

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2226**

Introduced by

Senators Schaible, Bekkedahl, Marcellais

Representatives D. Anderson, Froseth, D. Johnson

1 A BILL for an Act to amend and reenact sections 54-40.2-04, 54-40.2-05, 57-51.2-01, and
2 57-51.2-02 of the North Dakota Century Code, relating to legislative confirmation of state-tribal
3 tax collection agreements and the authority of the governor to enter agreements relating to
4 taxation and regulation of oil and gas exploration and production within the boundaries of the
5 Fort Berthold Reservation, Standing Rock Sioux Tribe Reservation, or Turtle Mountain Band of
6 Chippewa Indians Reservation and on certain trust properties outside reservation boundaries;
7 and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Section 54-40.2-04 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **54-40.2-04. Approval of agreement by governor and tribes - Approval by legislative**
12 **assembly for tax collection agreements.**

13 As a condition precedent to an agreement made under this chapter becoming effective, it
14 must have the approval of the governor of North Dakota and the governing bodies of the tribes
15 involved. If the agreement is a tax collection agreement between the tax commissioner and one
16 or more tribes, the agreement also is subject to confirmation by a majority of members elected
17 to the house of representatives and the senate and does not become effective until its
18 legislative confirmation date or the effective date in the agreement, whichever is later. Each tax
19 collection agreement presented for legislative confirmation must contain an expiration date not
20 later than March thirty-first of the next ensuing odd-numbered year. If the agreement se-
21 provides obtains the approvals under this section and, if required, legislative confirmation under
22 this section, it may be submitted to the secretary for approval.

23 **SECTION 2. AMENDMENT.** Section 54-40.2-05 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **54-40.2-05. Filing of agreement.**

2 ~~Within ten days after a declaration of~~After approval by the governor and following approval
3 of the agreement by the tribe or tribes affected by the agreement and, if required, legislative
4 confirmation, and prior to commencement of its performance, an agreement made pursuant to
5 this chapter must be filed with:

- 6 1. The secretary.
- 7 2. The clerk of court of each county where the principal office of one of the parties to the
8 agreement is located.
- 9 3. The secretary of state.
- 10 4. The affected tribal government.

11 **SECTION 3. AMENDMENT.** Section 57-51.2-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-51.2-01. Authority to enter agreements.**

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

21 Each agreement under this chapter is subject to confirmation by a majority of members
22 elected to the house of representatives and the senate and does not become effective until its
23 confirmation date or the effective date in the agreement, whichever is later. Each agreement
24 presented for confirmation must contain an expiration date not later than March thirty-first of the
25 next ensuing odd-numbered year.

26 **SECTION 4. AMENDMENT.** Section 57-51.2-02 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **57-51.2-02. Agreement requirements.**

29 An agreement under this chapter is subject to the following:

- 30 1. The only taxes subject to agreement are the state's oil and gas gross production and
31 oil extraction taxes attributable to production from wells located within the exterior

1 boundaries of the ~~Fort Berthold Reservation~~reservation and wells located on trust
2 properties outside reservation boundaries. For purposes of this chapter, "trust
3 properties outside reservation boundaries" means land in this state located outside the
4 exterior boundaries of a reservation which are held in trust by the United States for
5 any Indian tribe or owned by an Indian tribe or tribal member subject to a restriction
6 against alienation imposed by the United States.

7 2. The state's oil and gas gross production tax under chapter 57-51 must apply to all
8 wells located within the ~~Fort Berthold Reservation~~reservation and on trust properties
9 outside reservation boundaries.

10 3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas
11 production attributable to trust lands on the ~~Fort Berthold Reservation~~reservation and
12 on trust properties outside reservation boundaries may not exceed six and one-half
13 percent but may be reduced through negotiation between the governor and the ~~Three-~~
14 ~~Affiliated Tribes~~tribal governing body.

15 4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and
16 57-51.1 do not apply to production within the boundaries of the ~~Fort Berthold-~~
17 ~~Reservation~~reservation and on trust properties outside reservation boundaries except
18 as otherwise provided in the agreement.

19 5. The allocation of revenue from oil and gas gross production and oil extraction taxes on
20 the ~~Fort Berthold Reservation~~reservation must be as follows:

21 a. Production attributable to trust lands. All revenues and exemptions from all oil
22 and gas gross production and oil extraction taxes attributable to production from
23 trust lands on the ~~Fort Berthold Reservation~~reservation and on trust properties
24 outside reservation boundaries must be evenly divided between the tribe and the
25 state.

26 b. All other production. The tribe must receive fifty percent of the total oil and gas
27 gross production and oil extraction taxes collected from all production attributable
28 to nontrust lands on the ~~Fort Berthold Reservation~~reservation in lieu of the
29 application of the ~~Three-Affiliated Tribes'~~tribal fees and taxes related to production
30 on such lands. The state must receive the remainder.

- 1 c. The state's share of the oil and gas gross production tax revenue as divided in
2 subdivisions a and b is subject to distribution among political subdivisions as
3 provided in chapter 57-51.
- 4 6. An oil or gas well that is drilled and completed during the time of an agreement under
5 this chapter must be subject to the terms of the agreement for the life of the well.
- 6 7. ~~The Three Affiliated Tribes~~tribal governing body must agree not to impose a tribal tax
7 or any fee on future exploration and production of oil and gas on the ~~Fort Berthold~~
8 Reservationreservation and on trust properties outside reservation boundaries during
9 the term of the agreement.
- 10 8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the
11 agreement must allow the tax commissioner to offset future distributions to the tribe.
- 12 9. The tax commissioner must retain authority to administer and enforce chapters 57-51
13 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
- 14 10. An oil or gas well that is drilled and completed during the time an agreement under this
15 chapter is in effect is subject to state regulatory provisions for the life of the well in
16 addition to any other applicable regulatory provisions.
- 17 11. The federal district court for the ~~western~~northwestern division of North Dakota is the
18 venue for any dispute arising from a revenue-sharing agreement between the state
19 and the Three Affiliated Tribes or between the state and the Turtle Mountain Band of
20 Chippewa Indians. The federal district court for the southwestern division of North
21 Dakota is the venue for any dispute arising from a revenue-sharing agreement
22 between the state and the Standing Rock Sioux Tribe.
- 23 12. The agreement must require that the ~~Three Affiliated Tribes~~tribal governing body
24 report annually to the budget section of the legislative management and that the
25 report:
- 26 a. Identifies projects totaling investment of at least ten percent of tribal oil and gas
27 gross production and oil extraction tax receipts of the tribe for that year in
28 essential infrastructure.
- 29 b. At a minimum, informs the budget section of tribal investments in essential
30 infrastructure and fees, expenses, and charges the tribe imposes on the oil
31 industry.

1 **SECTION 5. EFFECTIVE DATE.** This Act is effective for agreements entered after July 31,
2 2015.