided Attachment # 1 which states the purpose of the Bill. His statement states that the passage of his bill and the signing of a new compact between the state and the Three Affiliated Tribes would bring tax certainty and stability for industry and peace between all parties. He states this bill is important to the long-term economic outlook for both the state and the MHA Nation.

Senator Robinson: moved a Do Pass. 2nd by V. Chairman Wanzek.

Chairman Holmberg: Call the roll on a Do Pass on 2312.

A Roll Call vote was taken. Yea: 14; Nay: 0; Absent: 0. Senator Kannianen from Finance and Tax will carry the bill.

The hearing on SB 2312 was closed.

Date: 2-15-2019Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2312

Senate Appropriations

Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Robinson Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0Absent 0Floor Assignment Back to F+T, Kammisner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2312, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2312 was placed on the Eleventh order on the calendar.

2019 HOUSE FINANCE AND TAXATION

SB 2312

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2312
3/5/2019
33202

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; relating to the tribal and state relations committee; to provide for a legislative management tribal taxation issues committee.

Minutes:

Attachment 1-6

Chairman Headland: Opened hearing on SB 2312.

Senator Kannianen: Introduced bill. Distributed written testimony, see attachment 1. This bill adjusts the tax sharing split between the state and Three Affiliated Tribes. It again reauthorizes the interim tribal tax issues committee from which this bill stems. The interim committee provided very good work with good faith negotiations. The main purpose of this bill is to provide stability and certainty for all parties involved and for industry. This new split would apply to new wells. The existing wells will keep the existing 50-50 split. The purpose of changing the split is to have a tax policy in place that recognizes those differences between trust land and fee land, instead of a 50-50 across the board split. Trust land is land where title is held by the United States and is held in trust for the benefit of the tribes. Primary infrastructure responsibility lies with the tribes. Fee lands are still within the boundaries of the reservation but the title is privately held. Property taxes are paid on fee lands just like any land off the reservation. Primary responsibility for infrastructure falls with the counties, townships, and the state. By changing the split and having 80% of revenues on trust land go to the tribes and 80% on fee land go to the state that would recognize those legal differences and recognize the infrastructure responsibilities. A new compact was signed last week by the governor and by Chairman Fox of the Three Affiliated Tribes. That compact along with this bill would bring the stability and certainty that all sides are seeking. We're looking long term with this. There is a fiscal note associated with this bill. Two additional rigs would cover that fiscal note. When 20% of production in the Bakken is within the boundaries of Fort Berthold. We are in a global competition with other plays so to have 20% of the play here in an uncertain tax environment isn't a good way to move forward. This is a statewide issue to make sure we have certainty.

Representative Steiner: On line 20 it's striking that the confirmation of a future agreement would not be done by the House and the Senate. What was the reasoning behind taking that out?

Senator Kannianen: This is existing language dealing with past agreements. The compact that was signed has a 10-year date on it. Any new agreement would still need to have legislative approval. That's the intent.

Representative B. Koppelman: With this agreement and with the signed compact we'll have certainty for the industry and consistency between the state oil tax that's charged and the tribal oil tax that's charged so there won't be a bunch of additional fees and taxes added on. The oil companies are paying the same amount whether it's on the tribal land or on state land somewhere outside the reservation?

Senator Kannianen: Yes, that was an important part of these negotiations was that fact that any past disagreements about trigger or other fees would be contained in the new compact and that is resolved with this. This new agreement will provide that certainty and the fees and rates will be the same whether on or off.

Representative B. Koppelman: In this bill there are two different cost sharing portions whether it's fee land or trust land. Are those two agreements equal so a barrel of oil or the beginning of a well is the same no matter where it starts?

Senator Kannianen: Yes.

Chairman Headland: Further testimony in support?

Scott Davis, Executive Director of the Indian Affairs Commission: Our office is supportive of SB 2312. This has been a long process. We are in a very good place here with the bill as it states. The compact is a big deal. This is about stability. When you think about our buckets and where this funding will go through this tax agreement, the buckets could fill more quickly. This is creating a win-win not only for the tribe but also for the state. This is about trust. The pace of progress has always been about trust.

Chairman Headland: Further testimony in support?

Mark Fox, Chairman of the MHA Nation: Distributed written testimony, see attachment 2. Our Fort Berthold economy has always intertwined with and has been dependent with the state's economy. It's our feelings that the state's economy also relies greatly on our tribal economy. We're trying to change a taxation system that allows more resources to stay on Fort Berthold. Jointly our economies will share in that development if we do it correctly. The oil and gas development has made us more intertwined than ever before. The heart of the Bakken is Fort Berthold. The production levels we have there are phenomenal and are known throughout the world. We are part of the state being in the number two position. Thirty percent of the nonrenewable resources in the United States are in Indian country. We have a tribal nation that chooses to develop its energy resources and move forward. There are issues but at the same time you have a nation that's willing to maximize its efforts to enhance its economy and use those resources properly. This is a unique situation. A study is being

completed and we will share that with you at the end of this legislative session which shows our impact to the economy to the state of North Dakota. Initial data shows that in 2014 the gross domestic product of the state was impacted nearly \$1 billion because Fort Berthold Reservation was involved in the economy. The more you defer revenues for our own development the more benefits come to the state. The last four years it averages nearly \$700 million annually impacting your economy positively. SB 2312 does a lot of thing but I want to talk about four things: it shifts the tax revenue to support and distinguish between fee and trust lands within our reservation. It more equally aligns production on Fort Berthold and puts the shift of the burden as we are responsible for trust lands. They are held in trust for our benefit. There are fee lands within our boundaries as well. The shift and the percentage allows our tribe to focus more on the trust land which the state has always asserted has no legal obligation to fund or to take care of. The federal government is the trustee but provides little in the way of resources. Our tribe is forced to take its revenue from its own resources to develop accordingly. The split doesn't allow us to focus on that trust land and would provide an unequal opportunity to provide things on trust lands. The 80-20 split is more equitable and that shift gives us a chance to focus on trust more. The additional tax revenue creates an opportunity for further development on Fort Berthold. Those revenues have spurred our economy. When we make improvements you get the benefit as well. The majority of salaries earned are spent off the reservation in most of the cities within your boundaries. Businesses are doing very well. Many of them pay state taxes as well. Improvements to the economy and infrastructure have a direct benefit as well. It far exceeds the changes in the split under the agreement. It takes a lot of water to frack a well and to maintain the life of the well; 12 million to 15 million gallons of water for one well. Without any assistance from anyone else our tribe has put the investment in to make sure that there is water to frack. Same thing with the road infrastructure. To build a road to support the oil and gas industry it costs us about \$3 million per mile to build a road to withstand the pressures and last for at least 10 or 12 years. We put a lot of dollars in, dollars we can't get from the federal government. The federal government has an obligation to fix and develop those roads but they don't do it. The budget for us annually to construct roads on Fort Berthold is a little over \$1 million a year. We have 150-200 miles in time needs to be built to handle the pressure of the oil and gas industry. We could build a third of the road with what the federal government provides. We need to use our own money. We put in \$130 million of revenue towards roads. When the barrel goes to market we split that tax so the infrastructure benefits you as well. We want you to see tax revenue as an investment. The fiscal note of \$33 million biannually should be looked at as an investment and is a smart move. We still have issues to address. We attempt to do that every two years. Government to government talks gives us the opportunities to understand how we all feel about different issues and the processes. I'm urging successful passage of this bill.

Representative Ertelt: Do you know the statistics on the trust land versus the fee land in acreage?

Mark Fox: As a whole trust land is about 50% and fee is about 50% within our boundaries as a whole.

Representative B. Koppelman: With this new agreement and with the new formula are there other fees charged in order to put a well on your land versus a well on state land outside the reservation?

Mark Fox: There are still drilling fees which applies when the spacing unit is more than 50% trust. In cases where it is not that's \$100,000 drilling fee. Outside of that there is no direct fee. There are other fees we have generically for all businesses, not just oil and gas. There are smaller fees that have been already in existence and we're going to keep them in place as well. By agreement we agree that we will not pass any new tax relative towards oil and gas industry in the future.

Chairman Headland: Further testimony in support?

Ron Ness, North Dakota Petroleum Council: Distributed written testimony, see attachment 3. We stand in strong support of this bill. In 2007 there had not been a well drilled on the Fort Berthold Indian Reservation in 27 years. In 2007 legislature came up with the tribal tax compact agreement. In 2008 the compact was signed. Marathon Oil drilled the first well in 27 years on the reservation. The significance of the compact the chairman talked about and tax certainty is a big deal. Since that first well was drilled I believe there are about 1,500 wells drilled on the reservation. They are producing roughly 20 or 21% of our state's oil production which is roughly 300,000 barrels of oil a day. I am confident this bill will spur more development, activity, and investment. As a producer today you have to take two or three scenarios to your investors and to your board of directors with a tax at 10%, 15%, or a double taxation if they chose to impose their own tax at 20% which is a potential deal killer. It would stop and hold precedence and caution over what you're going to continue to do. If you take that off the table since 2013 there has been this uncertainty. We, the tribal nation, and the state have been in this quagmire so this is a huge step in spurring development.

Chairman Headland: It's hard to believe that some of us on this committee have been here through all these agreements. There has been amazing progress with tough negotiations between the state of North Dakota and the Three Affiliated Tribes. It has been quite successful for both entities in the end. Further testimony in support?

Dobbs Thompson, Vice President and Associate General Counsel with Crestwood Midstream: Our headquarters are located in Houston, Texas. We have major midstream gathering assets in every shale producing basin in the continental United States but by far our largest assets are located here in North Dakota. We have two primary assets in North Dakota; the first is our aero gathering and processing system and the second is our Epping rail facility. We've been very proactive in helping increase the gas capture rates within the reservation because we're involved in all facets of that business. To increase the gas capture rate you have to have gathering capacity, processing capacity, and take away capacity. Our aero gathering system consists of approximately 640 miles of pipeline all in the Fort Berthold Indian Reservation. In 2017 we connected approximately 100 wells onto that gathering system. In 2018 we saw a slight reduction in that and in 2019 we anticipate connecting over 100 wells again. We have a processing plant outside of Watford City which is at 30 million cubic feet a day. Hopefully third quarter this year it will be increased to 150 million cubic feet a day. We'll be self-processing our own gas which was gas gathered in our system that was being processed elsewhere will now be free up. In 2019 we're looking at investing approximately \$200 million in North Dakota. From November 2013 until the end of 2019 we will have invested \$1.5 billion in North Dakota. We have approximately 200 employees and their families who reside in Watford City. Our workforce used to be about 70% transitional

now we have 200 employees residing here. The Epping rail facility consists of approximately 1.2 million barrels of crude oil storage and it has the capacity to load approximately 160,000 barrels of crude oil and NGLs for take away with the vast majority going to the west and east coast from rail. We believe this bill gives our customers great stability. We believe this bill keeps North Dakota competitive and allows us to continue to contribute to the gas capture rates within the reservation. In 2018 our system had over an 80% gas capture rate. Three Affiliated Tribes is our largest land owner and we work very well together.

Chairman Headland: What is our biggest hindrance from gas capture on the reservation? We understand that there are goals that need to be met and it holds up oil production because we're not able to meet those.

Dobbs Thompson: I think a good chunk of that is the checkerboard nature of the reservation. Some areas you have fee land then in a small area to the right you'll have trust acreage. I wouldn't say there is one single thing we could pinpoint. Federal management held in trust adds a certain layer of complexity whether you're dealing with tribal trust land or individual lot land. You have to obtain the land owners consent as the beneficiary then you have to go through a secondary federal approval process.

Zac Weis, Marathon Oil Company: Distributed written testimony, see attachment 4. Ended testimony at 48:04.

Chairman Headland: Further testimony in support?

Ryan Rauschenberger, Tax Commissioner for the State of North Dakota: Distributed written testimony, see attachment 5. Ended testimony at 49:53.

Chairman Headland: Further testimony in support?

Levi Bachmeier, Policy Director for Governor Burgum: Distributed written testimony, see attachment 6 (Compact). I want to share some gratitude on behalf of the governor with all the parties who made this compact possible. This will continue in deliberation through the House but we felt that Thursday's event was a monumental step forward in the art of bringing together legislative leadership, executive branch representation to include the tax commissioner, the tribe, and industry leaders. This has strengthened relationships between the state of North Dakota and the tribal nations. In the last two years production in the Bakken has decreased which we would like to reverse. We really have an opportunity to achieve a win-win-win opportunity for the industry, the tribe and the state of North Dakota. We respectfully request a favorable recommendation out of this committee.

Chairman Headland: Further testimony in support? Is there opposition? Seeing none we will close the hearing on SB 2312.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2312
3/13/2019
33645

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; relating to the tribal and state relations committee; to provide for a legislative management tribal taxation issues committee.

Minutes:

Attachment 1

Representative B. Koppelman: Distributed proposed amendment, see attachment 1.

Chairman Headland: There's been a lot of discussion on the overstrike on page one. It seems there is some thought that with the overstruck language the legislature is giving away their authority over the terms of these compacts and bills. Could you address that for the committee?

Ryan Rauschenberger, North Dakota State Tax Commissioner: In Section 57-51.2-02, unlike current law, the tribal tax agreement basically has the major stipulations in law; 50-50 split, there has to be wells within the boundaries, and state tax code are all laid out in the statute. The agreement that the governor signed in advance of the session and if it passes the bill needs to mirror legislation or else an agreement has to mirror the legislation. The language in statute is what dictates the major portions of the agreement and what has to be in the agreement. The passage of SB 2312 is the confirmation of the agreement being signed. If you were to pass SB 2312 it would be the confirmation ratification of the agreement that the governor has signed with the tribe now. In other cases, you've passed changes then the governor signs so it's a little confusing when you have an agreement signed then this bill is seen as the confirmation. This bill is that confirmation process. If another tribe wanted an agreement, we could sign one between now and the next legislative session that would mirror the agreement that's signed with the Three Affiliated Tribes the governor would be able to enter into that. In the statute it states that it's not just with Three Affiliated Tribes, it could be any of the tribes. You've pre-certified the agreements that have to follow the 80-20, 20-80 on new wells and it has to mirror the state's gross production and extraction tax. It would allow the governor to enter into an agreement because you've pre-approved the terms of the agreement, not just with Three Affiliated but with any of the tribes. We have the other tribes as well so you're pre-approving the legislation and all the stipulations about where

the well is located and the distribution of the tax rates are all in statute and dictated by that 57-51.2.

Chairman Headland: Could you explain to the committee what would happen in the case where one of the parties gave their notice and opted to get out of the agreement?

Ryan Rauschenberger: If SB 2312 didn't exist, if either the state or the tribe wanted to revoke the agreement, we would default to the section of code that authorizes the agreements. If the agreement is gone, we would assess the state tax on every well in the state. We would still continue to assess that 10% tax on every well as we are now but we would not distribute any more money.

Chairman Headland: You would not distribute any portions to the tribe at that point?

Ryan Rauschenberger: It would be treated like any other well but the tribe would likely put on their own. The Supreme Court case says we both have dual authority and that's why we've had the agreement since 2008. The statute imposing the GPT and the OET on every well in the state doesn't say if there's no agreement then back off to half. We keep assessing 10% on every well in the state regardless of an agreement.

Chairman Headland: When the agreement goes away we'll be taxing 10% and we'll be keeping all 10 percent. Now moving one step further, if the tribe tries to negotiate another compact with the governor, tell us what would happen. Would they be able to negotiate anything that isn't part of what would be placed in statute?

Ryan Rauschenberger: If there were another agreement it would have to mirror statute. The governor would not be able to divert off the 80-20, 20-80 and it would have to be wells within boundaries. If that's something the tribe would like in the agreement for future administrations to know and it needs to be provided on a regular basis, then I would see that as something that could be changed. It is our interpretation that the governor would not be able to agree to anything that would conflict with what you've approved in the specific statute which is being changed in 57-51.2.02. We can't impose a tax you haven't authorized. Unless it's explicitly allowed under statute, it's my understanding that the governor would not be able to agree to any significant changes that would be in conflict with this section.

Chairman Headland: Regarding the compact and the language in Article VIII, it says the parties agree the compact is effective upon filing with North Dakota Secretary of State of legislation enacted by the 66th legislative assembly containing the terms of SB 2312 as it existed on the day the compact was signed which was February 28, 2019. We have an amendment that's been drafted. What would be the impact of an amendment on this bill?

Ryan Rauschenberger: That would be up to the governor and Chairman Fox if that would be perceived as an amendment which would change the terms. If any amendment is changing the terms or if it's perceived as not impacting the agreement, I think that would be a better answer for Chairman Fox or the governor. Any amendment raises that risk of having it be null and void. If the parties agree the amendments conflict with the agreement in some way, it could be null and void.

Chairman Headland: Have you seen this amendment? Are you able to speak to it?

Ryan Rauschenberger: The major portion would be leaving in “An agreement under this chapter must give the governor, after consulting with the tax commissioner, and a tribe the authority to terminate an agreement with or without cause.”

Chairman Headland: We’ve already addressed that. It should be clear that the overstrike would not be an issue.

Representative B. Koppelman: I disagree.

Ryan Rauschenberger: The governor cannot make any significant changes that would be in conflict with the section. If there were any kind of administrative changes that wouldn’t conflict what you’ve approved in this bill those could be changed administratively in an agreement, an amendment to the agreement, or an additional appendix to the agreement. I don’t believe that the current version of the bill raises the risk of having any significant changes to the agreement. You’ve codified what the governor must agree to.

Chairman Headland: Representative B. Koppelman, let’s hear your argument.

Representative B. Koppelman: There is still a spud fee on the wells in the agreement but many other fees were banned under the agreement. Any duplicative taxes were banned. I don’t see that band in century code. Theoretically, if the governor wanted, he could go back and renegotiate, keeping it 80-20 or with a different tribe, then he could agree to other fees on wells. In 2015 the safeguard against that was any renegotiation of terms came back to the legislative session. The legislature acting, not only on what was in century code, but what was in century code and the agreement before them, going forward all the smaller terms of any agreement would never be weighed in by the legislature. I’ve been told this is the same thing but it’s not the same thing. In addition to that if you had an agreement that had a whole different set of terms with a different tribe as long as you keep 80-20 the tax part then the governor could negotiate that agreement. I don’t find it anywhere that it locks in all the terms of the agreement.

Ryan Rauschenberger: The 80-20 language would stay in there. There is language in there about not having any other fees. That spud fee has been in there since 2008 and was “grandfathered” in to the current agreement but no other fees have been agreed to. Going forward with any other fees, it is my understanding that they would not be allowed. The agreement from 2008 was agreed to under the original agreement and has remained. That was part of negotiations and has been something industry has been aware of the whole time. The \$100,000 spud fee has been in there but it’s in statute that other fees are not allowed.

Representative B. Koppelman: Where in statute does it say other fees can’t be added?

Ryan Rauschenberger: Number seven in 57-51.2.02. It is very clear that any other fees not agreed to back in 2008 are not allowed.

Representative B. Koppelman: Does it mean that the spud fee is in violation of the law?

Ryan Rauschenberger: That was there since 2008. All along that was part of the negotiations and the agreement.

Representative Hatlestad: On pages 21 and 22 is that an indication of how the legislature is not involved in any of the agreements?

Ryan Rauschenberger: I would say that the statute is the provision that guides the agreements. The inclusion of the legislature is you approving every session any changes that would be necessary to the agreements that would dictate what the governor can agree to. The statute is the approval of the governor to enter into agreements following the provisions you've set forth. The involvement would be changing the statute in any future legislative sessions.

Representative Hatlestad: I respectfully disagree. To me this takes the legislature out of the agreements.

Ryan Rauschenberger: To the extent to what you approved in statute. They wouldn't be able to conflict with what you approved in statute when it comes to 80-20 and 20-80 things we administer. We won't administer something that conflicts with statute when it comes to the tax code.

Chairman Headland: Who in this building has the ability to change a statute?

Ryan Rauschenberger: You do.

Chairman Headland: The legislature.

Representative B. Koppelman: In number seven you just referenced that was last amended in 2015 so even though the spud fee may have been going on since 2008 it would appear that's in violation. Since this was changed in 2015, if there had been law interpreted in 2008, that would supersede that because it would have passed later. It would appear that's in violation of statute. If we're to believe that the administration will honor statute in any future agreement they negotiate then it's pretty clear that we follow the statute today or amend the statute if the intent is to allow a spud fee but nothing else, we should amend number seven in this bill to be consistent. Otherwise the faith that the administration, whether it's the tax commissioner or the governor, will always follow statute is a little weak. How would you respond?

Ryan Rauschenberger: When you look at the 2015 language when that language was passed the spud fee was there and that wouldn't impact that specific spud fee going forward. There needs to be a question on behalf of the tribe and the governor if they feel that nullifies the agreement that's been signed. I can't speak for them.

Chairman Headland: We have a representative from the governor's office here and the governor has taken a position on it.

Levi Bachmeier, Policy Director for Governor Burgum: During the negotiations with the MHA nation the conversation was very clear that any adjustments made to the bill would

nullify the agreement and force the process to start over. The intent of the governor's office in trying to get a finalized agreement signed before this body was forced to vote on the bill was to make sure everybody knew what was in that agreement. We want to be abundantly clear that the policy makers and the people who set statute is the legislative branch with the approval of the governor by signing the bill. The bills are drafted, amended, and passed on this side of the capital. After reviewing the agreement, we still remain unsure what could be changed in the agreement that would affect the taxation regulation of oil development on the Fort Berthold nation. Our goal and commitment is to follow statute. It is quite clear that the parameters and the ratification is there and the legislature has to give its stamp of approval for this process to move forward otherwise the agreement has no effect at all.

Chairman Headland: Being part of these negotiations from the very beginning our goal along with the tribes is to increase production for the state of North Dakota both on the reservation and off. I am completely confident that this bill would be carried out as it is and we will achieve those goals.

Levi Bachmeier: The tax commissioner did a nice job explaining the history of the supreme court case which gives both the tribe and the state the authority to tax minerals within the exterior boundaries of the reservation. This really comes down to trust between the legislative body, the executive branch and the tribal nation where an agreement can be forged and increases investment and development in all corners of the state both on and off the reservation. This agreement is only as good as the paper it's printed on without the approval of the legislature and subsequent approval in future sessions. We follow your lead in this process. We have opportunity here to increase investment in the Bakken. North Dakota's share of oil production has declined the last two years and if we look at opportunities for increased investment tax and regulatory certainty it is an important step forward. One of the things we do here from industry partners is that the lack of tax certainty with the lack of regulatory certainty on and within the exterior boundaries of the reservation causes concern. This agreement was crafted with the intent of providing that certainty, increasing investment, and recognizing the sovereignty of the tribe and the responsibility and obligation that the state of North Dakota has.

Representative Ertelt: I don't know that this amendment would be an amendment to the compact that was signed. It's looking at giving the legislature or retaining the confirmation of the compact. The additional language on the amendment specifies the governor or the tribes can terminate the agreement with or without cause which seems to be in the compact under Article IX section two subsection a. The only change seems to be after "consulting with the tax commissioner." Giving the fact that the tax commissioner has been involved in the negotiations as well I can't see how this particular amendment really impacts the compact at all.

Levi Bachmeier: Changes to the bill would be seen as nullifying the compact. If it makes no meaningful change in the process, then why do the amendment at all?

Chairman Headland: Exactly.

Representative Ertelt: The point is not in the process. The bill is changing the process and stripping the legislature of its confirmation of the compact. The amendment doesn't change the compact itself.

Levi Bachmeier: That would be a distinction without a difference. If the terms of the bill are being adjusted when the negotiation occurred on what was in the compact explicitly spelled out, then changes to the bill would negate the work that's been done. We don't believe that without this amendment the ratification and approval of the legislature is necessary otherwise SB 2312 wouldn't be before you right now.

Representative B. Koppelman: The language in the compact in Article VIII strips the House of Representatives from its process if it's executed the way we're asked to do it. The Senate was not handcuffed that way. In future agreements it's saying agreements can be had back and forth without the legislature's consent as long as the backbone of terms are met that are in law. In number seven, if we're going to take that position then this is the backbone; these are the non-negotiable terms of the agreement. Number seven says you may not have a spud fee. You need that amendment if we're going to be consistent with the agreement or that part of your agreement would be null and void as soon as we pass SB 2312. You need an amendment on this bill if you're going to strictly follow the law.

Levi Bachmeier: I can reiterate what the tax commissioner mentioned and I think it's important to look at the legislative history. I respectfully disagree that the House has to make the decision of whether or not you want the amendment that would trigger the disillusion of the agreement and whether this process would be able to move forward or not. The process is here since the committee hearing is being had.

Representative B. Koppelman: Apparently any fee that isn't challenged somehow superseded law by being left alone for 11 years like a spud fee so it can violate the law and still be allowed.

Chairman Headland: Are there any other questions for Mr. Bachmeier?

Vice Chairman Grueneich: We heard from Commissioner Rauschenberger and Mr. Bachmeier. We do interim committees every year and the purpose of those meetings are to research and put forth a product we can look at during the legislative session. The argument that we're taking the legislative process out of it, that's not true because we are here today. In two years, if there is something that needs to change after this has been in effect, that will come before us again. To say the legislature is out of the process isn't true. The governor has the ability today with any bill that goes forth can either sign or not sign. We've probably never had as good of a relationship with the tribe as we have since Governor Burgum came here. **MADE A MOTION FOR A DO PASS**

Representative Mitskog: SECONDED

Chairman Headland: Discussion? There have things that have happened that has caused mistrust between the state and the tribe. I understand everybody's concern but I don't think there is any guarantees of anything going forward. We can't speak for the tribe; they are a sovereign nation. We are doing the best we can do on behalf of the state of North Dakota

and the legislature. The terms of this agreement and the bill have been carefully argued in several meetings with House and Senate leadership, the tax department, the governor's office and all parties involved have been very careful to make sure that everybody is completely satisfied with what the agreement and the bill now say. This is an important move forward. I appreciate the discussion and I appreciate the concerns of those of you who have been very vocal in the process.

Representative Ertelt: I think we deserve a little more discussion here. We're hearing the argument that the legislature isn't changing their role in the process at all but I don't know how you can look at the bill and the overstrike in this agreement and see that. The amendment that was offered by Representative B. Koppelman doesn't change the compact itself. The tribes tell us that any amendment would cause this to be null and void then we are to have to renegotiate but that is not entering a compact in good faith.

Representative Mitskog: I respect and appreciate the time of all parties involved in drafting the compact and this bill. I have a lot of respect for leadership. I'm curious if these concerns have been addressed with your party's leadership?

Representative Ertelt: That's part of the process here in committee to air our concerns with the bill. It was obvious how our discussion went and with the amendment here that there was concern with the bill. To think our leadership is not aware of that is a little misguided.

Chairman Headland: I think everybody is aware of it and we've addressed it. We have a motion on the table that we are going to vote on.

Representative B. Koppelman: I asked where in the agreement it authorizes the spud fee but it sounds like it is not specifically in the agreement; it's something that is understood between the parties outside the agreement. I want to correct my statement before even though my concerns still lie there.

Representative Ertelt: In Article IV subsection eight there is a one-time \$100,000 drilling fee.

Representative B. Koppelman: Now I'm reversed again. It is in violation from being in the agreement.

Vice Chairman Grueneich: I call the question.

Chairman Headland: Question has been called.

ROLL CALL VOTE: 8 YES 5 NO 1 ABSENT

MOTION CARRIED

Chairman Headland will carry this bill.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2312
3/18/2019
33881

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; relating to the tribal and state relations committee; to provide for a legislative management tribal taxation issues committee.

Minutes:

Attachments 1-2

Chairman Headland: Emily Thompson has finished her memorandum on the oil and gas revenue sharing compact. Can you go through it for the committee?

Emily Thompson, Legislative Council: Distributed testimony, see attachments 1-2. The memo you have before you originated based on a question of whether some agreement in the most recently signed revenue sharing compact conflicts with some language in the oil and gas revenue chapter which deals with state tribal agreement. The compact is the agreement with the tribe, not the statute. Our legislation can't bind the tribe as there is case law saying they are not subject to our state laws. The tribal chapter is not the agreement; the compact is the agreement and that is what binds the tribe. The legislature is the branch with the authority to allow for those revenue sharing agreements so the legislature grants that authority to the governor. The purpose of 57-51.2, the tribal chapter for oil and gas agreements, is to outline what the governor has to abide by if he/she chooses to enter into a revenue sharing agreement with the tribe. The purpose of that chapter is more for the governor's benefit. When the compact is entered by the governor with the tribe that is the agreement and that is the legal document that binds the tribe, not that statute. In 57-51.2.02 subsection seven are the requirements for each agreement. The tribal governing body in an agreement must agree not to impose a tribal tax or fee on any future exploration and production of oil and gas on the reservation and on trust properties outside reservation boundaries during the term of the agreement. In the most recent agreement that was signed on February 28, 2019 it has a contingent effective date on the legislation going through. In the compact, section eight, the tribe agrees not to impose any additional taxes or fees during the term of the compact not present at the time of entering into the compact on any present or future oil and gas exploration or production activity or interest with any exterior boundaries of the reservation, except for a one-time \$100,000 drilling fee and tribal application fee on trust land to offset the cost of oil and gas regulations and impacts. This is an exercise of pre-

existing authority to impose taxes of a general nature. The tribe agrees that no taxes will be imposed that target or disproportionately impact the oil and gas industry. I was asked if the language in this section violates the language in the code pertaining to not imposing a tribal tax or fee. I am not a court so we can't definitively say that the court would do this or that. I was able to provide some guidance; if it was challenged and someone was harmed by this compact, has standing, it would be a contract dispute. The court would apply contract law to that. This provides that the contract must be interpreted to give affect to the mutual intention of the parties as it existed at the time of contracting. Potentially if the court had this issue they would have to look at the intent of both parties; the governor and the tribe at the time. Both parties are aware of the statute. The court would have to see if whether it was their intent to violate that. The fee is referenced as a drilling fee and a tribal application fee. It's also described further as a tax of general nature used to offset the cost of oil and gas regulation and impact. The court can distinguish between a fee on exploration and production of oil and gas. We can provide some of those contract laws that the court would likely look to if this was challenged and a dispute arose. I ran across another memorandum in 2010 which was to the budget section. It analyzed that specific language on any fee on future production of oil and gas in statute. It notes for the renewed 2010 agreement the \$100,000 per well fee was allowed. It was based on a general nature, not based on oil and gas production. On the bottom of the memo, hypothetically, if someone had standing to sue and challenged it then it may violate statute but also may not. The language in the fourth paragraph down the effect would be to simply strike that language. You would remove that offensive language and the rest of the contract would hold.

Representative Kading: In paragraph two you say the legislative assembly has the power to amend the statutory provisions that control how to negotiate this contract. In the event a future legislator amends this section of statute to be contradictory to the proposed contract between the tribes and the state, which one trumps the other and what happens in that event?

Emily Thompson: Normally when there have been significant changes to that chapter you'll usually see a new contract entered. Another real world example is when the oil extraction tax rate was lowered there was disagreement. There is language to say the tribes specifically agree to forgive any uncollected tribal taxes and no longer impose such taxes including the .75% production taxes. That disagreement arose when the legislative assembly lowered those taxes the Three Affiliated Tribes have claimed several times that was a unilateral change. The contract at the time said the rate can only be lowered by mutual agreement of both parties. It has never been challenged so that has continued on in the manner it was administered. Under the agreements both parties, with or without cause, have 30 days to notify their intent to withdraw from the agreement. If they can't come to some sort of remedy they can cancel the agreement. A lot of it hinges on whether it's challenged or whether it just continues on.

Chairman Headland: With that being said, the Three Affiliated has gone outside the agreement and assessed .75% tax on the industry that has never been paid or collected. Had they suggested they were going to leave the compact would things have been different? Would they have had more grounds to assess that tax?

Emily Thompson: That is really starting to get into the weeds of a legal argument so I can't really give a definitive answer.

Chairman Headland: Had they chosen to notify they wanted out of the compact, what would have happened at that point? The state would have continued to collect the tax and the revenue sharing portion of that would have been null and void at the time the compact was broken?

Emily Thompson: It would depend on if the state and the tribe was able to come into some kind of remedy of that in that 30-day notification period or not and whether or not they would be backing out of part or all of the contract.

Chairman Headland: If we're concerned of them walking away from the compact after passing this bill there is going to be a 30-day window for the governor to come to terms but he wouldn't be able to do anything outside what the statute says. I think the memo would alleviate our concerns if somebody decides to walk away and that the statute really is us ratifying the compact that was signed.

Representative B. Koppelman: Drilling an oil well is part of exploration and production. The governor's position was that we didn't see it that way. Does the governor have the authority to enter into an agreement where he violates the statute and gives some intent language?

Emily Thompson: I don't know it's so much of an intense statement trying to says if it looks like a duck, quacks like a duck, it's not a duck. It is distinguished in the contract and goes beyond just an intense statement trying to say it's not this type of tax. It's not that type of tax; it's a one-time fee. A one-time fee isn't the same as a sales tax transaction. You're looking at an argument of two distinguishable tax types; ones of a general nature and a more specific tax based on gross production.

Representative B. Koppelman: We, as a state, don't tax exploration; we tax production. Our two taxes are based on barrels out of the ground. My biggest concern is that we're changing law, taking the legislature out of position for navigation and putting a set of ground rules in place that the governor can operate in within a template. If you can redefine that template as necessary if you're in the governor's office, how should that make us all feel good? Is there some other way we can lock it down that I'm not aware that's supposed to make us feel like it's all okay?

Chairman Headland: I think most of us feel okay with this.

Representative Ertelt: When you were talking about having standing so a party would have to be harmed if they were to challenge that fee, you referred to an oil production company but could it also be a tribal member who could claim that the \$100,000 fee is what's making the oil production company decide not to drill until prices rise? Could a tribal member have standing in that case to challenge?

Emily Thompson: I really don't want to get into hypotheticals. Standing would be something the court determines. I don't want to guess how that standing would be applied in different hypotheticals. Everything surrounding this compact and past compacts are very fact based and has many details.

Representative Ertelt: Even in the case of the oil production company themselves? You wouldn't take a position on that?

Chairman Headland: She said she's not going to offer an opinion. We've addressed this bill.

Representative Dockter: MADE A MOTION FOR RECONSIDERATION

Representative Eidson: SECONDED

Chairman Headland: Discussion?

VOICE VOTE: MOTION CARRIED

Chairman Headland: We have the bill before us.

Representative Dockter: MADE A MOTION FOR A DO PASS

Vice Chairman Grueneich: SECONDED

Chairman Headland: Discussion?

Representative Ertelt: Given the fact that legislative council really couldn't provide any opinion, I don't see much change in what the memorandum really presented to us. It definitely didn't address, and I didn't expect it to, the question about the legislature's role in the combination process that we know is being stripped out of the language that is currently in the code. There is definitely some ambiguity with relation to that fee. The compact, as it was drafted, is steering us in the direction of passing it otherwise it's null and void. I'm going to resist because I don't think any other parties should be in a position of demanding we do this or their contract is going to be void.

Representative B. Koppelman: I'm saddened that we couldn't get something figured out with this bill. It's easy to amend this bill and fix the problem we're aware of where there is a conflict. The context of what we're doing by getting rid of the ratification process is saying we're creating a system and trust the governor is going to strictly follow that system. All we got was the typical answer that we don't know how this is going to fall. If we trust the governor's office is going to do this in a very precise manner, then I think I could be swayed to give up some of the ratification authority but it doesn't sound like we have a will to do that. I can't vote yes on this.

ROLL CALL VOTE: 12 YES 2 NO 0 ABSENT

MOTION CARRIED

Chairman Headland will carry this bill.

Date: 3-13-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2312

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Grueneich Seconded By Rep. Mitskog

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	X		Representative Eidson	X	
Vice Chairman Grueneich	X		Representative Mitskog	X	
Representative Blum	X				
Representative Dockter	X				
Representative Ertelt		X			
Representative Fisher		X			
Representative Hatlestad		X			
Representative Kading	A				
Representative Koppelman		X			
Representative Steiner	X				
Representative Toman		X			
Representative Trottier	X				

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Headland

If the vote is on an amendment, briefly indicate intent:

Date: 3-18-17
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2312

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☒ Reconsider ☐ _____

Motion Made By Rep. Dockter Seconded By Rep. Eidson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Eidson		
Vice Chairman Grueneich			Representative Mitskog		
Representative Blum					
Representative Dockter					
Representative Ertelt					
Representative Fisher					
Representative Hatlestad					
Representative Kading					
Representative Koppelman					
Representative Steiner					
Representative Toman					
Representative Trottier					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote -
Motion carried

Date: 3-18-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2312

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Dockter Seconded By Rep. Grueneich

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	X		Representative Eidson	X	
Vice Chairman Grueneich	X		Representative Mitskog	X	
Representative Blum	X				
Representative Dockter	X				
Representative Ertelt		X			
Representative Fisher	X				
Representative Hatlestad	X				
Representative Kading	X				
Representative Koppelman		X			
Representative Steiner	X				
Representative Toman	X				
Representative Trottier	X				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Headland

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2312, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)
recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2312 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2312

Testimony on SB 2312

Senator Jordan Kannianen - District 4

Chairman Cook and committee members,

The purpose of this bill is to create mutual benefits for the state and the MHA Nation and certainty for industry. This is achieved by putting in place sound tax policy that recognizes the legal structure of the lands within the boundaries of the Fort Berthold Indian Reservation.

Trust land is land owned by the Federal Government held in trust for the tribes, whether the tribal government itself or individuals. No property taxes are levied on trust lands, and the tribes have primary responsibility for infrastructure.

Fee land is private land where normal property taxes are assessed, and the responsibility for infrastructure lies with the state, counties, and townships.

Currently, the oil production and extraction tax revenues from oil produced on Fort Berthold are split 50/50 between the state and the tribes.

This bill would create a tax structure that recognizes the differences between trust and fee lands by distributing 80% of oil taxes to the tribes on trust land and 80% of oil taxes to the state on fee land. This new split would apply to prospective wells.

The passage of this bill and the signing of a new compact between the state and the Three Affiliated Tribes would bring tax certainty and stability for industry and peace between all parties.

There is a fiscal note of \$33 million with this bill, as currently the development on trust land outpaces that on fee land. However, the uncertainty of the tax climate has caused development to slow over the past months and years within the boundaries of Fort Berthold, and the tax certainty that this bill and new compact would create would help bring development back. Each additional rig brings in approximately \$16 million to the state, so only two additional rigs would mean the state breaks even, and any rigs beyond that means the state is making more money.

The long-term projections with increased development mean both the state and the tribes will see more revenues.

This bill is important to the long-term economic outlook for both the state and the MHA Nation.

I respectfully ask for a Do Pass Recommendation on SB 2312.

**Senate Bill 2312
Senate Finance and Taxation Committee
February 6, 2019
Testimony of Mark Fox, Chairman, MHA Nation**

Mr. Chairman and members of the Committee, my name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation. The MHA Nation supports Senate Bill 2312 because it will bring stability to oil and gas development in North Dakota, enhance oil and gas production on the Fort Berthold Reservation, and provide a more equitable sharing of oil and gas tax revenue derived from oil and gas Production on trust land. Passing this bill will lead to an oil and gas tax agreement that both parties can sign.

Senate Bill 2312 amends the current law authorizing an oil and gas tax sharing agreement with the MHA Nation, by providing for a split of 80/20% in favor of the MHA Nation for production on Indian trust land, and 80/20% in favor of North Dakota for production on fee land within the Reservation. The MHA Nation has long advocated for a greater share of the tax revenue derived from wells on trust land, because that is where our government services are most impacted. Our Government cannot keep up with the heavy impact that oil and gas development brings to our trust land, our environment, and our people with only half of the oil and gas tax revenue under the current oil and gas tax agreement.

We all understand that a stable tax environment is important to continued oil and gas development in North Dakota. Dual state and tribal taxation is a constant threat to this stability. That is why a state and tribal agreement providing for sharing tax revenue at one consistent rate, rather than dual taxation, is necessary. We cannot have stability without it. A stable tax environment is something that the oil and gas

industry needs, and something that both the MHA Nation and North Dakota want. Senate Bill 2312 will help promote the desired stable tax environment.

Increasing the MHA Nation's share of tax revenue derived from development on Reservation trust land will provide a significant boost to the North Dakota economy. It allows the MHA Nation to spend more tax revenue on needed services and infrastructure such as roads, schools, housing, drug treatment centers, law enforcement, water infrastructure, fire and emergency services, community buildings, and recreation facilities. For example, over the last 4-6 years the MHA Nation has spent \$120 million on road construction, \$50 million on schools and education, \$18 million on a new Law Enforcement and Justice Center, \$ 30 million on the new drug treatment facility and services, \$65 million on housing and infrastructure, \$27 million on water infrastructure for energy development, and \$80 million on energy development and services. The expenditure of this revenue benefits many people, architects, engineers, construction and oil field service companies, employees, laborers, and suppliers. This economic benefit flows all the way down to the wholesalers and retailers in cities like Minot, Bismarck, Mandan, Williston and Dickinson, where our people and the people who benefit from our projects spend their money. The studies of our economist have shown, for example, that the last increase in the MHA Nation's share of tax revenue in 2013 increased the MHA Nation's contribution to gross domestic product (GDP) in North Dakota by \$395 million, or 87% over the previous year.

With continued oil and gas development, the demand on our ability to continue to support these important services grows much greater. In the area of energy development and related infrastructure alone, for things like gas capture and processing, oil refining, storage, pipelines and related mid-stream development, we project a need of \$2 billion dollars in the next 10 years.

2/6 SB 2312 #2 pg. 3

In order to reconstruct and maintain our roads system, we will need \$1.3 billion over the next 10 years. For the same period, we anticipate spending \$750 million on housing and related infrastructure, \$100 million on schools and education, and \$42 million on water infrastructure to support energy development.

The MHA Nation and the State of North Dakota will mutually benefit with the passage of Senate Bill 2312 and we strongly support its passage.

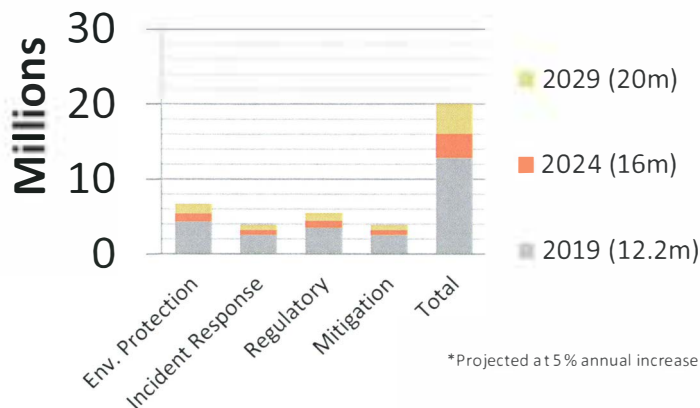


Environmental Impact Costs in the MHA Nation

The Environment and Ecosystems of the MHA Nation are heavily impacted by the oil and gas industry. The Nation is responsible for reoccurring budgeted costs (enforcing environmental regulations, etc.) but also has to plan for episodic incidents (oil spills, etc.). Corporations faced with large environmental liabilities often seek protection in bankruptcy and cleanup/restoration costs can become just another unsatisfied obligation. Environmental protection and ecological restoration is expensive and the MHA Nation must plan responsibly. The following are a few examples of the costs the MHA Nation and people must prepare for.

26 SB 2312
2 pg. 4

Annual MHA Environmentally Related Expenditures



Well Pads: Potential Restoration Cost

Oil production leaves scars on the land. One example is the well pad. After a well is depleted the land used for the pad must be reclaimed. The current (2019) cost for restoring a moderately diverse prairie ecosystem is **\$5,050.00 /acre**. Average well pad size is 2.6 Acres and the reservation currently has about 1600 wells. Industry is generally liable for this restoration but this closure cost is incurred when operator revenues are lowest and default risk may be highest. Prudent planning requires that the MHA Nation be prepared to shoulder the cost of restoring the reservation ecosystem.

In this one example, these costs could equal or exceed:

\$21,008,000.00^{(2) (3)}

Potential Cost of Spills

A major spill can damage or destroy an entire ecosystem. The extraordinary expense can leave a producer bankrupt. In that event, the MHA Nation has to be prepared to assume the often substantial costs of mitigation and restoration.*

*Yellowstone spill was the result of a failed pipeline. Multiple pipelines run below Lake Sakakawea. (4,5,6)

Tioga- 14 acres

\$93 Million

Yellowstone River

\$135 Million

Kalamazoo River

\$1.2 Billion

***Restoration cost for selected major spills.**





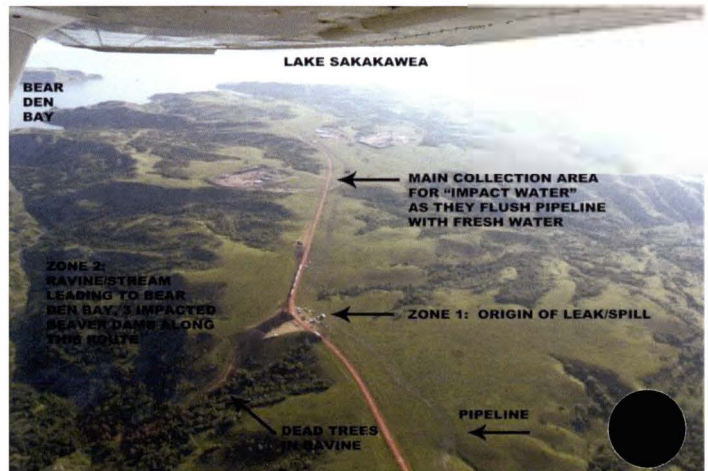
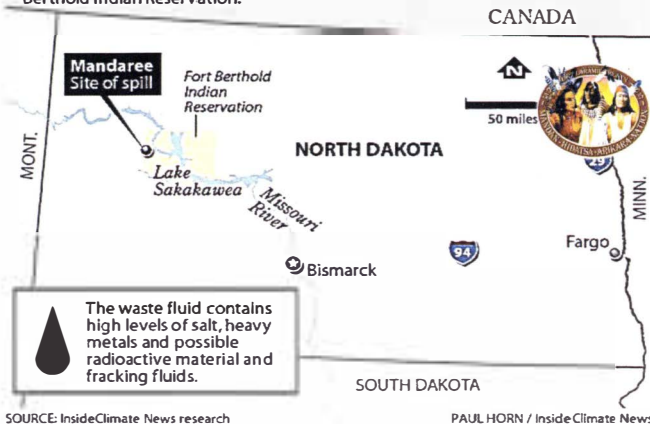
Case Study: The Bear Den Bay Spill

3/6 SB2312
#2 pg. 5

Over the Fourth of July weekend, 2014 a leaking pipeline spilled about 1 million gallons of production water near Mandaree, ND on the Fort Berthold Reservation. The pipeline, owned by the Texas-based Crestwood Midstream Partners, ran along the shore of Bear Den Bay on Lake Sakakwea, a reservoir on the Missouri River. At the time, Karolin Rockvoy, an emergency manager for McKenzie County, described a wide swath of dead grass and shrubs running downhill. "You can't really see the salt, but you know what salt water does to the vegetation," she said. "It's actually kind of worse than oil because it sterilizes the ground." Cleanup continues five years later with no firm end in sight. The MHA Nation is making major investments to prevent, mitigate and restore the land and ecosystem in the event of similar incidents.

Lake in Jeopardy

A million-gallon pipeline rupture is threatening to contaminate Lake Sakakawea with hazardous waste from oil and gas production. The lake is a source of drinking water for Fort Berthold Indian Reservation.



"Basically, all the vegetation, all the aquatic life at the point of the spill were destroyed and becoming lifeless, The high salt and the high metals and the high radioactivity that characterizes this wastewater causes a kind of local ecological disaster to the place where the water is released. - Avner Venegosh PhD commenting on the Bear Den Spill

"Pipeline leak on Fort Berthold Reservation creates oil sheen on Missouri River-Fargo Forum

PUBLIC SAFETY

2013-2018

SERVICE CALLS 106,905

ARRESTS 23,313

TRAFFIC STOPS 20,973

TRAFFIC ACCIDENTS 1,940



**NEW SCHOOLS
INFRASTRUCTURE
AND
EDUCATIONAL
DEVELOPMENT**

2015-2018

\$50 MILLION

**IN NEXT 10 YEARS ~
\$100 MILLION**



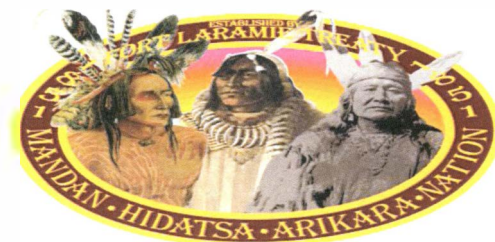
ENERGY DEVELOPMENT AND RELATED INFRASTRUCTURE

- GAS CAPTURE AND PROCESSING**
- OIL REFINING**
- STORAGE AND MID-STREAM DEVELOPMENT**
- ANCILLARY SERVICES**

IN NEXT 10 YEARS ~

\$2 BILLION

(\$1 BILLION: MIDSTREAM DEVELOPMENT)





Senate Bill 2312

Testimony of Ron Ness

Senate Finance and Taxation Committee

February 6, 2019

Chairman Cook and members of the Senate Finance and Taxation Committee, my name is Ron Ness, President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in strong support of Senate Bill 2312.

At a time when North Dakota's Bakken and Three Forks formations are in immense competition for capital investments with oil plays in other areas of the nation, it is critical to have a stable and consistent business climate in place. Senate Bill 2312 helps create that stable environment by allowing the MHA Nation and the State of North Dakota to form a strong and enduring agreement on how oil and gas taxes on minerals produced within the Fort Berthold Indian Reservation are shared between the two governments.

Stability created by a fair and equitable tax-sharing agreement has a far reach. Greater capital expenditures toward oil and gas exploration and production brought on by that stability inevitably lead to increased production and even larger amounts of revenue to the State, the MHA Nation, oil and gas companies, and royalty owners. Stability for oil and gas producers also encourages midstream companies to increase investments into natural gas infrastructure, significantly increasing natural gas capture capabilities within the Fort Berthold Indian Reservation.

The North Dakota Petroleum Council urges your support for **Senate Bill 2312** and respectfully recommends a **Do Pass** vote on the bill. Thank you, and I would be happy to answer any questions.

Senate Bill 2312

Testimony of Daubs Thompson

Senate Finance and Taxation Committee

February 6, 2019

Good Morning Chairman Cook and members of the Senate Finance and Taxation Committee. My name is Daubs Thompson, and I am the Vice President and Associate General Counsel for Crestwood Midstream Partners LP ("Crestwood"). Crestwood is a publicly traded master limited partnership that owns and operates midstream assets in all major shale producing basins within the continental United States, including here in North Dakota. Crestwood's operations are divided into three segments: (i) Gathering and Processing; (ii) Storage and Transportation; and (iii) Marketing, Supply, and Logistics.

Crestwood's largest capital investments have been, and for the foreseeable future will continue to occur in North Dakota. Through 2018, Crestwood had invested \$1.3 billion dollars in North Dakota. Crestwood anticipates investing an additional \$200 million dollars in North Dakota in 2019. Put simply: Crestwood loves North Dakota.

Crestwood plays a distinct and unique role in North Dakota's oil and gas industry. As background, Crestwood owns and operates two primary assets in North Dakota. First, the Arrow Gathering and Processing System ("Arrow"), which encompasses approximately 640 miles of oil, gas, and water gathering pipelines primarily located on the Fort Berthold Indian Reservation (the "Reservation"). Arrow also includes one existing and operational 30 MMcf/d gas processing plant, and another 120 MMcf/d gas processing plant under active construction. Both processing

plants are located near Watford City. Second, Crestwood's COLT Rail Hub in Epping, supports 160,000 barrels per day of crude oil and Y-Grade NGL railcar loading, 1.2 million barrels of storage, and acts as a rail transportation spur. Crestwood's operations are based at Arrow's Central Delivery Point ("CDP") outside Keene, and Crestwood employs approximately 200 individuals within North Dakota. The majority of Crestwood's workforce reside in Watford City with their families.

Arrow's gathering system connects gathering pipelines to individual well locations, and transports produced product away from the wellhead, to our CDP, and finally to market. Our gathering pipelines provide several benefits to North Dakota residents, including: (i) greatly enhancing natural gas capture; (ii) significantly reducing truck traffic; and (iii) providing better economics to further motivate our customers' continued operational investments. Crestwood is particularly proud of its continued commitment to enhance the natural gas capture rates in North Dakota. As the Committee may be aware, there are generally three components to support natural gas capture: (i) gathering pipeline capacity; (ii) processing capacity; and (iii) Y-Grade NGL takeaway capacity. Crestwood supports all three.

For example, in 2018, Arrow cumulatively captured more than eighty six percent (86%) of all natural gas on Arrow's system, and continues to increase its gathering pipeline capacity. By the conclusion of third quarter 2019, Arrow anticipates self-processing all natural gas on the Arrow system; therefore, allowing additional processing capacity at third-party facilities. Finally, Crestwood's ability to load and transport Y-Grade NGLS from the COLT Rail Hub provides additional downstream NGL capacity.

However, Crestwood's investments in North Dakota are driven by our customers' local investment. If our customers invest more in North Dakota, we will likewise follow suit. Crestwood's customers must have regulatory stability, and consistent tax predictability to invest in their local operations. As a result, and as this Committee can appreciate, stable business environments, particularly for Crestwood's customers, drive Crestwood's capital investments. It is for this reason Crestwood supports Senate Bill 2312.

As noted moments ago, our Arrow system is located almost entirely within the exterior boundaries of the Reservation. Arrow gathers oil, gas, and water from approximately eight oil and gas exploration and production operators with significant acreage within the Reservation. Many of these customers produce oil and natural gas from both federally regulated trust acreage and privately owned fee acreage. Because of the checkerboard landownership within the Reservation, Crestwood believes there is a common interest between the State, and the Mandan, Hidatsa, and Arikara Nations (the "Nations") to work together to promote a stable business climate within the Reservation. This includes a stable and predictable tax regime.

A stable tax climate is one of many important factors companies examine when deciding where to spend their capital. Senate Bill 2312's proposal to share tax revenues between the Nations and the State at a uniform rate is the certainty our customers, and likewise Crestwood, need for long term planning. A stable and long term tax agreement would allow Crestwood and our industry partner to focus on what they do best, the operational aspects of our business. Senate Bill 2312 also continues to promote the government-to-government relationship between the State and the Nations, which will further benefit our industry operating within the Reservation.

Furthermore, Crestwood believes robust oil and gas development within the Reservation benefits all citizens of North Dakota through increased tax revenue, high paying jobs, and the collection of royalty interests and other benefits associated with such development. Much of the individual income generated on the Reservation is spent outside of the Reservation in communities such as Williston, Minot, Dickinson, and Bismarck.

Finally, Senate Bill 2312 will also guarantee that the Reservation and North Dakota remain competitive. As referenced above, Crestwood maintains assets throughout North America. In maximize a return for our investors, Crestwood must make difficult, yet well-reasoned determinations about where to spend out capital. Stable business environments motivate Crestwood's customers to invest locally. That same stable business environment, and our customers capital decision, motivate Crestwood's determinations. Crestwood believes Senate Bill 2312 will add the stability our industry needs within the Reservation, and guarantee that North Dakota remains competitive in our capital investment decisions.

As I mentioned earlier, Crestwood loves North Dakota. Crestwood loves operating on the Fort Berthold Indian Reservation. Crestwood believes Senate Bill 2312 will allow Crestwood, and our industry partners, to continue investing within the Reservation, and within North Dakota.

Thank you for the opportunity to speak on Senate Bill 2312. I am happy to answer any questions the Committee members may have.

**Senate Bill 2312
Testimony of Zachary Weis
NDPC Tribal lands Committee Chairman
Marathon Oil Company
Senate Finance and Taxation Committee
February 6, 2019**

Good Morning Chairman Cook and members of the Senate Finance and Taxation Committee. My name is Zachary Weis and I represent Marathon Oil Company, a US resource play focused exploration and production company based in Houston, Texas with US assets located here in the Bakken, the Eagle Ford in south Texas, Stack/Scoop in Oklahoma and the Permian in New Mexico. Our Bakken operations is based in Dickinson ND with additional offices in Dunn Center and New Town, ND. I also serve as the Chairman of the Tribal Lands Committee for the North Dakota Petroleum Council.

I am here in support of Senate Bill 2312. With a significant portion of our acreage position on the Fort Berthold Indian Reservation, we believe there is a common interest between the State, the Three Affiliated Tribes and the industry to work together to promote a stable business climate on the reservation. Development on the reservation benefits all citizens of North Dakota through increased sales tax revenues, high paying jobs, and state income tax. Through that common interest, I want to lend my support to this bill that will ultimately promote more oil and gas development on the reservation mutually benefiting all parties.

A stable tax climate is one of many important factors we look at when deciding capital expenditures for our company. This agreement between the State and Tribe to share tax revenues at a tax rate that is uniform on and off the reservation is the certainty my industry needs for long term planning. With a stable and long term tax agreement, we are able focus on the operational aspects of our business and to grow production.

Additionally, the stability that comes with this bill will help grow tax revenues on and off that reservation for education, law enforcement, infrastructure, political subdivision, tribal segments, and federal BIA roads that lack funding from the federal government.

We are encouraging both the State and the Three Affiliated Tribes to continue to work together to overcoming the roadblocks that have prevented an updated State/Tribe oil and gas tax agreement. A unified, collaborative approach by all stakeholders is essential in maintaining the pace of development of oil and gas operations on the reservation.

Thank you for the opportunity to speak on HSB 2312 and I am happy to answer any they may have.



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
RYAN RAUSCHENBERGER, COMMISSIONER

SB 2312 TESTIMONY
SENATE FINANCE & TAXATION COMMITTEE
FEBRUARY 6, 2019

Chairman Cook and Members of the Senate Finance and Taxation Committee:

My name is Ryan Rauschenberger, Tax Commissioner for the State of North Dakota. I am here today to testify in support of SB 2312,

Since the first oil tax agreement with MHA nation was signed in 2008, we have seen tremendous production within the boundaries of the reservation. Both the state and the tribes have greatly benefited from this activity.

Over 2000 wells have been drilled since the original agreement was put in place resulting in over \$1 billion in state oil tax revenues over the past decade. These revenues have been used to fund education, flood protection and infrastructure across the state.

In order to make sure we are able to continue oil and gas development in a stable tax environment, we need to come to a new mutual agreement for the rate at which oil is taxed and the sharing of the revenue generated from that production. SB 2312 accomplishes that.

For the next biennium, the bill would create a new revenue split between the state and the tribe on new wells drilled and completed. MHA Nation would receive a larger share of the revenue generated from new wells drilled and completed on trust land, and the state would receive a larger share of new wells drilled and completed on non-trust land within the boundaries.

We have estimated that the bill would generate a loss of revenue for the state in the next biennium. However, if a new agreement is signed stabilizing the tax structure for producers, and more drilling activity occurs, the state is a net winner because new production is occurring.

I ask that you give this bill favorable consideration.

Thank you.

TRIBAL TAXATION ISSUES COMMITTEE

February 6, 2019

Testimony for the Standing Rock Sioux Tribe Tribal Tax Commission Regarding

Legislative Draft Bill of the 66th Legislative Assembly Introduced by Sen. Wardner, Sen. Kannianen and Rep. Pollort

Good Morning, my name is Ron His Horse is Thunder. I am the Chairman of the Standing Rock Sioux Tribe North Dakota Tribal Tax Commission.

The Standing Rock Sioux Tribe appreciates the opportunity to comment on S.B. 2312, which appropriately balances respect of the government-to-government relationship between tribes and the state while alleviating cumbersome dual taxation on reservation lands. We support S.B. 2312, with one minor exception and the need for some clarification.

Although the Standing Rock Sioux Tribe is not currently engaged in oil and gas exploration and production on our reservation, the structure established by S.B. 2312 shows respect for the Standing Rock Sioux Tribe's sovereign right to impose taxes in its jurisdiction. Should the Standing Rock Sioux Tribe ever engage in oil and gas production on its reservation, it will also provide the Standing Rock Sioux Tribe a means to potentially raise revenue to fund important Tribal programs that protect and promote the health and welfare of our people. Importantly, the tax-percentage allocation formula reflects the trust status of tribal lands and adequately compensates the tribes for oil and gas production that occurs on fee lands. We are pleased with S.B. 2312 for recognizing the legal status and importance of the trust lands located within the exterior boundaries of our reservation. We hope that the understanding the Legislature has shown toward the sovereignty of the Standing Rock Sioux Tribe is continued in future legislation in North Dakota.

The S.B. 2312 2(5)(a) and (b) provides that a tribe receives 20% of all taxes collected in lieu of all tribal "fees and taxes" for non-trust land production. The Standing Rock Sioux Tribe is of the opinion that the fees portion of this should be deleted, as this is a tax compact. The minor clarification is in regard to "applicable exemptions." This is very broad and does not reference any particular exemption. The Standing Rock Sioux Tribe would like some clarification as to what this language encompasses, such as references to specific statutory exemptions.

Thank you for the opportunity to provide these comments and we hope that we can continue to use our government-to-government relationship to reach results that benefits both governments.

Remarks of Josh Ruffo, Enerplus Resources USA

Hearing SB 2312

North Dakota Finance and Taxation Committee

February 6, 2019

Josh Ruffo, West Region Coordinator, Enerplus Resources USA
Watford City, ND

Asking the Finance and Taxation Committee to support SB 2312

Enerplus in North Dakota:

- Enerplus Resources has been an operator on FBIR since 2010 and currently operates roughly 60,000 mineral acres exclusively within the boundaries of the Ft. Berthold Indian Reservation.
- Enerplus supports SB 2312 as it will provide a more stable tax environment and certainty for our company when looking at future investment and development opportunities within FBIR.
- Changing the tax split from 50/50 to 80/20 on trust wells would provide the Three Affiliated Tribes more revenue to improve important infrastructure needs on lands where federal dollars usually come up short.
- Enerplus Resources works closely with the Three Affiliated Tribes and industry partners on key initiatives within FBIR, including cost-sharing agreements for maintenance and construction on Tribal roads.

2/6 SB 2312 #8 pg.2

- This kind of collaboration between the Three Affiliated Tribes and industry has improved greatly over the past few years and has created an environment where all parties involved are motivated to work together to address issues important to the Tribal community.
- As a member of the North Dakota Petroleum Council, Enerplus Resources is supportive and appreciative of the efforts of Governor Burgum, Chairman Fox and Legislative leadership to work together on this important issue.

Thank you for your consideration of SB 2312. Enerplus Resources again expresses our support for this measure and asks for a favorable vote in today's hearing.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2312

Page 1, line 1, replace the first "section" with "sections 57-51.1-02 and"

Page 1, line 1, after "57-51.2-01" insert a comma

Page 1, line 2, after "to" insert "imposition of the oil extraction tax and"

Page 1, line 4, after the semicolon, insert "to provide for application;"

Page 1, line 4, remove "and"

Page 1, line 4, after "date" insert "; and to declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax.

There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil.

The rate of tax is five percent of the gross value at the well of the oil extracted.

However, if the average price of a barrel of crude oil exceeds the trigger price of ninety dollars for each month in any consecutive three month period, then the rate of tax on oil extracted from all taxable wells is six percent of the gross value at the well of the oil extracted until the average price of a barrel of crude oil is less than the trigger price of ninety dollars for each month in any consecutive three month period, in which case the rate of tax reverts to five percent of the gross value at the well of the oil extracted. By December thirty first of each year, the tax commissioner shall determine an indexed trigger price under this section by applying to the current trigger price an adjustment equal to the percentage rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.

For purposes of this section, "average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed."

2/11 SB 2312 # 1pg. 2

Page 2, line 17, replace "**EFFECTIVE DATE**" with "**APPLICATION**"

Page 2, line 17, replace "This" with "Sections 2 and 3 of this"

Page 2, line 17, replace "is" with "are"

Page 2, after line 20, insert:

"SECTION 5. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 2019.

SECTION 6. EMERGENCY. Sections 2 and 3 of this Act are declared to be an emergency measure."

Renumber accordingly

2/11 SB 2312 #2 pg.1

19.0820.01000 (February 9, 2012)

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2312

Introduced by

Senators Kannianen, Wardner
Representative Pollert

1 A BILL for an Act to amend and reenact ~~section~~ sections 57-51.1-02 and 57-51.2-01, and
2 subsection 5 of section
3 57-51.2-02 of the North Dakota Century Code, relating to imposition of the oil extraction tax and
4 the allocation of revenue from oil and
5 gas production and oil extraction taxes imposed on production and extraction activity on a
6 reservation in this state; to provide for application; and to provide an effective date; and to
7 declare an emergency.

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

9 **SECTION 1. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-51.1-02. Imposition of oil extraction tax.**

12 There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the
13 activity in this state of extracting oil from the earth, and every owner, including any royalty
14 owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged
15 in the activity of extracting that oil.

16 The rate of tax is five percent of the gross value at the well of the oil extracted.

17 ~~However, if the average price of a barrel of crude oil exceeds the trigger price of ninety~~
18 ~~dollars for each month in any consecutive three-month period, then the rate of tax on oil~~
19 ~~extracted from all taxable wells is six percent of the gross value at the well of the oil extracted~~
20 ~~until the average price of a barrel of crude oil is less than the trigger price of ninety dollars for~~
21 ~~each month in any consecutive three-month period, in which case the rate of tax reverts to five~~
22 ~~percent of the gross value at the well of the oil extracted. By December thirty-first of each year,~~
23 ~~the tax commissioner shall determine an indexed trigger price under this section by applying to~~
24 ~~the current trigger price an adjustment equal to the percentage rate of change of the producer~~

price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.

For purposes of this section, "average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed.

SECTION 12. AMENDMENT. Section 57-51.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.2-01. Authority to enter agreements.

The governor, in consultation with the tax commissioner, may enter separate agreements with the Three Affiliated Tribes, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, relating to taxation and regulation of oil and gas exploration and production within the exterior boundaries of the Fort Berthold Reservation, that portion of the Standing Rock Sioux Tribe Reservation located in this state, or Turtle Mountain Band of Chippewa Indians Reservation and on trust properties outside reservation boundaries. Each tribal governing body is entitled to enter a separate agreement that conforms with the requirements of this chapter.

~~Each agreement under this chapter is subject to confirmation by a majority of members elected to the house of representatives and the senate and does not become effective until its confirmation date or the effective date in the agreement, whichever is later. Each agreement presented for confirmation must contain an expiration date not more than sixteen years after its effective date and the expiration date must be March thirty first of an odd numbered year.~~

SECTION 23. AMENDMENT. Subsection 5 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The allocation of revenue from oil and gas gross production and oil extraction taxes on the reservation must be as follows:

- a. Production attributable to trust lands. All~~The~~ tribe must receive eighty percent of the total revenues, and be subject to all applicable exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the reservation and on trust properties

- 1 outside reservation boundaries ~~must be evenly divided between the tribe~~
2 ~~and the state~~. The state must receive the remainder.
- 3 b. All other production. The tribe must receive ~~fifty~~twenty percent of the total
4 oil and gas gross production and oil extraction taxes collected, and be
5 subject to all applicable exemptions, from all production attributable to
6 nontrust lands on the reservation in lieu of the application of tribal fees
7 and taxes related to production on such lands. The state must receive the
8 remainder.
- 9 c. The state's share of the oil and gas gross production tax revenue as
10 divided in subdivisions a and b is subject to distribution among political
11 subdivisions as provided in chapter 57-51.

12 **SECTION 34. EFFECTIVE DATE APPLICATION.** ~~This~~ Sections 2 and 3 of this Act ~~is~~
13 ~~are~~ effective for all new oil and gas wells on which drilling first commences after June 30, 2019,
14 and which are the subject of an agreement
15 authorized under this chapter, or the first day of the next succeeding month after the date an
16 agreement authorized under this chapter is executed, whichever occurs later.

17 **SECTION 5. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1,
18 2019.

19 **SECTION 6. EMERGENCY.** Sections 2 and 3 of this Act are declared to be an
20 emergency measure.
21

Testimony on SB 2312

Senator Jordan Kannianen - District 4

§ 1
P 1

Chairman Holmberg and committee members,

The purpose of this bill is to create mutual benefits for the state and the MHA Nation and certainty for industry. This is achieved by putting in place sound tax policy that recognizes the legal structure of the lands within the boundaries of the Fort Berthold Indian Reservation.

Trust land is land owned by the Federal Government held in trust for the tribes, whether the tribal government itself or individuals. No property taxes are levied on trust lands, and the tribes have primary responsibility for infrastructure.

Fee land is private land where normal property taxes are assessed, and the responsibility for infrastructure lies with the state, counties, and townships.

Currently, the oil production and extraction tax revenues from oil produced on Fort Berthold are split 50/50 between the state and the tribes.

This bill would create a tax structure that recognizes the differences between trust and fee lands by distributing 80% of oil taxes to the tribes on trust land and 80% of oil taxes to the state on fee land. This new split would apply to prospective wells.

The passage of this bill and the signing of a new compact between the state and the Three Affiliated Tribes would bring tax certainty and stability for industry and peace between all parties.

There is a fiscal note of \$33 million with this bill, as currently the development on trust land outpaces that on fee land. However, the uncertainty of the tax climate has caused development to slow over the past months and years within the boundaries of Fort Berthold, and the tax certainty that this bill and new compact would create would help bring development back. Each additional rig brings in approximately \$16 million to the state, so only two additional rigs would mean the state breaks even, and any rigs beyond that means the state is making more money.

The long-term projections with increased development mean both the state and the tribes will see more revenues.

This bill is important to the long-term economic outlook for both the state and the MHA Nation.

I respectfully ask for a Do Pass Recommendation on SB 2312.

P 1

Testimony on SB 2312

Senator Jordan Kannianen - District 4

Chairman Headland and committee members,

The purpose of this bill is to create mutual benefits for the state and the MHA Nation and certainty for industry. This is achieved by putting in place tax policy that recognizes the legal structure of the lands within the boundaries of the Fort Berthold Indian Reservation.

Trust land is land owned by the Federal Government (title held by the USA) held in trust for the tribes, whether the tribal government itself or individuals. No property taxes are levied on trust lands, and the tribes have primary responsibility for infrastructure.

Fee land is land within the reservation where title is held by a private owner. Property taxes are assessed, and the responsibility for infrastructure lies with the state, counties, and townships.

Currently, the oil production and extraction tax revenues from oil produced on Fort Berthold are split 50/50 between the state and the tribes.

This bill would create a tax structure that recognizes the differences between trust and fee lands by distributing 80% of oil taxes to the tribes on trust land and 80% of oil taxes to the state on fee land. This new split would apply to prospective wells.

The passage of this bill and the signing of a new compact between the state and the Three Affiliated Tribes would bring tax certainty and stability for industry and peace between all parties.

There is a fiscal note of \$33 million with this bill, as currently the development on trust land outpaces that on fee land. However, the uncertainty of the tax climate has caused development to slow over the past months and years within the boundaries of Fort Berthold, and the tax certainty that this bill and new compact would create would help bring development back. Each additional rig brings in approximately \$16 million to the state, so only two additional rigs would mean the state breaks even, and any rigs beyond that means the state is making more money.

The long-term projections with increased development mean both the state and the tribes will see more revenues.

This bill is important to the long-term economic outlook for both the state and the MHA Nation.

I respectfully ask for a Do Pass Recommendation on SB 2312.

#2
SB 2312
3-5-19
p.1

Senate Bill 2312
House Finance and Taxation Committee
March 5, 2019
Testimony of Mark Fox, Chairman, MHA Nation

Mr. Chairman and members of the Committee, my name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation. The MHA Nation supports Senate Bill 2312 because it will bring stability to oil and gas development in North Dakota, enhance oil and gas production on the Fort Berthold Reservation, and provide a more equitable sharing of oil and gas tax revenue derived from oil and gas Production on trust land. Passing this bill will lead to an oil and gas tax agreement that both parties can sign.

Senate Bill 2312 amends the current law authorizing an oil and gas tax sharing agreement with the MHA Nation, by providing for a split of 80/20% in favor of the MHA Nation for production on Indian trust land, and 80/20% in favor of North Dakota for production on fee land within the Reservation. The MHA Nation has long advocated for a greater share of the tax revenue derived from wells on trust land, because that is where our government services are most impacted. Our Government cannot keep up with the heavy impact that oil and gas development brings to our trust land, our environment, and our people with only half of the oil and gas tax revenue under the current oil and gas tax agreement.

We all understand that a stable tax environment is important to continued oil and gas development in North Dakota. Dual state and tribal taxation is a constant threat to this stability. That is why the state and the MHA Nation signed the "Compact Between the Three Affiliated Tribes and the State of North Dakota Regarding Oil and Gas Gross Production and Extraction taxes within the Fort Berthold Indian Reservation, effective February 28, 2019."

#2
SB 2312
3-5-19
P. 2

This Compact provides for sharing tax revenue at one consistent rate and avoids the risk of dual taxation. We cannot have stability without an agreement. A stable tax environment is something that the oil and gas industry needs, and something that both the MHA Nation and North Dakota want. Senate Bill 2312 will help promote the desired stable tax environment.

Increasing the MHA Nation's share of tax revenue derived from development on Reservation trust land will provide a significant boost to the North Dakota economy. It allows the MHA Nation to spend more tax revenue on needed services and infrastructure such as roads, schools, housing, drug treatment centers, law enforcement, water infrastructure, fire and emergency services, community buildings, and recreation facilities. For example, over the last 4-6 years the MHA Nation has spent \$120 million on road construction, \$50 million on schools and education, \$18 million on a new Law Enforcement and Justice Center, \$30 million on the new drug treatment facility and services, \$65 million on housing and infrastructure, \$27 million on water infrastructure for energy development, and \$80 million on energy development and services. The expenditure of this revenue benefits many people, architects, engineers, construction and oil field service companies, employees, laborers, and suppliers. This economic benefit flows all the way down to the wholesalers and retailers in cities like Minot, Bismarck, Mandan, Williston and Dickinson, where our people and the people who benefit from our projects spend their money. The studies of our economist have shown, for example, that the last increase in the MHA Nation's share of tax revenue in 2013 increased the MHA Nation's contribution to gross domestic product (GDP) in North Dakota by \$395 million, or 87% over the previous year.

With continued oil and gas development, the demand on our ability to continue to support these important services grows much greater.

#2
SB 2312
3-5-19
p. 3

In the area of energy development and related infrastructure alone, for things like gas capture and processing, oil refining, storage, pipelines and related mid-stream development, we project a need of \$2 billion dollars in the next 10 years.

In order to reconstruct and maintain our roads system, we will need \$1.3 billion over the next 10 years. For the same period, we anticipate spending \$750 million on housing and related infrastructure, \$100 million on schools and education, and \$42 million on water infrastructure to support energy development.

The MHA Nation and the State of North Dakota will mutually benefit with the passage of Senate Bill 2312 and we strongly support its passage.

#3
SB 2312
3-5-19
p.1

Senate Bill 2312
Testimony of Ron Ness
House Finance and Taxation Committee
March 5, 2019

Chairman Headland and members of the House Finance and Taxation Committee, my name is Ron Ness, President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in strong support of Senate Bill 2312.

At a time when North Dakota's Bakken and Three Forks formations are in immense competition for capital investments with oil plays in other areas of the nation, it is critical to have a stable and consistent business climate in place. Senate Bill 2312 helps create that stable environment by allowing the Mandan, Hidatsa, and Arikara Nation and the State of North Dakota to form a strong and enduring agreement on how oil and gas taxes are shared between the two governments.

Stability created by a fair and equitable tax-sharing agreement has a far reach. Greater capital expenditures toward oil and gas exploration and production brought on by that stability inevitably lead to increased production and even larger amounts of revenue to the State, the MHA Nation, oil and gas companies, and royalty owners.

For these reasons, the North Dakota Petroleum Council urges your support for **Senate Bill 2312** and respectfully recommends a **Do Pass** vote on the bill. Thank you, and I would be happy to answer any questions.

Remarks of Josh Ruffo, Enerplus Resources USA

Hearing SB 2312

North Dakota Finance and Taxation Committee

March 5, 2019

Josh Ruffo, West Region Coordinator, Enerplus Resources USA

Watford City, ND. I have lived in Turtle Lake, North Dakota for over ten years while working on oil and gas projects on Fort Berthold Indian Reservation.

Asking the Finance and Taxation Committee to support SB 2312

Enerplus in North Dakota:

- Enerplus Resources has been an operator on FBIR since 2010 and currently operates roughly 60,000 mineral acres exclusively within the boundaries of the Ft. Berthold Indian Reservation.
- Enerplus supports SB 2312 as it will provide a more stable tax environment and certainty for our company when looking at future investment and development opportunities within FBIR.
- Changing the tax split from 50/50 to 80/20 on trust wells would provide the Three Affiliated Tribes more revenue to improve important infrastructure needs on lands where federal dollars usually come up short.

#3

SB 2312

3-5-19

p.3

- Enerplus Resources works closely with the Three Affiliated Tribes and industry partners on key initiatives within FBIR, including cost-sharing agreements for maintenance and construction on Tribal roads.
- This kind of collaboration between the Three Affiliated Tribes and industry has improved greatly over the past few years and has created an environment where all parties involved are motivated to work together to address issues important to the Tribal community.
- As a member of the North Dakota Petroleum Council, Enerplus Resources is supportive and appreciative of the efforts of Governor Burgum, Chairman Fox and Legislative leadership to work together on this important issue.

Thank you for your consideration of SB 2312. Enerplus Resources again expresses our support for this measure and asks for a favorable vote in today's hearing.

Senate Bill 2312
Testimony of Zachary Weis
NDPC Tribal lands Committee Chairman
Marathon Oil Company
House Finance and Taxation Committee
March 5, 2019

Good Morning Chairman Headland and members of the House Finance and Taxation Committee. My name is Zachary Weis and I represent Marathon Oil Company, a US resource play focused exploration and production company based in Houston, Texas with US assets located here in the Bakken, the Eagle Ford in south Texas, Stack/Scoop in Oklahoma and the Permian in New Mexico. Our Bakken operations is based in Dickinson, ND with additional offices in Dunn Center and New Town, ND. I also serve as the Chairman of the Tribal Lands Committee for the North Dakota Petroleum Council.

I am here in support of Senate Bill 2312. With a significant portion of our acreage position on the Fort Berthold Indian Reservation, we believe there is a common interest between the State, the Three Affiliated Tribes and the industry to work together to promote a stable business climate on the reservation. Development on the reservation benefits all citizens of North Dakota through increased sales tax revenues, high paying jobs, and state income tax. Through that common interest, I want to lend my support to this bill that will ultimately promote more oil and gas development on the reservation mutually benefiting all parties.

A stable tax climate is one of many important factors we look at when deciding capital expenditures for our company between on various assets in the US. This agreement between the State and Tribe to share tax revenues at a tax rate that is uniform on and off the reservation is the certainty my industry needs for long term planning. With a stable and long term tax agreement, we are able focus on the operational aspects of our business and to grow production.

Additionally, the stability that comes with this bill and the newly signed oil and gas tax compact will help grow tax revenues on and off the reservation for education, law enforcement, infrastructure, political subdivision, tribal segments, and federal BIA roads that lack funding from the federal government.

A unified, collaborative approach by all stakeholders is essential in maintaining the pace of development of oil and gas operations. We encourage both the State and the Three Affiliated Tribes to continue to work together to overcoming roadblocks that are preventing growth to the pace of development on the reservation.

Thank you for the opportunity to speak on HSB 2312 and I am happy to answer any they may have.



SB 2312 TESTIMONY
HOUSE FINANCE & TAXATION COMMITTEE
MARCH 5, 2019

Chairman Headland and Members of the House Finance and Taxation Committee:

My name is Ryan Rauschenberger, Tax Commissioner for the State of North Dakota. I am here today to testify in support of SB 2312.

Since the first oil tax agreement with the MHA Nation was signed in 2008, we have seen tremendous production within the boundaries of the reservation. Both the State and the MHA Nation have greatly benefited from this activity.

Over 2,000 wells have been drilled since the original agreement was put in place resulting in over \$1 billion to the state in oil tax revenues over the past decade. These revenues have been used to fund education, flood protection and infrastructure across North Dakota.

In order to make sure we are able to continue oil and gas development in a stable tax environment, we need to come to a new mutual agreement addressing the rate at which oil is taxed and the sharing of revenue generated from that production. SB 2312 accomplishes that.

For the next biennium, the bill creates a new revenue split on new wells drilled and completed within the reservation. The MHA Nation would receive a larger share of the revenue generated from new wells drilled and completed on trust land, and the State would receive a larger share of new wells drilled and completed on non-trust land within the boundaries.

We have estimated that the bill would generate a loss of revenue for the state in the next biennium. However, if a new agreement is signed stabilizing the tax structure for producers and more drilling activity occurs, the state is a net winner because new production is occurring resulting in additional state oil and gas tax revenue.

I ask that you give this bill favorable consideration.

Thank you.

#6
SB 2312
3-5-19
p. 1

COMPACT

**BETWEEN THE THREE AFFILIATED TRIBES and
THE STATE of NORTH DAKOTA**

Regarding

**OIL AND GAS GROSS PRODUCTION and EXTRACTION
TAXES WITHIN THE FORT BERTHOLD INDIAN
RESERVATION**

Effective Date: 2-28, 2019

PREAMBLE

WHEREAS, the Three Affiliated Tribes ("Tribe") is a federally recognized Indian tribe, possessed of the full inherent sovereign powers of a government;

WHEREAS, the State of North Dakota ("State") is a state within the United States of America, possessed of full powers of state government;

WHEREAS, Federal Indian law and policy recognize the right and the importance of self-determination for Indian tribes, the authority of tribes to tax certain activities, and the need for economic development in Indian country by Indian tribes;

WHEREAS, the Tribe and State will benefit from an efficient and uniform method of collection, administration, allocation, and enforcement of collection of Tribal and State Oil and Gas Gross Production and Extraction Taxes imposed on all activity subject to these taxes occurring within the exterior boundaries of the Fort Berthold Reservation;

WHEREAS, the Tribe and State will also benefit by the exercise of the attributes of tribal sovereignty and from the improved well-being of members of the Tribe that will result from economic development by the Tribe and their members;

WHEREAS, both the Tribe and State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis;

WHEREAS, the Tribe and the State desire to avoid litigation relating to each party's jurisdiction to impose taxes on oil and gas production and extraction activity within the exterior boundaries of the Fort Berthold reservation; and

WHEREAS, on the part of the State, this Compact is authorized by North Dakota Century Code ("N.D.C.C.") Chapter 57-51.2, and on the part of the Tribe, by Tribal Resolution No. 19-050-FWF, approved and passed by the Tribal Business Council on February 25, 2019.

NOW THEREFORE, the Tribe, by and through their Tribal Council, and the State, by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tribe and the State.

ARTICLE I – ACKNOWLEDGEMENTS

1. Sovereign Immunity

A. Nothing contained in this Compact is or may be construed to be a waiver, diminution, or expansion of the sovereign immunity of the Tribe, the Tribal Council, officials, or entities. The Tribe expressly retains its sovereign immunity.

B. Nothing contained in this Compact is or may be construed to be a waiver, diminution, or expansion of the sovereign immunity of the State. The State expressly retains its sovereign immunity.

C. The terms and conditions of this Compact may not be used in any way by either party in any litigation brought by any person including the parties to this Compact other than with respect to enforcement of the Compact.

D. In the event of a conflict with any other provision of this Compact, the terms of this Paragraph shall prevail and control.

2. Authority

The parties acknowledge the following inherent authority, while not forfeiting any legal rights to apply their respective taxes by entering into this Compact, except as specifically set forth herein:

A. Tribal Authority

1. The Tribe has jurisdiction to tax certain activity that occurs within the exterior boundaries of the Fort Berthold Reservation.

2. The Tribal Business Council, under Section 5 of Article VI of the Constitution and Bylaws of the Three Affiliated Tribes, has authority to enter into tax collection compacts or agreements with the State.

3. The parties specifically acknowledge that the Tribe has jurisdiction to impose, collect, administer, and enforce oil and gas production and extraction taxes on oil and gas activities on lands within the exterior boundaries of the Fort Berthold Reservation.

B. State Authority

1. The State, subject to inherent limitations under law, has jurisdiction to tax oil and gas production and extraction activity within the Fort Berthold Reservation.

2. The State, under N.D.C.C. Chapter 57-51.2, may enter into this Compact with the Tribal Business Council.

#6
SB 2312
3-5-19
p.4

3. The parties specifically acknowledge that the State, has jurisdiction to impose, collect, administer, and enforce oil and gas production and extraction taxes on oil and gas activities on lands within the exterior boundaries of the Fort Berthold Reservation.

ARTICLE II – DEFINITIONS

For the purposes of this Compact, the following definitions apply:

1. **“Non-Trust Lands”** means all mineral acres in a producing Spacing Unit not classified as Trust Lands.
2. **“Non-Trust Ratio”** means the total mineral acres of Non-Trust Lands in a Spacing Unit divided by the Spacing Unit Acres.
3. **“Spacing Unit”** means the area in each pool assigned to a well for drilling, producing, and perforation purposes in accordance with the State Industrial Commission’s rules or orders.
4. **“Spacing Unit Acres”** means the total mineral acres in a producing Spacing Unit.
5. **“Trust Lands”** means all mineral acres in a producing Spacing Unit that are owned by the United States in trust for the Tribe or for an individual tribal member. Trust Lands acreage in a producing Spacing Unit must be determined by the North Dakota Office of State Tax Commissioner (“Tax Commissioner”), on behalf of the State, based on records obtained from the Bureau of Indian Affairs in Aberdeen, South Dakota.
6. **“Trust Ratio”** means the total acres of Trust Lands in a Spacing Unit divided by the Spacing Unit Acres.

ARTICLE III - APPLICATION OF COMPACT

The respective rights of the Tribe and State, with respect to the oil and gas production and extraction taxes subject to this Compact, are to be determined exclusively by the terms of this Compact. The provisions of this Compact apply as follows:

1. The production from wells located within the exterior boundaries of the Fort Berthold Reservation drilled and completed after the effective date of this Compact are subject to the taxes and allocation provided in this Compact for the life of the well.
2. Except as provided in Article III, Paragraph 3, this Compact rescinds and supersedes the “Oil and Gas Tax Agreement Between the Three Affiliated Tribes and State of North Dakota” executed on June 21, 2013, by and between Chairman Tex Hall and Governor Jack Dalrymple.

3. Notwithstanding Article III, Paragraph 2, any oil or gas well drilled and completed during the term of a prior Agreement between the State and the Tribe remains subject to the terms and conditions provided in that prior Agreement.

4. Any oil or gas well that is drilled and completed during this Compact is subject to applicable federal, tribal, and state regulatory provisions for the life of the well. The State and Tribe agree to continue mutual efforts to cooperate on a government-to-government basis in an effort to coordinate regulatory enforcement in their overlapping spheres of authority and promote responsible oil and gas development.

ARTICLE IV – OIL AND GAS TAXES – ATTRIBUTION AND EXEMPTION

For the purposes of this Compact, the following provisions apply:

1. The total Tribal and State tax rate attributable to production and extraction of oil from Trust Lands must not exceed ten percent (10%), unless the one percent (1%) rate adjustments provided in N.D.C.C. § 57-51.1-02 are triggered, subject to applicable exemptions in N.D.C.C. Chapters 57-51 and 57-51.1. The total Tribal and State tax rate attributable to production of gas from Trust Lands must be the rate provided in N.D.C.C. Section 57-51-02.2.

2. The total State tax rate attributable to production and extraction of oil from Non-Trust Lands must not exceed ten percent (10%), unless the one percent (1%) rate adjustments provided in N.D.C.C. § 57-51.1-02 are triggered, subject to applicable exemptions in N.D.C.C. Chapters 57-51 and 57-51.1. The total State tax rate attributable to production of gas from Non-Trust Land must be the rate provided in N.D.C.C. Section 57-51-02.2.

3. The following exemptions apply to this Compact:

a. All exemptions under the United States Constitution, North Dakota Constitution, or federal law, apply to oil and gas production and extraction from wells located within the exterior boundaries of the Fort Berthold Reservation.

b. Oil and gas production and extraction from wells located on Trust Lands within the exterior boundaries of the Fort Berthold Reservation are entitled to all current exemptions in N.D.C.C. Chapters 57-51 and 57-51.1 (2017). Any future exemptions must be agreed to by both parties.

4. Production from Trust Lands must be determined by multiplying the total production from a Spacing Unit times the Trust Ratio of the Spacing Unit.

5. Production from Non-Trust Lands must be determined by multiplying the total production from a Spacing Unit times the Non-Trust Ratio of the Spacing Unit.

6. The respective tax rate(s) and allocations for Trust Lands and Non-Trust Lands must be based on the Trust and Non-Trust Ratios of each producing Spacing Unit.

7. The tax rates and allocations for unknown or unidentified mineral ownership interests in a Spacing Unit must follow the larger of the identifiable Trust Ratio or Non-Trust Ratio in the Spacing Unit, subject to correction based on future identification of the mineral ownership interests. In the event that the identified Trust and Non-Trust Ratios in the Spacing unit are equal, the tax rates and allocations for the unknown or unidentified mineral ownership interests are equal to the Trust and Non-Trust Ratios, subject to correction by the Tax Commissioner, based on future identification of the mineral ownership interests as the information becomes available. The revised tax rates will become effective and applied in the next production reporting period following revision.

8. The Tribe agrees not to impose any additional taxes or fees during the term of this Compact, not present at the time of entry of this Compact, on any present or future oil and gas exploration or production activity or interest within the exterior boundaries of the Fort Berthold Reservation, except for the one-time \$100,000.00 drilling fee and tribal application fee assessed on wells on Trust Lands to offset the costs of oil and gas regulation and impacts. For the purposes of this subsection, a well is determined to be on Trust Land if the majority of the Spacing Unit is comprised of Trust Lands. In the exercise of its pre-existing authority to impose taxes of a general nature, the Tribe agrees that no such taxes will be imposed that target or disproportionately impact the oil and gas industry.

By way of illustration, the impact of a generally applicable commercial vehicle registration fee is not disproportionate if the generally applicable tax applies equally to vehicles of the same weight or other classification regardless of the type of commercial activity in which the vehicles are used.

9. The State and the Tribe agree to collaborate in mutual efforts to reduce impacts to sites of cultural or archaeological significance to the Tribe. These collaborative efforts supplement, and do not diminish, existing tribal authority to manage trust lands within the Fort Berthold Reservation.

10. In addition to Article IV, Paragraph 8, the Tribe specifically agrees to forgive any uncollected tribal taxes, and to no longer impose such taxes including its 0.75% production taxes, under Three Affiliated Tribes Business Council Resolution No. 17-003-FWF, or other tribal resolutions, on oil and gas production occurring between January 1, 2016, and the effective date of this Compact.

6
SB 2312
3-5-19
p.7

ARTICLE V – ADMINISTRATION OF TAXES

1. The State, by and through its Tax Commissioner, is responsible for the collection, administration, enforcement, and allocation of the taxes subject to this Compact. The Tax Commissioner may use production data by pool from the State Industrial Commission, Department of Mineral Resources, for Trust Lands and Non-Trust Lands covered by this Compact, in addition to other sources of information necessary to ensure compliance with the terms of this Compact.

2. The Tribe retains exclusive jurisdiction and authority to file and prosecute civil and criminal enforcement actions as needed with respect to the tribal taxes, according to tribal and federal laws, and engage in any collection or enforcement actions necessary to implement the requirements of this Compact.

3. The State and Tribe agree to the imposition of the taxes at the rates set forth in this Compact. Neither party will adjust, raise, or lower the production and extraction taxes on oil and gas activities within the exterior boundaries of the Fort Berthold Reservation during the term of this Compact.

4. Notwithstanding the termination provisions in Article IX, Paragraph 2 of this Compact, an oil or gas well drilled and completed during the time this Compact is in effect will be subject to the terms of this Compact, including the terms relating to remittance and sharing of tax proceeds, for the life of the well.

5. The Tax Commissioner, on behalf of the State, has the authority to offset future distributions to the Tribe to address situations in which refunds of taxes are made to a taxpayer.

6. The Tribe, upon request of the State, may assist the State in the assessment and collection of any tax subject to this Compact.

7. The Tax Commissioner, on behalf of the State, retains the authority to administer and enforce the provisions of N.D.C.C. Chapters 57-51 and 57-51.1, in their present forms, and as may be amended from time to time by the North Dakota Legislative Assembly, where not in conflict with this Compact.

8. Each party shall notify the other in writing of any intended or enacted changes to, or repeal of, their respective state or tribal taxes covered by this Compact.

ARTICLE VI – REMITTANCE AND SHARING OF TAX PROCEEDS

The tax proceeds assessed and collected under this Compact are to be shared as follows:

1. The State agrees to remit to the Tribe its share of revenues collected in an amount equal to eighty percent (80%) of the total State and Tribal taxes assessed and collected under Article IV, Paragraph 1 of this Compact on oil and gas production and extraction from Trust Lands.

#6
SB 2312
3-5-19
p. 8

2. The State agrees to remit to the Tribe its share of revenues collected in an amount equal to twenty percent (20%) of the total State taxes assessed and collected under Article IV, Paragraph 2 of this Compact on oil and gas production and extraction from Non-Trust Lands.

3. Within thirty (30) days of the end of the calendar month during which collection of taxes occurs from oil and gas production and extraction covered under this Compact, the Tax Commissioner, on behalf of the State, shall determine and certify the payments specified in this Article to the North Dakota Office of the State Treasurer. Unless otherwise requested in writing by the Tribe, the remittance must be by State Warrant or electronic funds transfer (ACH) by the Office of the State Treasurer, payable to the order of the Three Affiliated Tribes.

4. Within thirty (30) days of the end of the calendar month during which collection occurs from oil and gas production and extraction covered under this Compact, the Tax Commissioner, on behalf of the State, shall furnish the Tribe a list identifying the source of revenues remitted to the Tax Commissioner intended for distribution to the Tribe.

ARTICLE VII – ADMINISTRATION AND MAINTENANCE OF RECORDS

1. The Tribe agrees to maintain accurate records setting forth information in sufficient detail to allow for verification that Tribally-owned entities are collecting and remitting the correct amount of tax due under this Compact. The Tribe agrees to furnish these records to the Tax Commissioner, on behalf of the State, upon request.

2. Upon reasonable request of the Tribe, the Tax Commissioner, on behalf of the State, must make available to the Tribe records of tax filings that relate to the taxes provided for under this Compact.

3. If the State receives a request for information pertaining to this Compact that it is required to furnish under the State's Open Records laws (N.D.C.C. Section 44-04-17.1, et seq.), the Tax Commissioner, on behalf of the State, shall inform the Tribe of the request and identify the information released.

4. The Tribe agrees to report annually to the Governor and the Budget Section of the State's Legislative Management regarding tribal investments in essential infrastructure and fees, expenses, and charges the Tribe imposes on the oil industry. The report must identify projects totaling investments of at least ten percent of tribal oil and gas gross production and extraction tax receipts of the Tribe for the preceding fiscal year in essential infrastructure.

ARTICLE VIII – EFFECTIVE DATE

1. The parties agree this Compact is effective upon the filing with the North Dakota Secretary of State, of legislation enacted by the Sixty-sixth Legislative Assembly containing the terms of Senate Bill 2312 as it existed on the day this Compact is signed by the Governor and the Tribe.

2. The parties agree that, if the conditions of Article VIII, Paragraph 1 are not met, this Compact shall be null and void.

ARTICLE IX – TERM AND TERMINATION

1. The parties agree that this Compact shall remain in effect indefinitely, unless formally cancelled by either party.

2. Termination may occur as follows:

a. Either party may terminate this Compact without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the other party.

b. Before the Compact is terminated under this provision, the parties will meet and make a good-faith effort to resolve the differences leading to the Notice of Termination. A Notice of Intent to Terminate on behalf of the Tribe must be executed by the Tribal Business Council. A Notice of Intent to Terminate on behalf of the State must be executed by the Governor's Office.

c. Except for tax collections and distributions that survive the termination of this Compact, within thirty (30) days of its receipt of a Notice of Termination, the Tax Commissioner, on behalf of the State, shall notify each known taxpayer affected by the termination by first class mail that it will no longer collect the taxes covered by this Compact, and the taxpayer should no longer remit to it the affected taxes.

ARTICLE X – AMENDMENTS, WAIVER, SEVERABILITY, VENUE, AND NOTICE

1. This Compact may not be modified or amended, nor may compliance with any provision of it be waived except by an instrument or instruments in writing signed by the party against whom enforcement of any modification, amendment, or waiver is sought.

2. Should any part of this Compact be rendered or declared invalid by the Federal District Court for the Western Division of North Dakota or a subsequent federal appellate court, the invalidation of any part or portion of this Compact will not invalidate the remaining

#6
SB 2312
3-5-19
p.10

portions, which remain in full force and effect. Venue for any dispute arising from the terms of this Compact not resolved by the parties shall be the Federal District Court for the Western Division of North Dakota.

2. Notice and Payment shall be as follows:

a. Notice required to be sent to the Tribe under this Compact must be sent to:

Tribal Chairperson
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

Tribal Tax Department
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

b. Payment required to be sent to the Tribe under this Compact must be sent by state warrant or electronic funds transfer (ACH) to:

Three Affiliated Tribes
Tax Department
404 Frontage Road
New Town, North Dakota 58763-9402

c. Notice required to be sent to the State under this Compact must be sent to the Tax Commissioner, on behalf of the State, to:

North Dakota Office of State Tax Commissioner
Director, Tax Administration Division
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

d. Payment to the State under this Compact must be sent to the Tax Commissioner, on behalf of the State, to:

North Dakota Office of State Tax Commissioner
Compliance Supervisor, Sales, Oil, and Special Taxes
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

Either party may change its notice or payment address by giving written notice of the change to the other party.

#6
SB 2312
3-5-19
p.11

ARTICLE XI - EXECUTION

IN WITNESS WHEREOF, the Three Affiliated Tribes and State of North Dakota have caused this Compact to be executed and delivered by their respective officers, duly authorized.

2/28/19
Date

Mark Fox
Mark Fox, Chairman
Three Affiliated Tribes

2/28/19
Date

Doug Burgum
Doug Burgum, Governor
State of North Dakota

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2312

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 57-51.2-02 of the North Dakota Century Code, relating to termination of an agreement;"

Page 1, remove the overstrike over lines 20 and 21

Page 1, line 22, remove the overstrike over "confirmation date or the effective date in the agreement, whichever is later."

Page 2, after line 18, insert:

"SECTION 3. A new subsection to section 57-51.2-02 of the North Dakota Century Code is created and enacted as follows:

An agreement under this chapter must give the governor, after consulting with the tax commissioner, and a tribe the authority to terminate an agreement with or without cause."

Page 3, line 25, replace "and" with a comma

Page 3, line 25, after "2" insert ", and 3"

Page 3, line 29, replace "3" with "4"

Page 4, line 1, replace "and" with a comma

Page 4, line 1, after "2" insert ", and 3"

Renumber accordingly

#1
SB 23-12
3-18-19
P.1

STATE-TRIBAL OIL AND GAS REVENUE SHARING COMPACTS

This memorandum describes the authority for revenue sharing compacts between the State of North Dakota and a tribal government, analyzes potential inconsistencies between fee language referenced in North Dakota Century Code Section 57-51.2-02(7) and an oil and gas gross production and extraction tax revenue sharing compact signed by the Governor and the Chairman of the Three Affiliated Tribes on February 28, 2019, and describes the treatment of compact language deemed to be inconsistent with statutory provisions.

The authority for the Governor to enter an oil and gas revenue sharing compact with a tribal government is derived from statute. As such, each Legislative Assembly has the power to amend the statutory provisions that control the manner in which the Governor may exercise that authority. The Legislative Assembly may provide the Governor broad authority to negotiate the terms of an agreement or may specifically define the terms that must be included in an agreement entered by the Governor. A revenue sharing agreement is created through the use of a compact, rather than through statutory provisions, because state laws have been held inapplicable within the boundaries of a reservation (*Worcester v. Georgia*, 31 U.S. 515 (1832)).

The most recent oil and gas revenue sharing compact was entered between the Governor and the Chairman of the Three Affiliated Tribes on February 28, 2019. However, the agreement does not become effective until Senate Bill No. 2312, containing the terms in the bill as it existed on February 28, 2019, is filed with the Secretary of State. A question has arisen regarding whether a provision in the compact conflicts with a provision in Section 57-51.2-02(7). Section 8 of Article IV of the compact provides:

The Tribe agrees not to impose any additional taxes or fees during the term of this Compact, not present at the time of entry of this Compact, on any present or future oil and gas exploration or production activity or interest within the exterior boundaries of the Fort Berthold Reservation, except for the one-time \$100,000.00 drilling fee and tribal application fee assessed on wells on Trust Lands to offset the costs of oil and gas regulation and impacts. For the purposes of this subsection, a well is determined to be on Trust Land if the majority of the Spacing Unit is comprised of Trust Lands. In the exercise of its pre-existing authority to impose taxes of a general nature, the Tribe agrees that no such taxes will be imposed that target or disproportionately impact the oil and gas industry. By way of illustration, the impact of a generally applicable commercial vehicle registration fee is not disproportionate if the generally applicable tax applies equally to vehicles of the same weight or other classification regardless of the type of commercial activity in which the vehicles are used.

Section 57-51.2-02 outlines the requirements of any agreement entered pursuant to Chapter 57-51.2, including the following requirement contained in subsection 7:

The tribal governing body must agree not to impose a tribal tax or any fee on future exploration and production of oil and gas on the reservation and on trust properties outside reservation boundaries during the term of the agreement.

Statutory provisions pertaining to the interpretation of contracts may be applied when evaluating whether the provisions in Section 8 of Article IV of the compact conflict with the provisions in Section 57-51.2-02(7). Section 9-07-03 provides a contract must be interpreted to give effect to the "mutual intention of the parties as it existed at the time of contracting." In this instance, both parties were aware of the statutory requirements in Chapter 57-51.2 at the time the agreement was signed. This fact is apparent given the language used in Section 8 of Article IV of the compact. It appears the parties went to great lengths to distinguish the \$100,000 fee imposed pursuant to the compact from the imposition of "a tribal tax or any fee on future exploration and production of oil and gas" prohibited under Section 57-51.2-02(7). Though the fee is referenced as a "drilling fee and tribal application fee" it also is described further as a tax of general nature used to offset the costs of oil and gas regulation and impacts, which could be distinguished from a fee on "exploration and production of oil and gas."

Similar fees have been imposed under prior revenue sharing compacts entered between the Governor and the Chairman of the Three Affiliated Tribes. The first compact entered in 2008 contained provisions allowing for "a one-time \$60,000 Tribal Employment Rights Office fee on wells on Trust Land and a one-time Tribal Application Fee of \$40,000." The 2013 compact also allowed for a "one-time \$100,000 fee that includes the Tribal Employment Rights Office ("TERO") fee and tribal application fee." Though the name of the fee in the 2013 compact differs from the name of the fee in the 2019 compact, the described purpose for which the fee is imposed is identical in both compacts as a fee to "offset the costs of oil and gas regulation and impacts."

If the fee language in the compact is challenged and ultimately determined by the United States District Court for the District of North Dakota, or a subsequent federal appellate court, to be in violation of the provisions contained in Section 57-51.2-02(7), only the offending provision would be deemed void by the court. All other provisions contained in the compact would remain in full force and effect.

#2
SB 2312
3-18-19
p.1

Sixty-sixth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2258

Introduced by

Senators Cook, Heckaman, Wardner

Representatives Boschee, Headland, Pollert

1 A BILL for an Act to create and enact chapter 57-39.9 of the North Dakota Century Code,
2 relating to state-tribal agreements for the administration and collection of sales, use, and gross
3 receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse
4 Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain
5 Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a
6 state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing
7 appropriation; to provide for application; and to declare an emergency.

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

9 **SECTION 1.** Chapter 57-39.9 of the North Dakota Century Code is created and enacted
10 as follows:

11 **57-39.9-01. Authority to enter state - tribal sales, use, and gross receipts tax**
12 **agreements.**

13 The governor, in consultation with the tax commissioner, may enter separate
14 agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the
15 Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Spirit
16 Lake Tribe, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, which
17 comply with this chapter relating to the collection, administration, enforcement, and allocation of
18 state sales, use, and gross receipts taxes imposed and collected within the exterior boundaries
19 of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this
20 state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this
21 state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any
22 proposed agreement under this chapter to determine if its provisions can be administered and

enforced. An agreement under this chapter must include the sales, use, farm machinery gross receipts tax, and the alcoholic beverages gross receipts tax.

57-39.9-02. Agreement requirements.

The governor may enter an agreement with a tribe or tribes if the agreement complies with this section.

1. The taxes subject to an agreement under this chapter are the state's sales, use, and gross receipts taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, as may be amended subsequently by the legislative assembly, for taxable transactions and activities occurring exclusively within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.

2. Except as otherwise provided in this chapter, the state's sales, gross receipts, and use taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, must apply to all transactions and activities by all persons and entities occurring within the boundaries of the reservation.

3. A tribe or tribes shall impose taxes equal to the state's taxes which conform in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, but must be applied only to those taxable transactions and activities occurring within the exterior boundaries of a reservation which are exempt from state taxes because the transactions or activities occur within the tribe's or tribes' jurisdiction.

4. Chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this chapter.

5. Except as provided in subsection 6, tribally owned and tribal member-owned business entities operating within the boundaries of a reservation are subject to the state's tax or taxes contained in the agreement.

6. Any tax subject to an agreement may not be imposed on a tribally owned entity that solely performs a governmental function or provides essential government services that directly impact the health, welfare, or safety of the tribe and its members, if the tribal entity is identified as such in the agreement. Any other tribally owned business enterprise whose moneys are used, in whole or in part,

to fund governmental functions or services, is not subject to the exemption provided under this subsection.

7. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal employment rights office fees.

8. The tax commissioner retains authority to collect, administer, and enforce the taxes as provided in chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the reservation under an agreement.

9. Any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.

10. ~~An agreement under this chapter may provide for the allocation of revenue to a tribe or tribes using a formula that may include the following~~ The amount of state sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or tribes under an agreement must be calculated as follows:

a. ~~One hundred Fifty~~ percent of the taxes collected from retailers within the exterior boundaries of the reservation. ~~The state must receive the remainder.~~

b. An amount ~~agreed to by the tribe or tribes and the state~~ of estimated use taxes paid or collected from ~~individual~~ enrolled tribal members ~~on taxable transactions or purchases occurring~~ residing within the exterior boundaries of the reservation ~~determined by multiplying the enrolled membership of the tribe by the estimated per capita use tax. The estimated per capita use tax is ten percent of the per capita sales tax burden. The per capita sales tax burden is determined by multiplying the state tax rate factor by one third of the sales tax burden reported by the most recent Tax Rates and Tax Burdens in the District of Columbia - A Nationwide Comparison, published by the Government of the District of~~

- 1 Columbia Office of Revenue Analysis, for a family of three living in the
2 largest city in North Dakota, and earning fifty-thousand dollars per year.
3 The state tax rate factor is a fraction representing the state general sales
4 tax rate as a share of the combined state and local sales tax rate for the
5 North Dakota city referenced in this subdivision.
6 c. Except as provided in subdivision d, the enrolled membership of the tribe
7 must be certified to the state by September thirtieth of each year during
8 the term of the agreement. The enrolled membership of the tribe must
9 consist of the number of enrolled members of the tribe physically residing
10 within the exterior boundaries of the portion of the tribe's reservation
11 located in this state. The enrolled membership of the tribe must be based
12 on the tribe's enrollment office records, the bureau of Indian affairs
13 enrollment records, or other records maintained by the tribe. The previous
14 year's certified enrollment number must be used if the tribe does not issue
15 a certification by September thirtieth, unless the tribe demonstrates the
16 certified enrollment number has increased or decreased.
17 d. The tribe or tribes must provide the initial population required by
18 subdivision c no fewer than sixty days before the effective date of the
19 agreement.
20 e. The manner in which the state and tribe resolve issues arising under this
21 subsection must be specified in the agreement.
22 11. The amount of alcoholic beverages gross receipts tax allocated to the tribe under
23 an agreement must be equal to an amount determined by multiplying the enrolled
24 membership of the tribe by the state alcohol revenue per capita.
25 a. The state alcohol revenue per capita is the monthly collections of the
26 state's alcoholic beverages gross receipts tax designated for deposit in
27 the state general fund divided by the state's total population as
28 determined in the most recent actual or estimated census data published
29 by the United States census bureau.
30 b. The enrolled membership of the tribe must be certified to the state by
31 September thirtieth of each year during the term of the agreement. The
32 enrolled membership of the tribe must consist of the number of enrolled
33 members of the tribe physically residing within the exterior boundaries of
34 the portion of the tribe's reservation located in this state. The enrolled

- 1 membership of the tribe must be based on the tribe's enrollment office
2 records, the bureau of Indian affairs enrollment records, or other records
3 maintained by the tribe. The previous year's certified enrollment number
4 must be used if the tribe does not issue a certification by September
5 thirtieth, unless the tribe demonstrates the certified enrollment number
6 has increased or decreased.
- 7 c. The tribe or tribes must provide the initial population required by this
8 subsection no fewer than sixty days before the effective date of the
9 agreement.
- 10 d. The manner in which the state and tribe resolve issues arising under this
11 subsection must be specified in the agreement.
- 12 ~~11~~12. An agreement under this chapter must give the tax commissioner, after
13 consulting with the governor, and a tribe or tribes the authority to terminate an
14 agreement with or without cause.
- 15 ~~12~~13. An agreement under this chapter must include:
- 16 a. A statement that the parties to the agreement are not forfeiting any legal
17 rights to apply their respective taxes by entering an agreement, except as
18 specifically set forth in the agreement;
- 19 b. A statement that a taxpayer may not be required to pay both the state tax
20 and the tribal tax but shall pay only one tax to one government in an
21 amount established by the agreement;
- 22 c. A statement that the state and the tribal government shall cooperate to
23 collect only one tax and share or refund the revenue as specified in the
24 agreement;
- 25 d. A statement recognizing the sovereign rights of the state and the tribe or
26 tribes; and
- 27 e. A statement that:
- 28 (1) The rights of each party must be determined by the terms of the
29 agreement with respect to the taxes subject to the agreement;
- 30 (2) Neither party may seek additional entitlement or seek to deny
31 entitlement on any federal ground, including federal pre - emption,
32 whether statutorily provided for or otherwise with respect to the
33 taxes that are the subject of an agreement; and

- 1 (3) Both parties shall defend the agreement from attack by third
2 parties.
- 3 ~~13~~14. a. Notwithstanding any other provision of state law, the agreement must
4 contain provisions in which:
- 5 (1) Except as otherwise provided by law, the tax commissioner shall
6 maintain the confidentiality of tax information relating to and
7 gathered under the terms of an agreement as provided in section
8 57-39.2-23;
- 9 (2) The tribe or tribes may receive a list of retailers located within the
10 boundaries of the reservation and the amount of tax collected from
11 each retailer during a reporting period; and
- 12 (3) The tribe or tribes agree to protect the confidentiality of tax
13 information received from the tax commissioner.
- 14 b. The agreement must specify the processes or procedures necessary to
15 safeguard the confidential nature of the tax information.
- 16 ~~14~~15. The administration, collection, and enforcement of the taxes under an agreement
17 may begin no sooner than the first day of a calendar quarter which is at least
18 ninety days after the agreement is signed by the parties.
- 19 ~~15~~16. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation
20 under an agreement entered under this chapter.
- 21 **57-39.9-03. Inapplicability of chapter 54-40.2.**
- 22 Chapter 54-40.2 does not apply to an agreement entered under this chapter.
- 23 **57-39.9-04. Revenue allocation and distribution-Refunds-Continuing**
24 **appropriation.**
- 25 The tax commissioner shall certify and transfer to the state treasurer for deposit in the
26 tribal allocation fund, a special fund created in the state treasury, tax revenues allocated
27 to a tribe or tribes under subsection 10 of section 57-39.9-02. Tax revenues collected
28 under this chapter are not subject to section 57-39.2-26.1, and are provided as a
29 standing and continuing appropriation to the state treasurer for distribution on a monthly
30 basis.
- 31 **57-39.9-05. Refunds-Continuing appropriation.**
- 32 1. Refunds of the tax imposed under chapters 57-39.2, 57-39.5, 57-39.6, and 57-
33 40.2, which are subject to an agreement under this chapter, must be paid from

Sixty-sixth

Legislative Assembly

1 the state general fund, and are provided to the state treasurer as a standing and
2 continuing appropriation.

3 2. Refunds of taxes paid under this section must be reimbursed to the state general
4 fund, with interest at the rate prescribed in section 57-39.2-25, from the first
5 available moneys deposited in the tribal allocation fund.

6 3. The tax commissioner shall determine the reservation of the tribe or tribes to
7 which the refund is attributable. The refund, including interest, must be
8 reimbursed from the first available moneys deposited in the tribal allocation fund
9 on behalf of the tribe or tribes to which the refund is attributable.

10 **SECTION 2. REPEAL.** Chapter 57-39.8 of the North Dakota Century Code is repealed.

11 **SECTION 3. APPLICATION.** Section 1 of this Act applies to agreements entered after
12 the effective date of this Act.

13 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.