

(Return in triplicate)

FISCAL NOTE

Bill/Resolution No.: 1083 Amendment to: \_\_\_\_\_

Requested by: Legislative Council Date of Receipt: \_\_\_\_\_

Please estimate the fiscal impact of the above measure for:

State general or special funds       Counties       Cities

In the following space note the fiscal effect in dollars of this measure:

Narrative: ESTIMATE NOT FEASIBLE  
This bill will not have a significant fiscal impact.

Our present promulgation 85-06-06-10 (copy enclosed) allows a ninety day period for reporting initial production and royalties, with monthly reporting thereafter.

State Fiscal Effect:

<u>1983-84</u>		<u>1984-85</u>		<u>Biennium Total</u>	
<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>
Not Significant	Not Significant	Not Significant	Not Significant	Not Significant	Not Significant

County and City Fiscal Effect:

<u>1983-84</u>		<u>1984-85</u>		<u>Biennium Total</u>	
<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>
None	None	None	None	None	None

If additional space is needed, attach a supplemental sheet.

Signed R.E. Lommen

Typed Name R.E. Lommen

Date prepared: 12-29-82

Department State Land Department

TITLE 85

BOARD OF UNIVERSITY AND SCHOOL LANDS

ARTICLE 85-06

MINERAL LEASING

Chapter 85-06-06

OIL AND GAS

Section

85-06-06-01	Definitions
85-06-06-02	Lease Applications
85-06-06-03	Advertisement and Public Auction
85-06-06-04	Rejection of Applications and Bids
85-06-06-05	Form and Terms of Lease
85-06-06-06	Pooling or Unit Agreements
85-06-06-07	Assignments and Releases
85-06-06-08	Royalties
85-06-06-09	Breach of Lease
85-06-06-10	Reports of Lessee - Delinquency Penalty
85-06-06-11	Audits and Inspections
85-06-06-12	(reserved for future use)
85-06-06-13	(reserved for future use)
85-06-06-14	Fees

85-06-06-01. DEFINITIONS. The terms used throughout this chapter and in documents used pursuant herewith have the same meaning as in the North Dakota Century Code Chapters 15-05, 15-08.1, 15-08.2, and 38-09, except:

1. "Arm's length transaction" means a transaction between parties with adverse economic interests where each party to the transaction is in a position to distinguish his economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships

- which may compromise their individual interests.
2. "Board" means the board of university and school lands.
  3. "Commissioner" means the commissioner of university and school lands.
  4. "Completion" means, in the case of an oil well, when the first commercial oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; in the case of a gas well, when the well is actually producing commercial gas through wellhead equipment from the ultimate producing zone after casing has been run.
  5. "Fund" means any one of the various trust funds or assets under the control and jurisdiction of the board.
  6. "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but shall not include coal, lignite, oil shale, or similar hydrocarbons.
  7. "Gas well" shall mean a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission.
  8. "Gross proceeds" shall be the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.
  9. "Leased premises" means the land area subject to a given oil and gas lease under the authority of the board of university and school lands.
  10. "Lessee" means the party specified in an oil and gas lease as the lessee, and his permissible assignees or other successors in interest.
  11. "Lessor" means the state of North Dakota acting by and through

the board of university and school lands and its agent, the commissioner of university and school lands.

12. "Market value" means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or seller is not compelled to sell.
13. "Net mineral interest" means all or that undivided portion of the total oil and gas mineral estate in a tract of land, the title to which is in the state of North Dakota acting by and through the board of university and school lands.
14. "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
15. "Oil well" shall mean any well capable of producing oil and which is not a gas well as defined herein.
16. (reserved for future use)
17. "State land department" means the office of the commissioner of university and school lands.
18. (reserved for future use)
19. "When run" means that point in time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time shall be considered to be 7:00 A.M., local time, on the day the production is delivered to the purchaser or user regardless of the actual time delivered.

85-06-06-02. LEASE APPLICATIONS. Lease applications may be made only for tracts not already leased for the production of oil and/or gas as shown on the tract books of the state land department, except applications may be accepted for a tract already under lease when it appears that such lease will expire prior to the date of the lease sale. Applications shall be accompanied by the application fee specified in section 85-05-05-14 of this chapter and shall indicate the bonus offered. Each tract is limited to a maximum of one hundred sixty contiguous acres of like net mineral interest belonging to any one fund and within the same quarter corner boundaries. Applications combining such interests or more than one hundred sixty acres will be divided and considered a separate application. Applications not accompanied by the application fee and not in the proper form shall be rejected. All applications are to be submitted to the mineral leasing division, state land department, state capitol, Bismarck, North Dakota 58505 (Tel. Area Code 701-224-2803), prior to the "cut-off-date" for each sale, which date may be obtained by calling or writing said division. In the event the applicant is not awarded the lease the application fee will be refunded.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

85-06-06-03. ADVERTISEMENT AND PUBLIC AUCTION. Prior to the execution of an oil and gas lease, the commissioner shall advertise the tracts offered for lease in the official paper of the county or counties in which the lands are located, and in the Bismarck Tribune. Such advertisements shall be published once each week for two weeks, the last publication being at least ten days prior to the day of the lease sale. The published notice shall contain the legal description of each tract, the time and place where the leasing will be held, the term of the

lease, minimum annual rental and the minimum bonus. Bidding shall be on the basis of such bonus as the bidder may offer. The successful bidder shall pay on the day of the lease sale the application fee (if not the original applicant), one year's rental, and the bonus bid. Should publication of any notice be inadvertently omitted by any newspaper or should such notice as published contain typographical errors, the commissioner may proceed with the scheduled leasing where it appears that the omission or error is not prejudicial to the fund.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

85-06-06-04. REJECTION OF APPLICATIONS AND BIDS. The commissioner may reject any and all applications or bids at any time prior to the issuance of a lease.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

85-06-06-05. FORM AND TERMS OF LEASE. Leases shall be issued on forms furnished by the commissioner. All leases shall be made for a term of not less than five years and shall continue in effect under the terms thereof for as long as oil and/or gas may be produced from the leased premises in commercial quantities or for as long as extended as provided therein. The lease may provide for a reasonable shut-in clause, force majeure clause, and drilling and reworking continuation clause. The lease shall provide for a bonus of not less than one dollar per acre and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the state land department at the time the lease is issued. The lease shall provide

for a royalty of not less than one-eighth of all oil and gas produced from the leased premises. The fraction or percentage established by the board as a royalty shall be construed to mean such fraction or percentage of the net mineral interest. The lease may contain such terms and conditions as the board or commissioner shall deem appropriate.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

85-06-06-06. POOLING OR UNIT AGREEMENTS. The board may enter into an agreement for the consolidation of the leased premises with other lands for the purpose of joint development and operation of an entire consolidated area as a unit. Such agreement shall provide that the leased premises shall share in the royalty on oil and/or gas produced from a consolidated tract in the proportion that the leased premises bears to the total area of such unit, or upon such other royalty sharing basis as may appear equitable to the board. The operations or production on such an area shall have the same effect as operations or production under the terms of each such lease included therein. All such agreements must be submitted to and approved by the board.

General Authority  
NDCC 15-05-09 .

Law Implemented  
NDCC 15-05-09

85-06-06-07. ASSIGNMENTS AND RELEASES. All leases may be assigned or released in whole or in part, (assignments being subject to the approval of the board); however, an assignment of any interest in a lease or any part thereof or a partial release of an area less than a governmental quarter-quarter section or comparable legal subdivision is prohibited. An assignment, when submitted to the board for approval, shall be ex-

ecuted and acknowledged in the same manner prescribed for the conveyance of interests in real estate and shall be filed in duplicate with the commissioner. One copy shall be filed in the state land department and a duplicate returned to the assignee. The approval of the board acting by and through the commissioner shall be noted upon all copies. All lease obligations of assignor must be current at the time such assignment is approved. Upon payment of the then current assignment fee and upon approval of an assignment by the board, lessee shall be relieved of all obligations with respect to assigned portions. Provided all lease obligations are current at the time a release or partial release is made all lease obligations and liabilities shall cease as to the released portions.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09  
15-05-15

85-06-06-08. ROYALTIES. If a sale of gas, carbon black, sulphur, or any other products produced or manufactured from gas produced and marketed from the leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction the royalties due lessor shall be as follows:

1. As a royalty on any gas, produced and marketed, (except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons or other products) one-sixth (1/6th) part of the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run,



or the gross proceeds of sale, whichever is greater; provided that the maximum pressure base in measuring the gas under this lease contract shall not at any time exceed 14.73 pounds per square inch absolute, and the standard base temperature shall be sixty (60) degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the Balance Method or by the most approved method of testing being used by the industry at the time of testing.

2. As a royalty on any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, one-sixth (1/6th) part of the residue gas and the liquid hydrocarbons extracted or the market value thereof, at the option of the lessor. All royalties due herein shall be based on eighty percent (80%) or that percent accruing to lessee, whichever is greater, of the total plant production of residue gas attributable to gas produced from the leased premises, and on forty percent (40%) or that percent accruing to lessee, whichever is greater, of the total plant production of liquid hydrocarbons attributable to the gas produced from the leased premises; provided that if a third party or parties are processing gas through the same plant pursuant to arm's length transaction and one such transaction accounts for an annual average of 10% or more or all such transaction collectively account for an annual average of 30% or more of the gas being processed in such plant the royalty shall be based on the gross proceeds of sale that would accrue to lessee if the gas were processed under the terms of the most remunerative third party transaction for processing gas in such plant.

Respective royalties on residue gas and on liquid hydrocarbons where the requirements for using third party transactions cannot be met shall be determined by 1) the highest market price paid for any gas (or liquid hydrocarbons) of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing, 2) the gross proceeds of sale for such residue gas (or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons), F.O.B. at the plant after processing, or 3) the gross proceeds of sale paid to a third party processing gas through the plant, whichever is greater. Lessee shall furnish copies of any and all third party gas processing agreements pertaining to the plant upon lessor's request.

3. As a royalty on carbon black, sulphur or any other products produced or manufactured from gas (excepting liquid hydrocarbons) whether said gas be "casinghead", "dry" or any other gas, by fractionating, burning or any other processing, one-sixth (1/6th) part of the gross production of such products, or the market value thereof, at the option of lessor. Such market value to be the 1) the highest market price paid for each of the products of comparable quality and quantity under comparable conditions of sale in the general area, during the same month in which such products are produced, or 2) the average gross proceeds of sale for each of the products for the same month in which such products are produced, whichever is greater; provided that if a third party transaction is used to determine royalty in accordance with subsection 2 above the royalty due under this subsection shall be deter-

mined in accordance with such transaction.

4. Lessee agrees that all royalties accruing to lessor under this rule shall be without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities, depreciation, risk capital, and otherwise making the oil gas and other products produced hereunder ready for sale or use.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09  
15-05-10

85-06-06-09. BREACH OF LEASE. The board may pursue any legal remedy for nonpayment of any sum due under the lease or for breach of any of the terms or conditions of a lease. In addition, the board may cancel any lease for nonpayment of any sum due under the lease or for breach of any of the terms or conditions of a lease provided that such cancellation shall not release lessee from liability for any sum due lessor or from any damages on account of the breach. Before a lease shall be canceled, the commissioner at the direction of the board shall mail to the lessee, by registered or certified mail addressed to the post office address of such lessee as shown by the records of the state land department, a thirty day notice of intention to cancel such lease, specifying the reason for cancellation. If lessee shall not have remedied the default within thirty days after receipt of such mailing, the commissioner, with board approval, may enter cancellation upon his records. A lease shall be canceled only after reasonable attempts have been made to secure voluntary payment of any sum due and compliance with the lease terms and conditions. The pursuit of one remedy shall not bar

the pursuit of other remedies. The commissioner may, in writing, waive any breach of a lease except such terms and conditions as are required by law, but any such waiver shall extend only to the particular breach so waived and shall not limit lessor's rights with respect to any future breach. Notwithstanding the foregoing, failure to pay the annual delay rental by the date due shall result in automatic termination of a lease.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

85-06-06-10. REPORTS OF LESSEE - DELINQUENCY PENALTY. Lessee shall immediately notify the commissioner, in writing, when a permit to drill a well on the leased premises has been issued and shall indicate the location of the proposed well. Immediately upon obtaining production of oil and/or gas in commercial quantities, the producing lessee shall notify the commissioner, in writing, giving the date production was commenced. Within ninety days following initial production of oil and within one hundred twenty days following initial production of gas, lessee shall file with the commissioner a production and royalty statement showing total production and indicating the royalty due together with payment of such royalty. Thereafter, such statement and payment of royalty shall be due each month on or before the last day of the month succeeding each month of production. These time limits may be extended by the commissioner for good cause. The commissioner reserves the right to request other information and to require that such reports be made on forms furnished by the commissioner. Any sum, other than annual delay rentals, not paid when due shall become delinquent and will be subject to a delinquency penalty of one percent of such sum for each thirty day period of delinquency or fraction thereof.

Lessor shall have a first lien upon all oil and gas produced from the leased premises to secure payment of all unpaid royalties or other payments that may become due under this lease.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

85-06-06-11. AUDITS AND INSPECTIONS. The cuttings, cores, and well logs of all wells on the leased premises and all books, accounts, receipts, and discharges of all wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the oil and/or gas or other products produced on the leased premises shall at all reasonable times be subject to examination and audit by the commissioner or his representative.

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

85-06-06-12. (reserved for future use)

85-06-06-13. (reserved for future use)

85-06-06-14. FEES. The following fees may be charged:

1. For filing application to lease or other applications - \$10.00  
per tract
2. For filing each set of lease assignments----- \$10.00  
per tract
3. For photostatic copies----- \$ .25  
per page
4. For certified copies----- \$ 5.00

General Authority  
NDCC 15-05-09

Law Implemented  
NDCC 15-05-09

EFFECTIVE DATE: July 26, 1979