

HOUSE BILL NO. 1398

Introduced by

Representatives Keiser, Kreun, Schmidt

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **Powers of commissioner.**

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

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

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

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

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

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

14 **Proceedings and penalty on delinquency.**

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

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

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

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

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

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

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

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

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

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

23 **Bond - Reports - Actions.**

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

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

6 **Penalty.**

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

8 **Deposit of revenue.**

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

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