

GAS AND OIL

CHAPTER 163

S. B. No. 142—(Committee on Judiciary)

AUTHORIZING BOARD OF COUNTY COMMISSIONERS TO ADOPT OIL AND GAS LEASES IN LANDS SUBJECT TO DELINQUENT TAX CHARGES

An Act Authorizing the Board of County Commissioners of the counties of the State of North Dakota to confirm, approve and adopt oil and gas leases, executed by owners of the right of redemption, owners of the title to and owners of interest in lands subject to delinquent tax charges, including lands the tax charges against which have been adjusted by contract, and lands forfeited to the county under tax proceedings, and held by the county by tax deeds sufficient to constitute color of title in the county; and providing that upon such confirmation, approval or adoption, that such oil and gas leases shall be and become binding upon the county and the lessee named therein and assigns, with like force and effect as though the county had become a party to the said leases; and providing for the payment of rentals, bonuses and royalties and the distribution and allocation thereof; and providing for constructive notice to purchasers of said lands from the county, and validating prior proceedings of county commissioners in substantial compliance herewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.] The Board of County Commissioners of the respective counties of the state, for and in behalf of their respective counties, shall have full right, power and authority to confirm, approve and adopt oil and gas leases executed by owners of the right of redemption, owners of the title to and owners of interest in lands in said county which are subject to delinquent tax charges, including lands the tax charges against which have been adjusted by contract and lands which have been forfeited to the county under tax proceedings, and held by the county by tax deeds sufficient to constitute color of title in the county.

§ 2.] The Board of County Commissioners may confirm, approve and adopt said oil and gas leases by proper resolution to that effect, duly and regularly passed by said Board at a regular or special meeting thereof. Said resolution may contain such other and additional provisions in addition to those contained in the original lease as said Board may deem for the best interests of said County, in which event said resolution shall provide that the terms and provisions thereof shall be binding upon the said county, and the said lessee and assigns, upon the execution of an acceptance of the terms and provisions of said resolution, in writing, endorsed upon a

certified copy thereof, by the lessee, his assigns or successor in interest.

§ 3.] It is further provided that in the event any lands affected by said resolutions, and the subject of delinquent tax charges, including lands the tax charges against which have been adjusted by contract, shall be forfeited to the County under tax proceedings, and the county shall thereafter obtain tax deeds to said property sufficient to constitute color of title in said county, then and in that event such oil and gas leases as may be affected by said resolution or resolutions shall become and remain binding upon the lessee, his assigns and successors in interest, with like force and effect as though the county had become a party to said leases as of the date of the tax deed to the county, and the terms and conditions thereof, together with any additional provisions provided for in said resolution, shall be and remain binding upon the county, and its grantees and the lessee, his assigns and successors in interest, with like force and effect as though said lease, with the additional provisions as provided for in said resolution, if any, had been executed as of the date aforesaid, by the county, and said lessee, his assigns or successor in interest.

§ 4.] The lessee, his assigns and successors in interest, may pay all bonuses, rentals and royalties to the lessor and his assigns; and successors in interest, until such time as a tax deed is executed and delivered to said county, and upon the execution and delivery of a tax deed sufficient to constitute color of title in said county the said lessee shall, in the event of confirmation, approval and adoption of said oil and gas lease by the county, either with or without additional provisions as hereinbefore provided for, pay all rentals and royalties to said county, so long as the county continues to hold the same by color of title, and the amounts received by the county as bonuses, rentals or royalties shall be credited upon the tax charges as against said real estate. In event of redemption or in event title of the county is otherwise obtained by the lessor, or his assigns and made a matter of record in the office of the Register of Deeds, and after notice thereof to said lessee, his assigns or successors in interest, by registered mail, directed to said lessee, his assignee or successor in interest, to the address of said lessee, assignee or successor in interest as appears in the office of the Register of Deeds, all rentals, bonuses, and royalties which may subsequent to the receipt of said notice become due and payable under said lease, shall be paid to the lessor, his assigns or successors in interest, as may be provided for by the terms of said original lease.

§ 5.] In the event that the title or color of title of any county in and to any of the lands hereinbefore referred to is set aside or declared null and void by a final decree of a court having jurisdiction thereof, all payments of rentals, bonuses and royalties, which may become due after notice of such decree has been given to the lessee,

his assigns or successors in interest, in the manner hereinbefore provided, shall be payable by the lessee to the lessor, his assigns and successors in interest, in accordance with and pursuant to the terms of the original lease.

§ 6.] All moneys received by the county from said oil and gas leases as are hereinbefore referred to shall be paid to the county treasurer, and shall be allocated to the state or any city, county, township, incorporated village, school district, or other taxing subdivision in such proportions as the tax interests of said state and taxing subdivisions may be in the tax charges to which said money is applicable.

§ 7.] Certified copies of resolutions of the Board of County Commissioners confirming, approving or adopting oil and gas leases, certified by the county auditor of the county, shall be subject to record in the office of the Register of Deeds of said county, and upon the recording thereof shall be constructive notice to all subsequent purchasers, encumbrancers, lessees and all persons dealing with oil and gas leases, or rights, in and to the properties in said resolution referred to, of all of the terms, conditions and provisions in said resolution set out.

§ 8.] All confirmations, approvals and adoptions of oil and gas leases heretofore made by Boards of County Commissioners in substantial compliance with the terms and conditions of this Act are hereby declared valid.

Approved March 7, 1941.

CHAPTER 164

S. B. No. 159—(Aandahl, Fowler, Raschko and Brunsdale)

LICENSING PURCHASERS AND DEALERS OF MOTOR VEHICLE FUEL

An Act Amending and re-enacting Chapter 147, Laws of 1939, permitting the purchase of Motor Vehicle Fuel to be used solely for agricultural, industrial, and domestic purposes, without the payment of a motor vehicle fuel tax on the purchase price thereof; licensing purchasers and dealers; and providing conditions for licensing; and providing penalties for the violations of this Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

AMENDMENT.] Chapter 147, Laws of 1939, is hereby amended and re-enacted to read as follows:

§ 1. DEFINITIONS.] When used in this Act, unless the context shall otherwise require, the word:

(1) "Person" shall mean any individual, firm, fiduciary, partnership, copartnership, trust, or association, however formed.

(2) "Tax exempt" motor vehicle fuel shall mean such motor vehicle fuel sold in this State to be used solely for agricultural, industrial, and domestic purposes, as defined herein, without the payment of a tax except such tax as may be required by a general sales tax law.

(3) The term "For agricultural purposes", as used in this Act, shall be construed to mean motor vehicle fuel used in engine motors of stationary portable type, for the purpose of farming and operating farming machinery in the usual course of husbandry.

(4) The term "for industrial purposes", as used in this Act, shall be construed to mean motor vehicle fuel used in engine motors of a stationary or portable type for the purpose of operating machinery in manufacturing or industrial purposes, and no part of which machinery is driven or operated upon the public roads, streets, or highways of this State.

(5) The term "for domestic purposes", as used in this Act, shall be construed to mean naphtha used for cleaning purposes; Class one household gasoline used for fuel in stoves and lamps and as classified as Class one gasoline by the Oil Inspection Division of the State Laboratories Commission of the State of North Dakota, and as found in Section 3080a1 of the 1925 Supplement to the Laws of North Dakota, for non-highway use; and "liquified petroleum gases" is defined as meaning and including any material which is composed predominantly of any of the hydrocarbons, or a majority of them; propane, propylene, butanes (normal butane or iso-butane), and butylenes, when sold or to be used for non-highway purposes. No license, as provided in this Act, is required for the purchase or sale of such naphtha, Class one household gasoline, or liquified petroleum gases for "domestic purposes".

(6) The term "non-highway purposes", as used in this Act, shall be construed to mean motor vehicle fuel or gasoline used for any other purpose than agricultural, industrial, or domestic purposes, and no part of which is used for operating motor vehicles or motor propelled machines of any description along and upon the streets, alleys, or highways of this State, as defined in this Act except in necessary movements about or between the farm and/or farms.

(7) The word "highway", as used in this Act, shall mean and include every way or place of whatever nature, including public roads, streets, and alleys of this State, generally open to the use of the public, or to be opened, or re-opened to the use of the public for the purpose of vehicular travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repairs. Motor vehicle fuel for non-highway purposes may be sold for agricultural and industrial purposes by licensed bulk dealers only, and may be sold by licensed

retailers for aircraft purposes and for domestic purposes as defined in subsection 5 of Section 1, without payment of the motor vehicle fuel tax as provided by law.

§ 2. LICENSED DEALERS.] Motor vehicle fuel for non-highway purposes may be sold for agricultural, industrial, or domestic purposes by licensed dealers only and as herein prescribed, without the payment of the motor vehicle fuel tax, provided by law.

§ 3. LICENSED CONSUMERS.] Motor vehicle fuel for non-highway use may be purchased by licensed consumers only and as herein prescribed, without the payment of a motor vehicle fuel tax, provided by law.

§ 4. DEALER'S LICENSE. HOW PROCURED. FEE.] Any person who is authorized by Section 2 to sell tax exempt motor vehicle fuel desiring to sell tax exempt motor vehicle fuel in the State of North Dakota shall procure a license so to do by making application to the State Tax Commissioner. The application shall be made on a form approved by the Tax Commissioner, stating the name of the dealer, the location of the station to be licensed, and said applicant in such application shall therein agree to keep all records provided by law, available for inspection in the State of North Dakota, shall agree to comply with all the laws relating to the sale of tax exempt motor vehicle fuel, and shall agree to comply with the rules and regulations of the Tax Commissioner to be adopted under the provisions of this Act. The applicant shall further agree that service of any summons, complaint, or notice that may be deemed necessary by the Tax Commissioner may be made on the person in charge of the station licensed. A separate dealer's permit must be had for each station or place of sale of such tax exempt motor vehicle fuel.

Upon every sale or purchase of motor vehicle fuel as tax exempt, receipts in triplicate shall be made out upon a form to be determined by the Tax Commissioner, which said receipts must show the name of the purchaser, the place of business or farm, the number of the purchaser's license, the number of gallons sold, the date of the sale, the post office address of the purchaser, and such receipt shall be signed by such licensed purchaser, or his authorized agent. Two of such triplicate copies shall be retained by the licensed seller, and one shall be delivered to the licensed purchaser. The copy delivered to the purchaser shall be the original and printed upon white paper; one of the copies retained by the dealer shall be printed upon yellow tinted paper, and the other upon pink paper; the copy printed upon pink paper properly made out, and signed by the licensee, may be delivered by such licensed dealer in such tax exempt motor vehicle fuel to any dealer importing motor vehicle fuel into the State of North Dakota, and originally liable for the payment of the motor vehicle fuel tax thereon, and such pink copy of receipt shall be acceptable by the Tax Commissioner in lieu of payment by such

dealer importing motor vehicle fuel into the State of North Dakota, and liable for the tax upon the number of gallons of motor vehicle fuel by such receipt shown to have been sold for agricultural or industrial purposes.

A fee of \$5.00 must be paid by each dealer authorized to sell tax exempt motor vehicle fuel under Section 2, for agriculture and industrial purposes. A fee of one (\$1.00) dollar must be paid by each dealer licensed under Section 2 to sell tax exempt motor vehicle fuel for aircraft or domestic purposes. A separate license must be secured for each station where tax exempt motor vehicle fuel is sold. The license is annual and runs from January 1 to December 31, both inclusive. A bulk dealer licensed to do business within the state of North Dakota shall not be denied a license because their bulk station is not located within the state of North Dakota.

§ 5. CONSUMER'S LICENSE. HOW PROCURED. FEE.] A consumer's license authorizing the applicant to purchase tax free motor vehicle fuel for agricultural and industrial purposes, as defined in this Act, shall issue to the applicant upon his making the application as hereinafter provided for only if the Tax Commissioner is satisfied that the same is to be used solely for the purposes set forth in this Act. In order to procure a license, the applicant shall set forth in the application prepared by the Tax Commissioner for such purpose the name and address of the applicant, the use to which the motor vehicle fuel is to be put, the total number of gallons of motor vehicle fuel he feels entitled to purchase during the year; and if the use is agricultural, a legal description of the land owned or operated, the acreage to be farmed, the make and year of manufacture, and rated horsepower of each automobile, motor vehicle truck, the rated horsepower of each and every engine or tractor propelled by motor vehicle fuel and the description of any other machinery or implement wherein tax exempt motor vehicle fuel is to be used. If the Tax Commissioner is satisfied that the motor vehicle fuel is to be used solely for the purposes authorized in this Act, then he shall grant a license to the applicant to purchase free from any motor vehicle fuel tax the amount of motor vehicle fuel set forth in the application and the license. A fee of fifty cents must be paid to the Tax Commissioner for each consumer's license. The license is annual and runs from January 1 of each year to the following December 31, both inclusive. Each such licensee shall, prior to being granted any further annual license, file with the Tax Commissioner a duplicate of his receipt or receipts as herein provided that has been received by him from any dealer licensed hereunder from whom any such motor vehicle fuel has been purchased and covering all motor vehicle fuel so purchased under the former license; together with a statement upon a form to be provided by the Tax Commissioner of the motor vehicle fuel purchased for other than solely agricultural, industrial, and domestic purposes, and upon which a motor

vehicle fuel tax was paid by such licensee during the period covered by such former license.

§ 6. REGULATING DELIVERY AND STORAGE OF TAX EXEMPT FUEL.] No tax exempt motor vehicle fuel shall be sold or delivered except by a dealer licensed to sell tax exempt motor vehicle fuel or his employee.

§ 7. PENALTIES.] The use of tax exempt motor vehicle fuel for the purpose of propelling any motor vehicle or other equipment upon the highways of this State is prohibited, and any person who knowingly sells or purchases tax exempt motor vehicle fuel or uses tax exempt motor vehicle fuel, for the purpose of propelling any motor driven vehicle or other equipment upon any of the highways within the State shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50.00 nor more than \$300.00, together with costs of prosecution.

§ 8. TAX COMMISSIONER MAY REFUSE OR CANCEL LICENSE.] The Tax Commissioner shall revoke and cancel a license of a purchaser or a seller under the following conditions:

A. A dealer's license shall be cancelled if he fails to keep the records, or to make the reports required by this Act, and the rules and regulations of the Tax Commissioner; makes or presents to the Tax Commissioner any false report, receipt, or certificate. for a sale of tax exempt fuel to anyone without a license; for placing tax exempt motor vehicle fuel in the supply tank of any motor vehicle being propelled or to be propelled upon a public highway.

B. A consumer's or purchaser's license shall be revoked and cancelled for loaning his license to another individual; for placing tax exempt fuel in the supply tank of a vehicle propelled upon or to be propelled upon the public highways of this State; for using tax exempt fuel to propel any motor vehicle along and upon the highways of this State; for sale of tax exempt motor vehicle fuel by purchaser to any person with knowledge that such fuel is to be used upon the highways of this State.

C. When revoked for cause, no new license shall issue to the dealer or the consumer for a period of one year.

§ 9. TAX COMMISSIONER TO ADMINISTER. RULES AND REGULATIONS.] The Tax Commissioner and his authorized agents are charged with the duty of enforcing the provisions of this Act, and are hereby given the power of peace officers for the purpose of making necessary inspections for the effective administration of the Act. The Tax Commissioner is hereby authorized to call to his assistance any member of the State Highway Patrol or any of the oil inspectors with the State Laboratories Commission, and it shall be the duty of the members of the State Highway Patrol and the

oil inspectors, so far as is consistent with their other duties, to assist the Tax Commissioner in effectively administering this Act.

The Tax Commissioner shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this Act for its detailed and efficient administration.

§ 10. FEES DEPOSITED IN STATE TREASURY.] All fees received by the Tax Commissioner, as herein provided for, shall be paid into the State Treasury and covered into the General Fund of the State.

§ 11. EXEMPTIONS FURTHER DEFINED.] Nothing in this Act shall be construed as exempting any motor vehicle fuel used in propelling any motor vehicle, truck, or engine to be operated in whole or in part upon any public highway in this State, or motor vehicle fuel used for purposes not wholly agricultural, industrial, or domestic, as defined in this Act. Provided that no tax exempt fuel, as herein defined, may be used for the construction, reconstruction, or maintenance of any state or county highway, except in cases where such construction, reconstruction, or maintenance of highways is done and performed by the State, county, township, or other municipality and where the public funds of the State, county, township, or other municipality are directly used for the purchase of such motor vehicle fuel.

§ 12. PENALTY.] Any person violating any of the provisions of this Act shall have his license revoked and no new license shall issue to such person for a period of one year. In addition to the revocation and cancellation of his license, any person violating any of the provisions of this Act shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not less than \$50.00 nor more than \$300.00, together with the costs of prosecution.

§ 13. The provisions in this Act for the payment of a license fee shall become effective January 1, 1942.

Approved March 18, 1941.

CHAPTER 165**H. B. No. 55—(Committee on Education)**

MINERAL, GAS AND OIL RIGHTS—STATE OWNED LANDS

An Act to Amend and Re-enact Chapter 149, Session Laws of 1939, Relating to Reservation of Mineral, Gas and Oil Rights on Sale of State Owned Lands; and Declaring an Emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 1 of Chapter 149, Session Laws of 1939 is hereby amended and re-enacted to read as follows:

§ 1.] In all transfers of land hereafter made by the State of North Dakota or any of the State departments of lands now owned by the State of North Dakota or which may hereafter be acquired by the State of North Dakota, or any of its departments by deed, quit claim deed, foreclosure or by any other method, and whether such transfers made by the State of North Dakota or any of its departments are made by deed, contract or lease, there shall be reserved to the State of North Dakota fifty (50%) per cent of all oil, natural gas or minerals which may be found on or underlying such land. Any transfer, deed or lease which does not contain such reservation shall be construed as if such reservation were contained therein.

§ 2. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after the date of its passage and approval.

Approved February 20, 1941.

CHAPTER 166**S. B. No. 135—(Committee on Judiciary)**

AUTHORIZING OIL AND GAS LEASES BY ADMINISTRATORS AND EXECUTORS

An Act Authorizing executors and administrators of decedents and guardians of minors and incompetents to execute oil and gas leases, providing for the procedure for the approval and confirmation of such leases, and validating all such leases executed prior to the passage and taking effect of this act, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Executors and administrators of the estates of decedents and guardians of minors and incompetents are empowered to lease

the real estate of the estate for the purpose of mining, drilling and operating for oil and gas and laying pipe lines, and building tanks, power stations and structures thereon to produce, save and take care of said products, for a period of not to exceed ten years, or as long thereafter as oil or gas, or either of them, is produced from said land by the lessee, or assigns, upon such terms and in consideration of such bonuses, royalties, rentals and payments as may be agreed upon; provided, however, that in no case shall the royalty be less than the equal one-eighth part of all oil produced and saved from the leased premises; nor, in the case where gas only is found, less than the equal one-eighth of the gross proceeds at the prevailing market rate, for all gas used off the premises; nor, in the case where gas is produced from any oil well and used off the premises, or for the manufacture of casing-head gasoline or dry commercial gas, less than one-eighth of the gross proceeds at the prevailing market rate for the gas during which time such gas shall be used. No such lease shall run for a period of more than two years from the date thereof unless a well be commenced on said land within such time, provided, however, that such lease may provide that the lessee may pay a delay rental in an amount to be specified in such lease and approved by the court, which shall operate as a rental and cover the privilege of deferring the commencement of a well for one year. Such lease may also provide for the payment of successive delay rentals and deferring of the commencement of a well for like successive periods. Upon the execution, approval and delivery of such lease, all persons interested in the estate shall be bound thereby during the entire period of the lease.

§ 2. No lease authorized in the preceding section shall be valid or of any force or effect until it shall have been approved and confirmed by the county court having jurisdiction. After the execution of such lease, the executor, administrator or guardian shall submit the same to the county court, together with his petition for the approval and confirmation thereof, and, after a hearing thereon upon notice given all persons interested in the estate in the manner provided by statute, if it shall appear to the Court that the terms thereof are just and reasonable and that it is for the best interest and advantage of the estate and the persons interested therein that such lease should be approved and confirmed, the court shall enter an order approving and confirming the same, a certified copy of which shall be recorded in the office of the Register of Deeds of the county wherein the land is situated. If all persons interested in the estate shall join in the petition to approve and confirm such lease, or shall in writing waive service of notice of hearing such petition, the hearing may be held at any time.

§ 3. All leases for any of the purposes mentioned in Section 1 hereof, which have been executed and delivered under authority of an order of a county court having jurisdiction or which have been

approved by such a court, prior to the passage and taking effect of this act, are hereby declared valid and legal for all purposes.

§ 4. An emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.

Approved March 7, 1941.

CHAPTER 167

S. B. No. 140—(Committee on Judiciary)

AUTHORIZING SALE OF OIL, GAS AND MINERAL RIGHTS BY ADMINISTRATORS AND EXECUTORS

An Act Authorizing the sale by executors, administrators and guardians of estates of oil, gas and mineral interests in land, providing for the procedure relative to such sales, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Whenever it shall appear to the satisfaction of the county court that it is necessary for the payment of the family allowance, claims, expenses of administration, or legacies, or that it is for the advantage, benefit or best interest of the estate of a decedent, minor or incompetent, and the persons interested therein, that the whole or some undivided fractional part of the oil, gas and other minerals in and under, and that may be produced from, land belonging to the estate, should be sold separate from the surface rights, the executor, administrator or guardian, as the case may be, may sell the same, upon order of the court, in the manner hereinafter provided.

§ 2. To obtain such order for the sale of oil, gas and other minerals, a verified petition shall be presented to and filed with the court, setting forth the matters required by law to be contained in a petition for the sale of real estate, and in addition thereto, setting forth the quantity of the interest in the oil, gas and other minerals desired to be sold, and the probable amount to be realized on the sale, whereupon a citation thereon shall be issued and served in the manner provided by law. If all persons interested in the estate join in the petition or signify in writing their assent thereto, or waive service of notice thereof, the hearing may be had at any time.

§ 3. Any person interested in the estate may file written objections to the petition, and the petition and objections shall be heard, the hearing conducted and witnesses examined in the manner now provided by statute relative to sales of real property.

§ 4. If it appears to the satisfaction of the court that it is necessary or for the advantage, benefit and best interest of the estate and the persons interested therein, to sell the whole or some fractional part of the oil, gas and other minerals in and under, and that may be produced from, land belonging to the estate, the court may authorize the sale of the whole or any fractional part thereof, separate from the surface rights.

§ 5. Upon the entry of such an order of sale all further proceedings shall be conducted in compliance with Sections 8544a29 to 8544a34, inclusive, and Sections 8544a36 to 8544a39, inclusive, of the 1925 Supplement to the Compiled Laws of the State of North Dakota of 1913 and amendments thereto.

§ 6. All such sales shall be made subject to the terms of any existing oil, gas or mineral lease, and shall cover and include all or a fractional part of the oil royalty and gas rental or royalty and mineral rental or royalty to be paid thereunder.

§ 7. The conveyance directed to be made shall convey, in addition to the whole or fractional part of all oil, gas and other minerals in and under, and that may be produced from the land, also the right of ingress and egress at all times for the purpose of mining, drilling and exploring such lands for oil, gas and other minerals and removing the same therefrom, with the right at any time to remove any or all equipment in connection therewith.

§ 8. When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell the whole or any fractional part of the oil, gas and other minerals in and under, and that may be produced from, land belonging to the estate in the same manner and upon the same proceedings as provided for in Section 8781 of the Compiled Laws of the State of North Dakota of 1913 and amendments thereto.

§ 9. EMERGENCY.] An emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.

Approved March 17, 1941.

CHAPTER 168

S. B. No. 134—(Committee on Judiciary)

AUTHORIZING OIL AND GAS LEASES BY POLITICAL
SUBDIVISIONS

An Act to authorize the leasing of land owned by school districts, cities, villages, townships and park districts, for oil and gas; authorizing the governing boards to make such leases; providing for the consolidation of such oil and gas leases with adjoining lands for operation and development; repealing all laws and parts of laws in conflict herewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. The governing board of any school district, city, village, township and park district in this state is hereby authorized and empowered to lease its grounds, lands, or any part thereof, for oil and gas development, for a primary term not to exceed ten years and as long thereafter as oil or gas is or can be produced, and any such oil and gas lease may provide that the lessee shall have the right and power to consolidate the land covered by said lease with other adjoining land for the purpose of joint development and operation of the entire consolidated premises as a unit, in which event the lessor of such lease shall share in the royalty on oil and gas produced from said consolidated tract in the proportion that the area of the land covered by such lease bears to the total area of said consolidated tract.

§ 2. All such leases and the occupancy thereunder of the lands leased shall not interfere materially with the purposes for which said lands are used and occupied by the school district, city, village, township or park district, nor shall any oil or gas well be drilled or located thereon within 100 feet of any public building upon any such land.

§ 3. All monies arising from such leases or the production of oil or gas thereunder shall become a part of the general funds of such school district, city, village, township and park district.

§ 4. All leases heretofore executed by the governing board of any school district, city, village, township and park district in this State covering lands under its control are hereby validated.

§ 5. All laws, or parts of laws, in conflict herewith are hereby repealed.

Approved March 7, 1941.

CHAPTER 169**H. B. No. 82—(Austad)**

TRACTOR FUEL SPECIFICATION

An Act to Amend and Re-enact Section 3 (d) of Chapter 165 Laws of North Dakota for 1933 to Provide a Higher Sulphur Limit; and to Provide a Minimum Knock Rating for Tractor Fuel; and Declaring an Emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 3 (d) of Chapter 165 of the Laws of North Dakota for 1933 is hereby amended and re-enacted to read as follows:

§ 3 (d) SULPHUR.] The sulphur shall not be more than 0.50 per cent. And there is hereby added to Section 3 the following:

(e) KNOCK RATING.] The knock rating shall not be less than Octane Number 30; provided that until January 1, 1942, the knock rating shall not be less than Octane Number 25.

§ 2. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1941.

(Note—Emergency did not carry in House.)

CHAPTER 170**H. B. No. 210—(Morland, Bubel, Saumur, Rohde)**

GAS AND OIL WELLS — RULES AND REGULATIONS

An Act to conserve crude petroleum oil and natural gas; to enlarge the duties and authority of the Industrial Commission of North Dakota to supervise and control the oil and gas resources of North Dakota; authorizing the Industrial Commission of North Dakota to promulgate rules and regulations for the enforcement of the provisions of the Act for the purpose of conserving oil and gas; providing penalties for the violation of certain provisions of the Act or the regulations promulgated thereunder; repealing Chapter 184 of the 1929 Session Laws and Chapter 135 of the 1937 Session Laws of North Dakota; repealing all laws and parts of laws in conflict herewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1: The duties and authority of the Industrial Commission of North Dakota are hereby enlarged to include supervision and

control over the crude petroleum oil and natural gas resources of the State of North Dakota.

§ 2: To accomplish the purposes of this Act the Industrial Commission shall obtain the assistance of the State Geologist of the State of North Dakota, who shall act as a supervisor charged with the duty of enforcing the regulations and orders of the Industrial Commission herein as they may apply to the crude petroleum oil and natural gas resources of the State of North Dakota, and the provisions of this Act.

§ 3: Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this Act:

(a) "Commission" shall mean the Industrial Commission of North Dakota;

(b) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;

(c) "Oil" shall mean crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods;

(d) "Gas" shall mean all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in Subsection (c) above;

(e) "Pool" shall mean an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of the general structure which is completely separated from any other zone in the structure is covered by the term "pool" as used herein;

(f) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "Field" shall include the underground reservoir or reservoirs containing crude oil or natural gas, or both. The words "Field" and "Pool" mean the same thing when only one underground reservoir is involved; however, "Field", unlike "Pool", may relate to two or more pools;

(g) "Waste", in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include:

(1) underground waste and the inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive, of any pool; and the locating, spacing, drilling, equipping, operating or producing of any oil well or gas well in a manner which results or tends to result in reducing the quantity of oil or gas ultimately recoverable from any pool; and (2) surface waste and the inefficient storing of oil and the locating, spacing, drilling, equipping, operating or producing of oil wells or gas wells

in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas;

(h) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another, or others;

(i) "Producer" shall mean the owner of a well or wells capable of producing oil or gas, or both, in paying quantities;

(j) "Well" shall mean a well drilled in search of oil or gas, but shall not include core test wells, stratigraphic test wells or wells drilled for information purposes only as distinguished from wells drilled for the purpose of producing oil or gas if found.

§ 4: The production or handling of crude petroleum oil or natural gas in such manner or under such conditions as to constitute or result in waste as herein defined is hereby prohibited; provided, however, that the production of gas in conjunction with the production of water insofar as such gas comes from the water bearing formations is expressly excluded from the coverage of this Act.

§ 5: (a) The Industrial Commission shall have jurisdiction and authority of and over all persons and property necessary to enforce effectively the provisions of this Act and all other Acts relating to the conservation of oil and gas.

(b) The Industrial Commission shall have the authority and it shall be its duty to make such inquiries as it may think proper to determine whether or not waste, over which it has jurisdiction exists or is imminent. In the exercise of such power the Commission shall have the authority to compel the State Geologist to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records, including drilling records and logs; to examine, check, test and gauge oil and gas wells, tanks, refineries and modes of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this Act.

(c) The Industrial Commission shall have the authority to make, after hearing and notice as hereinafter provided, such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of this Act, which shall include rules, regulations and orders for the following purposes: (1) to require the drilling, casing and plugging of wells to be done in such a manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into oil or gas strata; to prevent the pollution of fresh water supplies by oil, gas or salt water; and to require reasonable bond conditioned for the performance of the duty to plug each dry or abandoned well; (2) to require the person desiring or proposing to drill

any well for oil or gas, before commencing the drilling of any such well, to notify the State Geologist upon such form as the State Geologist shall prescribe and to pay to the Commission a fee of \$25.00 for each such well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid as hereunder provided. The State Geologist shall have the power and authority and it shall be his duty to prescribe that the said form indicate the exact location of such well, the name and address of the owner, operator, contractor, driller, and any other person responsible for the conduct of drilling operations; the elevation of the well above sea level, and such other relevant information as the State Geologist may deem necessary or convenient to effectuate the purpose of this Act. All funds paid to the Board pursuant to the provisions of this Section shall be by the Board deposited with the State Treasurer. (3) Shall compel the filing of logs, including electrical logs, if any are taken, drilling records, typical drill cuttings or cores, if cores are taken, in the office of the State Geologist within six months from the date of completion of any well. (4) To prevent wells from being drilled, operated and produced in such a manner as to cause injury to neighboring leases or property. (5) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool. (6) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios. (7) To prevent "blow outs", "caving", and "seepage" in the same sense that conditions indicated by such terms are generally understood in the oil and gas business. (8) To prevent fires. (9) To identify the ownership of all oil and gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities. (10) To regulate the "shooting" and chemical treatment of wells. (11) To regulate secondary recovery methods, including the introduction of gas, air, water or other substance into producing formations. (12) To regulate the spacing of wells. (13) To require the filing currently of information as to the volume of oil and gas, or either of them, produced and saved from the respective properties. (14) To require the filing with the State Geologist of a notice of intention to drill stratigraphic test wells, giving the location thereof, and to require the filing with the State Geologist of a plugging report within sixty (60) days after completion of such well. No fee shall be required in connection with the filing of such notices and reports.

§ 6: (a) The Commission shall prescribe its rules or order of procedure in hearings or other proceedings before it under this Act.

(b) No rule, regulation or order, including change, renewal or extension thereof shall, in the absence of an emergency, be

made by the Commission under the provisions of this Act except after a public hearing upon at least ten (10) days' notice given in the manner and form as may be prescribed by the Commission. Such public hearing shall be held at such time, place and in such manner to be held before the said commission or any member thereof, or before the State Geologist, at such time, place and in such manner as may be prescribed by the Commission, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) In the event an emergency is found to exist by the Commission, which in its judgment requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this sub-section shall remain in force no longer than fifteen days (15) from its effective date, and in any event it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

(d) All rules, regulations and orders made by the Commission shall be in writing, and shall be entered in full by the State Geologist in a book to be kept for such purpose by the Commission, which shall be a public record and open to inspection at all times during reasonable office hours. A copy of such rule, regulation or order, certified by such Geologist, shall be received in evidence in all courts of this state with the same effect as the original.

(e) Any interested person shall have the right to have the Commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the Commission by making a request therefor in writing. Upon the receipt of any such request the Commission promptly shall call a hearing thereon, and after such hearing and with all convenient speed and in any event within thirty (30) days after the conclusion of such hearing, the Commission shall take such action with regard to the subject matter thereof as it may deem appropriate.

§ 7: (a) The Commission, or any member thereof, or the State Geologist is hereby empowered to issue subpoenas for witnesses, to require their attendance and giving of testimony before it, and to require the production of books, papers and records in any proceeding before the Commission as may be material upon questions lawfully before the Commission. Such subpoenas shall be served by the Sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying, or from producing books, papers and records before the Commission or a Court, or from obedience to the subpoena of the Commission or a Court, on the ground or for the reason that

the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry, not pertinent to some question lawfully before such Commission or Court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before the Commission or Court, or in obedience to its subpoena; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(b) In case of failure or refusal on the part of any person to comply with any subpoena issued by the Commission or any members thereof; or in case of the refusal of any witness to testify or answer to any matter regarding which he may be lawfully interrogated, any District Court in this State, on application of the Commission, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the Commission and produce such documents, and give his testimony upon such matters, as may be lawfully required, and such Court shall have the power to punish for contempt as in case of disobedience of like subpoenas issued by or from such Court, or for a refusal to testify therein.

§ 8: Any interested person affected by this Act or by any rule, regulation or order made or promulgated by the Commission hereunder and who may be dissatisfied therewith shall have the right to file a suit in a court of competent jurisdiction against the Commission or the members thereof as defendants to test the validity of any provision of this Act or any rule, regulation or order made or promulgated hereunder. Such suit shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted except for reasons deemed imperative by the Court. In such trials, the burden of proof shall be upon the party complaining of the validity of this Act or any provision thereof, any rule, regulation or order made or promulgated hereunder and any such rule, regulation or order so complained of shall be deemed prima facie valid.

§ 9: (a) No temporary restraining order or injunction of any kind shall be granted against the Commission or the members thereof, or against the Attorney General, or any State's Attorney, or against any agent, employee or representative of the Commission, restraining the Commission, or any of its members, or any of its agents, employees or representatives, or the Attorney General or any State's Attorney from enforcing any of the provisions of this Act, or any rule, regulation or order made hereunder, except after due notice to the members of the Commission and to all other defend-

ants, and after a hearing at which it shall be clearly shown to the Court that the act done or threatened is without sanction of law, and that if enforced against the complaining party will cause an irreparable injury. The order or decree of the Court granting temporary injunctive relief shall state the nature and extent of the probable validity of any provision of this act, or of any rule, regulation or order made hereunder, involved in such suit, and shall also contain a clear statement of the probable damage relied upon by the Court as justifying the temporary injunctive relief.

(b) No temporary injunction of any kind, including a temporary restraining order, against the Commission or the members thereof, or its agents, employees or representatives, or the Attorney General, or any State's Attorney, shall become effective until the plaintiff shall execute a bond to the State with sufficient surety in an amount to be fixed by the Court, reasonably sufficient to indemnify all persons who may suffer damage by reason of the violation pendente lite, by the complaining party, of the provisions of this Act, or of any rule, regulation or order complained of. Such bond shall be approved by the Judge of the Court in which the suit is pending, and the Court may, from time to time, on motion and with notice to the parties increase or decrease the amount of the bond, and may require new or additional sureties as the facts may warrant. Such bond shall be for the use and benefit of all persons who may suffer damage by reason of the violations pendente lite of this Act, provision, rule, regulation or order complained of in such suit, and any person so suffering damage may bring suit on such bond before the expiration of six months after any provision of this Act, or any rule, regulation or order complained of shall be finally held to be valid, in whole or in part, or such suit against the Commission or the members thereof, shall be finally disposed of.

§ 10: Whenever it shall appear that any person is violating or threatening to violate any provision of this Act, or any rule, regulation or order made hereunder, and unless the Commission without litigation can effectively prevent further violation or threat of violation, then the Commission, through the Attorney General, who may call to his assistance the State's Attorney of the county in which suit is instituted, shall bring suit in the name of the State of North Dakota against such person in the District Court of the County of the residence of the defendant, or, if there be more than one defendant, in the District Court of the county of the residence of any of them, or in the District Court of the county in which such violation is alleged to have occurred, or in the District Court of Burleigh County, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the Commission, in the name of the State of North Dakota, may, without bond, obtain such injunctions, prohibitory and mandatory,

including temporary restraining orders and temporary injunctions, as the facts may warrant.

§ 11: In any suit where the Commission, in the name of the State, seeks enforcement of this Act, or of any rule, regulation or order issued thereunder, as provided in Section 10 of this Act, or in any suit where an interested party seeks to test the validity of, or enjoin the enforcement of any prior issue of this Act, or any rule, regulation or order issued hereunder, as provided in Section 8 of this Act, either party shall have the right of an immediate appeal to the Supreme Court from any final judgment or order therein entered. The manner of presenting any appeal as herein provided shall be governed by the provisions of the laws of the State of North Dakota regulating appeals in injunction proceedings.

§ 12: Nothing in this Act contained or authorized, and no suit by or against the Commission and no penalties imposed or claimed against any person for violating any provision of this Act, or any rule, regulation or order issued hereunder, and no forfeiture, shall impair or abridge or delay any cause of action for damage which any person may have or assert against any person violating any provision of the Act, or any rule, regulation or order issued hereunder. Any person so damaged by the violation may sue for and recover such damages as he may show that he is entitled to receive. In the event the Commission should fail to bring suit to enjoin any actual or threatened violation of any provision of this Act, or of any rule, regulation or order made hereunder, then any person or party in interest adversely affected by such violation, or threat thereof, and who has requested the Commission to sue in the name of the State, may, to prevent any or further violation, bring suit for that purpose in any Court in which the Commission could have brought suit. If, in such suit, the Court holds that injunctive relief should be granted, then the State shall be made a party and shall be substituted by order of the Court for the person who brought the suit, and the injunction shall be issued as if the State had at all times been the complaining party.

§ 13: Any person of whom an oath or affirmation shall be required under the provisions of this Act, or by any rule, regulation or order of the Commission, who shall wilfully swear or affirm falsely in regard to any matter or thing respecting which such oaths or affirmation is required, or any person who, for the purpose of evading any rule, regulation or order made thereunder shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this Act or by any rule, regulation or order made hereunder, or who, for such purpose shall make or cause to be made any false entry in any account, record or memorandum kept by any person in connection with the provisions of this Act or any rule, regulation or order made here-

under, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for a term of not more than six (6) months, or to both such fine and imprisonment.

§ 14. REPEAL]: That Chapter 184 of the 1929 Session Laws of North Dakota, and Chapter 135 of the 1937 Session Laws of North Dakota be, and the same are hereby, repealed. All laws or parts of laws in conflict with this Act be, and the same are hereby, repealed.

§ 15. SAVING CLAUSE]: It is hereby declared to be the legislative intent to enact each separate provision of this Act independently of all other provisions; and the fact that any section, word, clause, sentence or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence or part thereof unless otherwise stated herein.

Approved March 20, 1941.

HIGHWAYS

CHAPTER 171

H. B. No. 303—(Johnson of Cass)

BIENNIAL REPORT TO BE SUBMITTED BY THE STATE HIGHWAY COMMISSIONER

An Act Requiring departmental budgets and biennial reports by the State Highway Commissioner and repealing all Acts and parts of Acts in conflict herewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. DEPARTMENTAL BUDGETS.] Not later than the 31st day of December of each year, the State Highway Commissioner shall adopt a Department Budget wherein shall be allocated, set aside and appropriated to each Department, division, section or activity of the State Highway Department for the ensuing calendar year, a definite and fixed sum or allowance in such amount and with such detail as the Commissioner may elect for the use and purpose set aside in said Department Budget.

§ 2. BIENNIAL REPORTS.] It shall be the duty of the State Highway Commissioner, on or before January 15 of each odd num-