

Sixty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1439

Introduced by

Representatives Porter, Delzer, Dockter, Headland, Howe, Mock, Pollert

Senators Cook, Dotzenrod, Meyer, Unruh, Wardner

1 A BILL for an Act to create and enact section 47-31-09 of the North Dakota Century Code,  
2 relating to injecting substances for oil, gas, and mineral production; to amend and reenact  
3 subsection 3 of section 57-51.1-03 of the North Dakota Century Code, relating to an oil  
4 extraction tax exemption for the incremental production from tertiary recovery projects using  
5 carbon dioxide; and to provide an effective date.

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

7 **SECTION 1.** Section 47-31-09 of the North Dakota Century Code is created and enacted as  
8 follows:

9 **47-31-09. Injection of substances to facilitate production of oil, gas, or other**  
10 **minerals.**

11 This chapter may not be construed to limit the rights or dominance of a mineral estate to  
12 drill or recomplete a well under chapter 38-08. Injection or migration of substances into pore  
13 space for disposal operations, for secondary or tertiary oil recovery operations, or otherwise to  
14 facilitate production of oil, gas, or other minerals is not unlawful and, by itself, does not  
15 constitute trespass, nuisance, or other tort.

16 **SECTION 2. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18 3. a. The incremental production from a secondary recovery project which has been  
19 certified as a qualified project by the industrial commission after July 1, 1991, is  
20 exempt from any taxes imposed under this chapter for a period of five years from  
21 the date the incremental production begins.
- 22 b. The incremental production from a tertiary recovery project which has been  
23 certified as a qualified project by the industrial commission is exempt from any  
24 taxes imposed under this chapter for a period of ten years from the date the

1 incremental production begins. Incremental production from a tertiary recovery  
2 project from a horizontal well drilled and completed within the Bakken and Three  
3 Forks formations which has been certified as a qualified project by the industrial  
4 commission is not exempt from July 1, 2015, through June 30, 2017, and is  
5 thereafter exempt from any taxes imposed under this chapter for a period of five  
6 years from July 1, 2017, or the date the incremental production begins,  
7 whichever is later.

8 c. The incremental production from a tertiary recovery project that injects more than  
9 fifty percent carbon dioxide produced from coal and has been certified as a  
10 qualified project by the industrial commission is exempt from any taxes imposed  
11 under this chapter for a period of twenty years from the date the incremental  
12 production begins or from the date the project is certified by the industrial  
13 commission as meeting the fifty percent or more carbon dioxide produced from  
14 coal injection requirement, whichever is later. To qualify for the exemption under  
15 this subsection, the project must be located outside the Bakken or Three Forks  
16 formations and must use carbon dioxide produced from coal. The incremental  
17 production that has been certified by the industrial commission under this section  
18 must be used to calculate the exemption under this subdivision.

19 d. The incremental production from a tertiary recovery project that injects more than  
20 fifty percent carbon dioxide produced from coal and has been certified as a  
21 qualified project by the industrial commission is exempt from any taxes imposed  
22 under this chapter for a period of ten years from the date the incremental  
23 production begins or from the date the project is certified by the industrial  
24 commission as meeting the fifty percent or more carbon dioxide produced from  
25 coal injection requirement, whichever is later. To qualify for the exemption under  
26 this subsection, the project must be located within the Bakken or Three Forks  
27 formations and must use carbon dioxide produced from coal. The incremental  
28 production that has been certified by the industrial commission under this section  
29 must be used to calculate the exemption under this subdivision.

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

- 1           (1) For purposes of determining the exemption provided for in subdivision a and  
2           with respect to a unit where there has not been a secondary recovery  
3           project, incremental production means the difference between the total  
4           amount of oil produced from the unit during the secondary recovery project  
5           and the amount of primary production from the unit. For purposes of this  
6           paragraph, primary production means the amount of oil which would have  
7           been produced from the unit if the secondary recovery project had not been  
8           commenced. The industrial commission shall determine the amount of  
9           primary production in a manner which conforms to the practice and  
10          procedure used by the commission at the time the project is certified.
- 11          (2) For purposes of determining the exemption provided for in subdivision a and  
12          with respect to a unit where a secondary recovery project was in existence  
13          prior to July 1, 1991, and where the industrial commission cannot establish  
14          an accurate production decline curve, incremental production means the  
15          difference between the total amount of oil produced from the unit during a  
16          new secondary recovery project and the amount of production which would  
17          be equivalent to the average monthly production from the unit during the  
18          most recent twelve months of normal production reduced by a production  
19          decline rate of ten percent for each year. The industrial commission shall  
20          determine the average monthly production from the unit during the most  
21          recent twelve months of normal production and must upon request or upon  
22          its own motion hold a hearing to make this determination. For purposes of  
23          this paragraph, when determining the most recent twelve months of normal  
24          production the industrial commission is not required to use twelve  
25          consecutive months. In addition, the production decline rate of ten percent  
26          must be applied from the last month in the twelve-month period of time.
- 27          (3) For purposes of determining the exemption provided for in subdivision a and  
28          with respect to a unit where a secondary recovery project was in existence  
29          before July 1, 1991, and where the industrial commission can establish an  
30          accurate production decline curve, incremental production means the  
31          difference between the total amount of oil produced from the unit during the

1 new secondary recovery project and the total amount of oil that would have  
2 been produced from the unit if the new secondary recovery project had not  
3 been commenced. For purposes of this paragraph, the total amount of oil  
4 that would have been produced from the unit if the new secondary recovery  
5 project had not been commenced includes both primary production and  
6 production that occurred as a result of the secondary recovery project that  
7 was in existence before July 1, 1991. The industrial commission shall  
8 determine the amount of oil that would have been produced from the unit if  
9 the new secondary recovery project had not been commenced in a manner  
10 that conforms to the practice and procedure used by the commission at the  
11 time the new secondary recovery project is certified.

12 (4) For purposes of determining the exemption provided for in subdivision b and  
13 with respect to a unit where there has not been a secondary recovery  
14 project, incremental production means the difference between the total  
15 amount of oil produced from the unit during the tertiary recovery project and  
16 the amount of primary production from the unit. For purposes of this  
17 paragraph, primary production means the amount of oil which would have  
18 been produced from the unit if the tertiary recovery project had not been  
19 commenced. The industrial commission shall determine the amount of  
20 primary production in a manner which conforms to the practice and  
21 procedure used by the commission at the time the project is certified.

22 (5) For purposes of determining the exemption provided for in subdivision b and  
23 with respect to a unit where there is or has been a secondary recovery  
24 project, incremental production means the difference between the total  
25 amount of oil produced during the tertiary recovery project and the amount  
26 of production which would be equivalent to the average monthly production  
27 from the unit during the most recent twelve months of normal production  
28 reduced by a production decline rate of ten percent for each year. The  
29 industrial commission shall determine the average monthly production from  
30 the unit during the most recent twelve months of normal production and  
31 must upon request or upon its own motion hold a hearing to make this

1 determination. For purposes of this paragraph, when determining the most  
2 recent twelve months of normal production the industrial commission is not  
3 required to use twelve consecutive months. In addition, the production  
4 decline rate of ten percent must be applied from the last month in the  
5 twelve-month period of time.

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

21 (7) For purposes of determining the exemption provided for in subdivisions c  
22 and d, and with respect to a unit where a tertiary recovery project was in  
23 existence, and where the industrial commission cannot establish an  
24 accurate production decline curve, incremental production means the  
25 difference between the total amount of oil produced from the unit during a  
26 new tertiary recovery project and the amount of production which would be  
27 equivalent to the average monthly production from the unit during the most  
28 recent twelve months of normal production reduced by a production decline  
29 rate of ten percent for each year. The industrial commission shall determine  
30 the average monthly production from the unit during the most recent twelve  
31 months of normal production and shall upon request or upon its own motion

1 hold a hearing to make this determination. For purposes of this paragraph,  
2 in determining the most recent twelve months of normal production the  
3 industrial commission is not required to use twelve consecutive months. In  
4 addition, the production decline rate of ten percent must be applied from the  
5 last month in the twelve-month period of time.

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

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

25 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 2019.