

February 3, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2217

Page 2, line 9, remove "The sale value upon which a royalty or overriding royalty is calculated must be based"

Page 2, remove lines 10 and 11

Page 2, line 12, replace "unless the oil and gas lease or overriding royalty contract explicitly allows otherwise" with "An oil and gas operator that does not sell minerals to an arm's-length purchaser shall use a published index price to value the minerals. The index price used must be one that is readily and publicly available to the oil and gas industry and reflects the closest indices to the production of the minerals. If an oil and gas operator makes any arms-length sales, the weighted average price received for any sales within the state must be used. If an arms-length sale is not made, the closest index price must be used to value the minerals and identified on the remittance to the royalty owner"

Re-number accordingly

Introduced by

Senators Bekkedahl, Dwyer, Kannianen

Representatives Brandenburg, Kempenich, Zubke

1 A BILL for an Act to create and enact section 47-16-39.5 of the North Dakota Century Code,  
2 relating to oil and gas royalty leases, negative royalties, and arm's length transactions; and to  
3 provide a penalty.

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

5 **SECTION 1.** Section 47-16-39.5 of the North Dakota Century Code is created and enacted  
6 as follows:

7 **47-16-39.5. Definitions - Royalty lease - Penalty.**

8 1. As used in this section:

- 9 a. "Arm's length transaction" means a transaction between parties with adverse  
10 economic interests in which each party to the transaction is in a position to  
11 distinguish its economic interest from that of the other party. The term does not  
12 include a transaction made:  
13 (1) By a corporation or other entity with itself, or a parent, subsidiary, or  
14 interrelated corporation or entity;  
15 (2) Between partners or co-joint venturers; or  
16 (3) Between corporations or other entities having interlocking directorships or  
17 close business relationships that may compromise their individual interests.  
18 b. "Overriding royalty" means a right to oil, gas, and other minerals in place or as  
19 produced which entitles the owner of the right to a specified fraction of production  
20 without limitation to a specified amount of money or a specified number of units  
21 of oil, gas, or other minerals.  
22 c. "Royalty" means the mineral owner's share of production.

- 1           d. "Royalty owner" means a person that owns a royalty interest and is entitled to  
2           receive periodic royalty payments for a nonworking interest in the production of  
3           oil or gas or in the severance of other minerals from the mineral estate.
- 4           2. Except for taxes imposed under chapters 57-51 and 57-51.1, the deduction of  
5           postproduction costs from royalty payments is prohibited unless the lease contract  
6           explicitly allows for the deduction of postproduction costs. If an overriding royalty  
7           contract explicitly allows for the deduction of postproduction costs, the deduction only  
8           applies to the overriding royalty interest fraction.
- 9           3. ~~The sale value upon which a royalty or overriding royalty is calculated must be based~~  
10          ~~upon an arm's length transaction. A non-arm's length transaction or a transaction in~~  
11          ~~which a seller retains an interest beyond the purported sales point are disregarded~~  
12          ~~unless the oil and gas lease or overriding royalty contract explicitly allows otherwise.~~  
13          An  
14          oil and gas operator that does not sell minerals to an arm's-length purchaser shall use  
15          a published index price to value the minerals. The index price used must be one that is  
16          readily and publicly available to the oil and gas industry and reflects the closest indices  
17          to the production of the minerals. If an oil and gas operator makes any arm's-length  
18          sales, the weighted average price received for any sales within the state must be  
19          used. If an arm's-length sale is not made, the closest index price must be used to  
20          value the minerals and identified on the remittance to the royalty owner.
- 21          4. If a lease allows for deductions, the costs deducted from royalty or overriding royalty  
22          income may not exceed the income earned from the wells for the corresponding  
23          production month for the specific product. Costs in excess of income from a specific  
24          production month may not be carried forward or backward to any other production  
25          month. A violation of this subsection is a class B misdemeanor.
- 26          5. A royalty owner or overriding royalty owner may audit the records of the oil and gas  
27          operator obligated to pay royalties under the lease for compliance with the  
28          requirements of this section. Any audited records must be provided in accordance with  
29          section 47-16-39.2. The costs of auditing must be paid by the royalty or overriding  
30          royalty owner requesting the audit and the operator shall make all reasonable  
31          accommodations to provide documentation to verify the income and costs reflected in  
            the royalty owner and overriding royalty owner payments.

1        6. A noncompliant party that violates this section is guilty of a class B misdemeanor for  
2        each violation and is subject to a civil penalty. If the royalty owner or the royalty  
3        owner's designated representative is successful in a proceeding brought under this  
4        section, the district court shall allow the royalty owner or the royalty owner's  
5        designated representative to recover all underpaid royalties, court costs, reasonable  
6        costs, fees, disbursements, reasonable attorney's fees, and expenses incurred by the  
7        royalty owner or the royalty owner's designated representative from the party obligated  
8        to pay royalties under the lease. The district court also shall assess a civil penalty not  
9        exceeding ten thousand dollars for each violation of this section.