15.1024.07000

FISCAL NOTE
Requested by Legislative Council
04/23/2015

Amendment to: HB 1476

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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$35,000,000		
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
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 HB 1476, with Senate Finance and Tax Committee amendments, replaces oil extraction tax "triggered" rate reductions with a single, permanent tax rate of 5 percent.

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 HB 1476, with Senate Finance and Tax Committee amendments, imposes a 5 percent oil extraction tax rate and removes the triggered incentive provisions.

Section 4 removes the triggered 24 month exemption for new horizontal wells.

Section 5 removes additional oil extraction tax exemptions.

Section 6, along with the effective date clause in Section 9, allows for the triggered incentive (which would eliminate the oil extraction tax on new wells and reduce the rate to 4 percent on most other wells) to be in effect for production through November 30, 2015. Beginning December 1, 2015, the triggered incentives would no longer apply. The existing oil extraction tax rate of 6.5 percent would be in effect through December 31, 2015. Beginning January 1, 2016, the rate would be reduced to 5 percent.

The March 2015 revenue forecast assumes the triggered incentives will be in place for 11 months, beginning with June 2015 through April 2016. Based on the official oil price forecast, this bill would allow the triggered incentives to be in place for 6 months, June through November 2015. Because this bill eliminates the triggered incentive beginning December 1, 2015, December production would be taxed at the 6.5 percent rate provided in current law. Beginning January 1, 2016, the new rate of 5 percent would apply.

The removal of the triggered incentives and imposition of the rates provided in this bill is expected to increase oil extraction tax revenue by approximately $301 million in FY 2016 and reduce oil extraction tax revenue by $266 million in FY 2017, consistent with the provisions of the official March forecast. The fiscal impact is estimated to total +$35 million for the 2015-17 biennium. This increase in revenues will be distributed among the legacy, common schools trust, foundation aid stabilization, resources trust, and strategic investment and improvements funds.

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.*

   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 L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701-328-3402

Date Prepared: 04/23/2015

15.1024.05000

FISCAL NOTE
Requested by Legislative Council
04/21/2015

Revised
Bill/Resolution No.: HB 1476

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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$76,000,000		
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
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).*

HB 1476 replaces oil extraction tax "triggered" rate reductions with a single, permanent tax rate of 4.5 percent.

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 HB 1476 imposes a 4.5 percent oil extraction tax rate and removes the triggered incentive provisions.

Section 4 removes additional oil extraction tax exemptions.

Section 6, along with the emergency clause in Section 7, would have made his bill effective on June 1, 2015, assuming the triggered exemptions and incentives would otherwise become effective. The official March 2015 revenue forecast assumes these incentives will be effective on June 1, therefore this bill, with the emergency clause, would also have become effective at that time. However, due to failure of the emergency clause in Section 7, the bill will become effective July 1, 2015. The 4.5 percent tax rate will apply to production beginning July 1, 2015, which will affect revenues collected in August 2015. Assuming the current law triggered incentive will be in effect for one month during the 2015-17 biennium as a result of failure of the emergency clause lowers the positive fiscal impact by an estimated $44 million.

The removal of the triggered incentives and imposition of a 4.5% oil extraction tax rate is expected to increase oil extraction tax revenue by approximately $465 million in FY 2016 and reduce oil extraction tax revenue by $389 million in FY 2017, consistent with the provisions of the official March forecast. The fiscal impact is estimated to total +$76 million for the 2015-17 biennium. This increase in revenues will be distributed among the legacy, common schools trust, foundation aid stabilization, resources trust, and strategic investment and improvements funds.

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.*

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 L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 701-328-3402
Date Prepared: 04/21/2015

15.1024.04000

FISCAL NOTE
Requested by Legislative Council
04/17/2015

Bill/Resolution No.: HB 1476

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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$120,000,000		
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
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).*

HB 1476 replaces oil extraction tax "triggered" rate reductions with a single, permanent tax rate of 4.5 percent.

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 HB 1476 imposes a 4.5 percent oil extraction tax rate and removes the triggered incentive provisions. Section 4 removes additional oil extraction tax exemptions.

Section 6 makes this bill effective on June 1, 2015, assuming the triggered exemptions and incentives would otherwise become effective. The official March 2015 revenue forecast assumes these incentives will be effective on June 1, therefore this bill is assumed to become effective at that time as well.

The removal of the triggered incentives and imposition of a 4.5% oil extraction tax rate is expected to increase oil extraction tax revenue by approximately $509 million in FY 2016 and reduce oil extraction tax revenue by $389 million in FY 2017, consistent with the provisions of the official March forecast. The fiscal impact is estimated to total +$120 million for the 2015-17 biennium. This increase in revenues will be distributed among the legacy, common schools trust, foundation aid stabilization, resources trust, and strategic investment and improvements funds.

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.*

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 L. Strombeck

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Telephone: 701.328-3402

Date Prepared: 04/18/2015

2015 HOUSE FINANCE AND TAXATION

HB 1476

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1476
4/20/2015
26262

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to oil extraction tax rates and exemptions.

Minutes: Attachment #1, 2, 3, 4, 5, 6

Chairman Headland: Opened hearing.

Representative Carlson: Introduced bill. Distributed proposed restructuring of oil extraction tax testimony; see attachment #1. This issue has been under discussion for the last three bienniums; it isn't just a new topic today. This bill puts a trigger on the trigger. The price of oil has been significantly reduced in the last number of months. A great number of our rigs have left the state. There are very few wells being fracked compared to the number that were being fracked in the past. As we're looking at the process and the effect of our oil triggers we thought it would be beneficial to have a stable tax system for both the state of North Dakota and for the industry. This is a tax increase on the industry. If the big trigger were to hit on June 1, which means five consecutive months of the price being below the trigger of $55.09, the tax rate would have gone on some wells down to four percent and zero on others. By doing that there is a tremendous loss of revenue for the state but it is also a tremendous break for those people who were waiting for that lower rate to be able to frack those wells and produce that oil at a lower rate to make it more economical for them. Our responsibility as legislators is to have a hearing to discuss the topic and decide if it's a good long term policy for the state. This issue becomes very political and there are a lot of unknowns. The reality is that in the year 2009 we missed the trigger by two days and $.32. In every instance these people were hoping against hope that the price would stay down so they got the tax break on those triggers which means the oil wasn't very high at that point in time either. It would have cost the state $100 million that we didn't budget for in the 2009-11 budget. Back then $100 million is a bit different than the level of spending that we have today. This bill says that if that trigger hits the next day the oil tax goes to a rate of 4.5% on extraction and the production tax still stays at 5% so that means it would be an effective rate of 9.5 percent. The bill does not go into the exemptions. The exemptions are stripper wells which we dealt with last time. When we had our delayed bills committee there was some discussion from the minority leader and his assistant that they couldn't support the bill because it didn't address strippers. I thought we addressed that pretty well in the last biennium to make sure those low producing wells still had some tax breaks. This exemption does not affect the secondary recovery exemptions or the tertiary recovery efforts. It leaves in place a reduction in the extraction tax for those wells located outside the Bakken-Three Forks formations. It automatically removes the small trigger which is already in place and the large trigger which would take effect after five consecutive months with the average being below our trigger price. This month on Friday the oil price was $55.87 range which would have been above our trigger price. It would have to be over $65-70 the rest of this month for the average not to apply for the month of April. It looks like the four or five months will be hit but not until after we leave here. We believe we should deal with the issue today, open it up for public comment, have the hearings, and let it run as it is. We have already experienced a 50% drop in oil tax revenue just because of the low prices. People like to talk about the long term effect of what happened to the rates and now we're going to lose all this revenue when it comes back. There's no question you're going to lose some revenue but there is never a discussion as to what you lose when the trigger is on. If you're going to count one then you better count the other one because they are an offsetting number in a lot of cases. This trigger was previously on for about 17 years with this language. I would hope it would never happen to us again. I understand we have a sweet spot and a lot of oil to be produced but that's a good thing. Predictability has been a difficult process this time because of the uncertainty with prices. We used our budget projections that have been based on us producing 1.1 million barrels a day with an average taxable price of $41.97 in June 2015 to $52.56 in May 2017. When you look in the market the price of WTI if you figure out what we actually tax on it's between 10 and 15% less than a WTI. If the WTI is at $50 today you can take either $5 or $7.50 off that number and that's what we tax. It was also based upon 100 rigs; there were 94 rigs the last time I checked and there were almost 900 wells yet to be fracked that businesses are not fracking. The market has changed significantly since we've gone through this. Texas tax rate is 4.7% and they also charge on property tax. Oklahoma's tax when they are done is approximately 7.1 percent. We are probably in the middle zone on taxes. We've had meetings with the Three Affiliated Tribes and one of the discussions included the minority leader from both parties. In that meeting there was discussion about what they want and they mentioned a flat rate with some certainty. We may have disagreed on the rate but we talked about having a flat rate. They didn't want to participate in the triggers that were about to take place. We have a compact with them. It's important to understand that they, as a sovereign nation, have opportunities. If the trigger hits then both triggers go away and the exemptions stay in place. No one knows if it will happen or not; it's a very volatile market we're dealing with. Your decision today should not be based on politics or emotion but it should be based on what is a consistent, fair, equitable, and understandable tax rate for the oil that's extracted and produced in the state of North Dakota.

Representative Haak: Why did we wait to hear this bill on day 71 and not have the discussion for the past three months?

Representative Carlson: We've been having this discussion for a long time. We brought a bill forward two or three weeks ago on the first bill because there were some changes and the market has become less stable. Timing is everything. This has every opportunity for people to have their input in both industry and individuals. We have plenty of time to deal with this issue. I don't regret having it on the 70th day. We've brought it forward the last two bienniums; it's not a new topic to anybody. The timing is right because of the market conditions and what has happened to our revenues.

Representative Haak: Has there ever been a legislative management study regarding how all these triggers impact and things like that so that maybe there's a way to fix it?

Representative Carlson: I can't tell you if there was a specific study. We have an energy and a tax committee that has dealt with a lot of those issues. We could study it to death but the facts are the facts. When we're in session it is our job to make decisions and pass policy and that's why you have the bill before you.

Senator Wardner: Co-sponsor of the bill. This bill really doesn't affect the general fund unless we transfer money from the SIIF fund over there and do it that way. The production tax is where the formula is and that's where the money is that goes out to the political subdivisions. It does not affect the formula that puts money in the political subdivisions for impacts. The money that is called in lieu of property tax is unaffected. It would affect the extraction tax, 6.5% down to 4.5%, if it triggers. There are constitutional funds that we do not spend out of at this point other than the revenue; the Legacy Fund, where not as much money would go into that as before but there is still going to be a lot of money. We don't spend out of that at this point and when we do it will probably be only the revenue stream so it doesn't affect our current spending. The other fund is the Common Schools Trust Fund where we do spend the revenue out of. It is growing and is getting to be a more substantial fund but we don't spend the principle so that money isn't on the table. Next is the Foundation Aid Stabilization Fund which is a constitutional fund that I hope we will change this session. That money is for schools and we haven't been spending the money out of that either. We have a constitutional fund that we spend out of and that's the Resource's Trust Fund. We use that to fund water projects. Instead of having $800 million it will end up being somewhere around $600 million on a normal revenue year. It's still a lot of money and we have gone a long way so far in taking care of a lot of the water needs. The last fund is called the SIIF, Strategic Infrastructure and Investment Fund, which doesn't have as much money as it would normally have if it was at 6.5% versus 4.5 percent. We used it this time in the surge money for highways in the western part of the state. The reason for this bill is stability. The price of oil makes a difference. When the industry puts their money in they look at the tax rate and the forecast on prices. We now have a history as the price of oil came down they started stacking the rigs and taking them out of the state much sooner than they would have had it been a flat 9.5% rate. By the time the triggers put the exemptions on the prices are so low that they are already gone and they aren't coming back until the price gets higher. When you get under $70 at a lower rate they will stick around longer and there will be more activity out there. When an oil well is drilled it's about $250,000 sales tax dollars that comes to the state. The longer we keep that we keep the money coming into the general fund. This bill provides stability. When I came into the legislature we had 9% on existing wells and had a 15 month holiday on tax for all new wells. It wasn't until about 2004 or 2005 that we went to 11.5 percent. Nobody really knows that once the trigger triggers on the exemptions how long it will last. As we look to the future the oil market is very unstable because of what is going on around the world so we don't know what that price will be. It could trigger for a long time or it may not.

Representative Haak: You talked about the reason for this bill is stability. You said that under $70 they will stick around longer. Is this based on just your gut feeling or on activity that's happened in other states with their tax generation?

Senator Wardner: That is on my own observations. I've lived out there my whole life.

Chairman Headland: The last time the trigger was in effect it triggered in 1987 and didn't trigger off until 2004. I know at that time no one predicted how long that would last just as no one can predict how long it would last if it triggers today. What do you think would happen to state budgets if the trigger were to go on and last in the same 15-20 years, essentially through the heart of the life of the Bakken production? It would be detrimental, wouldn't it?

Senator Wardner: It would. We would also lose oil tax revenues. It would also affect the other side, the general fund. We wouldn't have as much economic activity and our revenues would go down.

Representative Schneider: We haven't seen a fiscal note on this so maybe you can help me with some of the issues. How much would it have cost us to have this plan in place for this biennium and last biennium?

Senator Wardner: That is hard to estimate although I would say there would be more rigs. I would say it would be more like 120 rigs working.

Representative Schneider: You don't have figures on that?

Senator Wardner: We don't have figures on that. We wouldn't have dropped from $8.5 billion down to $3.4 billion but I would say we'd be around the $5 billion.

Representative Schneider: When do you think we would have answers to that so we can evaluate the consequences on this and the impact to the state both in the short term and the long term?

Senator Wardner: I can give them to you right now. Any of us that have been involved in this can give you a ballpark figure. We can bring in Moody's Analytical but I think we have people here that can give you that number just as well as they can. I'm told we do have a fiscal note.

Chairman Headland: There is a fiscal note in our file with the proposed change and the amount of additional revenue going into the coffers.

Senator Wardner: We have one month to go. It may not trigger the incentives so then we just stay where we are at.

Chairman Headland: You have to realize there is a lot of speculation into your question so no matter who you ask that question to the answer will be speculative.

Representative Schneider: You said there would not be an impact on the legacy fund?

Senator Wardner: No, I said it would get less revenue. We don't spend money out of there so it doesn't affect our spending at this time.

Representative Schneider: In the list of the different funds and how they're affected we didn't have many specifics but it looks like the Water Resource Trust Fund would have about a 30% loss; a 30% loss in the future to the SIIF fund and a 30% loss to the Common Schools Trust Fund in the future if this measure passes.

Senator Wardner: Those numbers are also affected by price not just the tax rate. Those numbers are at a lower price so prices as well as the change in the percentage are included in those numbers. If the price were higher those numbers would get smaller.

Chairman Headland: You're also making the assumption that it doesn't trigger and our financial analyst, Moody's Analytical, have indicated that it is going to trigger. That's what we have to base our revenues off of.

Representative Schneider: I appreciate that but there are a lot of assumptions being made here and I'd like it to be as clear as possible for both the committee and others impacted with this issue. Perhaps this is brought to us by the same people who thought the trigger was a good idea too.

Representative Strinden: I think there are two worries on this bill; we would hit the big trigger and we would be there for 17 years, and that we wouldn't hit it or it would stay in effect for a small amount of time then we would be at a much lower tax rate for the next 17 years. I'm sorry I forgot my question.

Senator Wardner: Her question probably is why don't you just get rid of the triggers and leave it at 11.5 percent? The bottom line is what's good for North Dakota? A lower tax rate at a level pace will keep the whole economy going. We've got companies out there that live off these drilling activities. They are now laying off people and they are wondering when they are going back to work. This bill stabilizes the economy. This not only affects western North Dakota, we have all kinds of axillary businesses that are supplying the oil patch with supplies, equipment, and so forth.

Chairman Headland: You can look at this bill as a hedge against risk.

Representative Strinden: If we find ourselves in a situation as 1987-2004 we could come in and address this during any special session or legislative session? We don't have to do it before the big trigger hits, if it does?

Senator Wardner: That would be one possibility.

Representative Mitskog: At the beginning of the session we had a speaker that said we should be prepared for low prices for quite some time. Here we are nearing the end of the session and it seems like a last minute response with this legislation. When we're dependent on commodities we have to be prepared for the peaks and valleys. Our message throughout this whole session in this committee has been that we need to cut back and tighten our belts. Why the last week?

Senator Wardner: We've been studying this since last session. As we move through this session the price of oil has gone down and we're getting closer to the oil exemptions being triggered on. We have only one month to go. We've had discussions with Fort Berthold on the fact that they did not want to be involved in those exemptions. We've come to this point and it looked like it was time that we had to come up with some type of proposal to deal with this.

Representative Carlson: The Foundation Aid Stabilization Fund, the Common Schools Trust Fund, and the Resources Trust Fund that funds all our water projects not one penny of that money comes out of the extraction tax. Those funds will get the same funds they always got. The Legacy Fund is shared so it's not a 30% reduction it's a 20% reduction because it's part of both taxes. The Three Affiliated Tribes are part of both taxes. The Oil and Gas Research Fund is part of both taxes. You have to understand where the money goes before you take a number of 30% because it's only going from 11.5% to 9.5%, it's not going down 30% on the whole tax. If the trigger goes into place and we follow the revenue forecast the buckets don't fill; there is very little if any money in the Resources Trust Fund because of low prices. There's very little money that goes into the Property Tax Relief Fund because of low prices. The fiscal note you have is $120 million positive fiscal effect for the biennium. That is a fairly accurate number based on the projections we had in March. If all the prices went up and the trigger went into effect then we cancelled the trigger at 9.5% if prices went up $5 a barrel throughout our projection that's $481 million more tax collected. If we go back to our forecast of $74-82 you go back to $6.8 billion of revenue at 9.5% and if it goes up to the projection from the future for 1.5 million barrels it's $7.7 billion, you go to 1.6 million barrels a day with the market rolling then its $8.2 billion a biennium. The positive effect is that there is a tremendous amount of money to be raised with some assuredly that the money would be there.

John Walstad, Legislative Council: When it was created it was a one way trigger. The reduced rates and exemptions never actually triggered on; they were set by law on and there was an off switch. If oil prices rose above that level those exemptions and rate reductions would go away. That was turned into a two way switch sometime after that. For 17 years that initial legislative provision for extraction tax, exemptions, and lower rates was in play.

Chairman Headland: Initially when the trigger was first put in place do you recall that number?

John Walstad: $33. At that time in North Dakota oil prices were ridiculously low. Thirty three dollars was viewed as a pretty significant increase from where the price was.

Chairman Headland: With that being said, without legislation addressing the trigger it could continue to grow and could outpace the price of oil on average and always be in effect.

John Walstad: That's one of the possibilities. The initial trigger said nothing about horizontal wells. Mr. Walstad reviewed the bill's highlights. If the trigger under this bill does not come into play, if the big trigger in existing law never comes off, this bill will never do anything. The definitions in the extraction tax are being substantially revised because a lot of those definitions are unnecessary without some of the triggered exemptions that would be eliminated if this bill becomes effective. In section five line 13 is the rate change where the current extraction tax of 6.5% is reduced to 4.5 percent. The rate is only 4% triggered if the big trigger becomes effective some of these 4% tax rates would kick in. These 4% rates are all triggered. This bill would eliminate the big trigger and the little trigger at the same instant. If this bill becomes effective those 4% rates disappear from the law. Beginning on page six the exemptions from the oil extraction tax has a lot of strike through. Representative Carlson distributed the handout of proposed restructuring of oil extraction tax. The only exemptions that would remain in play if the big trigger goes off and this bill takes effect and eliminates the effect of the big trigger and the little trigger the remaining exemptions would be anything exempt from the production tax, stripper wells, secondary and tertiary enhanced recovery. Incremental production is exempt from extraction tax and would remain that way after this bill would become effective. The remaining exemption is for drilling outside the Bakken and Three Forks. The number of rigs deployed for that purpose now is zero so it doesn't have a significant effect. There are things that would disappear if this bill would take effect; a 15 month exemption for new vertical wells and a 24 month exemption for new horizontal wells are the most significant. This bill is written to become effective June 1, 2015; there is an emergency clause. The projection is that on that date the big trigger would become effective and if that happens and the emergency clause carries this bill would become effective at the same instant eliminating the big trigger, little trigger, the exemptions and rate reductions, and reducing the rate of the tax to 4.5 percent. If the projection does not come to pass or the emergency clause does not carry this bill would become effective if subsection three of 57-51.103, which is the 24 month horizontal exemption so that means the big trigger is on, if it becomes effective at a later date than June 1 then that date whenever that triggering happens or if the big trigger is in effect on July 1, without the emergency clause, then this bill would become effective and eliminate the big and the little trigger and the exemptions and the reductions going forward. It would not suspend them, it would eliminate them permanently (at least until next session). In the effective date clause it might be necessary to use the same phrasing as on the bottom of the page if that big trigger is or would become effective. There is a possibility if this legislation is approved it might be subject to referendum and it might be suspended or it might not if the emergency clause carries. If that period of suspension passes and the voters approve the measure the triggering should happen so a comma and one more word might take care of that possibility.

Chairman Headland: Over the past few bienniums how many bills do you think you drafted that have dealt with this problem?

John Walstad: I couldn't even guess. It's more than ten.

Chairman Headland: You've had bills that have been drafted by both the minority and the majority either together or separately.

John Walstad: I'd have to review that but my recollection is the drafts are usually presented by one or the other of the parties.

Representative Steiner: Do you remember who the governor was for the very first trigger in 1987?

John Walstad: Governor Sinner.

Representative Schneider: If you've had ten different bills on this and there have been a lot of discussions on the triggers, is this something that would benefit from study and careful consideration over a period of time?

John Walstad: I think our oil tax policy is constantly under scrutiny because it is such a significant engine for North Dakota's tax revenues and economy. I believe there are a couple proposals currently alive that would provide for study during the next interim.

Representative Haak: If the big trigger goes on this bill goes into effect and it makes it an extraction of 4.5% but if the price of oil continues to climb it never has another trigger that increases that back up to 6.5%, correct?

John Walstad: If this bill becomes effective 4.5% would be the rate until next session.

Chairman Headland: We will take testimony in support of HB 1476.

Laney Herauf, Greater North Dakota Chamber: We are supportive of this legislation. We like the stability and the reliability this provides.

Chairman Headland: Further testimony in support?

Brent Sanford, mayor of Watford City: As a recipient of funds from the Resource Trust Fund it's terrifying to think of the trigger happening. With the things that are happening in the water commission hearings and the budget hearings for water I don't know if we can afford to have the trigger hit for a two year time period. This is a complex and controversial issue. Predictability would be a great thing when we are talking about losing more than one half of our revenues as a state if this triggers. The business people keeping our economy going on the oil industry side would like some predictability and not be on the high end of the tax spectrum of where they can do business. I am in support of the bill.

Chairman Headland: You're city is the fastest growing city in North Dakota. You've been reliant to a certain degree with SIIF dollars. If the trigger kicks in and we don't do anything to address this and if it would happen to stay on for the whole biennium I don't think very little money flows to the SIIF fund. Can you address the impact to Watford City if that were to occur?

Brent Sanford: The surge funding came from the SIIF fund. Without excess funds in the SIIF fund there would be no surge funding and we would be basically asleep on the construction season at this time in western North Dakota. With the surge spending there are quite a few projects going and it's helping to take some of the displaced oil workers and put them in construction jobs for the time being until it picks up again. Those dollars were much needed. One of the future views for the SIIF fund is legislation for the future uses of SIIF and the opportunity for allocation to the areas in the west to be able to have some more dollars flowing to us if the budget turns out on the positive side. If the oil revenues come back and there are dollars in the SIIF fund hopefully we could share in some of those excesses because we know where they are generated from; the two different oil taxes. If it triggers there would be no chance for that. We hope that not only from the Resource Trust Funds and the water projects but also from the SIIF any opportunity to ask for infrastructure funding that there would be some excess dollars in the SIIF.

Chairman Headland: You believe it's a worthwhile tradeoff to leave the possibility of giving up just a little bit of revenue under certain scenarios versus having predictability for the future?

Brent Sanford: I watch the industry every day. There is a cloud of anxiety with oil in the $50s and further anxiety if the trigger is going to happen. Our neighbors to the east are going to have the same type of anxiety. To drop the revenue by one half by June 1 is terrifying so I'm glad to see action being discussed and considered.

Chairman Headland: I think there are a lot of legislators that feel the same way about state budgeting and revenues.

Representative Schneider: I can understand your discomfort with the change in this volatile industry with prices and you need to have some stability. Have you been given figures that we don't have yet about the long term consequences to Watford City and the state of having this new proposal?

Brent Sanford: I have not. I've seen a lot of similar summary information that you have where we could end up with $1.5 billion more revenues if the trigger is taken off. Over the long term we would be collecting 4.5% instead of 6.5% on the extraction tax. We could put a lot of formulas and projections together based on $75-100 oil but I don't have those specifics. I haven't had a lot of time either to digest those implications.

Representative Schneider: If you found out it would cost the state $1 million a day a year down the road from this change would that modify your opinion about having stability versus taking some short term hits here to have long term gain to the state?

Brent Sanford: Yes, I think it's a risk worth taking to have a predictable tax, to have a flat tax, and not have the trigger situations. We don't know how long this will last. There are still going to be oil wells pumping in western North Dakota even if the price is in the $40s for ten years because those wells are drilled. We'd hate to see the revenues at 5% versus a potential 9.5% if that were to happen. I'm supportive of this legislation.

Representative Schneider: I hope we both get the chance to make those decisions based on some projections and facts long term that are reliable for us.

Chairman Headland: Do you have any idea of the number of rigs drilling in McKenzie County right now?

Brent Sanford: There are 42 rigs drilling right now out of 91 total.

Representative Haak: What is the average price for a barrel of oil in April? From your conversations with oil companies that come into your community and drill do they tend to drill based on the price of oil or taxes?

Brent Sanford: It was in the low $50s for the first part of the month and the last week it was trickling above this trigger in the $56-57 dollar range. A few years ago it was a rush to drill based on holding leases but now they have the inventory in the ground it can go somewhere else the leases are held. Now it is priced base; there's a lot of pressure on vendors in Watford City and Williston. We are trying to get efficient. I would say price more so than tax overall. They are going to want to drill if it's $90 oil much more than if it's $30 oil.

Representative Froseth: How many wells are drilled but haven't been fracked or put into production in your county?

Brent Sanford: I know there are about 900 total rigs in the area. A large amount, around 300-400, are in our county.

Chairman Headland: Is there further testimony in support? Is there opposition to HB 1476?

Senator Mac Schneider: Distributed testimony in opposition; see attachment #2.

Chairman Headland: You have numbers and you say $10s of billions of dollars. If the trigger would go into effect and stay on for 17 years like it did last time how much revenue are we talking about there?

Senator Schneider: The fact that we don't have those numbers should give us all pause before we pass this. On the flipside of that coin do we really think that as policy makers we are going to levy a 4.5% extraction tax for the 17 year period that prices are below $55.09? We think the oil industry shouldn't have an incentive at those times of low prices? I think not. In a lot of ways this presents the worst of both worlds; it's a sharp reduction in the extraction tax when oil is at $80-100 a barrel and it takes away a meaningful incentive when prices are low. There has to be a middle ground here.

Chairman Headland: If that happens I suggest you be prepared to budget at those numbers because you'll probably be in charge.

Senator Schneider: I agree with you but I don't wish for it. I agree with the notion that if prices stay below that $55.09 index for inflation for 17 years we have bigger problems than the trigger. We reject the false choice here but we can reform the trigger. All of us agree this is a blunt instrument and the oil industry should be incentivized to continue needed production and investment in our state during a trough in the market. There is a middle road here that this bill doesn't have to take us down.

Chairman Headland: Were you majority leader in 2011?

Senator Schneider: I've never been majority leader. I aspire to that.

Chairman Headland: Do you remember Representative Onstad and Representative Meier had a bill that would lower the extraction tax to 4.5%, HB 1420?

Senator Schneider: I never saw it on my side. I believe it was defeated in the house.

Representative Haak: Can you recall any instance of when we studied this in a legislative management study?

Senator Schneider: I don't think reforming the trigger has been studied intensely. We've studied the way we tax oil in North Dakota but there's never been a grand bargain put together that says we're going to ease some of the impact on the two year budget that the trigger would impose on our state budget while also providing some meaningful incentive and leaving the top tax rate alone or anything like that. I think the best study here is what's happening in real life. The industry has thrived under the 6.5% extraction tax. We need to take a second look at a trigger but let's keep an incentive in place and don't trade it for 30% reduced oil extraction tax revenue for the life of the Bakken; that is a bad deal.

Chairman Headland: Are you suggesting we get rid of the trigger and leave the extraction tax at 6.5 percent?

Senator Schneider: Leave the 6.5% extraction tax that was put in place by a vote of the people. Let's take a look at that trigger that we put in place as a legislature and take out some of the bluntness of it while still providing an incentive during these down times. This bill is too extreme on both ends. A 30% cut is too much and taking away an incentive entirely is not wise either. I would ask that we focus on a bipartisan middle road which is reforming the trigger; not getting rid of it.

Chairman Headland: How do you come up with the fact that it's a 30% cut?

Senator Schneider: You take the 6.5% extraction tax down to 4.5% and that is actually a little bit over 30%; I rounded down for the sake of fairness.

Chairman Headland: You realize that there are other things that come into the equation that would probably reduce that overall number somewhat.

Senator Schneider: I understand this bill leaves those exemptions untouched. That is going to result in a lower effective rate than 6.5 percent.

Chairman Headland: Further opposition to HB 1476?

Mark Fox, Chairman of MHA Nation and Three Affiliated Tribes: This is our opportunity to weigh in as this significantly impacts our nation as well as yourselves. You often hear us refer to ourselves as MHA Nation; we don't do that as a matter of semantics or because we are grandiose in who we are. We talk about our tribal nation because the United States

Constitution says we are a nation. We were a nation before the United States became a nation. We remain that way. United States Supreme Court still talks about that in the same way. We are going to address you as our nation and why we are here before you today. As a nation we have an open door policy. For the last four years we have been here to discuss activities, events and choices that are going to impact both of us. We are also here because of oil. For us oil has been both a blessing and a curse. We have a tax agreement because the law says that on Fort Berthold lands within our boundary the state has a right to tax in certain situations and the tribe has the ability to tax production activities within our reservation. To avoid dual taxation we as two governments come together and decide to split that tax so we don't drive industry away. We could pull out of the agreement and tax you separately and that would strictly be our revenue. The state and the tribe has benefited because we have a tax agreement in place. We are certainly not here to fight with state government or fight between parties. Our people want a change and part of that change is to be conservative. We are independent. If government does something that behooves or helps our tribal nation we will support you. You do things against us and we will be against you. We need changes. Whatever the state chooses to do here we think there are alternatives we could put into place if we had a MOU and MOA process that would give us that chance other than just saying this bill or nothing. Our basic position is that we don't support the bill as proposed. We understand the dilemma the state is in as we are in the same one. A permanent cut that is being proposed puts us in even a more precarious position. When we started this oil boom the tribes were sitting in a position of not being prepared for that although the state was prepared. Everybody is well aware of the difficulties we experience even before the oil boom. When the oil boom came in and despite the revenues it increased our problems by 100 fold; roads being torn up, lack of affordable housing, cost of living, crime, violence, and pollution to our environment. Part of that curse is what we've been forced to contend with by our development. The 11.5% now has not been enough to address our concerns and problems. We've tolerated that number because it seems to be reasonable for the industry to not only move forward but for this state to become the number two leading producer. It isn't a problem at 11.5% but it is a problem if you drop the percent. Over the next 25 years as the boom continues to think that it's going to be enough revenue to address our problems it may or may not because we have about an $8-10 billion need right now in Fort Berthold for the next 10 years. Based upon our numbers it will never reach that. The end result is that we'll end up taxing and raising royalties to offset that. Instead of increasing the standard of living for all the people we will put all that money towards this process of extraction oil to market outside of our boundaries. When that oil is gone we will be sitting in a position like other tribal nations have suffered and we don't want that to occur. We've been in discussion with the state, with leadership and many of you sitting here. The two concerns we have right now with the way it is being proposed is the duration to make it permanent. We believe that if you're going to take a drastic action like this that it is only for a biennium and it sunsets. The other concern is the off switch. If we're going to drop down and the price of the bill goes back up instead of designing a boon for the industry, which they are going to continue anyway, you hit that trigger or the amount and we go back to where we are at, the 11.5 percent. We are asking for legislature to enable us to stay in agreement and exempt us from both the big trigger as well as this alternative solution of if the trigger hits it drops three percent. If you exempt us from that we will sit down with industry and we will figure out a formula for rebates and for taking other actions to ease the transition on this price of the bill now to keep production rolling. We want responsible development but we still want production and we want to do it in a way that when the price of the barrel of oil changes the price of the oil will go back up and we will be averaging $85 a barrel plus. If we cannot get these changes we will have to strongly consider whether we will stay in the agreement and we will go from there. We are here for the best interest of our people. We calculated our numbers and we look down the line at our future and try to make the best decisions possible. We're not here to advocate for the oil industry but we are going to work with them as they are our partners. We're hoping that this legislative branch will look at these options and we will go from there. It's a balance of industry development and taking care of our people in our state. The best place to store oil is in the ground; things change and as they change we can make changes.

Chairman Headland: Can you tell the committee when the compact between the Three Affiliated and the state of North Dakota came into play? What was your production prior to the compact going into effect?

Mark Fox: The agreement that was put into place between our tribal nation and the state of North Dakota was in effect July 1, 2008 and was the same agreement until two years ago, 2013, when we changed it because of inequitable sharing. The state took two thirds of the revenue but yet the majority of production was on trust wells. In 2008 there was very little production going on. Much production was on the outside. That was in part due to technology and because we had an industry that wasn't sure what was going to happen if they moved on to these vast and rich oil reserves on and beneath our reservation. It was between the state and the tribe that we entered into an agreement to eradicate an apprehension that existed with the industry at the time. Having an agreement and having one tax on Fort Berthold instead of dual taxation has been a positive thing for the industry.

Representative Klein: At the present time what is your approximate monthly income from oil?

Mark Fox: In taxation we are down to about $11-12 million a month. We were up to $20 million a year ago.

Representative Dockter: If we wouldn't do any amendments and the bill passed and the trigger would go into effect would your nation break the compact and do your own thing or would you stay in the compact?

Mark Fox: We have to strongly consider separation. Our inclination is to stay in the agreement but we have to crunch our own numbers and figure out what the impact would be to our nation. If we put ourselves in a position in which we jointly agreed to reduce the tax we could lose $700 million to $1 billion in a course of 25 years. For you that may not be such a significant number but for us it's a very big impact. If we allow industry to come in and extract this oil and sell it to market we should have a standard of living that is greater than where we sit today.

Chairman Headland: I agree it would be irresponsible of you not to do your due diligence in what is being proposed here. Can you give us an idea of the percentage of tribal lands that have been developed?

Mark Fox: We are about a third of the way into the drilling and production that will occur on the reservation. The majority of that production is going to be on trust lands within our boundaries mainly to the west because of what current production is in place now and in the future.

Representative Haak: A couple speakers have eluded that you had meetings with some of the sponsors of this bill. When did these meetings begin? Who first approached your nation regarding this tax proposal?

Mark Fox: Our policy is an open door policy. We met with the sponsor of the bill and we've met with the Tribal State Relations Committee. Beginning in December and January we talked to the governor's office about our concerns. We met with leadership in late January and beginning of February on two things; we came forward and asked that we be exempt from the big trigger. The system of triggers is archaic; it doesn't work. We as a tribe think we can propose something different. The second thing we said was that we need a MOU and MOA process that's in existence and figure out an agreement and go from there. We haven't taken one dime of tax from pipeline yet it is our right as a government but the state collects it every day for the last seven years. We need MOA and MOU process to determine the split tax.

Chairman Headland: Is there further opposition to HB 1476?

Tom Ricker, President of North Dakota AFL-CIO: I think reducing taxes on oil is a wrong move. There are only nine days left in this legislative session but here we are on the 71st day talking about a new bill that was just introduced on Friday and Monday we get public input on it. I think it is moving too fast; the sky isn't falling. There are 70some conference committees still going on and all those bills have to be heard yet in the next nine days. There's a lot of work left to do and I think this bill throws a wrench in all the work that still needs to be done. I think it's a solution to a problem that does not yet exist. I'm going to respectfully ask for a do not pass recommendation. Take care of the work that needs to be done. If and when the trigger comes in you still have time left where the senate and house can come back into session and take a look at it then.

Chairman Headland: If we allow the trigger to go into effect and we come back next biennium and it's still in effect what happens to the jobs that are supported by SIIF, Surge, and different funds we have put into place that help political subdivisions? What happens to the roughly 80,000 jobs that have been created by this latest oil boom?

Tom Ricker: It's my personal belief that tax breaks don't create jobs; supply, demand, and prices are what create jobs. We've seen companies nationally that have negative tax numbers and they get money back but that doesn't help create jobs.

Chairman Headland: You're saying that you don't believe that if our tax is 11.5% total and Oklahoma's is 7% that in the time of low prices for the commodity you think the rigs will stay here and drill anyway or do you think there is a risk of them leaving and going to a better tax environment?

Tom Ricker: I think it's a finite resource that will be here. There could be some job loss but I don't think tax breaks are the answer to save all the jobs.

Stuart Savelkoul, North Dakota United: We rise in opposition to HB 1476 not necessarily because we are 100% convinced that this bill is a bad idea but rather because we simply don't know enough right now. The problem is many people don't understand the way this works. There are an unlimited number of scenarios. There are more than 50 bills that the legislature has yet to take action on which are in conference committee. Those bills obviously require more than 70 days of debate and consideration. The fact that we can take a bill like this that has an unknown amount of fiscal impact for bienniums to come and it seems like an unprecedented approach. We would simply ask for a do not pass on the bill in its present form until we have more answers to what are an apparent unlimited number of questions.

Chairman Headland: Your inference that we don't have the information and we don't understand the numbers, I would take you to task on that. I think for most of us sitting here we have looked at those numbers and we've seen the impact of those numbers and the possibilities of what could occur if we don't make a change. That is the reason we are looking at this piece of legislation today. We needed more information. We were somewhat reliant on the forecast that was presented to both chambers in March to make a decision in how to move forward with this. I think it's a bit disingenuous to say that we don't understand the numbers because I think we do. I can understand how the average citizen may not and that it may appear this is something we are trying to slip through at the last minute but I assure everyone that it isn't the case.

Stuart Savelkoul: I didn't say you don't understand, I said we don't understand. When I said we I was speaking on behalf of the public at large rather than you're specific knowledge base. If we're going to reference the fact that it was the last real data we received on this was the Moody's report in March it is now April so this bill could have come sooner that might have allowed us to get a stronger grasp or a better grasp on the numbers like you have.

Randy Phelan, Vice Chairman of the MHA Nation: I live in Mandaree which is in the heart of the Bakken. Our roads are being beat up. In the last two years our council had put together $50 million to repair tribal roads because we don't get any money from the state of North Dakota. We don't get any money for dust control. The majority of our roads are gravel. We can't afford to be taking any more cuts. McKenzie County doesn't give us anything for dust control and neither does Dunn County. Our livestock are getting sick from eating the dusty grass.

Kayla Pulvermacher, North Dakota Farm's Union: We are opposed to HB 1476. Our member's policy states "We are opposed to exemptions to the oil extraction and production taxes. Additionally, we oppose reductions in the rate of tax until the state replenishes and addresses unmet needs in rural North Dakota to be forward looking and invest in the future of the state. While we applaud the reform of the small trigger we cannot support the decrease in the extraction tax."

Chairman Headland: Is your policy to oppose all exemptions?

Kayla Pulvermacher: Yes.

Chairman Headland: So you would oppose the big trigger as well?

Kayla Pulvermacher: We do oppose exemptions to these taxes so yes.

Jim Stenslie, resident of Napoleon: Distributed testimony in opposition; see attachment #3.

Chairman Headland: We have a forecast that was presented to us in March and it indicated that the big trigger would go into effect. It said they were predicting it was going to be in effect for ten months and we have a 24 month budget period. If we are certain the trigger goes into effect and there's a 50-50 chance it stays on for the whole biennium if I were to tell you we would be faced with coming back if that were to occur with no money for property tax relief, no surge money, school budgets would have to be reduced because state funding would have to be reduced because we've put about $600 million of oil tax money into that formula, I would suggest that every budget would look at a real reduction from current levels which we haven't faced in my legislative career. Do you think you would still look at it the same that we should wait to see if that occurs before we take action or would it not be more prudent to take an action that can always be changed in two years if we find out that the possibility of the trigger going into effect doesn't occur? The bill means that if the trigger kicks in it becomes permanent. Permanent means you are assuring money for those programs in a permanent tax versus one that is dependent on the price of a commodity.

Jim Stenslie: Insuring but at a reduced amount.

Chairman Headland: But substantially higher than the triggered price and the uncertainty with the low price of the commodity. All those programs we talked about could be funded at their current levels with a permanent tax.

Jim Stenslie: I'm not going to speculate. So much of what we've heard today is speculation.

Chairman Headland: Do you think it is worth the risk? Are you willing to risk that because as a legislator I'm not?

Jim Stenslie: I'm willing to take that risk.

Chairman Headland: Is there further opposition? If not, is there anyone who would like to speak in a neutral capacity?

Ron Ness, North Dakota Petroleum Council: Distributed testimony; see attachments 4 and 5. We're glad you're having this discussion today. This is nothing new to North Dakota. Chairman Fox and I had this discussion shortly after he was elected. We have been meeting at their request since January. We understand their uncertainties as well as ours. HB 1476 as it stands today there are people who are very upset and believe this bill is essentially an insurance policy for the state on the backs of the oil operators and the mineral owners of North Dakota. The fact that it only triggers if the reduced rate triggers on in our estimation it just means that you're raising the tax on the industry. We have amendments we've distributed. We believe you should lower the rate to 9% and if it's a good policy make it permanent and do it whether or not the trigger triggers. The big question we have is how do you have a $40 billion industry that employs over 80,000 people in this state and represents 36% of our state's wages, 20% of all of our jobs, 18% of the state's GVP, and all these chemical and fertilizer plants are completely dependent on the stability of the delivery of these products and commodities going forward. Forty days from today we have no idea what our tax rate is going to be. You've had companies since December try to determine if they should complete their wells or drill their wells or wait. We have no idea what oil is going to do. We are a commodity based business and now we have lost 100 drilling rigs and about 10,000 to 15,000 employees. The surge couldn't have come at a better time because it's hedged some of the difficulties out there. We think this is going to continue; we don't see this price deck changing for a while. Now we're looking at a $76 million a month incentive. It will only be taken away if it hits. If the price goes up just enough to not trigger we're going to keep it at 11.5 percent. We've been meeting with these gentlemen and I don't think we've been that far off on understanding what predictability means. The Bakken is a big industry; it takes massive amounts of capital and planning. In my opinion the five months was too long; we needed something significant to happen in February in order to encourage the investors and the banks. Now you have people sitting on 900-1,000 wells that haven't been completed. That's $6-8 billion of investment that's going to be needed to complete those wells. It's the production that generates the revenues, creates the jobs, and pays the wages. Who would have thought that we'd come into this session thinking we were going to have $8-9 billion of oil tax revenues? I have yet to hear anyone say, other than the chairman, what does industry need and how do we get this train back on the tracks? It's not just about industry; it's about the people who are going to invest in industry, the small businesses and entrepreneurs across the state and country, it's about what the Bakken has done for the geopolitics of the world. We have exited the exploration phase; we are now in the development phase of the Bakken. Now each company goes back and begins to look at where to deploy their capital. The world now has our technology; we're not the only place that has a shale type oil play so we're going to be competing against the world in what we believe is a higher threshold of oil production. We can only hope that we return to $90-100 barrel of oil but I don't think the market analysts tell you we're going to get back there. How are we going to make this work at $75 barrel of oil? How do we ensure we have enough money to invest in the challenges the Bakken brings? Oil producers pay 100% of sales tax. Find me another industry in the state that pays 100% of the sales tax on a production basis. All of those 900 wells are going to pay $250,000 per well in sales tax. We also pay the highest wages. We think this bill along with our amendment is a good policy. The chairman and I have had this discussion along with his council and my members. We have to keep North Dakota competitive. We are looking at 130% tax reduction. On a Bakken well you get half the oil you're ever going to get out of that well with today's technology in the first 24 months. It's a significant tax policy change. If it's good tax policy then let's just do it. We want the tribes consulted as part of this. We agree with them on SB 2226 that they should be part of the consultation process. There are 400,000 barrels a day of the 1.2 million barrels produced today on the reservation. We have to keep that favorable business climate there. Many of our operators only operate there. It's critical not only to the entire play but to the thousands of people who work there. This bill in its current format takes away $76 million incentive that is coming our way based upon what the month of May does.

Chairman Headland: Can you give us an updated number of rigs that are drilling today?

Ron Ness: I believe there are 93 at this current time; nine in the boundaries of the Fort Berthold Indian Reservation and 42 in McKenzie County. We have retracted to the better areas. We've seen a 50% reduction in our rig count and each one of those rigs accounts for about 177 jobs. We've all been humbled and surprised by what can happen. We are at the mercy of the commodity market.

Representative Froseth: Can you explain when you said this bill would amount to $96 million revenue to the oil companies?

Ron Ness: Your fiscal note of $120 million takes the Moody's budget forecast in the March forecast and amortizes it out across the $1.1 million barrels. When we look at this it immediately results in about a $76 million per month incentive. The revenues to the state in the month of October was over $200 million a month in oil tax revenues to the state which equates to a little over $11 million a day. This is a big discussion.

Chairman Headland: We understand the cause for the price of oil to drop and it's a supply and the amount of increased production that is seen across the world and here we are. Can you speak to that a little bit and give us an idea of what would make that change?

Ron Ness: As consumers we like the price drop in gasoline. Who would have expected that we could turn around our alliance on foreign oil this quick? I believe we were at 67% before 2007 when the Bakken technology to how to produce oil from shale really took off. We have reversed that and we have now become the world leader in energy production as a whole. I think we are set to become the world leader in oil production. We've got to rebalance this whole supply of energy and what the new normal price will be is what we need to be concerned about. We need to figure out how we're going to make it work at $75 a barrel rather than $90 a barrel because it will work somewhere else at $75 a barrel and that's what you compete against.

Representative Froseth: You're proposed amendment would place a tax at 9% effective immediately if this bill gets an emergency clause.

Ron Ness: My amendment lowers the extraction tax from 4.5% to 4% and it is not dependent upon whether or not the triggers hit. If its good policy for the state it should be good policy for the state June 1, not just if and when the trigger should hit.

Representative Froseth: If the state lowers theirs to 9% and Fort Berthold say they need 11.5% how will that affect the production in Fort Berthold if there are two rates?

Ron Ness: I haven't heard the tribe say they need 11.5% all the time. I've heard them say we should look at a floating rate where they do well when industry does well.

Representative Froseth: If we exempted the Fort Berthold production from the triggers the effective rate as of now would be 11.5% and then leave it that way and let the negotiations continue between the state and Fort Berthold.

Ron Ness: I believe that is the desire of the Three Affiliated Tribes. They do not like the big trigger. They don't like triggers period. They want some type of tax structure that gives them the flexibility to be more adaptive to the current price and situation on the ground.

Representative Haak: Do oil companies hire their own speculators or those who predict future prices? If so, what do your speculators predict for the next 24 months?

Ron Ness: Companies employ all types of analysts all over the world. The expectation of industry is we're looking at a 12 or 24 month cycle before you begin to see significant recovery. By significant recovery in the Bakken I think it takes $75 WTIOL in order to stimulate that investment. This is an investment play so you have to attract investment from the bankers and third parties to get a return on your dollar. That's why taxes matter. Our belief is that we are settling in to this new price deck for some period of time before we get back to a place where we think the economics across the Bakken are going to be substantial enough in order to see significant activity uptick.

Representative Steiner: Chairman Fox mentioned an exemption for the tribe off of HB 1476. What are your thoughts on that? If they negotiate at 10 and the state goes ahead with 1476 do you see some conflict there?

Ron Ness: I think a uniform tax policy across the field is the best policy. You need to find a policy that works for everyone and keep the playing field as flat as possible. The last thing we want is for them to cancel the agreement in my opinion. We would send ourselves back into pre-2007 chaos.

Representative Trottier: If you were sitting on this side of the desk and you had a choice between what we currently have with the potential that the big trigger is going to kick in and if we put in a flat 9.5% on June 1, what are your thoughts?

Ron Ness: You have ten days so you need to make a decision. I think it's time to put this issue to rest and find something that you feel is the right rate. If our production doubles you get $16 billion and on the other hand you end up with $2 billion so as policymakers you have to decide what the right number is. You're hedging your bottom side by giving up a little bit on the top side. You have to be out looking today to get money next fall not next budget cycle. Barring any substantial increase in the price of oil today we are looking at trying to figure out what's going on in 2016 very soon. Predictability is good. We don't think this bill in its current form is really a predictable measure. We need to set this thing in motion so we can begin to plan for June 1. Put yourself in the eyes of an oil producer and say out of those 900 wells sitting out there to be completed you've held off on 100 of them yourself. When are you going to know what your tax rate on June 1 is going to be? Are you keeping your employees today or are you letting them go? Are you keeping your frack crews on hold or are you letting them go? I don't think we'll know until the last few days of May what the tax rate is going to be on June 1.

Representative Froseth: Do you believe the most important point to the industry is that the potential discount of the state tax rate or is it the low price of oil that's keeping them from putting those wells into production?

Ron Ness: Certainly the price of oil is what drives the industry but we cannot control the price of oil. You have to try and eliminate as many of the unknown factors you can. Today you are trying to drive down your costs. Predictability in terms of knowing long term where I'm going to be at and where I have to get to is important but the price of oil is what drives the investors' decision to put their money into the wells, apartments, houses, and secondary business activity that is taking place across North Dakota.

Representative Mitskog: If the big trigger occurs in June what do you foresee happening with activity in the Bakken?

Ron Ness: It puts about $76 million a month of cash back into the system. It probably inspires you to go out and complete some of those wells. It encourages you to do recompletions on your other wells. It maybe adds to your infrastructure depending on whether you're bullish on the price in the next six to eight months. My guess is they start looking at how that affects their capital budget for 2016. It probably won't inspire a whole bunch of drilling rigs but it may keep the 90 that we have with maybe picking up one or two more. It encourages you to complete those wells. Contrary to popular opinion there is nothing that requires you to complete these wells under current provisions. I'm going to sit back and wait without that.

Chairman Headland: Is there anyone else who would like to testify in a neutral capacity? Seeing none we will close the hearing on HB 1476.

Additional testimony was distributed from North Dakota Petroleum Council; see attachment #6.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1476
4/20/2015
#26266

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Janette Cook

Explanation or reason for introduction of bill/resolution: A bill relating to oil extraction tax rates and exemptions; and to provide an effective date.

Minutes:

Attachments #1, 2, 3, 4, 5

Chairman Headland: We will now have discussion on the bill before us.

Representative Schneider: Is there someone from the tax department available to answer some questions on the fiscal note?

Kevin Schatz, Tax Department: Kathy Stombeck would be the one to answer those questions, and she is out of the office today. If I know what type of fiscal impact you are looking for, I could visit with the auditor and see if we could work something up.

Chairman Headland: I had Joe Morsett prepare two different scenarios for the next biennium. One would be to allow the trigger to go into effect and what the effect of that as far as revenues would be. The other document shows the difference between what the effective tax rate would be at the 6 ½% rate versus the 4 1/2 % rate, and the amount of revenue difference that we would be discussing.

Distributed: ***Estimated Revenue Impact if 2011 HB 1420 Had Been Passed***, see attachment #1. A copy of the bill, 11.0617.01000, and new fiscal note. See attachments #2 and #3.

Part of the argument put forth from opposing testimony and a lot of the questions were about the money that was going to be left on the table or possibility of money left on the table and the difference between the 6 ½% and the 4 ½% extraction rate. If we go back to the 2011 session, so everyone understands the type of scenarios that we are looking at. I will distribute an estimate as to what the impact to state revenues would have been, had we passed the bill at that time. See attachments #4 and #5. Remember this shouldn't be a political issue, or a partisan issue, but it should be based on what is best for the state. These estimates were based on a bill that was brought forth by two members of the minority party.

Representative Strinden: I'm glad that you brought up partisanship because that is something that I was thinking about a lot this morning. At our party last week I said that we all have the same vision for where we want to get, but we have different road maps. When I look at this bill, I don't see a Republican versus Democrat issue. I think that there is really just a difference in how you see the future. I do think that if we pass this bill, in the first two years we would make money that we otherwise would lose, but I think that in the long term this is going to lose the state money. Some of the other people in this committee might not think that, but I am not opposing it because I am a Democrat; I am opposing it because that is what I think what oil prices are going to do in the future. I am not coming at it from a position of partisanship.

Chairman Headland: Nor should any of us. I am passing this out to make a point. If it was a good idea back in 2011, and there are reasons that the bill was put in: It is what industry has asked for for several bienniums in a row; they want a flatter more certain tax.

Representative Haak: Tax department: It was stated in discussion this morning that this is NOT permanent; that we can come back and increase it later if we want to. Over the last several bienniums how often has this legislature decided to increase a tax?

Kevin Schatz: I don't know if I can answer that question for sure, but I am not aware of any legislation that has increased a tax.

Vice Chairman Owens: We increased the gas tax in 2005.

Chairman Headland: If you look at these two documents (Attachment #4 and #5), you can see that there is uncertainty in oil price and production. But, if you look at the detriment of revenues in the scenario where the trigger is allowed to take effect, and it stays on the whole biennium, we are dealing with a revenue shortfall that will be very difficult to manage.

Representative Strinden: I agree that this bill would help us save a lot of money THIS biennium. What I am concerned about is the biennia going forward and forward and forward... On this sheet that references 2011, which would have been the Onstad / Meier bill, am I reading this correctly that we would have lost out on about $1.5 billion?

Chairman Headland: That would be correct. But, the point would be, if it was good policy to do it then, and we could live without the revenue then, we should certainly be able to do that moving forward in exchange for certainty and predictability for budgeting purposes.

Representative Strinden: I wasn't here in 2011, and there were probably somewhat different circumstances then. This is kind of a glimpse of what could have happened if we had passed this before, and I am sorry that Democrats brought it forward. It is such a huge loss for the next few years.

Representative Schneider: This has come up fairly quickly from our perspective, even if **you** have been looking at it for a longer period. We just saw this on Friday. The fiscal note still wasn't available when I checked last night, so this morning is the first time that we have seen a fiscal note. It doesn't address the deepest concerns that I have for what happens to the revenue that we need from these one-time resources to meet the basic needs of our people on into the far future. I think that there were a lot of questions that were raised this morning, and until we can get someone who can address those questions, I won't really be comfortable moving forward. I think it would be irresponsible of us not to know what is going to happen in 2-4-6-8 years when this is going to impair our water projects, schools, and our basic needs. I hope we can wait to get answers to those questions.

Chairman Headland: This is what we face every biennium. There is uncertainty about what revenues will be, but the fact that you will be back here next session, and you can put forward any legislation that you feel is responsible for any purpose, is a luxury that any legislator has every time they come back to the next legislative session. All revenues are reliant on the way that the economy moves along. What we have tried to do is provide an environment in which the economy can grow and tried to ensure that revenues will be there for the future because of growth. No one knows what the effect of the income tax cut, that we just passed, will be 8-10 years down the road. That is why we meet every two years, so we can address those things.

Representative Klein moved a DO PASS on HB 1476.
Representative Dockter seconded the motion.

Representative Froseth: A lot of the conversation has centered on the fact that the trigger will NOT go on, and the prices will come back up. We are anticipating losing a lot of revenue when that happens, but if the trigger does go ON, which it is likely to do, and stays on for 10-11 months, I think that everyone is looking for stability in the revenues. We would like to build that into our budgets in the future and depend on the money to be there. I would like to see a flat tax eventually. I don't know if this is the right time or not. If we are going to do it, I would like to see it around the 10% range rather than the 9%.

Representative Kading: I think this policy of having a random percentage tax is not good policy. The state can't budget on it. It is not good for industry. We can't get an 11 ½% tax without a trigger, that won't pass the floor, and we are not going to get a 5% tax through without a trigger. I think that 9 ½ % is a good middle ground to start at. It is clear that if we don't pass something like this, we are going to have some fiscal troubles in the next biennium. One thing to remember is that we are taking this money from private investors. This money isn't our money; it is private investor money. It is not that we are losing it; we are just not taxing it. I think that this bill could result in more revenue or less revenue. It is impossible to predict the oil prices, but it is the best decision that we can make at this point.

Representative Mitskog: Certainly, there are questions about what is the right tax. But, we are in the last week, and where was this bill a month ago? Chairman Headland, you had a wonderful speaker in here the first week of session that raised questions and concerns about this commodity that we are so dependent on, and that it was going to be in a decline for quite some time. So, I go back to the question, where were the discussions? To have this dropped on us at the end, and to make this hasty decision, I would like this studied. What is the right tax? I think that there are questions that will surface this afternoon. To be impulsively and reactively making a decision is a bad choice.

Representative Strinden: Representative Kading said it isn't our money, that it is private investment money. When it comes to the oil extraction tax, I think that out of all of the taxes that this is North Dakota's money. We are literally taking it out of the ground, and all of the proceeds are going out of state. I think we shouldn't cheapen ourselves and give our resources away too easily.

Representative Haak: I also want to remind the committee that this 6.5% tax is the people's tax. They voted on it and wanted this tax. The triggers were through legislative action by bipartisan people. The 6 ½% was voted on by the people of North Dakota.

Chairman Headland: It was voted on by the people when the production wasn't near what it is today. At that time I don't think anyone could have envisioned what it could mean.

Representative Hatlestad: During the time leadership was considering this bill, was there ever any thought of a gradual reduction of the tax? For example, kick it right away from 11 ½% to 11% and then gradually reduce it to whatever figure we determine is a satisfactory compromise?

Chairman Headland: In the meetings I attended there wasn't that discussion.

Representative Froseth: I understand the frustration that all of us get at this time of the session when decisions have to be made in a hurry. Every session we get delayed bills that come in the last week. This isn't something that is new this session.

Representative Steiner: I agree with Representative Hatlestad. Perhaps people would feel more comfortable if we gradually stepped it down over two or three years. Then it wouldn't be such a drop. Maybe start in 2016 at 10.5 and then go to 10 and then to 9 ½%. I think that there is support for the 9 ½%, but there is some concern about how quickly we get there. His proposal was to step it down ¼ % over six years. Even if we did a little bit and get there in 2018; there would be some way that the companies would know it was coming, and we would be budgeting. There still would be certainty, but it wouldn't be so all of the sudden.

Chairman Headland: These discussions **have** been ongoing. The reason this bill didn't get heard until now was that we didn't have any idea what was going to happen, how long term or what the trend was going to be on oil prices. When it was made clear in the March forecast, that is when the discussions really ramped up. This is a bill that was discussed with industry, with the tribal leaders, and it was discussed amongst leadership. This is the end result of those discussions. Granted, there may be some unhappiness with all the parties involved, but it is a compromise. I don't think that industry will go along with giving up the triggers at all for a ramp down tax. I don't think that the tribe is necessarily going to support a ramping down of the tax over bienniums. The tribe, as they indicated, is looking for some flexibility and would like the opportunity to increase the tax as the price of oil increases. This is legislation that comes from discussions and a lot of meetings.

Representative Schneider: I appreciate that **some** people have discussed this, but certainly I haven't seen the evidence of bringing together the good minds and good ideas that we have in this state on a broad basis. Both Rep. Hatlestad and Rep. Steiner suggested other ways that we might be able to do this that might be better for the petroleum industry and for the citizens of North Dakota. I think that we should be taking the time to thoughtfully discuss and decide on it. If my math is anywhere near close, it is pretty shocking. It looks like in the short term we might gain about $816 million, but after that, using Moody's estimates, it looks like we could lose over a billion dollars per biennium after the first biennium. That is an awful lot of money that we could use to do good things for our state. I think that this is the first of the tax bills that has not come with a fiscal note that we can discuss and no one to answer the questions. I have questions about how this will impact our people in the future.

Chairman Headland: I ask you about any fiscal note that you have gotten, where legislative council looks into the future with certainty. Can you tell me one?

Representative Schneider: We've at least had the opportunity to ask the questions of the experts. We don't have that opportunity with this, the biggest bill of this session.

Representative Mitskog: This is a commodities based state. We have had peaks and valleys in our two big commodities, oil being one. Go back to *studying taxation*. Rather than making hasty decisions, look to the agriculture industry. When the farmers are in a critical situation and markets drop out, they don't make hasty decisions. They don't sell the farm. They tighten their budgets and ride out the storm. To make a decision so quickly with so many unknowns for the future... I think questions have come up again today. We have seen peaks and valleys before. I ask why have we not studied this?

Chairman Headland: The last time it lasted 17 years. Are you prepared to go it out 17 years?

Representative Mitskog: I don't think that anyone wants to go back to that period of time, and I don't think that there are any indications, right now, from our analysts that are suggesting that. But to make such long term changes to our taxation in the eleventh hour, I am wondering if that is the wisest thing to do.

Chairman Headland: I don't think that this bill has **not** been thought out. **You** have maybe not been part of those discussions, but **I** have been. It has been thought out for a while now. It's taken some time to get to a position where we decided for the necessity of budgeting, we needed to introduce it. So, it is on the table today. We can study commodities and taxation. But this is an extraordinarily different tax that is not applied against any other commodity in this state.

Representative Froseth: I don't know if anyone can come up with a fiscal analysis that would hold true. There are so many variables. We have 100 fewer rigs drilling in the state right now than we had a year ago. Each rig is capable of drilling eight new wells in a year's time. That would be 800 new wells that aren't being drilled in the next year. I read, somewhere, that it takes 47 wells coming online every month to keep our production at 1.2 million barrels. From January to February we had one new well come into production. Unless we keep the oil companies working, the volume is going to go down, and our income is going to go down no matter what the tax is. There are a lot of things to take in consideration. We have to look at the big picture, and what is the best all-around policy to keep them all working. If there are 100 less rigs working, that is about 10,000 employees that are not earning money, paying income tax, and sales tax. It is a big loss that is more than just the oil tax revenue.

Vice Chairman Owens: I appreciate the point of looking forward and not jumping to conclusions. But, I want to remind everyone that this isn't a quick jump or reaction. Last session HB 1234 sought to do this, and it stepped it down. It passed the House and went to the Senate. The Senate had a bill, 2236 I believe, that also sought to get rid of the triggers. All this was a proactive approach to getting rid of the triggers, **prior** to us getting in the situation that we are in now. What has happened is that we are still trying to become proactive rather than reactive by going ahead and putting this bill in **now**. In my opinion it is too late to put in the step-down now. I liked the step-down; my name was on that bill, but when it came out of the Senate it was completely different. It didn't do what it was supposed to do, which was to eliminate the triggers and go to a flat, stable, predictable tax level that we could use to predict revenue. We are not jumping the gun. We have had commentary in 2011 and 2013, and now we are up against the fence.

Representative Schneider: In deference to Rep. Froseth, I would say that if our future is that uncertain, then my biggest concern is that we're doing a short sided fix for something that might turn into a long term mistake. The permanence of it is really unsettling to me. In so many of our other tax bills we have allowed for studies, or sunset provisions, or a set term. Here we have the one that has the largest impact on our state's revenue, and we haven't done that. I think maybe this should be a short term issue.

Chairman Headland: Every legislature is suspect to the next legislative assembly. That following assembly can make changes. If we come back next session and regret making this move, we certainly can change it. Those are things that legislatures do all of the time.

Representative Schneider: It says permanent in there, and it does not have to. I presume that there is some intent that goes with that verbiage.

Representative Strinden: I don't really care when this was introduced, I feel like I would feel the same way about the bill either way. I think that the sheet about 1420 is pretty telling. It has a loss every single month June 11th through February 15th. I don't think it was good policy in 2011, and I don't think it is good policy for us now. We may see some short term gain in the next couple of years, and that is really enticing, but the fact that this bill is so far-reaching, it could **really** have some negative consequences on our economy.

Representative Haak: I would like to call the question.

A DO PASS motion was made on HB 1476.

A roll call vote was taken: Aye 10 Nay 4 Absent 0
The motion carried.

Rep. Mark Owens will carry HB 1476.

Date: 4-20-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1476

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. Klein Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK		✓
VICE CHAIRMAN OWENS	✓		REP STRINDEN		✓
REP DOCKTER	✓		REP MITSKOG		✓
REP TOMAN	✓		REP SCHNEIDER		✓
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Owens

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

REPORT OF STANDING COMMITTEE

HB 1476: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1476 was placed on the Eleventh order on the calendar.

2015 SENATE FINANCE AND TAXATION

HB 1476

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Brynhild Haugland Room, State Capitol

HB1476
4/21/2015
Job #26323

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alicia Grove

Explanation or reason for introduction of bill/resolution:

A bill relating to oil extraction tax rates and exemptions; to provide legislative intent; and to provide an effective date.

Minutes:

Attachments #1, #2, #3, #4, #5, #6

Chairman Cook opened the hearing on HB1476. All committee members present.

Sen. Cook -- Opened the hearing and welcomed Rep. Carlson.

Rep. Carlson -- (Attachment #1 Proposed Restructuring of Oil Extraction Tax) It's good to be able to come two days in a row and say basically the same thing. It's probably good to keep thing rolling along while it is fresh in everyone's minds. I will explain the bill to you and what it does. This bill is a trigger on the trigger. It establishes that if the large trigger were to hit which means that the price of oil for 5 consecutive months must average below $55.09. At this time today the price is above the trigger but most of the month it has been below. It appears that April will be the 4th consecutive month of having the trigger price met. If the trigger is met the tax on extraction would go down and there are taxes within that tax and one would drop to 2% and one would drop 6.5%, depending on whether those are old or new wells. That would be a tax rate of zero for many of the new wells on the extraction side of the tax. In the House we did not pass the emergency clause. We did not have the required 2/3 vote to pass that which means that the bill would not go into effect until the normal time in which bills go into effect which would have an effect on lowering the fiscal note because that would have an effect on that month where nothing was to happen or the triggers would take place. 4.5% would be the yield but it does not take away some of the exemptions in the bill. It does not take away the production from stripper well property or an individual stripper. It does not take away the secondary or tertiary recovery projects that we have had exemptions for, and it does not take away the exemption for the production of wells drilled and completed outside the Bakken and Three Forks formations. Those were in place for a reason: it was to incentivize that drilling to move outside of that circle of where the very best producing wells are at. Those items are not taken out of the bill. When we started this biennium the governor's first projection was oil to be priced between $74 and $82/barrel and we would produce between 1.22 and 1.4M barrels a day. In January we lowered that forecast to 1.2M barrels/day and we lowered the price of oil. That reduced the revenue anticipated by $4B. In March we had a reforecast by Moody's and they agreed in that forecast that they thought the likelihood of the trigger hitting was pretty evident so they built in the trigger happening in their forecast. We further lowered that forecast to $3.4B instead of the $4.2B. At this point in time, with their forecast, we are almost $5B less revenue than we projected when the governor had his speech to us in December. People have said why are you moving so fast and why did you wait until the 70th day? We have watched the revenue go down and down and we've also done projections. We are here to decide what is fair, equitable tax policy on oil for the state of North Dakota. Not how much money we hope to gain so that we can spend more. This would make it a rate of 4.5% on extraction, 5% on production. With all those numbers going down, they told us if the trigger goes on in June and does not stay on for the 10 months we predicted in our forecast but stays on for 2 years, now the revenue from oil would be $2.2B, a $6B reduction from what we anticipated when we started this projection way back in December and January. We have lost $850M to date, only because of the price of low oil. It had nothing to do with anybody's triggers. When we did our final projections, we assumed that we would hold 1.1M barrels of oil production a day and that we would have a graduating price where the price of oil would increase $4 up to mid-50's range over the course of the biennium. That's what we based it on and we assumed that there would be no less than 100 rigs producing. Today there are 94 rigs. There are 920 odd wells to be fracked. We normally frack 135 wells a month. Last month we fracked 45 wells. We have seen a tremendous downturn in production and the laying down of rigs. Some believe that we will fall below the million barrels of oil a day. The industry does not fire their rigs back up at $38. They say it better be $70. So was it prudent to look at the tax structure and see that we had some type of a stable environment for the taxes for ourselves as predictable revenue and for the industry to have one? My answer was yes and that is why the bill is before you. (meter 9:00- 13:14) I think this is sound responsible tax policy and I would hope that you would pass the bill.

Sen. Cook -- Rep. Carlson, I've got to ask you one question: why the trigger on the trigger? Why don't we just do it?

Rep. Carlson -- There's politics and there's policy. I was and am on your side and believe that we need a very definite tax policy. If you follow the news today, the news was about how much money we were going to lose to potentially spend. I don't believe that there is the appetite, but what is that number? If you went to the industry, you would get a different number, if it was an immediate drop, then you would get if you are going to have the trigger that may or may not happen.

Sen. Triplett -- You indicated in your testimony that you think this is good tax policy for North Dakota and you said you wanted a fair and equitable tax policy. I am asking you how do you justify this relative to the oil industry? How is this fair to the industry when we have had this triggering mechanism in effect since 1987 and they came to the state with this in place and now the very second that it would take effect, you try to pull the rug out from under them and, but for the emergency clause not passing, would have done that?

Rep. Carlson -- We obviously didn't do this in a vacuum. We talked to the oil industry and talked to the people who are actually investing billions of dollars in our state and they said a certain number of us who believe that we are going to frack some more wells and drill some more wells if we get the 6.5% reduction. We talked to others who said it will not make any difference to us. We want a flat rate. We want a new rate and be done with it. It is a tax increase on them. They are on new wells and even old wells are going to be paying more tax.

Sen. Triplett -- It's a tax increase in the short term because they were expecting the trigger to go on; it's a tax decrease in the long term. You are saying in your understanding the industry is with you on this?

Rep. Carlson -- Some in the industry like it and some don't. Our job is to create public policy and to have a stable policy. We don't have a floating rate on sales tax. We don't have a floating rate on gas tax. Our policy is consistent to have a standard rate, I believe. Let's remember that in 2009 we missed by 2 days and .32 from having that trigger go on. We were almost in a panic mood before we left as to what to do because that would have cost us no less than $100M that we had spent.

Sen. Triplett -- I don't disagree that uniformity and predictability is good tax policy. My question is more about the immediacy of it, in terms of not giving the industry time to plan for this. If we were to do this but have a delayed effective time, 6 to 12 months, so that they could roll into it, wouldn't that be more fair to the industry than cutting it off so abruptly?

Rep. Carlson -- Yesterday it was mostly assumptions in our debate on the floor of the House. It didn't end up being about the bill. It ended up being about lowering the tax. This may never happen, although we are assuming that it will take place. Sen. Cook's position is to do it right now and get it over with. You are on the other side of that, let's see if we can wait a...

Sen. Cook -- I'm not sure that she is. I think that she is concerned about losing this trigger for 4 or 5 months. It's got a benefit to it, but...

Sen. Triplett -- Have you considered how this bill, if it passes in the form that's it's currently in, how it would affect the tribal compact that is currently in force with the Three Affiliated Tribes?

Rep. Carlson -- We have looked at the compact and we have had discussions with the Native Americans all along on this and I'm glad to see that they are here today as well as yesterday. That's a question that you have to ask them. The compact that we are presently in says that we are joined at the hip. We believe that is still the case. (meter 18:20-18:28)

Sen. Triplett -- Before you drafted it or before you presented it, did you discuss it?

Rep. Carlson -- We had that discussion. I have a copy of the compact. I believe that we still okay.

Sen. Triplett -- You did discuss a comparison with Texas and the Eagle Ford, in particular, in terms of tax rates and suggested that your opinion is that we should be in the middle of the pack. Can you tell me what research you have done to believe that tax policy makes any particular amount of difference in terms of where oil companies invest?

Rep. Carlson -- Ask anybody in Alaska what has happened to their drilling rigs because they have the highest oil tax in the nation and they have lost most of their production and new production.

Sen. Triplett -- Have you done any research relative to economist or tax policy experts or even fiscal analysts for major oil companies, do you have any legitimate research that will support your position that tax policy makes much difference to decision making?

Rep. Carlson -- I don't know that I said it makes a difference, I said a consistent tax relative to North Dakota is more important to me. How does it directly affect North Dakota? The comparison was, that was my point, that we are not high, we are not low, we are in the middle. We are taxing a private resource. This is not like Alaska that has federal lands. These are private individuals that own a majority of this resource in North Dakota and we are taxing them as well as the industry.

Sen. Cook -- Just for your reference, page 77 of your red books, you will see all of the taxes of the other states, the oil taxes, and the one that sticks out and we are not very competitive with is Oklahoma. This is one of the best charts you will find as far as tax policy of the other states on oil.

I had some communications with Kathy Strombeck and she tells me that the effective tax rate for oil taxes is 11.15. She also tells me: that's the highest it's been in history. It is going down and the bottom is 6 or 6.1 and if you look back to this research that we got early in the session, you will see that the effective oil extraction rate that they are using is 6.1%. To me that is the challenge we have, an effective tax rate that in less than a year can go from 11.15 to 6.1%.

Sen. Wardner -- I see everybody here now that I saw yesterday, so I will not repeat. I support the concept in HB1476 that would bring more stability and lead to more investment in North Dakota. This would mean more jobs and would mean more economic activity which would increase the revenue that would go into our general fund. It would cut down on the revenue if everything were the same as far as the oil tax revenue. Any time you have more activity, more investment, that means that production is going to be up. When you take a look at tax revenues, the price dictates and also the production. If everything were the same, the revenue under the new tax rate would put less money into the oil tax buckets.

Sen. Dotzenrod -- We've had a real tremendous growth in the oil business over the last 8 years or so with the oil boom going on with a rate of 11.5%. If we remove the triggers to achieve the stability and predictability that you talked about, why would we reduce the tax rate at all?

Sen. Wardner -- We would lower the tax because as long as the oil prices were high, not a problem; as soon as the oil price came down below the $70, the rigs start stacking up north of Dickinson. They have continued and the price plays a part in it. Price is a big factor in an oil company's decision. The tax rate is also a factor.

Sen. Cook -- Don't you think that it is the ability to make a profit that's the biggest factor and that, as you look at your expenses and the prices you get, taxes are going to have an influence on the bottom line?

Sen. Wardner -- That's true. Those 2 things lead to profitability.

Sen. Cook -- Especially as we compete with other states.

Sen. Triplett -- Yesterday you said that they started to take the rigs down and take them out of the state when prices started going down. Today you said the rigs are down and stacked up north of Dickinson. Do you know how many rigs have actually been removed from the state versus just been laid down?

Sen. Wardner -- I know that we were at about 190. We are now down at about 90. That's a hundred rigs and I am told that there are approximately 70 rigs stacked up around the state and the rest, 30, have gone to Colorado and Oklahoma.

Sen. Triplett -- So both answers are correct. I have 3 questions: why do you think this is fair to the industry? The bill would have literally put this new formula into place the second it went on and would have given a pretty large tax break to the industry in the immediate future for some unknown period of time. How is it fair to make that change with barely a month's notice?

Sen. Wardner -- The fact of the matter, if it wouldn't have been for visiting with other people in the industry, I wouldn't think it was fair at all. Without any discussion with them, they would have gotten the tax holiday first. My feeling is that they were willing to trade that for the lower rate.

Sen. Triplett -- Mr. Ron Ness came in yesterday and I listened to his testimony also and he said he was testifying in a neutral capacity on the bill but the testimony seemed kind of negative to me. So I'm wondering, is the industry really on board with this?

Sen. Wardner -- I wouldn't say that they are completely on board. They are kind of on board.

Sen. Cook -- Hopefully we will get some indication when they testify.

Sen. Triplett -- How do you think this affects the tribal compact? Have you thought about it? What's your best information?

Sen. Wardner -- If the tribal compact stays in, unless it's broken by either side, it's in play. It will definitely take away the chances of the exemptions going on and really lowering the revenue. In the long term I don't think they are in favor of the rate that is in this bill.

Sen. Triplett -- The compact says that they can't charge a tax that is greater than 11.5%. If we drop ours down, there may be some issues. I will hold my questions for Mr. Walstad on that. Did you seek legal advice from the tax department or legislative council or anyone else to understand what the real implications for the tribes were before you proposed this?

Sen. Wardner -- Last year I spent a lot of time on it. Not this time. You have a point that it does say that in the compact. They can't charge over that.

Sen. Cook -- I can tell you that I've had a conversation with Mr. Walstad on this issue and we will have him address it. He is working on an amendment.

Sen. Triplett -- What research have you done to understand that tax policy matters to the industry and, if so, to what degree does it matter in their decisions of where to drill or where to make investment?

Sen. Wardner -- It would be from reading different periodicals that talk about the oil industry and the CEO's and what they are thinking as far as their investment in the oil industry and where they are going to invest their money. There is no question, they have money to invest. They take a look at the different oil plays that they are involved in and decided where to put their money.

Sen. Cook -- Mr. Walstad would you step up and answer some questions.

John Walstad, Legislative Council -- Not for or against. My mission for being here is to do what the committee would like, educationally, and line by line is not necessary. Do you want to highlight?

Sen. Cook -- One issue that keeps arising is whether or not the tribal agreement would need to be redone if this piece of legislation passed in its current form and you suggested that there should be language somewhere that if the agreement needs to be redone, subject to the approval of 1476, it would not be subject to the language that we have in 2226, correct?

John Walstad -- That would be my advice.

Sen. Cook -- You are thinking that maybe the agreement, if 1476 passed in its current form, that the agreement would have to be redone. You are thinking or you know?

John Walstad -- I don't know. That will have to be determined. The agreement says that the total oil tax on the reservation cannot exceed 11.5%. It doesn't say that's what the rate is. It doesn't say what the rate is. It just says it can't exceed 11.5 and it doesn't say that it is the same rate as imposed by state law. To me, it is unclear. By unilateral action, the tribe could say we will use the rate that is in the bill that the legislature has approved and I don't know if they are inclined to do so. There is a question there. There is another question in the language in the agreement that says all of the extraction tax exemptions apply to production on the reservation at least on trust lands, except subsection 8 & 9. And 8 & 9 are the 5 year exemption for drilling on the reservation and 9 could be an old provision that's expired or it could be the small trigger that is currently subsection 9. To me it is not clear whether the agreement needs to be redone but if we leave here without making provision for that possibility, then 2226 says you can't have an agreement put in effect without confirmation by the legislature and that's 2017. I think it makes sense to put in a measure that says...

Sen. Triplett -- What happens, given what you just said, if we pass this as is without amendments, and then we put the little provision into the other bill that would allow us to fix it but what if the tribe chooses not to fix it and then we have 2 years or more than 2 years with differential tax rates between the non-reservation part of the state and the reservation. Does that create any problems in your mind? What would be the issues if that scenario played out?

John Walstad -- I don't know what the answer is. That would be a possibility. The Three Affiliated Tribes is a sovereign entity and can make its own policy. They don't have to be part of this agreement. It's in their interest to do so because state regulation and state collection comes along with that.

Sen. Triplett -- That's not my question. I think I heard you say in response to Sen. Cook's question that, given the way that the compact is written, that they could stay with the compact; they could choose not to get out of the compact, still accept the regulatory mechanisms that we have, still accept the tax collection piece, they could simply choose to have a different tax rate and still be within the boundaries of the agreement. Assume that scenario for a moment, what problems does that cause for the state tax department or the industry in terms of how you even figure out what the taxes are, if you have a well that has a lateral with 1 mile outside the reservation and 1 mile inside the reservation?

John Walstad -- An inside the reservation, fee and trust land. There are all kinds of possible difficulties.

Sen. Cook -- But first we should find out what's the answer to the question. We've got to get the legal counsel as to what rights and freedoms do they have with their current agreement, despite what happens in this committee.

John Walstad -- One of the rights, if this legislation becomes effective and reduces the rate to 9.5%, the tribes do not have to agree that that's the tax rate on the reservation.

Sen. Triplett -- Just to be very, very clear about this, they could make that choice without violating the compact, correct?

John Walstad -- I kind of think so. It says the rate cannot be more than 11.5 and if the tribe said okay we will do the 9.5, it wouldn't violate the agreement. The part about all of the exemptions applying, the exemptions would largely be gone, so presumably that could be interpreted that any exemptions that remain apply, stripper wells, etc. Perhaps the agreement doesn't need to be changed. If we find out a month after the session is that it does, then there's a 2 year wait.

Sen. Cook -- But there's a relationship between the tax rate and the trigger, right? Can they let the trigger not kick on if they don't follow the rate, the agreement? We've got a trigger that is looming of kicking on. The tribes don't want that trigger to kick on either.

John Walstad -- The agreement doesn't refer specifically to the trigger but it does refer to the exemptions and it says they all apply and most of them are triggered.

Sen. Cook -- So before we have much more dialogue on this, we recognize that we are going to get some legal advice.

Sen. Triplett -- It's not my objective to solve all of the legal problems, but to point out that there are questions which apparently have not been thought through in the drafting of the bill. I think we have accomplished that.

John Walstad -- I thought about these things when drafting the bill. I don't know if there is an answer out there. There is not a case somewhere that has this exact scenario and says here's the answer.

Laney Herauf, Greater North Dakota Chamber -- I want to let you know that we fully support this bill. We see it as a valuable way to provide some stability, reliability, and predictability for the oil and gas tax and we think it is a really good idea. We request a do pass recommendation.

Brent Sanford, Mayor of Watford City -- I am here to speak in support of HB1476. As an elected official from oil country whose community survives on gross production tax, my message is that we cannot let this trigger happen. I am very relieved to see some action of this issue this legislative session. (meter 43:43-44:57). Urging a do pass.

Sen. Triplett -- You are aware that this bill only relates to the oil extraction tax and so, being in the oil patch, your community would still have access to the gross production tax and all the support that you get from that.

Brent Sanford -- I wanted to make that clear to differentiate from our neighbors from Three Affiliated, they received both taxes so what they are facing is different. We have the same issues but we are paid differently.

Sen. Dotzenrod -- In your testimony you talked about that we really shouldn't let this trigger come on. We should find some way to avoid that. You didn't say anything about the tax rate. What would you think if we got rid of the triggering, kept the 11.5%, the 6.5% extraction tax, how would you feel about that?

Brent Sanford -- That is the crux of this whole issue in here. I can tell you from 9 years on city council and mayor of Watford City, we have had to make these same decisions: do you increase the sales tax rate? Do you increase the mill levies? Do you increase permit fees? We've gone from stray dogs in the street to 4 story buildings being constructed. Our fees have gone up tremendously. In a very similar situation it is tough to look at this and say we are going to take our revenue and drop it 2% when you are already charging 11.5. You've already got ways to spend it. The citizens tell us if it is fair or not. Your mineral owners and your oil production companies would tell you that it would not be fair to keep the rate at the highest level but take away incentives at the bottom. In effect, that would give them a tremendous tax increase for this upcoming year when they are looking at the trigger kicking in to give them some relief from the 11.5% tax.

Sen. Cook -- In all due respect, if I looked at the tax rate of McKenzie County, the mill rate, and compare that rational to this, I think this extraction tax would probably end up about 1.5%.

Brent Sanford -- We don't have enough time for that.

Testimony opposed to HB1476

Mac Schneider, Senator from Dist. 42 -- I am testifying in opposition to this **bill (Attachment #2)**

Sen. Cook -- We can get all kinds of projections. We can go to somebody else besides Chicago Mercantile Exchange and get another projection but the bottom line is we have a tax mechanism on oil that creates an effective tax rate from 6% to 11.15% and we have no control over that, virtually. It's going to swing back and forth. To me, that is ludicrous, do you agree?

Mac Schneider -- I would disagree that that matter is out of our control. This was not put in place by supernatural beings.

Sen. Cook -- It was put in by us and we can control it and fix it right here. That is the intent of this bill. It takes that swing from 6% to 11%. I would argue that it takes it down to 9 to 9.5. If that's not the right solution, then what is?

Mac Schneider -- I believe that Senator Dotzenrod and Senator Triplett are going to have some very productive solutions when the committee begins work on this bill this afternoon. This committee has forgotten more about tax policy then I'll ever know. I'm here to urge the committee to focus in on what's the issue and that is the trigger and we do have that under control.

Sen. Cook -- We do focus in. You want to see the trigger go?

Mac Schneider -- I don't necessarily want to see the trigger go. I think pulling the rug out from under the industry during this down time, that wouldn't be the best policy. But maybe we can update it for the era of the Bakken and provide some sort of meaningful incentive to continue investment in the Bakken during this down time but also not absolutely destroy our 2 year budget.

Sen. Cook -- That sounds like a lot different rhetoric.

Mac Schneider -- It's a different day.

Sen. Cook -- I counted your 30% comments in your testimony yesterday and it was only in there 8 times but I think you said it close to 30.

Mark Fox, Chairman, MHA Nation -- We would not oppose the bill with the amendments we propose. **(Attachment #3)**

Sen. Triplett -- Have you had a chance to do the legal analysis that I was quizzing Mr. Walstad about in terms of what the implications might be if we pass this bill in the form that you don't like?

Mark Fox -- We continue to look at those impacts, legally and otherwise. Our first concern, obviously, was impacts to revenue. We are looking for opportunities to reserve as much of that as we can in this whole process. And, yet, adhere to our goal of trying to stay in the agreement. This is our goal. We think the agreement can and is a good thing, generally. As far as the legal questions on how that is going to take place, we did have discussion since that time and yesterday, a lot, about what it would take on amending our compact, what it would take to addressing our issues and maybe there are opportunities there to attain what we are looking for without touching it. I don't know. Those things need to be worked out. That is part of the argument that we have been making as well, too. When this session ends, the opportunities for our government, our tribal nation, and the state to enter into agreements or discuss issues and resolve them should not end and we delayed for 2 years. We are very concerned about that whole process and I think that you will hear that from other tribes as well. (meter l:04:07-l:04:37)

Sen. Triplett -- If this bill were to pass in the form that it is and we are left with the other bills to try to do something to help with the process, if we can't come to a better agreement about the 2 year delay would it be your preference that we would leave in place the idea that the tribe could negotiate through our executive branch, through the governor's office, and resolve things without having to bring it back to the legislature?

Mark Fox -- If the end result of that negotiation, if it's open for that opportunity for us to address how the tax rate is going to be different on Fort Berthold versus the way it may end up being under this bill off the reservation, yes. That is what we are after here. If it can be resolved in this bill to provide that exemption that we are asking for, I think the large part of it is being addressed, and we can go from there.

Sen. Triplett -- I have been hearing you and your colleagues from the Three Affiliated Tribes saying that your larger issue is to better define the process of the state legislature and executive working with the tribal government. We are running out of time here as a legislature so I'm saying as a default fallback position, if we don't get it worked out to have a better process the existing process of you working with the governor's office is better than what is currently being proposed in the other bill. Is that a fair statement?

Sen. Cook -- Which isn't before us right now.

Sen. Triplett -- Which isn't before us right now, I'm a little out of order.

Mark Fox -- I can't answer that with an honest yes and here's why: we do have a process that exists to some degree to negotiate with the executive branch, to enter into agreements. It's worked in some minor situations. And it's worked under our motor fuels agreement but the minute we became more aggressive this last biennium about putting other things into play, we were constantly being pushed back to say once we get to a certain development point, between our government and the state, we are being told that is something that has to go before the legislature. We are confused. What does and what does not? We sought clarification. The biggest thing that we are looking for is to create a process in which we can resolve our differences at the table. On the North Dakota side of it between the executive and legislative branches, you figure that out. Our government is here. We sit at the table. We pass things. We get them ready to go. It doesn't mean that the state or the governor has to sign off. It means that it is on the table to discuss for mutual benefit and that is what we are looking for.

Sen. Cook -- Chairman Fox, it wasn't too many night ago, every member of this committee was wearing a button that say the best government is run by Cook. Last Friday you shared with me some concerns, first time I ever heard them, the concerns that you had regarding alcohol tax, pipeline tax, bulk fuel delivery tax. Now I've got a delayed bill here that will solve the motor fuels tax but I don't dare introduce it because it's too late in the session. The point that I am making is our two different government, I know how you operate, and we do have a different way of passing laws that affect the citizens of North Dakota, of which you are also citizen members. It brings certainty every 2 years. We go home and the people know that for the next 2 years, nothing is going to change. We can work better together and solve a lot of these problems without it taking 2 years but there are some times where 2 years is good.

Sen. Bekkedahl -- On your second page, I think I understand it but I want to make sure. You are talking in your third provision where it says adding a provision exempting trust wells from the reduced tax rate, that's referring back up to the first provision where there is a 2% tax reduction for a time certain for sunset, is that correct?

Mark Fox -- That's correct. If the bill passes, what we are asking for is about set to pass, we are asking for that amendment that says that if it passes and you reduce and create a flat rate that won't be applicable to the wells on trust within our boundaries.

Sen. Bekkedahl -- The differentiation is you have trust lands, you have fee lands within the reservation boundaries, so the reduction would still apply to the fee land wells, is that correct?

Mark Fox -- That's correct. What we are doing in that sense, we are trying to cut to the chase. There are probably many of my own constituents and others from my reservation who would say, exempt all the wells. What we are trying to do is we are trying to work with the system, work with industry as well. If industry says every single well is going to be stuck on 11.5% subject to our negotiation, they might not be as apt to support but if they say, okay a portion of those wells, as much as 40%, would be under the current system of reduction then that might put us in a position to better negotiate this amendment.

Richard McCloud, Chairman, Turtle Mountain Band of Chippewa -- I am here to support HB1476 with the amendments proposed by Chairman Fox. **(Attachment #4)**

Steve Sitting Bear, External Affairs Director, Standing Rock Sioux Tribe -- I'm here on behalf of Standing Rock Sioux Tribe to testify in support of the Three Affiliated Tribes proposed amendments to HB1476. **(Attachment #5)**

Tom Ricker, President, North Dakota AFL-CIO -- We are opposed to HB1476 in the current form. Since the governor came out with his budget proposal in December, oil prices have fallen. We've seen quite a few important bills that either have funding cut or slashed to stay within a budget. (meter 1:16:27-1:17:37) Ask for a do not pass.

Stuart Savelkoul, Assistant Executive Director, North Dakota United -- We ask for a do not pass on HB1476. It's not because we know that this bill is a bad idea because we don't know much of anything. I don't normally lobby on tax bills. I lobby on pension bills. (meter 1:18:39-1:22:45)

Sen. Cook -- We are always transparent but we still call it making sausage but as I listened to your testimony, if I'm not mistaken what I heard you say at the beginning "I don't know much of anything", is that what I heard you say on the record here?

Stuart Savelkoul -- I don't know if I said that but it doesn't make it any less true.

Sen. Cook -- You don't have any comments about the bill, though, you are just talking about the process.

Stuart Savelkoul -- What I would say is that North Dakota United was formed as the result of a merger between North Dakota Education Association and...

Sen. Cook -- And North Dakota United doesn't want to see an effective rate go from 6% to 11% either.

Stuart Savelkoul -- See the effective rate go from 6 to 11? As I understood earlier we talked about the effective rate being at 11.15.

Sen. Cook -- And tomorrow it could be 6.1.

Stuart Savelkoul -- Oh, from 11 to 6? No, we absolutely wouldn't like to see that. I see this as a bit of a false dilemma if the choice is either 1476 or an effective rate of 6, then, okay, I suppose the 1476 is a good idea. What we are suggesting is that the right answer might be somewhere in between.

Sen. Cook -- That's why we have hearings.

Sen. Laffen -- Actually retirement plan, in my mind, is a good way to look at these numbers that we are staring at right now. (meter 1:24:23-1:25:59)

Stuart Savelkoul -- I think that is an exact example of a false dilemma. You are saying would you take this or that. My response to that is that it doesn't have to be the only 2 choices from which this committee works from. (meter 1:26:26-1:26:54)

Sen. Laffen -- We are looking for those answers and if you have thoughts on those, we are all ears.

Sen. Triplett -- I just wanted to correct one piece of your testimony about the pension funds, one step that you missed is that after our potential changes for any of our pension funds are proposed, in addition to a committee like GVA, they also go to a special committee. (merit 1:27:31-1:28:10)

Stuart Savelkoul -- I do appreciate the comment. I think most of the folks that are watching the legislative process can see this train on the tracks. I would encourage the committee to take the time to consider any amendments that may or may not come forward.

Sen. Cook -- This committee is very familiar with this issue and we will take due care with the bill. And next time you testify, don't ever admit to not knowing much of anything and we won't ask you so many questions.

Kayla Pulvermacher, North Dakota Farmers Union -- North Dakota Farmers Union is opposed to HB1476. We are opposed to exemption to the oil extraction and production taxes. Additionally we oppose reductions in the rate of tax until the tax replenishes and addresses unmet needs in rural North Dakota and to be forward looking and invest in the future of the state. While we applaud the reform of the triggers provisions, we cannot support the decrease in the extraction tax rate.

Sen. Bekkedahl -- Have you had any time with your organization to review the proposed amendments submitted by the MHA Nation and if that would make any difference in your position?

Kayla Pulvermacher -- I have not had time to discuss with our membership and so I don't feel comfortable putting out a position without our membership being able to look at it at this point.

Ron Ness, President, North Dakota Petroleum Council -- We are in neutral position on this bill. **(Attachment #6)** I do have an amendment. It is attached to the back of my testimony. I urge you to adopt our amendments and pass this bill.

Sen. Cook -- Your amendment, 9% rate is what you are looking for?

Ron Ness -- My amendment is the rate that we've always said, a 9% flat tax started in June 1st. I don't disagree with Sen.Triplett, I've got people that have waited to complete wells. Is that necessarily fair to them? I don't pretend to think that it is. I understand politics. We understand timing and sometimes the unknown is the best way to do it. I've got lots of numbers. If you want numbers, I'll bring numbers. Let's figure this out.

Sen. Triplett -- You started your testimony here by addressing me and saying that taxes do matter and I understand that. My point of my questions to the previous speakers was where do you get your information and tell me the extent to which taxes matter. My point in asking the question is that I think that we, in this state collectively, have not done our research to understand really the extent. We have made all of these exemptions based on exigencies of the moment without really knowing the extent to which they mattered to people. My understanding, from my reading, is that there were a lot of things that mattered more to the industry including the price of oil, the quality of the resource, the certainty of knowing that it is a pool instead of a coral reef and that they can count on finding the oil when they get there. The entire regulatory environment which is pretty darn friendly in North Dakota; distance to refineries which is a disadvantage to us which we are not likely to overcome any time soon. I think there are a lot of other factors that the industry probably takes into account before they even consider taxes. When people just throw taxes out as the only reference point and say we have to compete with Texas. I think that is a pretty unscientific statement. If you would like to elaborate on why you think taxes matter in this kind of environment?

Ron Ness -- I think you are exactly right. I think every one of those factors matter and at the end of the day, when you go to your bankers, you look at what's my rate of return? We have got to look at the Bakken in a different light going forward. (meter 1:47:18-1:49:06)

Sen. Triplett -- A technical question: you have used both today and yesterday in your testimony, I heard you say that, from the industry point of view, the big trigger is a big $76M per month hit. But our fiscal note says it is $44M per month hit. Can you tell us what the difference is there?

Ron Ness -- The information that I've got was derived from the tax commissioner's office. When you look at all of the triggers, all of the incentives, all of the 1.1M barrels drops from 11.5 to 9 and you start looking at all the other incentives and you back in... Remember, every well that we drilled in the last 24 months is going to go from 11 to 5. You get the remainder of your 24 months. Every well we drill is going to go for 24 months. That's the number that we've had and we've been using. So whether it's 44M/month or $76M/month, you get the point. (meter1:50:11-1:50:33)

Sen. Triplett -- So you think that your number is right at the moment and I'll have to ask somebody from the tax department to explain where the 44 came from.

I think you have responded to my question about the tribal issue that I've been asking everyone by saying that you believe it is important that we solve this and end up with the same tax structure throughout the state, do you have a sense of what might happen if we pass a bill that does not pass muster with the tribal government and then they choose to maintain a higher rate. How does that effect your folks?

Sen. Cook -- You don't have an agreement if you start exempting things.

Ron Ness -- I would much prefer that we have a uniform rate. There are many other considerations that you have working within the boundaries, within federal lands, all of those things that you said on everywhere. I think that you start with principal A: what are the things that you can control in the oil world in terms of this? You can't control price. You can try to control your costs. You are going to try to improve your discount on your Bakken barrel, that's critical, but if you can at least plug into my formula a fair and competitive tax rate, whether I'm operating there or here, I think it creates a much better business climate.

Sen. Triplett -- Without making you go through all the potential problems, I think I hear you saying that it is important that we get this right so that we can hold the compact together, is that a fair statement?

Ron Ness -- I would say it is extremely that we hold the compact together and we will stand with the tribe in that statement.

Sen. Triplett -- We are all talking here about the goal of predictability and uniformity. If we get a bill together that we can pass out of both chambers in the next few days that your industry finds acceptable, that the tribal government finds acceptable, that the people of North Dakota don't rush off to do a referral on us, if it's accepted, what is the guaranty for any of us that you won't be back in 2 years if prices are done again saying, we'd like one more exemption?

Ron Ness -- I think Sen. Dotzenrod has asked me that question every year for the last 5 years, correct? What's your guaranty that you aren't going increase the tax on us?

Sen. Cook -- It's a 2-way street.

Ron Ness -- I think this body has a very long memory, as do we, by the way. I know what a deal is. That's find that fair rate.

Sen. Triplett -- You would like to get to a place where we don't have to be revisiting this every year.

Ron Ness -- Nobody would be happier than me if we found a place where we did not have to revisit this.

Sen. Cook -- There is two of us.

Sen. Triplett -- Would you still have a job?

Ron Ness -- I'd gladly take a pay cut.

Sen. Dotzenrod -- It's fashionable now to bash this trigger thing. It's ridiculous. It's antiquated. It's unpredictable, yet it's been in place a long, long time, since 1987. When we had Moody's here in March giving us the economic outlook for the future he talked about the fact that one of the things that he was optimistic about for the future of North Dakota's oil production and possibly keeping our production up somewhat and not fading away as it might otherwise do was the fact that North Dakota offers something that is very attractive to the industry that no other state offers and it's a 2-tiered tax system that allows, in time when prices are significantly down, a mechanism where they can get a reduced rate that is quite substantial. It would be so effective that companies would avoid moving from North Dakota because there is no other place they could go to get a deal that good. He was touting it as being one of these things that would help North Dakota get through this period of low oil prices and really giving it an endorsement or a sense that this was something the industry would be very happy to have. From what I'm hearing from people around the industry, it is just the opposite. Was he wrong about that?

Ron Ness -- With all due respect, the Moody's guy comes here 1 day every 2 years. How has the trigger worked so far? We've lost 100 rigs, 10,000 to 15,000 employees. If you wanted to incentivize those rigs to stay here, you needed something like that in February. This happened in 2009. By the time we got to April the rig count had gone from 90 to 30. Oil was $147 in July of the previous year and it was $32 in North Dakota. A 5 month-x-month average essentially means it is going to be 6 or 8 months before that kicks in. By then industry has had to make its decisions. When you look at the Bakken, this is a huge moving machine that requires incredible capital as do all of the investors that are building the apartments and the complexes and all of the things in Sen. Bekkedahl's district and across western North Dakota. I think he was wrong. I heard him say that and I thought to myself, he's right in a sense that it may do this or that, but he doesn't understand the mechanics of how that works and how industry works. And, by June 1, you had to make your decisions. (meter 1:57:47-1:59:07)

Sen. Dotzenrod -- The large trigger was set up in 1987 and the industry was here in the capitol lobbying and supporting it, it went through the committee process and there was general agreement at the time that something needed to be done so the legislature did this. Is the problem with the system that's in place now is that it is antiquated? Then we didn't have horizontal drilling, we didn't have fracking, we didn't have the huge amount of capital. It was expensive then. It's a lot more expensive now. Has the industry with the tremendous amount of money involved, has everything changed to the degree that what seemed appropriate and reasonable in 1987 isn't a good fit any more?

Ron Ness -- This legislative body essentially re-ratified that in 2001. They amended that trigger and made changes to that trigger. A lot has changed since 1987. The concept in 1987 was the recognition that maybe we went a little too far raising that tax by 130% and we created a noncompetitive situation in North Dakota with the other issues that we have. The legislature began to modify that and tried to create a more competitive tax base for industry. To me it's more about the barrels you produce than what you tax on it from a state standpoint. (meter 2:01:05-2:02:07)

Sen. Triplett -- I would like someone from the tax department to come and answer a question.

Ryan Rauschenberger, Office of State Tax Commissioner -- To explain the issue with the $76M. The $76M is a number that we've had out ever since triggers were looming, starting in January, with questions from the media and different interest groups. $76M is the cost of the trigger using 1.1M barrels per day, $45 North Dakota crude for 1 month. That is the difference between the effective rate of 11.15 and 6.1. That is a number that was out before this legislation was introduced. That is just looking at a forecast of the difference between the 11.1% and 6.1% for 1 month. This is included on our white papers that describes the small and big triggers and the monthly impact. To the $44M that is actually comparing the new proposed 9.5% top rate, the effective rate of about 9.1, compared to if we triggered 6,1%. It's a smaller window, hence the 44 compared to 76.

Sen. Triplett -- Thank you for the explanation. Everyone is right. We are just talking about different formulas.

Sen. Cook -- Any other neutral testimony? Close the hearing on HB1476.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Brynhild Haugland Room, State Capitol

HB1476
4/22/2015
Job #26341

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee Work

Minutes: Attachment #1

Chairman Cook opened the committee work on HB1476. All committee members present.

Sen. Cook -- We have before us HB1476. You have amendments. If you've been listening to the chatter in the capitol, you have heard that Sen. Triplett and Sen. Cook were seen having lunch together in the capitol café. It's true we did and we sat down and had an adult discussion about what we thought was right with this bill and what we thought needed to be changed. We were pretty close on what we thought needed to be done. We agreed that the major problem that needed a solution was the fact that we have an effective tax rate that can have some rather drastic swings from 6 to over 11%. Neither one of us are too fond of the triggered effective date that the bill that we had before us with my name on it had in it. We have been dealing with this issue for a long time and I think if we could go home and put this issue behind us and solve the issue of the tax rate and the triggers in North Dakota, it would be the best thing to do. Regardless of what happens in the future regarding the triggers. You will see an effective tax rate in this amendment that is certain and that effective tax rate is January 1, 2016. If the triggers kick in June 1 there will be 7 months while the oil industry can enjoy a zero percent extraction tax. That is the policy that we are living with and we can both agree, Sen. Triplett, that we feel that they deserve that 7 months. The effective tax rate is January 1, 2016. The other big issue is the tax rate that we would go to. You heard yesterday that the oil industry indicated that 9% was right. We've heard the tribe say 10%. We've heard others say higher. The bill, as introduced, was 91/2. We will have John Walstad come up and explain the amendments so that everyone understands them. We are not going to take a vote this morning. We will come back this afternoon and vote this up or down. The effective tax rate in the bill is going to be 10%, 5% gross production tax, 5% extraction tax. A new twist, we have a long-time exemption dealing with tertiary recovery, the co2, we've had some discussions on that. This was an issue that Sen. Triplett brought to the table. She is not a fan of tertiary recovery so it is coming out and Sen. Triplett I will let you explain your argument on that for the sake of the committee, if you would like.

Sen. Triplett -- Do you want the discussion now?

Sen. Cook -- Yes, right now, please.

Sen. Triplett -- I will confirm now that I brought that issue up and that I thought it was an important issue. We have removed the co2 exemption which would have provided a zero percent extraction tax for any well that used co2 as tertiary recovery method in the Bakken and that was set up as a permanent life of the well exemption. I think it stood to make the effective tax rate in North Dakota 5% for the long term, if we didn't deal with it. It seemed to me exceedingly important that we deal with it prior to the industry making large investments based on that. We have put in an exception for areas outside of the Bakken Three Forks geographic area because there is at least one example that we are aware of where industry has put very large investments into a particular field and it is not our intention to violate the trust that industry had put into the state. Predictability is important for the people of North Dakota, the state as a government, the tribes as a government, and also predictability is important for the industry to be able to make long term plans. (meter 7:44-8:15)

Sen. Cook -- And the last major bill in this bill that you will see, Chairman Fox brought this up, there is a reverse trigger on the bill. If the price of oil exceeds $90 for 3 months any time in the future, the extraction tax will go to 6%, making the total tax in North Dakota on oil 6%. Making the tax 11%. That's the biggest changes in this bill. I will call Mr. Walstad up here to walk through this piece of legislation, section by section, so we all understand it.

John Walstad, Legislative Council -- Not for or against. When you say go through the bill section by section, the whole works? Okay, just the changes.

I had copies made of the Christmas tree version **(Attachment #1)** Mr. Walstad walks through the changes, beginning on page 5, line 13.

Sen. Cook -- This is the biggest change that is new to the committee on that last section that John just explained?

Sen. Bekkedahl -- Relative to these incremental production areas in division a there is a 5 year date of exemptions, in subsection b it's 10 year and also 5 year. None of them are infinite anymore, is that what I am hearing?

John Walstad -- The only one that was infinite was the co2 injection tertiary recovery. The others have a period of years which they apply. They don't all match up. Tertiary recovery, not using co2 is 10 years; secondary recovery, water flooding, is a 5 year.

Sen. Bekkedahl -- By this language, tertiary recovery projects in the Bakken and Three Forks using co2 would have no exemption from incremental production?

John Walstad -- That's correct.

Sen. Laffen -- Are we exempting just the extraction tax or both?

John Walstad -- This affects only the oil extraction tax, the 5% GPT is completely unaffected by any of the changes in this bill.

John Walstad continues going through the bill on page 8. (ending at meter 27:25)

Sen. Cook -- The intent of the study is, from last Friday's meeting that I had with the tribe, there are quite a few tax issues that are out there that need to be addressed. These discussions have been going on but they have been going on in the wrong committee. They have been discussed in the state and tribal relations committee. We need to get them into tax committee where we can find solutions to them and bring the solutions forward. It's important for the tribe to understand with the fix that's in section 6, all they need to do if they want to start receiving revenue from bulk delivery of fuel oil, dyed or clear or whatever, is impose the tax and this language enables that to happen and not jeopardize the agreement. It will be subject to the 70/30 split that's in the agreement. That one particular issue is fixed. The other thing I should point out, again, section 5, the change there is the direct opposite of what the bill had when it was introduced. When the bill was introduced, all of the current exemptions that the industry is enjoyable because the clock is still running, they are in their 75,000 barrels of the small trigger, for example, they would have ended. Now we are giving them to the end of the time. That's a major change.

Sen. Triplett -- That seems only fair to me that we would do that. The discussion in our committee, the whole conversation in finance and tax, day in and day out on all of the bills that we work on, is to try to find uniformity and fairness and for the most part, everything that we do is forward-looking. We don't cut people off mid-stream. We are trying to get to a future that has fair and predictable tax rates for the people and the legislature and the tribal government and the industry. The way the bill was drafted, it failed to keep the commitment of the state that we had made in the previous exemptions. That didn't seem fair to me. (meter 29:49-30:34)

Sen. Cook -- I think that it is safe to say, also, as far as the bill is drafted, my name is on it and I sat down with leadership as this discussion was there. I am glad that we introduced the bill. I'm glad that we got it in before we went home. This issue has been in the hallways, it's been in front of us, we have been dealing with, we dealt with it last session. I think the motive of the leadership was we had to get this issue on the table again to see if we could resolve it before we went home. We listened to the tribe. We listened to the industry. There is a little bit for everybody. There's not everything for anybody. I think it is a great compromise.

Sen. Dotzenrod -- I've got a question on section 6, the waiver of agreement; the legislative confirmation. It looks like we would be saying, if this were adopted, that for the period of time between now and the end of the year, because the effective dates that are on page 13, section 6 is effective from July 1, 2015 through the end of December, 2016. During that year and half there would be legislative confirmation required. Evidently we have some law that says they are supposed to be confirmed. If that is waived, if there is no legislative confirmation, then are agreements then to be made and signed by the leaders of the tribe involved and the state tax commissioner? Only those 2 signatures would be needed, is that what we are saying?

Sen. Cook -- It would be between the tribe and the governor. As far as the fuel tax, there would not need for any agreement to be made. All they need to do is impose their own tax on dyed bulk fuel. The intent is, it ends of December 31, 2016, if we are going to make these changes, let's get it over with. Don't come back 10 years from now and say we want to make the change.

Sen. Dotzenrod -- If section 6 becomes ineffective after December of 2016, the legislature would send down what it would require?

Sen. Cook -- We have another bill, Senate bill 2226, sitting there contingent on this bill, that bill imposes the law that all agreements have to be approved by the legislature. That's in another bill.

Sen. Dotzenrod -- So this bill gets us between here and there. And then section 7, Mr. Walstad said there are really 2 issues here. I think he is separating out the consideration of state tribal agreements from the allocation of centrally assessed property. He is making the distinction between the two.

Sen. Cook -- Many times the agreement is what is taxed, another part of these agreements is the revenue split with certain centrally assessed property, and I am going to talk about pipelines because they are the ones that come up. Pipelines go through the reservation but because the reservation does not impose any property tax, they get no revenue. All of the revenue from the centrally assessed tax on pipelines is distributed amongst political subdivisions, prorated by the amount of mills that they levy. This will allow us to study the possibility of sharing that revenue with the tribe. It is something that we need to get on the table to discuss.

Sen. Triplett -- Following up on Sen. Dotzenrod's question about who approves agreements and the state of the law right now, until the legislature passes 2226, is that we authorized the governor to enter into those agreements. It's a conversation for the other bill when it comes up in discussion. (meter 35:18-36:52)

Sen. Cook -- We will be back into committee right after floor session today. The sole purpose is to have a motion on this bill and send it out with our recommendation. I think, by the amendments that you see, there are two votes to send it out with a do pass. I would hope that there are 5 more come this afternoon. We will recess until after floor session.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Brynhild Haugland Room, State Capitol

HB1476
4/22/2015
Job #26356

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee Work

Minutes: Attachment #1, #2, #3, #4

Chairman Cook opened the committee work on HB1476.

Sen. Cook -- We have before us HB1476. Sen Dotzenrod has some amendments that he would like to offer.

Sen. Dotzenrod -- I will pass out the amendments **(Attachment #1)** We heard a lot of the testimony, yesterday and today, about the triggers and the big swing back and forth so what this amendment does is it eliminates the triggers and it leaves the tax at 11.5%.

Sen. Cook -- Did you want to move the amendment?

Sen. Dotzenrod -- I would move amendment 15.1024.05001.

Sen. Triplett -- Seconded.

Sen. Cook -- Discussion? Roll call vote on motion to amend 15.1024.05001. 2 yes, 5 no. Motion failed.

Sen. Cook -- Sen. Dotzenrod, I bet you have another one now.

Sen. Dotzenrod -- I've got another one. I have the amendment here but I think that I will hold it and pass out the Christmas tree. The purpose of this amendment is to get rid of the triggers and to impose a version of the small trigger and on page 11 the terms of the small trigger are spelled out. You can see that the language on page 11 is blue which is the removal of overstrike from the House version and it extends the current 6 year provision 2 years to 2017. And on page 12 it says that any of the exemptions that were earned before the effective date of the bill will stay in effect until they are used up.

Sen. Cook -- You are extending the small trigger, just as HB1437 does, which we still have, but you are doubling the tax rate?

Sen. Dotzenrod -- Yes.

Sen. Cook -- Okay. Questions? Did you want to move these amendment?

Sen. Dotzenrod -- I would move amendment 15.1024.05004 (Attachment #2)

Sen. Triplett -- Seconded.

Sen. Cook -- Discussion? The amendments would extend the small trigger to 2017 and double the tax. Right now, the small trigger would go to 2% tax. You want to take it to 4%.

Sen. Dotzenrod -- The purpose here is to get away from the swing, the big swing, which we heard in testimony. There is such a large difference between where we are now with the big trigger and the 11.5%. We go from 5% to 11.5% so this would set the tax at 11.5% but would allow a reduction for the small trigger so that we would not have that kind of large swing if this were adopted.

Sen. Unruh -- I agree with the concept that Sen. Dotzenrod has going here and I think that it is moving toward a more stable consistent tax policy; however, I don't think it is appropriate for us to just raise the tax on the bottom end and do nothing on the top end. I won't be supporting these amendments.

Sen. Cook -- Discussion?

Sen. Triplett -- One point which I'm not sure has been well understood in all of our discussions is that the small trigger is distinct from the large trigger in one important way which is that the amended tribal compact that is now in effect does exempt the tribal government from the small trigger but does not exempt the tribal government from the large trigger. So focusing in on the small trigger responds to some of the concerns that have been expressed by the tribal government. That is part of the rationale for Sen. Dotzenrod's bill.

Roll call vote on motion to amend. 2 yes, 5 no. Motion failed.

Sen. Cook -- Sen. Dotzenrod, you still have red envelopes.

Sen. Dotzenrod -- I will hold the amendment back and just pass out the Christmas tree version of this. The way this version of 1476 is drafted it is to adopt the 3 provisions that Chairman Mark Fox talked to us about yesterday. You can see on page 1, line 4, and to provide an expiration date. This is a 2 year bill. The second thing that we heard from Chairman Fox and that I thought was a good idea was that the rate can go back to 11.5%. The 4.5% can go back up to 6.5%. If you look at the bottom of page 5, this exempts those wells on trust lands which was his 3rd point. If you look at the top of page 6, this is the provision that would restore the extraction tax to 6.5% if you were over $70 for 3 months. There is one error in here and I have asked the council to correct it by the time that we adjourned and got down here. As this bill is drafted, the trigger only goes 1 way. It really needs to go both ways and I think that was the intention. This trigger says that if you go over $70 for 3 months you go up 11.5%. It should also have a provision that says that if it goes under $70 for 3 months it goes back to 9.5%. And that is not in here and I have asked them to prepare that. Everyone on the committee can understand that a trigger that the intention is to have those 3 provisions that he had asked for with the trigger that goes both ways. If this were adopted, it could be corrected.

Sen. Cook -- As we move forward we can take a vote on their understanding of your intentions. Your intention here is to make the tribe the most happiest people at the negotiating table.

Sen. Dotzenrod -- One of the problems that I had with the version of 1476, as it came to use from the House, is that the change in rate from 11.5% that we currently have to the proposed 9.5 was a one-way trip. If the big trigger got hit, you went from 11.5 to 9.5 or the extraction tax went from 6.5 to 4.5 there was no way, in the future, to ever go back to a higher rate. The amendments that he offered to us, I thought they made a lot of sense because they said if the oil prices were to improve that we could restore to what we currently have, 6.5% extraction tax. I don't know that I felt motivated to try to satisfy his desires to have the bill conform to what he thought rather than it solved the problem that I saw when the bill came over and I certainly like that provision to do that.

Sen. Cook -- The amendments that were offered this morning address that issue, not as far as you do, they address it with mechanism to trigger it back on again up to 11% not 11.5%. It's at $90 not $70.

Sen. Dotzenrod -- That's right.

Sen. Triplett -- In response to your comments that Sen. Dotzenrod is trying to make the tribe the happiest folks in town...

Sen. Cook -- At the negotiating table.

Sen. Triplett -- The long term price here is 9.5% which is more like halfway between the industry and the tribe. It doesn't go all the way toward the tribe. It takes care of one problem but leaves a different position on the price.

Sen. Cook -- Sen. Dotzenrod, I see you also have a change in the average price of crude oil, on top of page 2. Can you explain what you are doing there?

Sen. Dotzenrod -- It takes off the overstrike and leaves the overstrike on the minus $2.50. It turns the average price definition but it leaves off the $2.50.

Sen. Cook -- Questions? Sen. Dotzenrod, did you want to move these amendments?

Sen. Dotzenrod -- I would move the adoption of amendment 15.1024.05006. (Attachment #3)

Sen. Triplett -- Seconded.

Sen. Dotzenrod -- One additional point on this, if we had this bill early in the session and we had plenty of time to collect data and get information and really be able to know exactly how each of the effected parties was affected, I think I would have considered not having it be a 2 year bill. Part of the reason that I thought that it made sense to have it be a 2 year bill is because we are squeezed for time and there is a lot of data that we don't have, impacts that we don't know. I thought that was a good idea to make it a 2 year bill.

Sen. Cook -- Not putting a sunset on this bill, of course, does not stop anyone of us from bringing a bill next session and changing it, does it?

Sen. Dotzenrod -- Certainly you are right about that. Once a provision is in law, to try to get it removed is a little different than trying to get a legislature to adopt a program that would go forward. (meter 14:27-14:47)

Sen. Cook -- With your persuasiveness, I'm sure that if it is the right thing to do, you would persuade us to do it.

Roll call vote on motion to amend 2 yes, 5 no. Motion failed.

Sen. Cook -- Now that you are all here, you are looking to see another amendment to put on the table. We are close to a fiscal note that is not here yet. You will see a fiscal note before we vote on this. It's in the process. My intent is to adjourn. We have conference committees at 2:30 and to come back in after the floor session.

Sen. Triplett -- Can we have some discussion on the other amendment. It hasn't been moved yet but it could be moved and open for discussion so we could start the conversation.

Sen. Cook -- Let's discuss the amendments that we have before us 15.1024.05008 **(Attachment #4)** Committee, any thoughts or comments.

Sen. Triplett -- I'd like to spend some time discussing the piece that was added at my request in this amendment which is the carbon dioxide. The carbon dioxide enhanced oil recovery notion and just by way of a small bit of history, we put an exemption on which starts on page 6 of the 5008 version that we are looking at now, 57-51.1-03, Exemptions from oil extraction tax. (meter 17:55-23:10) I am passionate about this piece staying in.

Sen. Cook -- Your passion is obvious. We have had the discussions about EmPower before and we recognize that the ball has been dropped between them and the energy committee and there will be changes. This is a changing industry and we are looking at co2 recovery and we need to know what we are doing as we move forward.

Sen. Triplett -- The reason that it is important to get it out now is because the industry has not made any particularly significant amount of investment in tertiary recovery in the Bakken because it is too soon. The reason it's all still in here, the entire section on co2 use as enhanced oil recovery, is because we have exempted the area outside of the Bakken

Three Forks geographic area using the same definition that we did for a small incentive 2 years ago. (meter 24:42-25:12)

Sen. Cook -- We are recessed.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Brynhild Haugland Room, State Capitol

HB1476
4/22/2015
Job #26376

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee Work

Minutes:

Attachment #1, #2

Chairman Cook opened the committee work on HB1476.

Sen. Cook -- Folks, you should have at your desk, some new amendments, 15.1024.05015. **(Attachment #1)** I will tell you right now the only difference between what you see now and what you've seen earlier today, if you turn to the last page of the bill, section 6. That is the only difference, John, right? I thought that was section 5. How did it get to section 6?

John Walstad speaks off microphone: because there is a one month speed up for December. We will have to amend that section separately.

Sen. Cook -- And where is that at?

John Walstad off microphone: that is section 4 of the bill on page 6.

Sen. Cook -- Okay. Here we go. You see the amendment on section 4, the new section 4, on page 6. This morning we were waiting for a fiscal note, I've seen a fiscal note and it was not one that I wanted to deal with. What we have done here is the continuation of exemptions that are in place and will expire for the big trigger December 1, 2015. Effective December 1, 2015, the big trigger is gone. Completely gone. We will get to Ryan for the fiscal note of this bill. It not only affects the fiscal note but it makes this bill much more likeable to the MHA and they can speak to that and probably have in the hallway. All of us, the state, MHA, all of us would only have to deal with the big trigger, if it kicks in, for 6 months. MHA stated that they would like an exemption for the trigger. They don't have an exemption but they only have to deal with it for 6 months. The previous bill they could have had to deal with it up to 24 months. That's a big change and with that these amendments are before us. I think we should formally have a motion and then we will discuss the amendments.

Sen. Laffen -- I would move amendment 15.1024.05015 to engrossed HB1476.

Sen. Bekkedahl -- Seconded.

Sen. Cook -- Discussion? And do you want Mr. Walstad to come up to the podium again? When you explain it, neither for nor against the bill, it just seems to be accepted a lot better.

John Walstad, Legislative Council -- Sen. Cook gave a pretty good explanation. Let's just thumb through here. We've got first 5 pages, 6 pages no change from previous until we get to section 4, that is the elimination beginning December 1, of the 24 month exemption for horizontal wells. New ones. It doesn't say that here. The effective date is what makes it December 1, right. The language on 8 about the tertiary outside the Bakken that was in the earlier version we looked at, right, so, unless there are some questions. On page 12, right at the very bottom, section 6, I wacked out legislative intent because I thought this really isn't intent anymore. This is a statement of what the law is. So, what it provides now is that any remaining term for an exemption or rate reduction that is eliminated in section 4. Wait, is that a wrong reference, the 4? Yes, it should be 5.

Sen. Cook -- We can all change that.

John Walstad -- And those carryover kinds of periods of exemptions, or rate reduction, would be terminated effective January 1. Now, the remaining term of the horizontal well in section 3. That's wrong. That's section 4. So the first one should be 5 and this one should be 4, but 4 is that 24 month horizontal well exemption and the remaining term for that expires December 1, 2015. The effective dates are somewhat different than they were previously. We've got a new section and we've got 1,2,3,& 5 kick in January 1, 2016. Four kicks in December 1, 2015, and then section 7 is the waiver, that's still effective July 15, to the end of 2016.

Sen. Dotzenrod -- Just a clarification, changing 4 to 5, that's on page 13 , line 1. Where was the next change that you were changing?

John Walstad -- Just 2 lines lower. That 3 should be a 4.

Sen. Cook -- John, stay close but I am going to call Ryan up and let him talk about the fiscal note.

Ryan Rauschenberger, Tax Commissioner -- Under this version of the bill, the trigger will be in effect for 6 months, that's in line with the current forecast. We would have June production through the end of November production still under the trigger so that is basically a wash when it comes to the official forecast. **(Attachment #2)**

Sen. Cook -- This fiscal note, you calculated December 2016 at 10%, instead of 11.5%?

Ryan Rauschenberger -- That's correct.

Sen. Cook -- So, it's not accurate. It's a rough estimate, what, another $2M?

Ryan Rauschenberger -- Actually, at the 1½% in one month... It is indexed up going up from 42. In that month, we are looking at $47.08 for North Dakota crude. I would say that, based on the number that I talked about yesterday of the trigger, 1 ½% rough change would be probably another $15M.

Sen. Cook -- There will be an accurate fiscal note done for...

Ryan Rauschenberger -- If the amendments are adopted, we would do an official fiscal note for the amended bill but at this time I can say it would be more than the $15M because you would now be looking at 11.5 as opposed as 10, just for that one month. That little rate change in one month is a pretty big swing when we are talking fiscal notes.

Sen. Triplett -- If I am reading your notes correctly, it looks like you are assuming for your fiscal impacts going out into 2016 and 2017 that you are showing increases because you are assuming an effective rate of 6.1% and that comes from the discounts North Dakota takes, essentially. Can you explain why it is 6.1 as opposed to 6.5?

Ryan Rauschenberger -- Right now, the current rate is, on the overall effective rate is due to the exemption for stripper wells, primarily due to stripper wells. Right now it's at that 11.15 overall rate is due to stripper wells making up a very small percentage of all well production. They are only taxed at 5%. That's why we never reach 11.5% because we do have stripper wells at 5. That's why all the effective rates are kind of an odd number.

Sen. Dotzenrod -- If we never hit the big trigger, if May turns out to be an average higher than $55.09, does this bill have no effect?

Ryan Rauschenberger -- I don't have numbers in front of me but we do assume that 11 months trigger so you would have, basically, starting December 1, or January 1, you would have rates at that point being lower than what would be. I should say after actually May 1. We have triggers going out through May so the effective rate up through then would be 6.1% so that is how we compared. That is our effective rate in the forecast, 6.1% so anything above or below that is basically a fiscal impact.

Sen. Dotzenrod -- So when you are making these fiscal predictions, you are comparing the provision of this bill to an anticipated engagement of the trigger and then what the effects of that would be through the month of November and comparing that to what this bill does. If, for some reason, your predictions about hitting that trigger turned out to be wrong and it never engaged, we would have some different numbers here.

Ryan Rauschenberger -- That is true. As with any fiscal note, we live with the legislatively adopted forecast and that was adopted in March. That assumes the trigger is on for 11 months, ranging from $38.00 North Dakota crude through $38 to $48 next March. We assume that the trigger is on for 11 months.

Sen. Dotzenrod -- On that 3rd line from the bottom where you've got fiscal year 2017 minus $266M. Underneath that it says 12 months where effective rate, doing that 12 months is the rate constant or is there a time when it's one rate and then during the 12 months it changes?

Ryan Rauschenberger -- Because that rate does actually change from month to month depending on the exemptions that are available, it isn't just a constant rate. We look at it actually on a month by month basis but 6.1 is an average. The 4.8 is an average for the purposes of a fiscal note.

Sen. Triplett -- If you all would go to page 8 of the Christmas tree version of the bill that we are looking at right now on the topic of the secondary tertiary recovery, I'd like to draw your attention to the fact that if you look on lines 3 where we are talking about the secondary recovery, we now have incremental production having a tax exemption that lasts for 5 years. If you look at subdivision b on line 8, the existing law gives incremental production for 10 years for tertiary recovery not using carbon dioxide and then, as we talked about, the one that we removed carbon dioxide tertiary recovery for those that are outside the Bakken and Three Forks formations which is the exemptions; what we are really doing we have at 5 years. I had a lobbyist wander by my desk and suggest that was pretty unfair and they ought all to be the same. So, I am going to throw a proposed verbal amendment out to say on line 8, change that 10 to 5.

Sen. Unruh -- Seconded.

Sen. Triplett -- The idea of tertiary recovery is still unused, other than the one example that we've made an exception for and was started in the earlier part of our committee hearing our goal here is to get a level playing field to start a different kind of discussion in the next session or whenever it becomes an issue for the industry. (meter 18:20-18:32)

Sen. Oehlke -- I don't see a real problem. We will be back here in 2 years if this becomes a raving issue, it's not like this can't be adjusted ever.

Sen. Cook -- It may very well become a raving issue, also. I've got one other question in that section, Sen. Triplett, we'll come back to the 10 to 5, but on line 10, do we want to say and or do we want to say or.

Sen. Triplett -- Which one of the three?

Sen. Cook -- The last one. I'm thinking it should be or.

Sen. Triplett -- Nope. It is and. Mr. Walstad used exactly the same language as we used 2 years ago for the additional exemption that we granted 2 years ago for things outside the Bakken.

Sen. Cook -- I see his head is nodding.

Sen. Unruh -- I'm happy to have this discussion but I feel like this would be going backwards, in the opposite direction. I'm be much happier to move things over to 10, rather than 5 but I seconded so that we could move forward a discussion.

Sen. Cook -- You'd rather change the 5 to 10?

Sen. Unruh -- I would rather change the 5 to a 10. I think this is quite a policy change to be adding on to something that I know is not unrelated, by any means. I think this could potentially cause some very, very big problems for some projects out there. (meter 20:40-21:22)

Sen. Oehlke -- Five or ten, we're back here in 2 years.

Sen. Cook -- I like the bill the way it is.

Sen. Cook -- We have a motion to amend this further from 10 to 5 on line 8. **Roll call vote 3 yes, 6 no. Motion failed.**

Sen. Unruh -- I would like to make a motion to change the word 5 on line 15 of page 8 to 10. I think this is important because we do need to create a level playing field here. Current law has 10 years for any other type of product that is used for tertiary recovery and I don't think that we need to be deincentivizing the carbon dioxide process with this.

Sen. Triplett -- Point of order, I'm not entirely sure that motion was seconded.

Sen. Bekkedahl -- Seconded.

Sen. Triplett -- I made the same argument about uniformity a minute ago so I do agree with uniformity but I think that the idea was that we had made a mistake in the past and we need to study this with some diligence before we give away the farm again and so I am resisting giving away the farm until we have studied it.

Sen. Dotzenrod -- The information that we got from Mr. Rauschenberger showed that in the second year we are minus $266M, it does seem to me that we have in this bill made significant policy change. I don't think that this part of it would, by changing the years from 5 to 10 or 10 to 5, be very significant relative to what other big changes are going on.
(meter 24:42-24:58)

Sen. Unruh -- I would argue that this isn't a minor policy issue; that this does send a pretty strong message to those folks who are looking at carbon dioxide for tertiary recovery. Putting them in a completely different time frame category as the other products that could be used sends a strong message to them and that is not a message that I am comfortable sending to them. It think 10 is appropriate for both section of subsection b.

Roll call vote on motion to amend on page 8, line 15, from 5 to 10. 2 yes, 5 no. Motion failed.

Sen. Cook -- We have before us, again, HB1476, as amended. Discussio ?

Sen. Triplett -- You made some representations on behalf of the tribe when we first got here this afternoon and I think you offered that we could hear from the tribes if they were interested in responding to the most recent set of amendments.

Sen. Cook -- It was a mistake I made. It was innocent.

Sen. Triplett -- If they are interested.

Sen. Cook -- I think we have had plenty of conversations in the hall. I know where they are at. I always get concerned about bringing anybody back up at a time like this because then they are others that say they would like to address us also. But you brought it up, Chairman Fox, do you have anything else that you wanted to say? And, I apologize.

Mark Fox -- I appreciate the opportunity to make some comments. There's a lot of deliberation on this and things have changed from what we were looking at yesterday to today. We have had a chance to indicate our concerns. We were stressing hard on the exemption of the big trigger to trust wells within our boundaries. I will admit that the change going from a potential application of 24 months to 6 months is an improvement and we respect that. (meter 27:50-29:33)

Sen. Cook -- Chairman Fox, I think the big questions is we are going to make a decision on this. We are either going to kill this bill and live with current tax law regarding oil taxes or we are going to pass it and live with the law and the changes that this brings. What would you rather see happen?

Mark Fox -- I believe I would rather see the change. Even though we are not happy with the 90 versus the 70 and things of that nature. We will be calculating ours but we do recognize that the overall system did need to change. The old means of big trigger had to change and we appreciate that.

Sen. Cook -- And I think I could ask the same question of the oil industry. There's a lot of other things they would like in this bill too.

Sen. Laffen -- Did you want to officially change those two section numbers at the back or are you comfortable with just stating it?

Sen. Cook -- We better have it on the record that we changed them.

Sen. Laffen -- I would move to amend on page 13, line 1, number 4 to 5; and line 3, 3 to 4.

Sen. Bekkedahl -- Seconded.

Sen. Cook -- All in favor, signify by saying aye. Motion carried.

Sen. Dotzenrod -- If I wanted to propose a couple of one word changes in the bill, would it be better for me to make those motions at this time or wait and see if the amendments that we have in front of us are adopted and then propose to further amend?

Sen. Cook -- Tell me what words you want to change?

Sen. Dotzenrod -- On page 5, line 29, amend the 90 to 70 and on the top of page 6..

Sen. Cook -- We already did that this afternoon, did we not?

Sen. Dotzenrod -- That was on a question if, for 90 days days, it went over $70 then the 11.5% tax would come in. If it went below $70 it would be...

Sen. Cook -- Make your motion.

Sen. Dotzenrod -- I would move to amend 1476 by on page 5, line 29, delete the word 90 and put in its place 70; and at the top of page 6, line 1, delete the word 90 and put in place 70.

Sen. Triplett -- Seconded.

Sen. Dotzenrod -- What I'm thinking if the bill as it sits right here with 90 in here, I believe is a trigger that is not going to hit or very difficult to hit. I think it is going to be very hard to get $90 and then there is an index on it so it's an inflator.

Sen. Triplett -- Thank you for letting Chairman Fox speak one more time. I did not have a chance to speak with him in the hallway. Regarding Sen. Dotzenrod's motion, I do intend to vote yes with him on that motion and I wanted to report that someone suggested an alternative to the word trigger after hearing Mr. Walstad say he worked to try hard to find an alternative and the suggestion was prosperity tax. I like that. (meter 34:20-36:26)

Sen. Cook -- I don't.

Roll call vote on motion to amend 90 to 70. 2 Yes, 5 no. Motion failed.

Sen. Bekkedahl -- Since the word trigger has becomes a 7 letter or 4 letter word in our vocabulary, can I ask Mr. Walstad a question? As the code reviser, is it improper to use the word threshold price in opposition to trigger price?

John Walstad -- I think it works.

Sen. Bekkedahl -- Mr. Chairman, would you have any objection to that being amended in?

Sen. Cook -- I could care what it says: trigger, threshold, it's all doing the same thing. If you want to wordsmith, people are going to call it a prosperity tax, I'm sure they are. I'd like to pass the bill.

Sen. Bekkedahl -- Hearing that I have no more objection.

Roll call vote on amendments 15.1024.05015. 6 yes, 1 no.

Sen. Cook -- Motion passes 6-1. That finishes our work, committee. I'll carry it.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1476
4/23/2015
Job #26378

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee Work

Minutes: Attachment #1, #2

Chairman Cook opened the committee work on HB1476. All committee members present.

Sen. Cook -- It was a long day yesterday. Somehow we got out of there; we passed an amended bill but we didn't pass the bill. I spent a sleepless night worrying about all the amendments you were going to try to put on it and Sen. Dotzenrod you are not going to put on any more amendments. You are out.

Sen. Triplett -- I will move my amendment 15.1024.05019. **(Attachment #1)**

Sen. Laffen -- Seconded.

Sen. Triplett -- This is longer than it looks due to Legislative Council. What I asked for was the parts that are labeled section 9 & 10. I think it was incorporated into the last amendment that we offered. You can ignore everything except those 2 sections. Section 9 provides for a legislative management study, this is a mandatory study, and it is focused on the economics regarding enhanced recovery techniques and it has an appropriation of $300,000. (meter 2:01-3:24)

Sen. Cook -- Sen. Triplett, as far as the research, the research on tax policy focuses on our tax policy regarding co2 and tertiary recovery. We passed another bill out of here earlier regarding the capture of co2 from a power plant and taking it to be used for oil well flooding and secondary recovery and we didn't do a lot of research on that either. I have no problem doing this. I am concerned about putting on this bill at this point of the game. I will commit to trying to put this on OMB. I believe it is a good study.

Sen. Oehlke -- If we are going to reject it, that's one thing. If not, I did notice that the information on the top of this Christmas tree bill that we have wasn't completely addressed because it did replace on top of page 13, the 4 with 5 but it address the 3 with the 4.

Sen. Triplett -- That wouldn't be a part of anything at OMB because there wouldn't be the necessity of repeating yesterday's amendment on this bill. I had only looked at the parts that I cared about. I appreciate your commitment to try that and does the commitment include requesting some money for it?

Sen. Cook -- It will. The only thing that really scares me is the amendments that we passed yesterday were 05015. These are 05019. I'm wondering what else is out there since we adjourned. We have a motion to amend 05019.

Sen. Unruh -- I agree with you. I think this is an important discussion for us to have and I we are making a big policy change on something that didn't quite get enough discussion. Continuing that discussion throughout the interim is very, very important. I don't believe this is the place for the study but I will try to do what I can to make it happen this session.

Roll call vote on motion to amend 05019. 2 yes, 5 no. Motion failed.

Sen. Cook -- We have before us HB1476, as amended.

Sen. Laffen -- I would move a do pass on engrossed HB1476.

Sen. Unruh -- Seconded.

Sen. Dotzenrod -- I want to make sure I'm clear on the number of the amendment that was added, was that .05015? **(Attachment #2)**

Sen. Cook -- That is the one that is before us.

Roll call vote on motion to pass HB1476 as amended. 6 yes, 1 no. Motion passed.

Carrier: Sen. Cook

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1476
4/23/2015
Job #26387

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened the committee work on HB1476.

Sen. Cook -- We have before HB1476.

Sen. Laffen -- I would move that we reconsider our previous action on HB1476.

Sen. Unruh -- Seconded.

Sen. Cook -- Discussion? **All in favor signify by saying aye. Motion carried.**

Sen. Cook -- We have before us HB1476. We have a technical correction we must make, Mr. Walstad would you come and explain?

John Walstad, Legislative Council -- I apologize. Something happened here and I overlooked it. In the bill we had speeded up to December 1 the elimination of the 24 month exemption for new horizontal wells. The oversight that I made, if you've got your mark-up copy of the bill, in the 02 section which has the rate in it, this is where the rate change is made. Because we were also getting rid of all of the triggered exemptions, reductions, etc., everything below the rate there was overstruck. That all takes effect on January 1st. The oversight was when we eliminated the exemption for horizontal wells December 1, this hasn't happened yet and so that subsection 1, that cuts the rate to 4%, would kick in for those wells for 1 month, which would make the rate 4%, instead of the 6.5% that we were assuming in the fiscal note. It was an oversight. One of my best ones ever, this one having a price tag of about $35M. I apologize, again. I was lonesome for you all and I wanted to get together again.

Sen. Cook -- The new language that you are adding with this amendment?

John Walstad -- The new language being added now, **(Attachment #1)** I'm looking at the amendment sheet this time instead of at the bill, and on page 2 of the amendment sheet that indented subsection 3, the last 7 lines I overstruck some language (meter 2:49-4:52)

Ryan Rauschenberger, Office of State Tax Commissioner -- Basically, the fiscal note I mentioned yesterday was positive $15M. That would have assumed that we do go to 10% starting in December, if that would started December 1, this bill would have the 11.5% which I mentioned was an additional 15 to 20. The actual number is 20. So it is a positive $35M.

Sen. Cook -- If the trigger doesn't kick on, and it's starting to look like it might not, we will be at 11% for the rest of 2015 up until December 31st and then we will go to 10%.

Ryan Rauschenberger -- That's correct. The effective rate would remain around 11.15 and then it would go to just below 10 because of the effective rate.

Sen. Laffen -- I would move the amendment 15.1024.05022 to engrossed HB1476.

Sen. Unruh -- Seconded.

Sen. Dotzenrod -- Would the motion have to include that we recede from earlier amendments? We can just adopt this?

Sen. Cook -- No. That's how the first mistake got made. I thought that I was in a conference committee and now you are thinking that we are in a conference committee.

Sen. Dotzenrod -- I'm assuming that a lot of the words that are in this amendment are already on the bill. So if we adopt them we are probably..

Sen. Cook -- We have to, first, before we do this we need to reconsider our action by which we amended HB1476.

Sen. Laffen -- **I would make a motion that we reconsider our action by which we amended engrossed HB1476.**

Sen. Unruh -- **Seconded.**

Sen. Triplett -- Point of order, do you have to pull the previous motion out because there was already a motion on the floor to approve the amendment and then you announced the need for the reconsideration.

Sen. Cook -- I didn't hear that. **You have the motion in front of you to reconsider our action by which we amended HB1476. All in favor signify by saying aye. Carried.**

Now we have 1476 as introduced before us.

Sen. Laffen -- I would move the amendment 15.1024.05022 to engrossed HB1476.

Sen. Unruh -- **Seconded.**

Discussion?

Sen. Triplett -- There has been some hallway conversations again while we have been waiting, is there any appetite for a motion to amend the 90 to some other number?

Sen. Cook -- No. I'd rather not. We've done it. We know the action. I think that we will do it on the floor, probably. I am expecting to do it on the floor.

Sen. Triplett -- Are we expecting it to pass on the floor if we haven't done it here?

Sen. Cook -- I do not know. I'm not expecting it to pass here as it did yesterday.

Sen. Triplett -- So, strategically, it might be better not to try here so it doesn't have the defeat here?

Sen. Cook -- I think you would be better off not to try here. We have tried it here. I think we only need to try it here once.

Sen. Triplett -- We tried 70 yesterday. I don't think we tried 80.

Sen. Cook -- I thought you were going to try 89.

Sen. Triplett -- No. 80. We sat here in a different conference committee, the big dog and I, for many, many days to get to 87.5.

Sen. Cook -- Sen. Triplett, there are a lot of parties involved with this and you start making changes like this and somebody might become more happy with the bill, somebody is going to become much more disappointed with the bill. We can do whatever we can do on the floor. Let's get this bill out of here.

Sen. Cook -- We have a motion to amend HB1476, any discussion? **Roll call vote on motion to amend ending with 22. 7 yes. Carried.**

Sen. Cook -- We have before us HB1476, as amended.

Sen. Laffen -- **I would move a do pass on engrossed HB1476, as amended.**

Sen. Unruh -- **Seconded.**

Sen. Triplett -- Should the motion say and also refer to appropriations?

Sen. Cook -- Normally, it would. It's got to go to the floor. No, It's not going to appropriations.

Sen. Triplett -- And that is a decision made above our pay grade?

Sen. Cook -- Yes, it has been made.

Roll call vote on motion on a do pass, as amended. 6 yes, 1 no. Motion carried.

Carrier: Sen. Cook

Sen. Cook -- Our work is finished.

15.1024.05001
Title.

Prepared by the Legislative Council staff for
Senator Dotzenrod
April 21, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 5, line 13, remove the overstrike over "~~six~~"

Page 5, line 13, remove "<u>four</u>"

Renumber accordingly

15.1024.05004
Title.

Prepared by the Legislative Council staff for
Senator Dotzenrod
April 21, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 11, line 9, after "~~9.~~" insert "4."

Page 11, line 9, remove the overstrike over "~~The first seventy-five thousand barrels or the first four million five hundred thousand~~"

Page 11, remove the overstrike over lines 10 and 11

Page 11, line 12, remove the overstrike over "~~April 30, 2009, and before July 1,~~"

Page 11, line 12, after "~~2015~~" insert "2017"

Page 11, line 12, remove the overstrike over "~~, is subject to a reduced tax rate of~~ "

Page 11, line 12, after "~~two~~" insert "four"

Page 11, line 12, remove the overstrike over "~~percent~~"

Page 11, line 13, remove the overstrike over "~~of the gross value at the well of the oil extracted under this chapter.~~"

Page 11, line 16, remove the overstrike over "~~The rate reduction under this~~"

Page 11, remove the overstrike over lines 17 through 26

Page 11, line 27, replace "4." with "5."

Renumber accordingly

15.1024.05006
Title.

Prepared by the Legislative Council

April 21, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 3, remove the second "and"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 2, line 3, remove the overstrike over "~~"Average price" of a barrel of crude oil means the monthly average of the daily closing~~"

Page 2, remove the overstrike over line 4

Page 2, line 5, remove the overstrike over "~~in the Wall Street Journal, midwest edition~~"

Page 2, line 5, remove the overstrike over "~~. When~~"

Page 2, remove the overstrike over lines 6 and 7

Page 2, line 11, after "~~4.~~" insert "3."

Page 2, line 14, replace "3." with "4."

Page 2, line 17, replace "4." with "5."

Page 2, line 23, replace "5." with "6."

Page 3, line 3, replace "6." with "7."

Page 4, line 1, replace "7." with "8."

Page 4, line 4, replace "8." with "9."

Page 4, line 14, replace "9." with "10."

Page 5, line 14, remove the overstrike over "~~, except that the rate of tax is~~"

Page 5, line 14, after "~~four~~" insert "six and one-half"

Page 5, line 14, remove the overstrike over "~~percent of the gross value at the well of the oil~~"

Page 5, line 15, remove the overstrike over "~~extracted~~"

Page 5, line 28, after "~~57-51.1-03~~" insert "from wells located on trust lands within the boundaries of the Fort Berthold Reservation if an agreement entered under chapter 57-51.2 provides that production from trust lands is subject to the tax imposed under this section"

Page 5, line 28, remove the overstrike over the period

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil~~"

Page 5, line 29, after "~~oil~~" insert "meets or"

Page 5, line 29, remove the overstrike over "~~exceeds~~"

Page 5, line 29, after "~~exceeds~~" insert "seventy dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "<u>three-month</u>"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six and one-half percent of the gross value at the well of the oil extracted~~"

Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 12, after the period insert "If this Act takes effect, it is effective through July 31, 2017, and after that date is ineffective."

Renumber accordingly

15.1024.05015
Title.

Prepared by the Legislative Council staff for Senator Cook
April 22, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 3, remove the second "and" with "to provide for an exception; to provide for a legislative management study;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~"

Page 5, line 29, after the second "price" insert "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~a percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~"

Page 6, line 1, after "price" insert "of ninety dollars"

Page 6, line 1, remove the overstrike over "~~for each month in any consecutive~~"

Page 6, line 2, after "~~five-month~~" insert "three-month"

Page 6, line 2, remove the overstrike over "~~period, in which case the rate of tax reverts to~~"

Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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.

SECTION 4. AMENDMENT. Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period."

Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" insert "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 3 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 6. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly

Prepared by the Legislative Council staff for
Senator Triplett
April 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 3, remove the second "and" with "to provide for an exception; to provide for legislative management studies; to provide an appropriation;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~"

Page 5, line 29, after the second "price" insert "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~a percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~"

Page 6, line 1, after "price" insert "of ninety dollars"

Page 6, line 1, remove the overstrike over "~~for each month in any consecutive~~"

Page 6, line 2, after "~~five-month~~" insert "three-month"

Page 6, line 2, remove the overstrike over "~~period, in which case the rate of tax reverts to~~"

Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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.

SECTION 4. AMENDMENT. Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period."

Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, replace "4" with "5"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" insert "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 4 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 6. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 9. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS TAX INCENTIVES. During the 2015-16 interim, the legislative management shall study the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques to determine the desirability and appropriate level of tax incentives to serve the interests of the state, political subdivisions, the public, and the energy production industry. The legislative management may expend up to $300,000 from funds appropriated for that purpose to secure consulting services to assist in completing the study. The legislative management shall report its recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $300,000, or so much of the sum as may be necessary, to the legislative council for the purpose of a study of the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques, for the biennium beginning July 1, 2015, and ending June 30, 2017."

Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly

1 of 3
TD
4/23/15

15.1024.05022
Title.07000

Prepared by the Legislative Council staff for
Senate Finance and Taxation Committee
April 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, after the second comma insert "subsection 3 of section 57-51.1-03,"

Page 1, line 2 after "and" insert "section"

Page 1, line 3, replace "to provide legislative intent; and" with "to provide for an exception; to provide for a legislative management study;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~" and insert immediately there after "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~" and insert immediately thereafter "of ninety dollars"

Page 6, line 1, remove the overstrike over "~~for each month in any consecutive~~"

Page 6, line 2, after "~~five-month~~" insert "three-month"

Page 6, line 2, remove the overstrike over "~~period, in which case the rate of tax reverts to~~"

Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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.

SECTION 4. AMENDMENT. Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. ~~However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period~~The reduced rate of tax under subsection 1 of section 57-51.1-02 does not apply after November 30, 2015, for oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under this section."

Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, replace "4" with "5"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" with "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 4 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 7. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 8. LEGISLATIVE MANAGEMENT STUDY - TRIBAL TAX ISSUES. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "under subsection 3 of section 57-51.1-03 would become effective" with "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly

Date: 4-22-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05001

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 Sen Dotzenrod Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓	Motion		
Senator Jessica Unruh		✓	Failed		

Total (Yes) 2 No 5

Absent ______

Floor Assignment ______

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

Date: 4-22-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05004

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 Sen. Dotzenrod Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
				✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett		
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓	Motion Failed.		
Senator Jessica Unruh		✓			

Total (Yes) 2 No 5

Absent

Floor Assignment

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

Date: 4-22-15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05006

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 Sen Dotzenrod Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓	Motion failed		
Senator Jessica Unruh		✓			

Total (Yes) 2 No 5

Absent

Floor Assignment

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

Date: 4-22-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05015

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 Sen. Laffen Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment ______

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

Motion made on pg 2.
Vote taken on pg. 1.

Date: 4-22-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: On page 8, line 8 from 10 to 5 years.

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 Sen. Triplett Seconded By Sen. Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓	Motion		
Senator Jessica Unruh		✓	Failed		

Total (Yes) 3 No 6

Absent ____________

Floor Assignment ____________

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

Date: 4-22-15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: On page 8, line 15 from 5 to 10 years

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 Sen Unruh Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett		✓
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓	Motion Failed		
Senator Jessica Unruh	✓				

Total (Yes) 2 No 5

Absent ____________

Floor Assignment ____________

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

Date: 4-22-15

Roll Call Vote #: 4

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: On page 13, line 1, replace 4 with 5 and page 13, line 3, replace 3 with 4

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 Sen. Laffen Seconded By Sen. Bekkedahl

voice vote. Carried

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke			Motion Carried		
Senator Jessica Unruh					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Date: 4-22-15

Roll Call Vote #: 5

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: On page 5, line 29 delete ninety to seventy and on page 6, line 1, delete ninety to seventy.

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 Sen. Dotzenrod Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓			
Senator Jessica Unruh		✓			

Motion Failed

Total (Yes) 2 No 5

Absent ____

Floor Assignment ____

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

Date: 4-23-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05019

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 Sen. Triplett Seconded By Sen. Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓	Motion failed		
Senator Jessica Unruh		✓			

Total (Yes) 2 No 5

Absent 0

Floor Assignment

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

Date: 4-23-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05015

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 Sen. Laffen Seconded By Sen. Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Sen. Cook

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

Date: 4-23-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1476

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 by which we passed HB 1476

Motion Made By Sen. Laffen Seconded By Sen. Unruh

voice vote. Carried

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Date: 4-23-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1476

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 ☐ ____________

our action by which we amended HB1476

Motion Made By Sen. Laffen Seconded By Sen. Unruh

voice vote. Carried

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Total (Yes) ____________ No ____________

Absent ____________

Floor Assignment ____________

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

Date: 4-23-15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05022

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 Sen. Laffen Seconded By Sen. Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) ____________ No ____________

Absent ____________

Floor Assignment ____________

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

Date: 4-23-15

Roll Call Vote #: 4

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1476

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.1024.05022 Title .07000

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 Sen. Laffen Seconded By Sen. Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Sen. Cook

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

REPORT OF STANDING COMMITTEE

HB 1476, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1476 was placed on the Sixth order on the calendar.

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, after the second comma insert "subsection 3 of section 57-51.1-03,"

Page 1, line 2 after "and" insert "section"

Page 1, line 3, replace "to provide legislative intent; and" with "to provide for an exception; to provide for a legislative management study;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~" and insert immediately there after "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~" and insert immediately thereafter "of ninety dollars"

Page 6, line 1, remove the overstrike over "~~for each month in any consecutive~~"

Page 6, line 2, after "~~five-month~~" insert "three-month"

Page 6, line 2, remove the overstrike over "~~period, in which case the rate of tax reverts to~~"

Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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.

SECTION 4. AMENDMENT. Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. ~~However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period~~The reduced rate of tax under subsection 1 of section 57-51.1-02 does not apply after November 30, 2015, for oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under this section."

Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, replace "4" with "5"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" with "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 4 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 7. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 8. LEGISLATIVE MANAGEMENT STUDY - TRIBAL TAX ISSUES. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "under subsection 3 of section 57-51.1-03 would become effective" with "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly

2015 TESTIMONY

HB 1476

15.9636.01000

Prepared for Representative Carlson

HB 1476
4-20-15
#1

PROPOSED RESTRUCTURING OF OIL EXTRACTION TAX

This memorandum provides information on the restructuring of oil extraction tax rates and exemptions that would occur if bill draft [15.1024.04000] is approved by the 2015 Legislative Assembly. If approved, oil extraction tax rates and exemptions would be as follows:

- Oil extraction tax rate:
  - The rate is equal to 4.5 percent on all oil extracted, subject to limited rate reductions and exemptions.
- Production exempt from the oil extraction tax includes:
  - Production that is exempt from the gross production tax imposed by North Dakota Century Code Chapter 57-51.
  - Production from stripper well property or an individual stripper well.
  - Incremental production from a secondary recovery project for five years from the date incremental production begins.
  - Incremental production from a tertiary recovery project for 10 years from the date incremental production begins if the recovery project does not use carbon dioxide or indefinitely if the project does use carbon dioxide.
- Production subject to a reduced oil extraction tax rate includes:
  - Production from wells drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation.
    - The first 75,000 barrels of oil produced during the first 18 months after completion are subject to a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

Oil extraction tax rate reductions and exemptions that would be eliminated if bill draft [15.1024.04000] is approved by the 2015 Legislative Assembly include:

- Rate reductions that are dependent on the average monthly comparison price of a barrel of oil dropping below the trigger price for five consecutive months. These reductions currently bring the 6.5 percent tax rate down to 4 percent on:
  - Oil produced from a vertical well completed after April 27, 1987, following the first 15 months of exempt production.
  - Oil produced from a horizontal well completed after April 27, 1989, following the first 24 months of exempt production.
  - Oil produced from a qualifying secondary or tertiary recovery project certified by the industrial commission after June 30, 1991.
  - Incremental oil produced from a qualifying secondary or tertiary recovery project, following the initial 5-year or 10-year exemption period.
- A rate reduction that is dependent on the average price of a barrel of oil falling below $55 for one month.
  - This reduction currently brings the 6.5 percent tax rate down to 2 percent on the first $75,000 barrels, or the first $4,500,000 of gross value at the well, whichever is less, of oil produced during the first 18 months after completion. This rate reduction only applies to horizontal wells drilled and completed after April 30, 2009, and before July 1, 2015.
- Exemptions that are dependent on the average monthly comparison price of a barrel of oil dropping below the trigger price for five consecutive months. These exemptions include:
  - A 15-month exemption on the initial production from a vertical well.
  - A 24-month exemption on the initial production from a horizontal well.
  - An exemption on all oil recovered during the testing period prior to well completion.
  - A 12-month exemption on production from a qualifying well that was worked over.
  - A 10-year exemption on production from a certified two-year inactive well.
  - A nine-month exemption on production from a certified horizontal reentry well.
- A 60-month exemption on the initial production from:
  - Wells drilled and completed before July 1, 2013, on nontrust lands within the boundaries of an Indian reservation or on lands held in trust by the United States for an individual Indian or tribe.
  - Wells drilled and completed before July 1, 2013, on lands held by an Indian tribe if the interest was in existence on August 1, 1997.

If approved by the 2015 Legislative Assembly, bill draft [15.1024.04000] would become effective on June 1, 2015, if the average monthly comparison price of a barrel of oil remained below the trigger price for the months of March through May of 2015, or on the first day of the sixth month following a period of five consecutive months where the average monthly comparison price of a barrel of oil remains below the trigger price. Once effective, the remaining term of any exemptions or rate reductions eliminated by bill draft [15.1024.04000] would expire.

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#2 p. 1

TESTIMONY OF SENATOR MAC SCHNEIDER (DISTRICT 42 - GRAND FORKS)

HOUSE BILL 1476

JOINT HOUSE AND SENATE FINANCE AND TAX COMMITTEE - APRIL 20, 2015

Permanently reducing the oil extraction tax by 30% is an artificial and unwise exchange for elimination of the trigger incentive and stands to potentially cost the people of North Dakota tens of billions of dollars over the life of the world-class Bakken oil play. As an alternative, I would respectfully ask that we instead focus on reforming the trigger incentive in a bipartisan manner during these few remaining days of the session while leaving the oil extraction tax rate alone.

The heart of my concern with this bill is the permanent nature of the 30% cut to the extraction tax and the stunning loss of revenue that the people of this state could see if this reduction becomes effective.

For the sake of perspective, North Dakota collected about $2.14 billion in oil extraction tax revenue during the last (2011-2013) biennium. A 30% reduction of this amount is roughly $642 million. I think we can all agree that would have been a rather staggering loss of revenue for the state in a two year period.

I need to emphasize, that is what a 30% reduction in oil extraction tax revenue would have looked like -- in reality -- over the course of just two years. The 30% reduction in the extraction tax proposed in this bill, on the other hand, would be ongoing forever and for all time across the biennia.

The details of this bill were made available on Friday and the legislation is now being heard at 9:00 a.m. on Monday. As a result, I have not yet been able to obtain projections of what the proposed 30% cut to the extraction tax could cost our people in the decades to come. I urge the committee to take no action on this bill until the long-term cost of the proposed 30% cut to the extraction tax is thoughtfully considered and debated.

What we do know right now is that Moody's Analytics estimates the trigger incentive will go into effect in June of this year. Importantly, Moody's also predicts

#2p.2

that the rising price of oil will result in the expiration of the trigger incentive effective May of 2016. That's 11 months of lost extraction tax revenue on newly-producing wells.

While the lost extraction tax revenue during this 11 month period would be significant -- $863 million, according to the Legislative Council -- it is temporary. On the other hand, a 30% cut to the extraction tax -- which, again, would have resulted in $642 million in lost revenue in only two years -- is perpetual. By any fair measure, the cost of the extraction tax reduction over the life of the Bakken would absolutely dwarf the temporary loss of revenue Moody's and Legislative Council predict will occur if the trigger incentive becomes effective. In fact, the loss of revenue is incomparable.

But there is no reason why we have to accept the false choice between the blunt trigger incentive and a massive cut to the extraction tax. That is why I urge the committee to instead key in on reforming the trigger by providing a meaningful incentive to the industry to continue investing in North Dakota during down times in the market while easing the impact of the incentive on any given two-year state budget. I do not have easy answers on this point, but I know the experienced members of this committee -- both Republican and Democratic -- can get there with the right focus and will.

Before I conclude, I would like to address some of the professed rationales for this bill and why they fail to justify passage of this legislation in its current form.

First is that this is a "hedge" or insurance policy. Respectfully, I wager there are few people who would permanently trade 30% of their income for the rest of their working lives to guard against a temporary loss of income -- especially one anticipated to last 11 months. This bill, with all due respect, would be an extremely unpopular insurance product if sold on the private market.

Second is that this bill will result in revenue stability. Even with a flat tax in place and elimination of the trigger incentive, there would be no revenue stability so long as oil prices remain volatile. Using the WTI price as an example of this point, the difference between 4.5% of $105.34 a barrel (the WTI price on 3/3/14) and 4.5%

of $50.43 (the WTI price on 3/3/15) is significant. Similar future volatility in the price of North Dakota crude would continue to cause wildly varying oil extraction tax collections even with a flat tax in place.

Third is that this will result in predictability for the industry. While I will let the industry speak for itself, a concern is that this bill short-changes the people of North Dakota during times where oil may return to prices of $80 per barrel or more while also taking away an incentive when the oil industry is most likely to need one as a "carrot" to continue investing in our state. I understand the forces of geopolitics may be stronger than any incentives we can provide through state tax policy under certain circumstances, but elimination of a tax incentive during troughs in the market price of oil in exchange for a 30% tax cut when prices are at a peak seems to be a strange policy choice. I do not believe any perceived predictability gains from this legislation justify the cost to the state and lost incentive to the industry.

Mr. Chairman, I would also urge the joint committee to consider this final point: The 6.5% extraction tax was put in place by a vote of the people. The trigger incentive, on the other hand, is a creation of the Legislature. There is no reason we need to undo what the people have put in place, especially considering how well the industry has done in North Dakota under the existing 6.5% extraction tax. If the concern is the trigger, then let us focus on that. Respectfully, leave the people's share of this one-time harvest of natural resource revenue intact for the benefit of future generations.

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HB 1476
4-20-15
#3

HB 1476
Senate and House Joint Finance and Taxation Committees
April 20, 2015

Testimony by Jim Stenslie

I am Jim Stenslie, resident of Napoleon, and I am opposed to this bill.

First of all, I have a problem with the way this bill was drawn up and presented so near to the 80 day limit you face. I also object to the way this has been done, without prior discussion with Minority members and without any public input including disregard for the Three Affiliated Tribes on Fort Berthold. This is not the way I want my Legislature to do our business.

Despite a statement that the oil industry accepts this bill "reluctantly," like so many other actions of this Legislature, it is clearly intended and proposed to meet their needs. Cutting the oil extraction tax in this way by 30%, from 6.5%, arrived at by a vote of our citizens, to 4.5% is a pretty heavy handed way to legislate. Reading various statements about the effect this bill might have is enough to convince me that we are much better off to put this bill aside and leave things the way they are rather than trying to force this bill through. This issue deserves much more time than you have before you.

In process and content this is a faulty bill, and I urge you to move on to the many other issues waiting your attention.

NORTH DAKOTA
PETROLEUM
COUNCIL
100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395
701.223.6380 | ndpc@ndoil.org | www.NDOil.org

HB1476
4-20-15
#4
1 of 4

House Bill 1476
Testimony of Ron Ness
House [redacted] Finance & Taxation Committee
April 20, 2015

Chairman Headland and members of the committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies directly employing 65,000 employee in North Dakota 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. We are neutral on HB 1476 but are providing an amendment to the current version and with adoption of that we support a flat predictable oil tax rate for North Dakota.

It's hard to imagine that a $40 billion dollar industry in North Dakota has no idea what their tax rate will be 40 days from today. Under today's law, the big trigger is a 130% swing in the tax rate and all existing wells are reduced to 9%, that's about $76 million dollars per month at $40 dollars a barrel. How can you plan with that on the horizon? HB 1476, as drafted, is merely a revenue insurance policy for the State of North Dakota on the backs of oil producers and mineral owners.

Over the course of the last seven years, the Bakken has seen a lot. These initial years of the play brought intense exploration activity during a period of high prices and excitement and leaseholds that had to be drilled. We quickly began to learn the Bakken was a world class play. It also brought many challenges, some difficult and costly.

The "Exploration Phase" of the Bakken is over. We've learned that although the Bakken is a huge resource with large reserves, we've all been humbled and reminded these last few months that oil is still a commodity. Our rig count dropped exactly 50% in less than four months and thousands of jobs have been lost. The consequences of the low prices and the big trigger going on now amounts to billions of dollars in revenue, not a few million as in the pre or early Bakken days. While technology has dramatically changed our ability to recover oil, the price of the commodity will always fluctuate and there is nothing in today's world that suggests this won't be the case in the future. When the big trigger became law in 1987, it stayed on until 2004 and our effective tax rate was around 7.2%.

Again, the Exploration Phase is over. We now enter the "Development Phase" which will be a period in our State's history lasting several decades, and despite the current price situation, long term the Development Phase if managed well, will ensure prosperity for our State for decades beyond.

The Development Phase brings new challenges, it will require new ideas, and consistent long term strategies to manage this world class play. What is the Development Phase, what are some of the challenges and solutions, and what does this all mean to the State of North Dakota?

The Development Phase:

- Leases Held
- Multi well pad drilling
- Potentially thousands more wells and production over the course of 30 or more years.
- Continued technological advancements allowing for even greater increased recovery of oil.
- Continued technological advancements in health, safety and protection of our environment.
- Infrastructure expansion, pipelines, processing facilities, housing, roads, schools, water, etc.

The Challenges our industry faces:

- Capital intensive. We can't meet the infrastructure expansions or the necessary technological advancements without continued and massive amounts of capital investment.
- Competition with other plays and states with lower taxes over the same capital investment
- Regulatory costs
- Weather
- High transportation costs
- High taxes and unpredictable tax rates
- Long term oil prices

What does Industry need for the Development Phase?

Neither the State or industry can control or predict prices long term, but what the State can provide industry is a long term consistent regulatory policy and a uniform, stable and competitive tax policy to ensure the necessary long term capital investment required for this next phase. A stable more competitive tax rate encourages, not discourages, the needed long term capital investment in North Dakota. And, in return, the State also benefits with more consistent revenues and less uncertainty.

What does the Development Phase mean for the State of North Dakota?

- A once unimaginable thriving state where young people return home, relocate here, or start a business because we have jobs and a surging economy.
- More jobs than we can fill with rising wages and incomes.
- Schools that need to expand rather than close and consolidate.
- State revenue collections from oil that nearly double what our state budget was just a decade ago.
- While other states raise taxes ND reduces taxes, funds education, roads, and is looking to incentivize a chemical industry that diversifies our economy but that won't happen unless investors are confident the Bakken will continue to grow production.
- Means that we need to continue to work on the challenges of a growing population, research and invest in new technologies to tackle oil shale issues, and think BIG – World Class!
- North Dakota is looked at as a place to be, where to come to invest, and has become a shining star in a struggling world economy.

How does a State [redacted] Wit all this expect a 40 billion dollar industry to operate without knowing what it's tax rate will be in 40 days – it could vary 130% on a few pennies at market close any day in May. The Bakken is big business, requiring massive investment and planning – it's time to end this tax chaos and allow industry to focus on long-term strategies for developing the Bakken while providing the state revenue certainty.

Thank you, we urge you to adopt our amendments and pass this bill. I would be happy to answer any questions.

OIL TAXES IN THE 14 MAJOR OIL PRODUCING STATES
SEPTEMBER 2014

State	Severance or Gross Production Tax Rate	Local Ad Valorem Taxes Effective Rate	Misc. Taxes	Total Taxes	Annual Production (Million Barrels)			
					2006	2008	2010	2012
Alaska	0% to 25.0%	*	.01% - .04%	0% - 25.0%	270.5	249.9	219.5	
California (1)		1.139%		1%	223.4	214.5	201.4	
Colorado (2)	2% to 5%	4% to 10%	0.14%	7.14%	23.4	24.1	32.6	
Kansas (3)	4.33%	3.67%		8%	35.7	39.6	40.5	
Louisiana	3.125% to 12.5%	*		3.125% - 12.5%	73.9	73	67.4	
Michigan	4% to 6.6%	*		6.6%	5.1	6.2	6.8	
Mississippi	0% to 6.0%	*		0% - 6.0%	17.4	22.1	23.6	
Montana (4)	.5% to 14.8%			.5% - 14.8%	36.3	31.5	25.3	
New Mexico	3.75%	2.339%	3.39%	9.479%	59.8	59.4	65.4	
NORTH DAKOTA(5)	5.0%, 7.0%, 9.0%, or 11.5%	*		5% - 11.5%	39.9	62.8	113.1	
Oklahoma	1% to 7.0%	*	0.9 of 1%	1% - 7.095%	62.8	64.1	67.7	93.6
South Dakota	4.5%		.24%	4.74%	1.4	1.7	1.6	
Texas (6)	0% to 4.6%	4% to 5%	½ cent per bbl.	4.0% - 10.0% plus ½ cent per bbl.	397.2	398	429.3	
Utah (6)(7)	0%, 3.0% or 5.0%	4% to 5%	0.2%	0% - 5% + ad valorem (4%-5%)	17.9	22	24.7	
Wyoming	2% to 6.0%	6.7%		8.7% - 12.7%	52.9	52.9	53.3	

* Severance (or gross production) tax is in lieu of local property taxes on the oil.

(1) California's statutory tax rate is 1% but is subject to increases based on needs to retire voter approved credit.

(2) Colorado has a 2% to 5% severance tax but allows 87.5% of local property taxes as a credit against the tax. Since property taxes average about 7% this credit generally eliminates the severance tax liability.

(3) Kansas has an 8.0% severance tax but allows a credit of up to 3.67% for property taxes paid on oil properties. The severance tax is based on value. Actual rate paid after credit is 4.33%.

(4) Montana's tax rates vary based on the type of well, when the well was drilled, and whether the taxpayer has a working or non-working interest. A portion of the production tax is allocated back to local governments in lieu of property taxes.

(5) North Dakota, has a gross production tax rate of 5% with no exemptions and oil extraction tax rates of 0.0%, 2.0%, 4.0% and 6.5%.

(6) Texas and Utah have property taxes on oil properties but it was not possible for local authorities to estimate an effective percentage rate.

(7) Utah's severance tax is 3% on the first $13 per barrel and 5% on any amount over $13 per barrel.

SOURCE: Survey of states conducted by North Dakota Office of State Tax Commissioner, Oil and Gas Section, September 2012. Interstate Oil and Gas Compact Commission and the Dept. of Energy.

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4-20-15
#5

Proposed Amendments to HB 1476

Page 5, line 13, overstrike "and one-half"

Page 12, line 9, remove ", if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, remove "under subsection 3 of section 57-51-03 would become effective"

Renumber accordingly

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ECONOMIC CONTRIBUTION of the OIL & GAS INDUSTRY IN 2013

In 2013, the oil and gas industry contributed a total of

$43 BILLION

to North Dakota's economy.

EXPLORATION & DEVELOPMENT

Exploring, well drilling, well completions

DIRECT IMPACTS = $7.6 BILLION

SECONDARY IMPACTS = $12.8 BILLION

+

EXTRACTION & PRODUCTION

Oil and gas production activities

DIRECT IMPACTS = $7.7 BILLION

SECONDARY IMPACTS = $7.6 BILLION

+

PROCESSING & TRANSPORTATION

Pipeline operations, crude by rail, refining & gas processing

DIRECT IMPACTS = $957 MILLION

SECONDARY IMPACTS = $1.9 BILLION

+

INFRASTRUCTURE

Investment in infrastructure

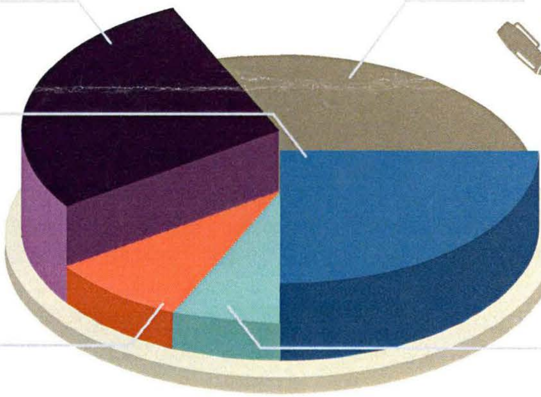
DIRECT IMPACTS = $1.5 BILLION

SECONDARY IMPACTS = $3 BILLION

BENEFITTING FAR MORE THAN THE OIL & GAS INDUSTRY:

RETAIL TRADE
$11.3 Billion

HOUSEHOLDS
$9.3 Billion
Includes $1.43 billion in royalties; $300 million in lease bonuses; salaries, wages & other income.



OTHER:
Business & Personal Services - $2.8 billion
Communications & Public Utilities - $2.3 billion
Professional & Social Services - $2.2 billion
Construction - $1.8 billion
Manufacturing - $1.3 billion
Other (various ag & mining sectors) - $1.5 billion
Transportation - $838 million

HOUSES for SALE

FINANCE, INSURANCE & REAL ESTATE
$4.5 Billion

GOVERNMENT
$4.4 Billion
Including:

TAXES:
$2.9 billion in severance and production taxes;
$204 million in direct sales, use & property taxes;
$50.5 million in corporate & personal income taxes;
$354 million in indirect state general tax collections;

ROYALTIES & LEASES:
$304 million in state royalties;
$349 million in federal royalties, including tribal;
$49.6 million in state lease bonuses;
$4.1 million in federal lease bonuses that were returned to the state.

OTHER:
$54.6 million in licenses, permits, & fees;
$12.5 million in charitable donations.

WHICH HELPS FUND

SCHOOLS

ROADS & INFRASTRUCTURE

LAW ENFORCEMENT

OUTDOOR HERITAGE FUND AND PARKS & REC

$ INDIVIDUAL TAX RELIEF

#6 p. 2

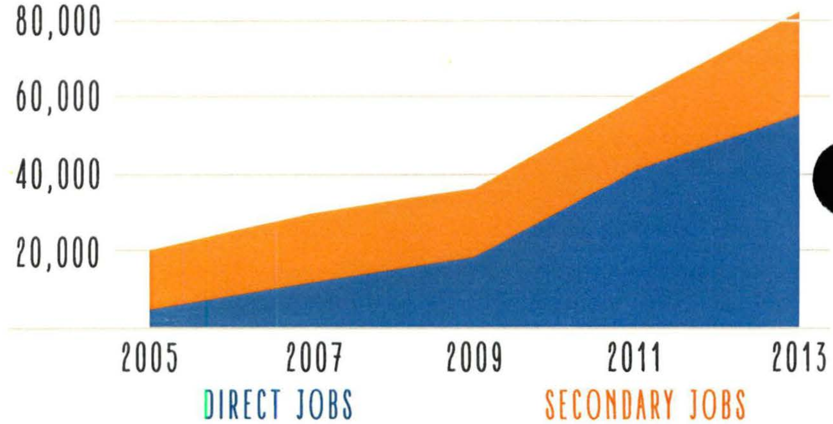
THE RIPPLE EFFECT

EVERY ONE DOLLAR SPENT BY THE INDUSTRY... = RESULTS IN AN ADDITIONAL $1.48 IN ECONOMIC ACTIVITY SENDING RIPPLE EFFECTS THROUGHOUT ND'S ECONOMY.

WHICH ALSO MEANS

55,137 DIRECT JOBS ← JOBS → 26,403 SECONDARY JOBS

This represents a **303%** growth in total jobs supported by the industry since 2005 and a **992%** increase in direct jobs.



BREAKDOWN PER RIG

*180 rigs operating per day on average in 2013

$40 MILLION IN IN-STATE SPENDING

$105 MILLION IN DIRECT & SECONDARY IMPACT

$1.4 MILLION IN SALES, USE & INCOME TAXES

177 IN DIRECT & SECONDARY JOBS

BREAKDOWN PER WELL

* 10,015 producing wells in 2013

$860,000 IN IN-STATE SPENDING

$1.7 MILLION IN DIRECT & SECONDARY IMPACT

$347,000 IN TAXES ($324,000 OF WHICH WAS SEVERANCE)

2.4 IN DIRECT & SECONDARY JOBS

$122 million in other taxes.

COUNTIES & CITIES and other services.

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#1

Estimated Revenue Impact if 2011 HB1420 Had Been Passed

	Production	Production From Wells Completed Prior to July 2011	Production From Wells Completed After July 2011	Actual Ave. Price	Act Eff Rate	Eff OET Rate	Revenue From Old Production	Revenue From New Production (Full Rate)	Revenue From New Production (HB1420 Rate)	Change
Jun-11	11,573,888									
Jul-11	13,178,751	11,226,671	1,952,080	$91.79	10.41%	5.41%	$57,474,064	$9,693,713	$6,110,085	($3,583,628)
Aug-11	13,834,810	10,879,455	2,955,355	$80.71	10.48%	5.48%	$51,190,242	$13,071,265	$8,300,730	($4,770,534)
Sep-11	13,907,190	10,532,238	3,374,952	$81.38	10.47%	5.47%	$51,521,000	$15,023,551	$9,530,479	($5,493,072)
Oct-11	15,123,451	10,185,021	4,938,430	$81.39	10.55%	5.55%	$52,280,930	$22,307,602	$14,268,827	($8,038,776)
Nov-11	15,311,721	9,837,805	5,473,916	$90.36	10.55%	5.55%	$58,042,817	$27,451,580	$17,559,119	($9,892,461)
Dec-11	16,587,107	9,490,588	7,096,519	$87.98	10.59%	5.59%	$56,921,330	$34,901,262	$22,414,227	($12,487,035)
Jan-12	16,967,112	9,143,372	7,823,740	$88.77	10.65%	5.65%	$58,048,893	$39,240,009	$25,349,741	($13,890,269)
Feb-12	16,221,722	8,796,155	7,425,567	$89.05	10.59%	5.59%	$57,613,599	$36,963,693	$23,738,758	($13,224,935)
Mar-12	17,994,854	8,448,938	9,545,916	$84.73	10.61%	5.61%	$55,014,775	$45,375,107	$29,198,598	($16,176,509)
Apr-12	18,348,827	8,101,722	10,247,105	$83.92	10.67%	5.67%	$55,071,615	$48,758,433	$31,559,691	($17,198,742)
May-12	19,972,541	7,754,505	12,218,036	$81.76	10.67%	5.67%	$53,654,137	$56,640,274	$36,661,341	($19,978,933)
Jun-12	19,933,927	7,407,288	12,526,639	$73.21	10.72%	5.72%	$48,466,952	$52,456,702	$34,115,198	($18,341,504)
Jul-12	20,976,779	7,060,072	13,916,707	$73.61	10.74%	5.74%	$48,902,154	$58,801,067	$38,312,890	($20,488,177)
Aug-12	21,755,342	6,712,855	15,042,487	$82.76	10.74%	5.74%	$54,980,875	$71,458,191	$46,559,867	($24,898,324)
Sep-12	21,880,228	6,365,638	15,514,590	$88.02	10.79%	5.79%	$58,984,677	$79,067,903	$51,756,019	($27,311,884)
Oct-12	23,233,422	6,018,422	17,215,000	$86.90	10.78%	5.78%	$58,133,556	$86,467,848	$56,548,177	($29,919,670)
Nov-12	22,051,864	5,671,205	16,380,659	$83.92	10.79%	5.79%	$56,237,151	$79,593,097	$52,099,799	($27,493,298)
Dec-12	23,835,431	5,323,988	18,511,443	$82.96	10.82%	5.82%	$55,881,879	$89,378,280	$58,664,094	($30,714,185)
Jan-13	22,911,661	4,976,772	17,934,889	$91.04	10.81%	5.81%	$61,219,201	$94,865,233	$62,209,387	($32,655,846)
Feb-13	21,877,978	4,629,555	17,248,423	$89.77	10.83%	5.83%	$60,572,996	$90,271,190	$59,303,372	($30,967,818)
Mar-13	24,383,486	4,282,339	20,101,147	$88.61	10.81%	5.81%	$59,585,165	$103,485,551	$67,862,298	($35,623,253)
Apr-13	23,814,955	3,935,122	19,879,833	$87.90	10.80%	5.80%	$59,005,996	$101,351,365	$66,402,618	($34,948,747)
May-13	25,171,516	3,587,905	21,583,611	$87.91	10.82%	5.82%	$59,216,201	$110,429,566	$72,481,261	($37,948,304)
Jun-13	24,702,668	3,240,689	21,461,979	$86.20	10.83%	5.83%	$58,164,111	$107,856,319	$70,855,866	($37,000,452)
Jul-13	27,099,595	2,893,472	24,206,123	$96.76	10.82%	5.82%	$65,177,563	$136,315,136	$89,471,446	($46,843,689)
Aug-13	28,296,240	2,546,255	25,749,985	$97.18	10.86%	5.86%	$65,910,376	$146,639,674	$96,592,003	($50,047,670)
Sep-13	28,017,535	2,199,039	25,818,496	$85.51	10.90%	5.90%	$58,391,307	$130,256,637	$86,101,845	($44,154,792)
Oct-13	29,309,187	1,851,822	27,457,365	$88.27	10.95%	5.95%	$60,786,812	$144,207,865	$95,734,633	($48,473,232)
Nov-13	29,293,592	1,504,605	27,788,987	$79.27	10.99%	5.99%	$54,955,980	$131,949,695	$87,893,035	($44,056,659)
Dec-13	28,620,049	1,157,389	27,462,660	$82.65	11.01%	6.01%	$57,490,569	$136,414,311	$91,018,534	($45,395,777)
Jan-14	29,053,210	810,172	28,243,038	$80.85	11.01%	6.01%	$56,238,506	$137,235,322	$91,566,329	($45,668,992)
Feb-14	26,692,529	462,956	26,229,573	$91.34	11.01%	6.01%	$63,535,252	$143,988,135	$96,071,951	($47,916,185)
Mar-14	30,280,750	115,739	30,165,011	$90.29	11.03%	6.03%	$63,013,883	$164,233,011	$109,761,034	($54,471,977)
Apr-14	30,127,641		30,127,641	$89.89	11.05%	6.05%	$62,942,796	$163,844,506	$109,681,033	($54,163,473)
May-14	32,259,365		32,259,365	$90.83	11.07%	6.07%	$63,811,254	$177,858,170	$119,255,808	($58,602,362)
Jun-14	32,787,662		32,787,662	$92.94	11.08%	6.08%	$65,401,171	$185,274,947	$124,329,240	($60,945,706)
Jul-14	34,550,160		34,550,160	$90.02	11.09%	6.09%	$63,450,577	$189,411,509	$127,207,401	($62,204,108)
Aug-14	35,118,088		35,118,088	$83.18	11.10%	6.10%	$58,725,676	$178,188,476	$119,766,025	($58,422,451)
Sep-14	35,589,844		35,589,844	$80.31	11.12%	6.12%	$56,885,335	$174,923,087	$117,758,679	($57,164,407)
Oct-14	36,691,154		36,691,154	$71.97	11.13%	6.13%	$51,061,228	$161,872,602	$109,059,355	($52,813,247)
Nov-14	35,647,736		35,647,736	$64.36	11.14%	6.14%	$45,736,580	$140,869,301	$94,983,535	($45,885,766)
Dec-14	38,047,672		38,047,672	$47.00	11.17%	6.17%	$33,563,118	$110,334,444	$74,569,632	($35,764,812)
Jan-15	36,926,820		36,926,820	$35.99	11.15%	6.15%	$25,617,470	$81,733,269	$55,153,344	($26,579,925)
Feb-15	32,958,450		32,958,450	$39.52	11.13%	6.13%	$28,038,623	$79,844,350	$53,793,991	($26,050,359)
Total										($1,478,671,948)

HB 1476
4-20-15
#2

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1420

1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				($371,000,000)		
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1420 reduces the oil extraction tax rate on new wells from 6.5% to 4.5%.

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 HB 1420 reduces the oil extraction tax rate on new wells from 6.5% to 4.5%. This rate reduction is expected to reduce legacy fund, permanent oil tax trust fund, education funds, and water resources trust fund revenues by an estimated $371 million in the 2011-13 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.*

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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/28/2011

11.0617.01000

HB1476
4-20-15
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Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1420

Introduced by

Representatives S. Meyer, Onstad

A BILL for an Act to amend and reenact sections 57-51.1-01, 57-51.1-02, 57-51.1-03, and 57-51.1-03.1 of the North Dakota Century Code, relating to oil extraction tax rates and exemptions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax.

For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

2. ~~"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, minus two dollars and fifty cents. 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.~~

~~3.~~ ~~"Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well.~~

~~4.~~ ~~"Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].~~

~~5.~~ "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.

~~6.~~3. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

~~7.~~4. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

~~8.~~5. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

a. Miscible fluid displacement.
b. Steam drive injection.
c. Microemulsion.
d. In situ combustion.
e. Polymer augmented water flooding.

f. Cyclic steam injection.

g. Alkaline flooding.

h. Carbonated water flooding.

i. Immiscible carbon dioxide displacement.

j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

~~9.~~6. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.

~~10.~~7. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

~~11.~~ ~~"Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the 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.~~

~~12.~~ ~~"Two-year inactive well" means any well certified by the industrial commission that did not produce oil in more than one month in any consecutive twenty-four-month period before being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.~~

SECTION 2. 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 six and one-half percent of the gross value at the well of the oil extracted, except that the rate of tax is four and one-half percent of the gross value at the well of the oil extracted in the following situations:

1. For oil produced from new wells drilled and completed after ~~April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03~~June 30, 2011;
2. For oil produced from a secondary or tertiary recovery project ~~that was certified as qualifying by the industrial commission before July 1, 1991~~not otherwise exempt under section 57-51.1-03;

3. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project ~~that is certified as qualifying by the industrial commission after June 30, 1991~~; or

4. For incremental oil produced from a secondary or tertiary recovery project ~~that is certified as qualifying by the industrial commission after June 30, 1991, and which production is~~ not otherwise exempt under section 57-51.1-03~~; or~~.

~~5. For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03.~~

~~However, if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period, then the rate of tax on oil extracted from all taxable wells is six and one-half 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 for each month in any consecutive five-month period, in which case the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells subject to a reduced rate under subsections 1 through 5.~~

SECTION 3. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. ~~(Effective through June 30, 2012)~~ Exemptions from oil extraction tax.

The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. ~~For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the~~

~~trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~4.~~ ~~The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~5.~~ a. The incremental production from a secondary recovery project ~~which has been certified as a qualified project by the industrial commission after July 1, 1991,~~ is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

b. The incremental production from a tertiary recovery project that does not use carbon dioxide ~~and which has been certified as a qualified project by the industrial commission~~ is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide ~~and which has been certified as a qualified project by the industrial commission~~ is exempt from any taxes imposed under this chapter from the date the incremental production begins.

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

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

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

(3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an

accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

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

(5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from

the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.

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

d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.

~~6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel~~

~~of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~7.~~ ~~The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~8.~~4. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

a. The well is located within the boundaries of an Indian reservation;

b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or

c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.

~~9.~~ ~~The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed after April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject~~

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~~to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.~~

~~**(Effective after June 30, 2012) Exemptions from oil extraction tax.** The following activities are specifically exempted from the oil extraction tax:~~

~~1.~~ ~~The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.~~

~~2.~~ ~~The activity of extracting from the earth any oil from a stripper well property.~~

~~3.~~ ~~For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~4.~~ ~~The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month~~

~~period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~5.~~ ~~a.~~ ~~The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.~~

~~b.~~ ~~The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.~~

~~c.~~ ~~For purposes of this subsection, incremental production is defined in the following manner:~~

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

~~(2)~~ ~~For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the~~

~~difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.~~

~~(3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.~~

~~(4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total~~

~~amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.~~

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

~~(6)~~ ~~For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been~~

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~~commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.~~

~~d.~~ ~~The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.~~

~~6.~~ ~~The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~7.~~ ~~The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~8.~~ ~~The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:~~

~~a.~~ ~~The well is located within the boundaries of an Indian reservation;~~

~~b.~~ ~~The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or~~

~~c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.~~

~~9. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~

SECTION 4. AMENDMENT. Section 57-51.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03.1. Stripper well, new well, work-over, and secondary or tertiary project certification for tax exemption or rate reduction - Filing requirement.

To receive the benefits of a tax exemption or tax rate reduction, a certification of qualifying well status prepared by the industrial commission must be submitted to the tax commissioner as follows:

1. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property under subsection 2 of section 57-51.1-03, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's qualification period.
2. To receive, from the first day of eligibility, a ~~tax exemption under subsection 3 of section 57-51.1-03 and a~~ rate reduction on production from a new well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after a new well is completed.
3. ~~To receive, from the first day of eligibility, a tax exemption under subsection 4 of section 57-51.1-03 and a rate reduction for a work-over well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the work-over project is completed.~~

~~4.~~ To receive, from the first day of eligibility, a tax exemption under subsection ~~5~~3 of section 57-51.1-03 and a tax rate reduction under section 57-51.1-02 on production from a secondary or tertiary recovery project, the industrial commission's certification must be submitted to the tax commissioner within the following time periods:

a. For a tax exemption, within eighteen months after the month in which the first incremental oil was produced.

b. For a tax rate reduction, within eighteen months after the end of the period qualifying the project for the rate reduction.

~~5. To receive, from the first day of eligibility, a tax exemption or the reduction on production for which any other tax exemption or rate reduction may apply, the industrial commission's certification must be submitted to the tax commissioner within eighteen months of the completion, recompletion, or other qualifying date.~~

~~6. To receive, from the first day of eligibility, a tax exemption under subsection 6 of section 57-51.1-03 on production from a two-year inactive well, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the two-year inactive well's qualification period.~~

If the industrial commission's certification is not submitted to the tax commissioner within the eighteen-month period provided in this section, then the exemption or rate reduction does not apply for the production periods in which the certification is not on file with the tax commissioner. When the industrial commission's certification is submitted to the tax commissioner after the eighteen-month period, the tax exemption or rate reduction applies to prospective production periods only and the exemption or rate reduction is effective the first day of the month in which the certification is received by the tax commissioner.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

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#4

Comparison of Full Biennium Oil Extraction Tax (OET) Revenue with Big Trigger NOT In Effect for 24 Months or HR1476 Flat Rate In Effect for 24

	OET Revenue With HB1476 Flat Rate For Full Biennium (@4.2% Eff. Rate)	OET Revenue With Trigger Off For Full Biennium (@6.1% Eff. Rate)
WTI Price	$60.00	$60.00
Less Estimated 15% Discount	($9.00)	($9.00)
ND Sweet Posted Price	$51.00	$51.00
Total Production (Barrels)	803,000,000	803,000,000
Average BOPD	1,100,000	1,100,000
Total Revenue From Current Production	1,720,026,000	2,498,133,000

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Comparison of Full Biennium Oil Extraction Tax (OET) Revenue with Big Trigger In Effect for 24 Months or HR1476 Flat Rate In Effect for 24 M

	OET Revenue With HB1476 Flat Rate For Full Biennium (@4.2% Eff. Rate)	OET Revenue With Trigger On For Full Biennium (@1% Eff. Rate)
WTI Price	$55.00	$55.00
Less Estimated 15% Discount	($8.25)	($8.25)
ND Sweet Posted Price	$46.75	$46.75
Total Production (Barrels)	803,000,000	803,000,000
Average BOPD	1,100,000	1,100,000
Total Revenue From Current Production	1,576,690,500	375,402,500

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1.

PROPOSED RESTRUCTURING OF OIL EXTRACTION TAX

This memorandum provides information on the restructuring of oil extraction tax rates and exemptions that would occur if bill draft [15.1024.04000] is approved by the 2015 Legislative Assembly. If approved, oil extraction tax rates and exemptions would be as follows:

- Oil extraction tax rate:

  The rate is equal to 4.5 percent on all oil extracted, subject to limited rate reductions and exemptions.

- Production exempt from the oil extraction tax includes:

  Production that is exempt from the gross production tax imposed by North Dakota Century Code Chapter 57-51.

  Production from stripper well property or an individual stripper well.

  Incremental production from a secondary recovery project for five years from the date incremental production begins.

  Incremental production from a tertiary recovery project for 10 years from the date incremental production begins if the recovery project does not use carbon dioxide or indefinitely if the project does use carbon dioxide.

- Production subject to a reduced oil extraction tax rate includes:

  Production from wells drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation.

  The first 75,000 barrels of oil produced during the first 18 months after completion are subject to a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

Oil extraction tax rate reductions and exemptions that would be eliminated if bill draft [15.1024.04000] is approved by the 2015 Legislative Assembly include:

- Rate reductions that are dependent on the average monthly comparison price of a barrel of oil dropping below the trigger price for five consecutive months. These reductions currently bring the 6.5 percent tax rate down to 4 percent on:

  Oil produced from a vertical well completed after April 27, 1987, following the first 15 months of exempt production.

  Oil produced from a horizontal well completed after April 27, 1989, following the first 24 months of exempt production.

  Oil produced from a qualifying secondary or tertiary recovery project certified by the industrial commission after June 30, 1991.

  Incremental oil produced from a qualifying secondary or tertiary recovery project, following the initial 5-year or 10-year exemption period.

- A rate reduction that is dependent on the average price of a barrel of oil falling below $55 for one month.

  This reduction currently brings the 6.5 percent tax rate down to 2 percent on the first $75,000 barrels, or the first $4,500,000 of gross value at the well, whichever is less, of oil produced during the first 18 months after completion. This rate reduction only applies to horizontal wells drilled and completed after April 30, 2009, and before July 1, 2015.

- Exemptions that are dependent on the average monthly comparison price of a barrel of oil dropping below the trigger price for five consecutive months. These exemptions include:

  A 15-month exemption on the initial production from a vertical well.

  A 24-month exemption on the initial production from a horizontal well.

  An exemption on all oil recovered during the testing period prior to well completion.

  A 12-month exemption on production from a qualifying well that was worked over.

  A 10-year exemption on production from a certified two-year inactive well.

  A nine-month exemption on production from a certified horizontal reentry well.

- A 60-month exemption on the initial production from:

  Wells drilled and completed before July 1, 2013, on nontrust lands within the boundaries of an Indian reservation or on lands held in trust by the United States for an individual Indian or tribe.

  Wells drilled and completed before July 1, 2013, on lands held by an Indian tribe if the interest was in existence on August 1, 1997.

If approved by the 2015 Legislative Assembly, bill draft [15.1024.04000] would become effective on June 1, 2015, if the average monthly comparison price of a barrel of oil remained below the trigger price for the months of March through May of 2015, or on the first day of the sixth month following a period of five consecutive months where the average monthly comparison price of a barrel of oil remains below the trigger price. Once effective, the remaining term of any exemptions or rate reductions eliminated by bill draft [15.1024.04000] would expire.

<u>Testimony of Senator Mac Schneider (District 42 - Grand Forks)</u>

House Bill 1476

Senate Finance and Tax Committee - April 21, 2015

As the committee is aware, the House heard and passed this bill in the span of about 10 hours yesterday without having considered the long-term effects of the proposed 30% cut to the oil extraction tax.

Working with my colleagues, I have done my best under this improperly shortened timeframe to gather best evidence -- from Department of Mineral Resources, the Energy Information Administration, and the Chicago Mercantile Exchange Group -- regarding the potential fiscal impact of this bill.

Using projections on price and production from these entities, we had Legislative Council draft the attached memorandum. A review of this memo demonstrates that HB 1476 does not guarantee stability or predictability. Rather, it trades risk for risk and threatens to cost our state a stunning amount of revenue in the upcoming biennium, the next ten years, and beyond under existing projections.

Without engaging in puffery, Mr. Chairman, this bill is fairly described as a multi-billion dollar crap shoot. Instead of gambling with billions in these closing days of the session, I urge the committee to focus on reforming the trigger. That is a goal that is within our bipartisan reach.

I would like to take you through what is called "Proposed Scenario No. 2" in the attached memo. For the 2015-2017 biennium, this scenario incorporates price projections from the Chicago Mercantile Exchange Group. Under these projections, the trigger incentive would activate in June of 2015. However, the price of oil would exceed the trigger price during June, July, August, September, and October of 2015, meaning that the trigger incentive would only be in effect for the statutory minimum of five months.

Under current law, the 6.5% extraction tax would go back into place in November of 2015. Should HB 1476 become law, on the other hand, the 30% cut to the

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extraction tax would activate for the remainder of the coming biennium and in perpetuity thereafter.[1]

This projected scenario also happens to be a nightmare scenario for North Dakota. Relative to current law -- even if nothing is done to reform the trigger -- the people of our state would lose over $369 million dollars during the 2015-2017 biennium alone due to the 30% cut to the extraction tax that would go into effect in November of this year.

Of course, the cost of the permanent 30% cut to the extraction tax will continue forever and for all time. If the production and price projections materialize, North Dakota would lose an additional $5.83 billion from the 2017 biennium through the 2023 biennium.

While I recognize projections can and frequently do change, that merely underscores the need for caution. Sure, the trigger could be on for 11 months as Moody's predicted, but the price projections for this biennium and future biennia could prove conservative. The bottom line is that this bill is extraordinarily risky. There is no guarantee it results even in near-term revenue increases. Indeed, if these projections play out, the state would experience the worst of both worlds: Near-term revenue losses beyond those that would be incurred due to a triggering of incentives and a permanent 30% loss of extraction tax revenue.

This bill is a risk the state can't afford to take. I urge the committee to instead focus in on the trigger, which we all agree is the heart of the matter.

###

[1]The emergency clause on this bill failed in the House. While I am still examining the legal effect of that, my present understanding is that without an emergency clause the bill would become effective July 1, 2015. If this is indeed the case, it appears June would operate under the "trigger," i.e., no extraction tax on newly producing wells for that month, and the 30% cut to the extraction tax would go into effect on July 1.

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COMPARISON OF ESTIMATED OIL AND GAS TAX COLLECTIONS - PROPOSED SCENARIO CALCULATIONS

This memorandum calculates estimated oil and gas tax revenue collections based on various proposed scenarios submitted by the requestor. **(There is no "official" forecast of future bienniums oil price and production levels beyond the 2015-17 biennium. The calculations shown below reflect oil price and production levels provided by the requestor based on information from the Department of Mineral Resources, the Energy Information Administration, and the Chicago Mercantile Exchange Group.)**

The March 2015 forecast reflects total oil and gas tax collections of $3,398,390,000 and is based on the following:

- The average daily oil production remaining constant at 1.1 million barrels per day;
- The monthly average price of oil increasing from $41.97 to $52.56 per barrel; and
- The "large" trigger being in effect for the first 11 months of the 2015-17 biennium.

PROPOSED SCENARIO CALCULATIONS - 2015-17 BIENNIUM ESTIMATED COLLECTIONS

The schedule below provides information on 2015-17 biennium estimated oil and gas tax revenue collections based on two proposed scenarios submitted by the requestor. Proposed Scenario No. 1 is based on an oil extraction tax rate of 6.5 percent for the entire 2015-17 biennium except during the first five months of the biennium when the scenario anticipates the "large" trigger would be in effect. Proposed Scenario No. 2 is based on an oil extraction tax rate of 4.5 percent for the entire 2015-17 biennium and assumes the "large" trigger is repealed prior to going into effect on June 1, 2015. Both proposed scenarios reflect average daily oil production remaining constant at 1.1 million barrels per day and the monthly average price of oil increasing from $48.72 to $54.19 per barrel.

	Proposed Scenario No. 1	Proposed Scenario No. 2	Proposed Scenarios - Increase (Decrease)
Gross production tax	$2,018,430,000	$2,018,430,000	$0
Oil extraction tax	2,135,450,000	1,766,120,000	(369,330,000)
Total collections	$4,153,880,000	$3,784,550,000	($369,330,000)

PROPOSED SCENARIO CALCULATIONS - 2017-19 BIENNIUM THROUGH 2023-25 BIENNIUM ESTIMATED COLLECTIONS

The schedule below provides information on estimated oil and gas tax revenue collections for the 2017-19 biennium through the 2023-25 biennium based on two proposed scenarios. Proposed Scenario No. 1 is based on an oil extraction tax rate of 6.5 percent for the entire period. Proposed Scenario No. 2 is based on an oil extraction tax rate of 4.5 percent for the entire period. Both proposed scenarios reflect the following assumptions provided by the requestor based on information from the Department of Mineral Resources, the Energy Information Administration and the Chicago Mercantile Exchange Group:

- The average daily oil production increasing from 1.15 million to 1.81 million barrels per day over this four biennium period;
- The monthly average price of oil increasing from $65 to $78 per barrel over this four biennium period; and
- The "large" trigger provisions and the "small" trigger provisions are not effective.

	Proposed Scenario No. 1	Proposed Scenario No. 2	Proposed Scenarios - Increase (Decrease)
Gross production tax	$14,729,320,000	$14,729,320,000	$0
Oil extraction tax	18,718,510,000	12,888,160,000	(5,830,350,000)
Total collections	$33,447,830,000	$27,617,480,000	($5,830,350,000)

NOTE: The amounts reflected in these schedules are **calculated based on the requestor's scenarios. There are no forecasts available for the 2017-19 through 2023-25 bienniums. The actual amounts collected for the 2015-17 biennium and future bienniums may differ significantly from these amounts** based on actual oil price and oil production.

3.

House Bill 1476
Senate Finance and Taxation Committee
April 21, 2015
Testimony of Mark Fox, Chairman, MHA Nation

Mr. Chairman and members of the Committee, my name is Mark Fox and I am the Chairman of the Mandan Hidatsa and Arikara Nation. The MHA Nation sits in the heart of the Bakken/Three forks oil play and accounts for approximately 30% of the total oil production in North Dakota. I testified at length yesterday about the MHA Nation's sovereign right to tax economic activity within its boundaries. Because the threat of dual state and tribal taxation stifled oil production on the Reservation, the MHA Nation entered into a tax sharing agreement with North Dakota to remove the threat and stimulate production on the Reservation. We reluctantly share oil and gas tax revenue on Fort Berthold to avoid the economic reality that Reservation production can be dramatically impaired or prohibited by double taxation.

We currently have a need to address dual taxation in other areas as well. As I stated yesterday, for example, we currently do not collect a dime in taxes on pipelines that cross and impact our Reservation, even though we bear the expense of cleaning up spills and regulating activity. This is unjust and there needs to be an efficient process in place that will allow us to negotiate in good faith intergovernmental agreements without waiting for the Legislature to convene every two years.

The recent oil boom has been both a blessing and a curse. It has brought needed revenue to the MHA Nation, but it has also brought devastating impacts in the form of destruction of our roads, damage to our environment, increased crime, and a significant increase in the cost of services which the MHA Nation must provide on the Fort Berthold Reservation. The MHA Nation needs more tax revenue to mitigate these costs. Historically, revenues have been and remain inadequate to cover the costs

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that come with Reservation oil production. The MHA Nation cannot afford a decrease in its existing revenue.

We agree that the five month tax trigger (the big trigger) needs to be removed. It is outdated and unnecessary. However, tying the elimination of the tax trigger to a permanent 30% reduction in the extraction tax is not acceptable, because it will result in a significant loss of tax revenue in the long term. The estimated loss to the MHA Nation over a period of twenty years is hundreds of millions of dollars. A loss of revenue of this magnitude is excessive and will further reduce our ability to address the serious oil production impacts. The MHA Nation currently does not have enough revenue to mitigate the impacts of the oil industry. Asking us to agree to such a massive reduction is not only unreasonable, it is unnecessary.

The Bill should be amended by: (1) including a sunset provision under which the 2% reduction in the extraction tax expires in two years. This would require the Legislature to revisit the issue in the next session, and give it the time it needs to determine whether a permanent 2% reduction is actually necessary when weighed against oil prices, production, and the astounding loss of revenue over the long term; (2) including a provision that requires the extraction tax to return to 11.5% if the price of oil averages at or above $70.00 per barrel for a period of 90 days. This will assure that if the price of oil recovers sufficiently, then industry will pay its fair share. It will also mitigate the huge loss of revenue that will come with a permanent unconditional reduction; and (3) most importantly, adding a provision exempting trust wells from the reduced tax rate. This will recognize the MHA Nation's right to work with its industry partners and determine how best to continue production on Fort Berthold and mitigate the significant long term loss of revenue that will result from a reduced tax rate.

We would not oppose the Bill with the amendments we propose. Thank you.

House Bill 1476
Senate Finance and Taxation Committee
April 21, 2015
Testimony of Richard McCloud, Chairman, Turtle Mountain Band of Chippewa

Mr. Chairman and members of the Committee, my name is Richard McCloud and I am the Chairman of the Turtle Mountain Band of Chippewa. I am here to support HB 1476 with the amendments proposed by Chairman Fox.

In particular, the Turtle Mountain Band of Chippewa supports the provision exempting trust wells from the reduced tax rate. As with MHA, this particular amendment would give the Tribe the flexibility to negotiate directly with industry in the Tribes best interest.

In 2012, in my State of Tribe address, I stressed pathways out of poverty through education. This bill with the proposed amendments would allow the Tribe to capitalize on the potential tax revenues to address much needed funding for:

- Education
- Jobs—70% unemployment
- Housing--shortage
- Roads—infrastructure
- Healthcare—shortfalls in budget

I am not asking for a handout—just a hand up. We support the Bill with the proposed amendments. Thank you.

5.

To: North Dakota Legislature, Senate Finance & Taxation Committee

From: Steve Sitting Bear, External Affairs Director Standing Rock Sioux Tribe

Subject: HB 1476

Date: April 21, 2015

Good afternoon:

Today I am here on behalf of the Standing Rock Sioux Tribe to testify in support of the Three Affiliated Tribes proposed amendments to HB 1476. The Standing Rock Sioux Tribe isn't currently engaged in the oil and gas production that is occurring in our state, but we do have concerns for future agreements between our governing bodies with the current language in HB 1476.

Chairman Fox's recommendation to place a sunset provision on the 2% reduction only makes sense as oil prices will eventually return to previous levels. When that happens the loss of revenue that will be realized to both the state and the tribes is nothing short of devastating. Chairman Fox has estimates that MHA will realize 700 million to 1 billion dollars in lost revenue. This also effects the other tribes in our state who wish to engage in the oil and gas opportunities.

The chairman's second recommendation to restore the 11.5% extraction tax if the price per barrel stays over $70 for a 90 day time period is not unreasonable, and quite frankly, very smart. It only gives the state more options moving forward. At the end of the day, we are all accountable to our constituents who are being effecting by the impact of the oil industry, most notably the Three Affiliated Tribes and those counties in the oil patch. I would hope that many of them would agree.

The Chairman's third and last recommendation to exempt wells on trust lands is undoubtedly the supported by all the tribes, and is ultimately the most important proposal. One of the key reasons for this, are the jurisdictional issues alone. The state is not obligated to contribute resources to the problems that are associated with trust lands. The federal trust responsibilities have never been enough to fulfill that need. So who is responsible? It is those who are most effected, tribal members.

In closing, the Standing Rock Sioux Tribe hopes this committee will take Chairman Fox's recommendation into consideration in moving forward with the bill.

Thank you

Steve Sitting Bear

6.

NORTH DAKOTA PETROLEUM COUNCIL

100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395
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House Bill 1476
Testimony of Ron Ness
Senate Finance & Taxation Committee
April 21, 2015

Chairman Cook and members of the committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies directly employing 65,000 employees in North Dakota 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. We are neutral on HB 1476 but are providing an amendment to the current version and with adoption of that we support a flat predictable oil tax rate for North Dakota.

It's hard to imagine that a $40 billion dollar industry in North Dakota has no idea what their tax rate will be 40 days from today. Under today's law, the big trigger is a 130% swing in the tax rate and all existing wells are reduced to 9%, that's about $76 million dollars per month at $40 dollars a barrel. How can you plan with that on the horizon? HB 1476, as drafted, is merely a revenue insurance policy for the State of North Dakota on the backs of oil producers and mineral owners.

Over the course of the last seven years, the Bakken has seen a lot. These initial years of the play brought intense exploration activity during a period of high prices and excitement and leaseholds that had to be drilled. We quickly began to learn the Bakken was a world class play. It also brought many challenges, some difficult and costly.

The "Exploration Phase" of the Bakken is over. We've learned that although the Bakken is a huge resource with large reserves, we've all been humbled and reminded these last few months that oil is still a commodity. Our rig count dropped exactly 50% in less than four months and thousands of jobs have been lost. The consequences of the low prices and the big trigger going on now amounts to billions of dollars in revenue, not a few million as in the pre or early Bakken days. While technology has dramatically changed our ability to recover oil, the price of the commodity will always fluctuate and there is nothing in today's world that suggests this won't be the case in the future. When the big trigger became law in 1987, it stayed on until 2004 and our effective tax rate was around 7.2%.

Again, the Exploration Phase is over. We now enter the "Development Phase" which will be a period in our State's history lasting several decades, and despite the current price situation, long term the Development Phase if managed well, will ensure prosperity for our State for decades beyond.

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NORTH DAKOTA
PETROLEUM
COUNCIL
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The Development Phase brings new challenges, it will require new ideas, and consistent long term strategies to manage this world class play. What is the Development Phase, what are some of the challenges and solutions, and what does this all mean to the State of North Dakota?

The Development Phase:

- Leases Held
- Multi well pad drilling
- Potentially thousands more wells and production over the course of 30 or more years.
- Continued technological advancements allowing for even greater increased recovery of oil.
- Continued technological advancements in health, safety and protection of our environment.
- Infrastructure expansion, pipelines, processing facilities, housing, roads, schools, water, etc.

The Challenges our industry faces:

- Capital intensive. We can't meet the infrastructure expansions or the necessary technological advancements without continued and massive amounts of capital investment.
- Competition with other plays and states with lower taxes over the same capital investment
- Regulatory costs
- Weather
- High transportation costs
- High taxes and unpredictable tax rates
- Long term oil prices

What does Industry need for the Development Phase?

Neither the State or industry can control or predict prices long term, but what the State can provide industry is a long term consistent regulatory policy and a uniform, stable and competitive tax policy to ensure the necessary long term capital investment required for this next phase. A stable more competitive tax rate encourages, not discourages, the needed long term capital investment in North Dakota. And, in return, the State also benefits with more consistent revenues and less uncertainty.

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NORTH DAKOTA
PETROLEUM
COUNCIL
100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395
701.223.6380 | ndpc@ndoil.org | www.NDOil.org

What does the Development Phase mean for the State of North Dakota?

- A once unimaginable thriving state where young people return home, relocate here, or start a business because we have jobs and a surging economy.
- More jobs than we can fill with rising wages and incomes.
- Schools that need to expand rather than close and consolidate.
- State revenue collections from oil that nearly double what our state budget was just a decade ago.
- While other states raise taxes ND reduces taxes, funds education, roads, and is looking to incentivize a chemical industry that diversifies our economy but that won't happen unless investors are confident the Bakken will continue to grow production.
- Means that we need to continue to work on the challenges of a growing population, research and invest in new technologies to tackle oil shale issues, and think BIG – World Class!
- North Dakota is looked at as a place to be, where to come to invest, and has become a shining star in a struggling world economy.

How does a State with all this expect a 40 billion dollar industry to operate without knowing what it's tax rate will be in 40 days – it could vary 130% on a few pennies at market close any day in May. The Bakken is big business, requiring massive investment and planning – it's time to end this tax chaos and allow industry to focus on long-term strategies for developing the Bakken while providing the state revenue certainty.

Thank you, we urge you to adopt our amendments and pass this bill. I would be happy to answer any questions.

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Proposed Amendments to HB 1476

Page 5, line 13, overstrike "and one-half"

Page 12, line 9, remove ", if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, remove "under subsection 3 of section 57-51-03 would become effective"

Renumber accordingly

FIRST ENGROSSMENT

1.
4-22-15

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1476

Introduced by

Representatives Carlson, Belter, Headland

Senators Cook, Wardner

(Approved by the Delayed Bills Committee)

A BILL for an Act to amend and reenact subsection 4 of section 38-08-04 and sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to oil extraction tax rates and exemptions; to provide legislative intent; ~~and~~to provide for an exception; to provide for a legislative management study; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in ~~subsection 8 of~~ section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells as defined in section 57-51.1-01 and the depth of those wells, ~~to recertify stripper wells that are reentered and recompleted as horizontal wells,~~ and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations ~~under~~as defined in section 57-51.1-01, and the date of qualification for the ~~reduced rate of~~ oil extraction tax exemption for secondary and tertiary recovery operations.

SECTION 2. AMENDMENT. Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax.

For the purposes of this chapter:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the

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well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

2. ~~"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, minus two dollars and fifty cents. 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.~~

~~3.~~ ~~"Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well.~~

~~4.~~ "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].

~~5.~~3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.

~~6.~~4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

~~7.~~5. "Qualifying secondary recovery project" means a project employing water flooding. ~~To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations.~~ To be eligible for the tax exemption provided under section 57-51.1-03 ~~and subsequent thereto the rate reduction provided under section 57-51.1-02~~, a secondary recovery project must be certified as qualifying

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by the industrial commission and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

~~8.~~6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

a. Miscible fluid displacement.
b. Steam drive injection.
c. Microemulsion.
d. In situ combustion.
e. Polymer augmented water flooding.
f. Cyclic steam injection.
g. Alkaline flooding.
h. Carbonated water flooding.
i. Immiscible carbon dioxide displacement.
j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. ~~To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations.~~ To be eligible for the tax exemption provided under section 57-51.1-03 ~~and subsequent thereto the rate reduction provided under section 57-51.1-02~~, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

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~~9.~~7. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.

~~10.~~8. "Stripper well" means a well drilled and completed, or reentered and recompleted as a horizontal well, after June 30, 2013, whose average daily production of oil during any preceding consecutive twelve-month period, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations, and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048 meters] in the Bakken or Three Forks formation.

~~11.~~9. "Stripper well property" means wells drilled and completed, or a well reentered and recompleted as a horizontal well, before July 1, 2013, on a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

~~12.~~ ~~"Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the 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.~~

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~~13. "Two-year inactive well" means any well certified by the industrial commission that did not produce oil in more than one month in any consecutive twenty-four-month period before being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.~~

SECTION 3. 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 ~~six~~four ~~and one-half~~five percent of the gross value at the well of the oil extracted~~, except that the rate of tax is four percent of the gross value at the well of the oil extracted in the following situations:~~

~~1. For oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03;~~

~~2. For oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991;~~

~~3. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991;~~

~~4. For incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03; or~~

~~5. For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03.~~

However, if the average price of a barrel of crude oil exceeds the trigger price of ninety dollars for each month in any consecutive ~~five-month~~three-month period, then the rate of tax on oil extracted from all taxable wells is six ~~and one-half~~ percent of the gross value at the well of the

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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 ~~five-month~~three-month period, in which case the rate of tax reverts to ~~four~~five percent of the gross value at the well of the oil extracted ~~for any wells subject to a reduced rate under subsections 1 through 5~~. 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.

SECTION 4. AMENDMENT. Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

SECTION 5. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. Exemptions from oil extraction tax.

The following activities are specifically exempted from the oil extraction tax:

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1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property or individual stripper well.
~~3.~~ ~~For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~
~~4.~~ ~~The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

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~~5.~~3. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

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

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

(2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the

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difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.

(3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

(4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total

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amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

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

(6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been

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commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.

d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.

~~6.~~ ~~The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~7.~~ ~~The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~8.~~ ~~The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:~~

~~a.~~ ~~The well is drilled and completed before July 1, 2013, on nontrust lands within the boundaries of an Indian reservation;~~

~~b.~~ ~~The well is drilled and completed before July 1, 2013, on lands held in trust by the United States for an Indian tribe or individual Indian; or~~

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~~c. The well is drilled and completed before July 1, 2013, on lands held by an Indian tribe if the interest is in existence on August 1, 1997.~~

~~9. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed after April 30, 2009, and before July 1, 2015, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.~~

~~10.~~4. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~

SECTION 6. ~~LEGISLATIVE INTENT -~~ TERM OF EXEMPTIONS AND RATE REDUCTIONS. ~~It is the intent of the sixty-fourth legislative assembly that the~~The remaining

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term of any exemption or rate reduction eliminated in section 4 of this Act expires ~~upon the effective date of this Act~~January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 3 of this Act expires December 1, 2015.

SECTION 7. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS. The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 8. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 9. EFFECTIVE DATE - EXPIRATION DATE. ~~This Act becomes effective June 1, 2015, if on that date the exemption under subsection 3 of section 57-51.1-03 is, or would become, effective and, if it is not, this Act becomes effective on the first day of the first subsequent month the exemption under subsection 3 of section 57-51.1-03 would become effective~~Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective.

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15.1024.05001
Title.

Prepared by the Legislative Council staff for
Senator Dotzenrod
April 21, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 5, line 13, remove the overstrike over "~~six~~"

Page 5, line 13, remove "<u>four</u>"

Renumber accordingly

2.
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15.1024.05004

Sixty-fourth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1476

Introduced by

Representatives Carlson, Belter, Headland

Senators Cook, Wardner

(Approved by the Delayed Bills Committee)

A BILL for an Act to amend and reenact subsection 4 of section 38-08-04 and sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to oil extraction tax rates and exemptions; to provide legislative intent; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in ~~subsection 8 of~~ section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells <u>as defined in section 57-51.1-01</u> and the depth of those wells, ~~to recertify stripper wells that are reentered and recompleted as horizontal wells,~~ and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations ~~under~~<u>as defined in</u> section 57-51.1-01, and the date of qualification for the ~~reduced rate of~~ oil extraction tax <u>exemption</u> for secondary and tertiary recovery operations.

SECTION 2. AMENDMENT. Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax.

For the purposes of this chapter:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as

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defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

2. ~~"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, minus two dollars and fifty cents. 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.~~

~~3.~~ ~~"Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well.~~

~~4.~~ "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].

~~5.~~3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.

~~6.~~4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

~~7.~~5. "Qualifying secondary recovery project" means a project employing water flooding. ~~To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations.~~ To be eligible for the tax exemption provided under section 57-51.1-03 ~~and subsequent thereto the rate reduction provided under section 57-51.1-02~~, a secondary recovery project must be certified as qualifying

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by the industrial commission and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

~~8.~~6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

a. Miscible fluid displacement.

b. Steam drive injection.

c. Microemulsion.

d. In situ combustion.

e. Polymer augmented water flooding.

f. Cyclic steam injection.

g. Alkaline flooding.

h. Carbonated water flooding.

i. Immiscible carbon dioxide displacement.

j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. ~~To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations.~~ To be eligible for the tax exemption provided under section 57-51.1-03 ~~and subsequent thereto the rate reduction provided under section 57-51.1-02~~, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

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~~9.~~7. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.

~~10.~~8. "Stripper well" means a well drilled and completed, or reentered and recompleted as a horizontal well, after June 30, 2013, whose average daily production of oil during any preceding consecutive twelve-month period, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations, and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048 meters] in the Bakken or Three Forks formation.

~~11.~~9. "Stripper well property" means wells drilled and completed, or a well reentered and recompleted as a horizontal well, before July 1, 2013, on a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

~~12.~~ ~~"Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the 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.~~

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~~13. "Two-year inactive well" means any well certified by the industrial commission that did not produce oil in more than one month in any consecutive twenty-four-month period before being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.~~

SECTION 3. 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 ~~six~~four and one-half percent of the gross value at the well of the oil extracted~~, except that the rate of tax is four percent of the gross value at the well of the oil extracted in the following situations:~~

~~1. For oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03;~~

~~2. For oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991;~~

~~3. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991;~~

~~4. For incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03; or~~

~~5. For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03.~~

~~However, if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period, then the rate of tax on oil extracted from all taxable wells is six and one-half percent of the gross value at the well of the oil extracted until the average price~~

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~~of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period, in which case the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells subject to a reduced rate under subsections 1 through 5~~.

SECTION 4. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. Exemptions from oil extraction tax.

The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property or individual stripper well.

~~3.~~ ~~For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~4.~~ ~~The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous~~

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~~employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~5.~~3. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.

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

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

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

(3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner

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that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

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

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

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

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

d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.

~~6.~~ ~~The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~7.~~ ~~The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

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~~8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:~~

~~a. The well is drilled and completed before July 1, 2013, on nontrust lands within the boundaries of an Indian reservation;~~

~~b. The well is drilled and completed before July 1, 2013, on lands held in trust by the United States for an Indian tribe or individual Indian; or~~

~~c. The well is drilled and completed before July 1, 2013, on lands held by an Indian tribe if the interest is in existence on August 1, 1997.~~

~~9.~~4. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed after April 30, 2009, and before July 1, ~~2015~~2017, is subject to a reduced tax rate of ~~two~~four percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~ The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

~~10.~~~~4.~~5. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation, is subject to a reduced tax rate of two percent of the gross value at

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the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~

SECTION 5. LEGISLATIVE INTENT - TERM OF EXEMPTIONS AND RATE REDUCTIONS. It is the intent of the sixty-fourth legislative assembly that the remaining term of any exemption or rate reduction eliminated in section 4 of this Act expires upon the effective date of this Act.

SECTION 6. EFFECTIVE DATE. This Act becomes effective June 1, 2015, if on that date the exemption under subsection 3 of section 57-51.1-03 is, or would become, effective and, if it is not, this Act becomes effective on the first day of the first subsequent month the exemption under subsection 3 of section 57-51.1-03 would become effective.

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the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~

SECTION 5. LEGISLATIVE INTENT - TERM OF EXEMPTIONS AND RATE REDUCTIONS. It is the intent of the sixty-fourth legislative assembly that the remaining term of any exemption or rate reduction eliminated in section 4 of this Act ~~expires upon~~remains in effect after the effective date of this Act for production that qualified during the time the exemption or rate reduction was effective.

SECTION 6. EFFECTIVE DATE. This Act becomes effective June 1, 2015, if on that date the exemption under subsection 3 of section 57-51.1-03 is, or would become, effective and, if it is not, this Act becomes effective on the first day of the first subsequent month the exemption under subsection 3 of section 57-51.1-03 would become effective.

15.1024.05006
Title.

Prepared by the Legislative Council

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April 21, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 3, remove the second "and"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 2, line 3, remove the overstrike over "~~"Average price" of a barrel of crude oil means the monthly average of the daily closing~~"

Page 2, remove the overstrike over line 4

Page 2, line 5, remove the overstrike over "~~in the Wall Street Journal, midwest edition~~"

Page 2, line 5, remove the overstrike over "~~. When~~"

Page 2, remove the overstrike over lines 6 and 7

Page 2, line 11, after "~~4.~~" insert "3."

Page 2, line 14, replace "3." with "4."

Page 2, line 17, replace "4." with "5."

Page 2, line 23, replace "5." with "6."

Page 3, line 3, replace "6." with "7."

Page 4, line 1, replace "7." with "8."

Page 4, line 4, replace "8." with "9."

Page 4, line 14, replace "9." with "10."

Page 5, line 14, remove the overstrike over "~~, except that the rate of tax is~~"

Page 5, line 14, after "~~four~~" insert "six and one-half"

Page 5, line 14, remove the overstrike over "~~percent of the gross value at the well of the oil~~"

Page 5, line 15, remove the overstrike over "~~extracted~~"

Page 5, line 28, after "~~57-51.1-03~~" insert "from wells located on trust lands within the boundaries of the Fort Berthold Reservation if an agreement entered under chapter 57-51.2 provides that production from trust lands is subject to the tax imposed under this section"

Page 5, line 28, remove the overstrike over the period

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil~~"

Page 5, line 29, after "~~oil~~" insert "meets or"

Page 5, line 29, remove the overstrike over "~~exceeds~~ "

Page 5, line 29, after "~~exceeds~~" insert "seventy dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

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Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "<u>three-month</u>"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six and one-half percent of the gross value at the well of the oil extracted~~"

Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 12, after the period insert "If this Act takes effect, it is effective through July 31, 2017, and after that date is ineffective."

Renumber accordingly

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FIRST ENGROSSMENT

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1476

Introduced by

Representatives Carlson, Belter, Headland

Senators Cook, Wardner

(Approved by the Delayed Bills Committee)

A BILL for an Act to amend and reenact subsection 4 of section 38-08-04 and sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to oil extraction tax rates and exemptions; to provide legislative intent; ~~and~~ to provide an effective date<u>; and to provide an expiration date</u>.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in ~~subsection 8 of~~ section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells <u>as defined in section 57-51.1-01</u> and the depth of those wells, ~~to recertify stripper wells that are reentered and recompleted as horizontal wells,~~ and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations ~~under~~<u>as defined in</u> section 57-51.1-01, and the date of qualification for the ~~reduced rate of~~ oil extraction tax <u>exemption</u> for secondary and tertiary recovery operations.

SECTION 2. AMENDMENT. Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax.

For the purposes of this chapter:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as

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defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

2. ~~"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, minus two dollars and fifty cents. 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.~~

~~3.~~ ~~"Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well.~~

~~4.~~ "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].

~~5.~~3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.

~~6.~~4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

~~7.~~5. "Qualifying secondary recovery project" means a project employing water flooding. ~~To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations.~~ To be eligible for the tax exemption provided under section 57-51.1-03 ~~and subsequent thereto the rate reduction provided under section 57-51.1-02~~, a secondary recovery project must be certified as qualifying

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by the industrial commission and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

~~8.~~6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

a. Miscible fluid displacement.

b. Steam drive injection.

c. Microemulsion.

d. In situ combustion.

e. Polymer augmented water flooding.

f. Cyclic steam injection.

g. Alkaline flooding.

h. Carbonated water flooding.

i. Immiscible carbon dioxide displacement.

j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. ~~To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations.~~ To be eligible for the tax exemption provided under section 57-51.1-03 ~~and subsequent thereto the rate reduction provided under section 57-51.1-02~~, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection ~~5~~3 of section 57-51.1-03.

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~~9.~~ 7. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.

~~10.~~ 8. "Stripper well" means a well drilled and completed, or reentered and recompleted as a horizontal well, after June 30, 2013, whose average daily production of oil during any preceding consecutive twelve-month period, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations, and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048 meters] in the Bakken or Three Forks formation.

~~11.~~ 9. "Stripper well property" means wells drilled and completed, or a well reentered and recompleted as a horizontal well, before July 1, 2013, on a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

~~12. "Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the 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.~~

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~~13. "Two-year inactive well" means any well certified by the industrial commission that did not produce oil in more than one month in any consecutive twenty-four-month period before being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.~~

SECTION 3. 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 ~~six~~four ~~and one-half~~five percent of the gross value at the well of the oil extracted~~, except that the rate of tax is four percent of the gross value at the well of the oil extracted in the following situations:~~

~~1. For oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03;~~

~~2. For oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991;~~

~~3. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991;~~

~~4. For incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03; or~~

~~5. For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03.~~

However, if the average price of a barrel of crude oil exceeds the trigger price of ninety dollars for each month in any consecutive ~~five-month~~three-month period, then the rate of tax on oil extracted from all taxable wells is six ~~and one-half~~ percent of the gross value at the well of the

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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 ~~five-month~~three-month period, in which case the rate of tax reverts to ~~four~~five percent of the gross value at the well of the oil extracted ~~for any wells subject to a reduced rate under subsections 1 through 5~~. 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.

SECTION 4. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. Exemptions from oil extraction tax.

The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property or individual stripper well.

~~3.~~ ~~For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the~~

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~~trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~4.~~ ~~The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~5.~~3. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation and which has been certified as a qualified project by the industrial

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commission is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

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

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

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

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(3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

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

(5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production

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

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

d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.

~~6.~~ ~~The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes~~

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~~ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~7.~~ ~~The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.~~

~~8.~~ ~~The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:~~

~~a.~~ ~~The well is drilled and completed before July 1, 2013, on nontrust lands within the boundaries of an Indian reservation;~~

~~b.~~ ~~The well is drilled and completed before July 1, 2013, on lands held in trust by the United States for an Indian tribe or individual Indian; or~~

~~c.~~ ~~The well is drilled and completed before July 1, 2013, on lands held by an Indian tribe if the interest is in existence on August 1, 1997.~~

~~9.~~ ~~The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed after April 30, 2009, and before July 1, 2015, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate~~

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~~reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.~~

~~10.~~4. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. ~~A well eligible for a reduced tax rate under this subsection is eligible for the exemption under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.~~

SECTION 5. LEGISLATIVE INTENT - TERM OF EXEMPTIONS AND RATE REDUCTIONS. It is the intent of the sixty-fourth legislative assembly that the remaining term of any exemption or rate reduction eliminated in section 4 of this Act ~~expires upon~~remains in effect after the effective date of this Act for production that qualified during the time the exemption or rate reduction was effective.

SECTION 6. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS. The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of

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revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 8. EFFECTIVE DATE - EXPIRATION DATE. ~~This Act becomes effective June 1, 2015, if on that date the exemption under subsection 3 of section 57-51.1-03 is, or would become, effective and, if it is not, this Act becomes effective on the first day of the first subsequent month the exemption under subsection 3 of section 57-51.1-03 would become effective~~Sections 1 through 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 6 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective.

1.

15.1024.05015
Title.

Prepared by the Legislative Council staff for
Senator Cook

April 22, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 3, remove the second "and" with "to provide for an exception; to provide for a legislative management study;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~"

Page 5, line 29, after the second "price" insert "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~a percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~"

Page 6, line 1, after "price" insert "of ninety dollars"

Page 6, line 1, remove the overstrike over "~~for each month in any consecutive~~"

Page 6, line 2, after "~~five-month~~" insert "three-month"

Page 6, line 2, remove the overstrike over "~~period, in which case the rate of tax reverts to~~"

Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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

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

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period."

Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" insert "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 3 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 6. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

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Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly

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Notes on Fiscal Impact of HB1476

With Senate amendments:

- Big trigger in effect for 6 months (production months June through November = revenue months July through December) – Effective rate = 1% for those months

- New rate of 5% in effect for 18 months – Effective rate = 4.8%

- Wells qualifying from June – November get big trigger exemption for only those months – exemption ends on December 1

- Fiscal impact = +$15 million
    - FY2016 = +$281 million
        - 6 months where effective rate goes from 1% in forecast (trigger in effect) to 4.8% (new tax rate in effect)
    - FY2017 = -$266 million
        - 12 months where effective rate goes from 6.1% to 4.8%
    - 2015-17 biennium total revenue change from forecast = +$15 million

1.

15.1024.05019
Title.

Prepared by the Legislative Council staff for
Senator Triplett
April 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 3, remove the second "and" with "to provide for an exception; to provide for legislative management studies; to provide an appropriation;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~"

Page 5, line 29, after the second "price" insert "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~a percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~"

Page 6, line 1, after "price" insert "of ninety dollars"

Page 6, line 1, remove the overstrike over "~~for each month in any consecutive~~"

Page 6, line 2, after "~~five-month~~" insert "three-month"

Page 6, line 2, remove the overstrike over "~~period, in which case the rate of tax reverts to~~"

Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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

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

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period."

Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, replace "4" with "5"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" insert "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 4 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 6. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any

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legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 9. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS TAX INCENTIVES. During the 2015-16 interim, the legislative management shall study the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques to determine the desirability and appropriate level of tax incentives to serve the interests of the state, political subdivisions, the public, and the energy production industry. The legislative management may expend up to $300,000 from funds appropriated for that purpose to secure consulting services to assist in completing the study. The legislative management shall report its recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $300,000, or so much of the sum as may be necessary, to the legislative council for the purpose of a study of the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques, for the biennium beginning July 1, 2015, and ending June 30, 2017."

Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly

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15.1024.05015
Title.

Prepared by the Legislative Council staff for Senator Cook
April 22, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 3, remove the second "and" with "to provide for an exception; to provide for a legislative management study;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~"

Page 5, line 29, after the second "price" insert "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~a percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~"

Page 6, line 1, after "price" insert "of ninety dollars"

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Page 6, line 2, after "~~five-month~~" insert "three-month"

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Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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

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

3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months~~, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months~~. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period."

Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" insert "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 3 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 6. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

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Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly

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15.1024.05022
Title.

Prepared by the Legislative Council staff for
Senate Finance and Taxation Committee
April 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1476

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, after the second comma insert "subsection 3 of section 57-51.1-03"

Page 1, line 2 after "and" insert "section"

Page 1, line 3, replace "to provide legislative intent; and" with "to provide for an exception; to provide for a legislative management study;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 5, line 13, remove "four"

Page 5, line 13, overstrike "and one-half" and insert immediately thereafter "five"

Page 5, line 29, remove the overstrike over "~~However, if the average price of a barrel of crude oil exceeds the trigger price~~" and insert immediately there after "of ninety dollars"

Page 5, line 29, remove the overstrike over "~~for each month in~~"

Page 5, line 30, remove the overstrike over "~~any consecutive~~"

Page 5, line 30, after "~~five-month~~" insert "three-month"

Page 5, line 30, remove the overstrike over "~~period, then the rate of tax on oil extracted from all taxable wells is~~"

Page 5, line 31, remove the overstrike over "~~six~~"

Page 5, line 31, remove the overstrike over "~~percent of the gross value at the well of the oil extracted until the average price~~"

Page 6, line 1, remove the overstrike over "~~of a barrel of crude oil is less than the trigger price~~" and insert immediately thereafter "of ninety dollars"

Page 6, line 1, remove the overstrike over "~~for each month in any consecutive~~"

Page 6, line 2, after "~~five-month~~" insert "three-month"

Page 6, line 2, remove the overstrike over "~~period, in which case the rate of tax reverts to~~"

Page 6, line 2, after "~~four~~" insert "five"

Page 6, line 2, remove the overstrike over "~~percent of the gross value at the~~"

Page 6, line 3, remove the overstrike over "~~well of the oil extracted~~"

Page 6, line 3, after the period insert "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.

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

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Page 7, line 15, after "dioxide" insert "in a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation"

Page 7, line 17, after "chapter" insert "for a period of five years"

Page 12, line 5, remove "**LEGISLATIVE INTENT -** "

Page 12, line 6, replace "It is the intent of the sixty-fourth legislative assembly that the" with "The"

Page 12, line 7, replace "4" with "5"

Page 12, line 7, remove "upon the effective"

Page 12, line 8, replace "date of this Act" insert "January 1, 2016. The remaining term of the horizontal well exemption eliminated in section 4 of this Act expires December 1, 2015"

Page 12, after line 8, insert:

"**SECTION 6. WAIVER OF LEGISLATIVE CONFIRMATION REQUIREMENT FOR CERTAIN STATE-TRIBAL TAX COLLECTION AGREEMENTS.** The requirement of legislative confirmation of state-tribal tax collection agreements under section 57-51.2-01 do not apply, for adjustment of an existing agreement attributable to the changes in the oil extraction tax under this Act, and for agreements under section 54-40.2-04 do not apply, for adjustment of an existing agreement regarding application of tribal tax authority to bulk delivery of dyed or undyed special fuels within the exterior boundaries of the reservation.

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Page 12, line 9, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 12, line 9, remove "This Act becomes effective June 1, 2015, if on that date"

Page 12, remove lines 10 and 11

Page 12, line 12, replace "under subsection 3 of section 57-51.1-03 would become effective" with "Sections 1, 2, 3, and 5 of this Act are effective for taxable events occurring after December 31, 2015. Section 4 of this Act is effective for taxable events occurring after November 30, 2015. Section 7 of this Act is effective from July 1, 2015, through December 31, 2016, and is thereafter ineffective"

Renumber accordingly