

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/14/2019**

Bill/Resolution No.: HB 1449

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

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			\$(92,600,000)	\$702,000,000		
<b>Expenditures</b>						
<b>Appropriations</b>						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 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 1449 increases the amount of revenue in the state aid distribution fund (SADF) and increases the oil extraction tax rate.

- 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 1 of HB 1449 increases from 8.7% to 12.8% the amount of sales, use, and motor vehicle excise tax revenue that is deposited in the SADF.

Section 2 of HB 1449 increases the oil extraction tax rate from 5% to 6.5%.

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

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

If enacted, Section 1 of HB 1449 is expected to decrease state general fund revenues and increase SADF revenues by an estimated \$92.6 million in the 2019-21 biennium.

Section 2 of HB 1449 is expected to increase revenues in the oil extraction tax development fund by an estimated \$609.4 million in the 2019-21 biennium.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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

**Name:** Kathryn Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701.328.3402

**Date Prepared:** 01/22/2019

**2019 HOUSE FINANCE AND TAXATION COMMITTEE**

**HB 1449**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1449  
1/23/2019  
31286

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Brucker

### Explanation or reason for introduction of bill/resolution:

A bill relating to the state aid distribution fund and the oil extraction tax rate and distributions; and to provide an effective date.

### Minutes:

Attachments 1, 2

**Chairman Headland:** Opened hearing on HB 1449.

**Representative Pamela Anderson:** Introduced bill. Distributed written testimony, see attachment #1. Ended testimony at 7:12.

**Chairman Headland:** First of all I do not appreciate anyone coming before this committee trying to make a political statement and causing political feeder. The first part of your testimony you know to be completely false. Legislative Council and the Tax Department has proven again and again that with the legislation we passed we collected over \$1 billion more than we would have had we not addressed the legislation. I think your whole testimony is nothing but political feeder and I don't appreciate it happening in my committee. Are there any questions for Representative Anderson? Thank you for your political testimony. Is there further support for HB 1449? Is there opposition?

**Ron Ness, president of the North Dakota Petroleum Council:** Distributed written testimony, see attachment #2. Ended testimony at 19:30.

**Chairman Headland:** You and I worked closely on that bill in 2015 and it was a hard pill for the industry to swallow. We both understand the difficulties North Dakota faced at that time. It irritates me when we know what the true numbers are to have someone say that we gave away this money to the oil industry but what we really should be doing is thanking our oil industry for helping us through the hard times.

**Ron Ness:** Amazingly I still have a job. Who else cuts a deal and costs your industry \$1 million a day? That deal did not turn out in our favor. At the end of the day certainty in the business industry is so important. I always felt a certain tax rate at 9.25% would allow you to project long term. The Bakken is a big long term play with major long term investments,

not only in the oil and gas side but in the community development and businesses you see across North Dakota. They want to make long term investments and they want the stability to know the industry is going to be here. The leaders in Watford City don't want anything done to hurt industry because that's their opportunity to attract home builders and investors, etc. That certainty, like what we're going to need on the tribal tax agreement, allows board rooms and investors to know it has to be fair and competitive. Do you remember budgeting when you had a 130% swing in your oil tax revenue streams? Right now you would have two budgets before you because we'd be two months into the five months of a trigger again. You would have to budget without  $\frac{3}{4}$  of that because the tax rate would drop. If the triggers hit, then the funds all went to zero. You can't predict markets. We're a commodity driven state and that's why you try and hedge. You try and provide yourself with some certainty so you know what your revenues and your expenditures are going to be. We stuck by the deal. We're here to fix the deal with the tribe. That's our priority this session.

**Chairman Headland:** Is there further opposition? I'd like the Tax Commissioner to explain to the public what happened with revenues in the bill we passed in 2015.

**Ryan Rauschenberger, State Tax Commissioner:** The bill that was passed in 2015, if you track the revenue and compare old law to new law, the old 11.5% rate would have been dropped down to about 6-6.5% rate from January 2016 through part of 2018. If you take all that into account and net out the most recent months it would have been 11.5% so we would have been just shy of \$1 billion which has actually been raised more than if we had those triggers in place. The new law in the last three years has generated an additional \$1 billion. If you compare that to the old law and if we didn't do anything last session, we would have collected \$1 billion less.

**Chairman Headland:** Is there anyone else who would like to come forward on this bill? Seeing none we will close the hearing on HB 1449.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

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1/29/2019  
31733

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Brucker

### Explanation or reason for introduction of bill/resolution:

A bill relating to the state aid distribution fund and the oil extraction tax rate and distributions; and to provide an effective date.

### Minutes:

No attachments

**Chairman Headland:** We're open for discussion.

**Representative B. Koppelman:** I am in opposition of this bill. I think what we heard during testimony is not the way I remember the series of events toward the end of the session. As I recall there was only one bill introduced that would have probably saved us from a very damaging budget shortfall and that was to do what we did. The testimony suggested that there was another option that we snubbed our noses at and didn't pass. I don't recall that there was another bill that was presented. I think it has worked well for our state. **MADE A MOTION FOR A DO NOT PASS.**

**Representative Kading:** **SECONDED**

**Chairman Headland:** Discussion.

**Representative Mitskog:** Certainly this could be construed as partisan in the discussion of taxation of oil in our state. I remember when this occurred, it was my first session and I was disappointed the way that all went down. I truly believed things needed to be fixed. I think my particular party was left out of the conversations. Now for the sake of imposing an increase on tax I don't care what commodity it is but when prices are down it's not the time to be messing with tax structure and tax changes. I will oppose this bill. Oil is a big part of our revenue. I think it is very prudent that we move into some comprehensive study of that as we build our budgets around it. I appreciate what oil has done for our state and our budgets. This bill as presented was missing some things about what you want that money to do if we raise that tax and I didn't hear that.

**Chairman Headland:** Any further comments?

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ROLL CALL VOTE:  
13 YES 1 NO 0 ABSENT

MOTION CARRIED

Representative B. Koppelman will carry this bill.

Date: 1-29-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1449**

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. Koppelman Seconded By Rep. Kading

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

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Koppelman

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

**REPORT OF STANDING COMMITTEE**

**HB 1449: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1449 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1449**

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Testimony HB 1449 House Finance and Taxation Committee

Representative Pamela Anderson, District 41

January 22, 2019

Good Morning Chairman Headland and Committee Members

HB 1449 reinstates the oil extraction tax to 6.5% as voted on by the people in 1980. At the very last minute in the 2015 session, the Republican majority reduced the tax to 5%.

During the 2017 session we came in a \$1 billion in the hole and had to make drastic cuts in all areas- higher education, human services, plows, Senior Meals on Wheels, state employee salaries, to name a few. I believe this shortfall was in part due to the reduction in the oil extraction tax.

During my re-election campaign, I knocked on doors and doors and doors, as well as emails, phone calls, and no one said to me- I am fine with our state employees, including NDSU staff, receiving no raises in four years. I am fine with little or no dollars for suicide prevention and those addicted to drugs and alcohol. I am fine with reducing Meals on Wheels and DOT services. I am fine with no early childhood education and intervention. I am fine with my property taxes going up. What I did hear, is reinstate the oil extraction tax. We are the second largest state in oil production with a population of these than 800,000 and we can't afford anything. There is a bill this session to add the "granny tax" for nursing homes and long term care is supporting. Let's not tax our grannies, let's tax out-of-state oil companies.

This bill reinstates the extraction tax to 6.5%. But, what I did was fund the constitution buckets and put the rest in the general fund. From the general fund, I allocated \$100,000,000 to the cities based on the sales tax formula. This would be a way to have the cities participate in the restoration and, perhaps, lower or at

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least help in the increase of real property taxes. I passed out the Proposed Changes sheet and at the bottom shows the additional funds certain cities would receive and it is significant. The percentage increase would be the same for the cities.

Opposition to the reinstatement I hear most often is the trigger history. I don't feel that is relevant today. Also, the oil proponents want us to fear that with this reinstatement, they will shut the oil field down. We have been pumping over a 1,000,000 barrels for the 18<sup>th</sup> month. We are up to 1.3M barrels a day now. The price of WRI crude today is \$53.20, breakeven costs are around \$30 per barrel.

Further statistics to prove that we can restore the extra 1.5% tax and not have the Bakken close down:

1. North Dakota's total number of producing wells numbered 14,457 at the end of March, the highest on record.
2. The newest numbers confirm the resurgence in volumes extracted from North Dakota, centered on the Bakken Shale formation.
3. The drilling rig count increased further to 60 in April and modern rigs have helped boost the per unit output.
4. Apart from the strength in crude prices, another factor that is set speed up Bakken output growth, the 1,100 mile-long Dakota Access Pipeline. In fact, around 73% of oil shipments out of North Dakota are not being carried by pipelines. Market players believe that the pipeline has helped in bettering the region's drilling economics by lowering transportation costs for operators.
5. A closely watched yardstick of North Dakota oil industry's strength is the improvement in the number of units searching for oil and gas in the region indicates rebounding drilling activities and production.
6. Whiting Petroleum is a top-tier operator in North Dakota's Williston Basin. The 2-18 Zacks Consensus Estimate for this Denver, CO- based company is \$2.90, representing some 321.4% earnings growth over 2017.
7. Continental Resources also holds a premium position in the prolific Bakken Shale formation. The company has a working interest in 1,576 net oil

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producing wells in the region, which comprises almost 48% of the energy explorer's proved reserves. The 2018 Zacks Estimate for this Oklahoma City, OK based company is \$3.14, representing some 515.7% earnings per share growth over 2017.

The steady uptick in North Dakota's production bode well for the region. With oil prices likely to head higher, the monthly output in the second-largest oil producing state after Texas is expected to stay above the important one million barrel a day mark in the short-to-medium term.

I believe North Dakota residents should share in this uptick and not just large out of state oil companies. HB 1449 does that by restoring the 6.5% extraction tax.

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## PROPOSED CHANGES TO THE OIL EXTRACTION TAX AND STATE AID DISTRIBUTION FUND

### OIL AND GAS TAX REVENUE SCENARIO COMPARISON

The schedule below compares two oil and gas tax revenue scenarios. The first scenario reflects the allocation of oil and gas tax collections for the 2019-21 biennium based on current law tax rates. As included in proposed bill draft [19.0550.01000], the second scenario reflects the allocation of oil and gas tax collections for the 2019-21 biennium based on a 6.5 percent oil extraction tax rate rather than the 5 percent rate in current law and proposed changes to the allocation of the oil extraction tax revenue collections to increase the allocations to the general fund. Both scenarios are based on the current law allocation formulas, oil production remaining at 1.2 million barrels per day, and oil prices averaging \$52.50 per barrel.

2019-21 Biennium Oil and Gas Tax Revenues			
	Scenario One - Current Law Tax Rates	Scenario Two - 6.5 Percent Oil Extraction Tax	Increase (Decrease)
<b>Oil price and production (biennium average)</b>			
Production in barrels	1,200,000	1,200,000	0
Price per barrel	\$52.50	\$52.50	\$0.00
<b>Collections</b>			
Gross production tax	\$2,253,510,000	\$2,253,510,000	\$0
Oil extraction tax	2,207,520,000	2,805,390,000	597,870,000
<b>Total collections</b>	<b>\$4,461,030,000</b>	<b>\$5,058,900,000</b>	<b>\$597,870,000</b>
<b>Allocations</b>			
Tribal share	\$428,100,000	\$487,590,000	\$59,490,000
Legacy fund	1,209,880,000	1,371,390,000	161,510,000
North Dakota outdoor heritage fund	28,180,000	28,180,000	0
Abandoned well reclamation fund	14,090,000	14,090,000	0
Oil and gas impact grant fund	5,000,000	5,000,000	0
Political subdivisions	643,840,000	643,840,000	0
Common schools trust fund	176,820,000	224,710,000	47,890,000
Foundation aid stabilization fund	176,820,000	224,710,000	47,890,000
Resources trust fund (net deposits)	349,440,000	349,490,000	50,000
Energy conservation grant fund	1,200,000	1,200,000	0
Renewable energy development fund	3,000,000	3,000,000	0
Infrastructure revolving loan fund	0	0	0
Oil and gas research fund	10,000,000	10,000,000	0
General fund	300,000,000	580,940,000	280,940,000
Tax relief fund	200,000,000	200,000,000	0
Budget stabilization fund	75,000,000	75,000,000	0
Lignite research fund	3,000,000	3,000,000	0
State disaster relief fund	0	0	0
Strategic investment and improvements fund	836,660,000	836,760,000	100,000
<b>Total allocations</b>	<b>\$4,461,030,000</b>	<b>\$5,058,900,000</b>	<b>\$597,870,000</b>

**NOTE:** The amounts reflected in the schedule above are preliminary estimates based on selected assumptions for August 2019 through July 2021. **The actual amounts allocated for the 2019-21 biennium may differ significantly from these amounts** based on actual oil price and oil production.

### STATE AID DISTRIBUTION FUND SCENARIO COMPARISON

A portion of the sales, use, and motor vehicle excise tax collections are deposited in the state aid distribution fund. The state treasurer distributes money in the fund to counties and cities based on a formula. During the 2015-17 biennium, \$184.8 million from sales, use, and motor vehicle excise tax collections was deposited in the fund based on 43.5 percent of an equivalent one-cent sales tax. The state treasurer distributed the \$184.8 million to counties and cities, including \$17.50 million to Fargo, \$3.84 million to Williston, \$1.18 million to Wahpeton, and \$110,000 to Steele.

If the deposits in the state aid distribution fund were increased to 64 percent of an equivalent one-cent sales tax based on proposed bill draft [19.0550.01000], \$284.7 million would have been deposited in the fund during the 2015-17 biennium. The \$284.7 million reflects an increase of \$99.9 million. The \$284.7 million would be distributed by the state treasurer to counties and cities, including \$26.96 million to Fargo, \$5.91 million to Williston, \$1.82 million to Wahpeton, and \$160,000 to Steele.

**House Bill 1449**  
**Testimony of Ron Ness**  
**House Finance and Taxation Committee**  
**January 23, 2019**

Chairman Headland and members of the Finance and Taxation Committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition to House Bill 1449.

House Bill 1449 is petty politics and should be defeated immediately. Instead we should focus on passing legislation creating a revenue split with the Three Affiliated Tribes. As with any business, certainty is important and essential to attract the capital necessary to fund the \$20 million per day that industry is spending on oil exploration and development in our state. Oil production tax revenues, since the onset of the Bakken, have accounted for 44% of all taxes collected and equal more than \$17 billion in collections since 2008. In the 2017-2019 biennium budget, oil taxes are expected to generate \$4.12 billion in revenues for North Dakota. The race is on, this session, to see who will receive funding from oil taxes. As you can see in the recently released "Oil and Gas Tax Revenue Study," the entire state and all our citizens benefit greatly from oil taxes.

Some people continue to say that the 2015 tax deal was "not fair," we would tend to agree. Because of that deal, the industry lost the low-price oil triggers implemented in the late 1980s by the Democrat and Republican controlled House and Senate to attract investment. The loss of those triggers cost the industry,

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and the mineral owners (tens of thousands of farmers, ranchers, and citizens across the state), who also pay the tax on every royalty dollar they receive, over \$1 million per day. This adds up to \$942 million since the bill was passed. The Petroleum Council pushed for a 9.25% tax, but the legislature approved a 10% tax plus a new high-price trigger. Yes, the state would have been in major financial distress without those funds, but industry and the mineral owners also needed that revenue during the 30-month downturn. In the past four years, oil prices have only been in a positive economic position for about 8 months but fell again this fall.

Other major oil producing states are taxing oil at a much lower rate. Texas at 4.6%, New Mexico at 7.3%, and Oklahoma at 7%. These states all have more rigs operating than North Dakota and we compete for capital every day with investment opportunities in those states. The climate and distance to market are also costs that must be considered when investing in North Dakota, on top of the high tax rates.

Supporters of House Bill 1449 indicate a dire need for more money to fund priorities in North Dakota. Yet they don't acknowledge the fact that oil tax revenues are ALREADY funding North Dakota priorities. But if legislators truly believe we need to raise taxes, why just tax the oil industry and ND mineral owners? Why not raise taxes on everyone?

Raising taxes on the industry is a surefire way to slow economic growth and discourage investment. There is a point at which companies will decide the costs of operating here exceed the benefits, I don't ever want us to get to that point. The North Dakota Petroleum Council cannot support this measure, and we therefore urge a Do Not Pass on House Bill 1449. I would be happy to answer any questions.