

**HOUSE BILL 1520  
ENERGY AND NATURAL RESOURCES COMMITTEE  
FEBRUARY 9, 2023**

**TESTIMONY FROM A NORTH DAKOTA LAND & MINERAL OWNER**

**HOUSE BILL 1520**  
**North Dakota Century Code Updates and Additions**

- Six main provisions in the bill
  - 1) Clarify Industrial Commission's relationship between a lessor and lessee
  - 2) Provide revenue statements in an electronic format
  - 3) Resolution for disputes involving how royalties are calculated
  - 4) Clarifies the obligation to pay royalties and interest
  - 5) Provide production and royalty records in electronic format
  - 6) Specifies information to be provided to royalty owner in spacing unit disputes
- HB 1520 brought forth to address noncompliance with existing statutes

## HOUSE BILL 1520 – SECTION 1

### 38-08-04 of the North Dakota Century Code

New subsection addressing the Industrial Commission

Regarding disputes between a Lessor (mineral owner) and a Lessee (oil company)

- Clearly defines where the Commission does not have jurisdiction to minimize claims that a mineral owner has not exhausted administrative remedies
- Statement from Commission letter:**  
“The Commission does not have jurisdiction to enforce lease terms, division orders, or other agreements regarding the payment of royalties; that jurisdiction lies with a district court.”
- North Dakota Supreme Court ruling for Schank v. North American Royalties, Inc. 201 N.W.2d 419 (1972):**  
“Furthermore, the Industrial Commission is an administrative agency and, as such, is not empowered by the statutes to determine the legal relationship between a lessor and a lessee. This is a matter for the courts in an appropriate action.”
- Adding subsection will save time for the courts and the Commission

# HOUSE BILL 1520 – SECTION 2

## 38-08-06.3 of the North Dakota Century Code

### Information statement to accompany payment to royalty owner - Penalty

**HB 1520 will require that statements be provided in Excel format:**

- ❑ Issues with paper copies and PDF files:
  - ✓ Data not easy to review
  - ✓ Single well with adjustments spanning 98 pages from May 2014 – March 2022
  - ✓ Blue pop out box shows dates not printed in any chronological order
    - Adjustments for Oct 2017 production on pages 39, 53, 62, 75 & 76
  - ✓ Yellow highlighted area - amounts are not totaled leading to manual calculations
  - ✓ Excel would take seconds to sort and tabulate data

Type	Production Date	BTU	Volume	Price	Value	Owner Interest	Distribution Interest	Volume	Value
Owner									
ROYALTY INTEREST	04-17			51.22	(117,728.50)	0.00038922	0.00038922	(0.89)	(44.82)
NO GENERAL EXTRACTION TAX	04-17					0.00038922	0.00038922		2.16
SEVERANCE TAX	04-17			5,558.32		0.00038922	0.00038922		2.16
TRANSPORTATION/GATHERING EXP	04-17			6,560.20		0.00038922	0.00038922		2.55
NO - STATE NON RESIDENT WITHHOLDING	04-17			0.00		0.00038922	0.00038922		0.99
AMOUNT					(2,166.28)			(0.94)	(46.69)
Operator									
ROYALTY INTEREST	04-19			63.25	(132,898.34)	0.00038922	0.00038922	(0.82)	(51.77)
NO GENERAL EXTRACTION TAX	04-19					0.00038922	0.00038922		2.46
SEVERANCE TAX	04-19			6,341.59		0.00038922	0.00038922		2.46
TRANSPORTATION/GATHERING EXP	04-19			6,341.59		0.00038922	0.00038922		2.46
NO - STATE NON RESIDENT WITHHOLDING	04-19			61.34		0.00038922	0.00038922		0.02
AMOUNT					(102.83)			(0.82)	(51.77)
No Subtotals = Manual Addition									
Dates: Oct 17, Jan 20, Jan 18, Jan 19 Generated on Friday, May 27, 2022 7:25 PM © 2022 Evonics All rights reserved. Unauthorized use prohibited.									

**HOUSE BILL 1520 – SECTION 2**  
**38-08-06.3 of the North Dakota Century Code**  
 Information statement to accompany payment to royalty owner - Penalty

**Excel is required by North Dakota Trust Lands Revenue Compliance Division:**

- Excel reports were provided free prior to companies moving to EnergyLink
- Vast majority of industry now uses EnergyLink for reporting
- Companies can easily send similar Excel data to individual royalty owners
- Data should be unlocked and editable with no password required

What reporting formats are allowed to submit royalty data?

Excel is the only accepted form. The report is available on our website under the Revenue Compliance link.

 Export PDF



File Type	Description	Create Date	Status
 Excel Report	Data Analysis Revenue XLS for E570187359	2023-02-03 10:16:41 AM	 Click to Purchase (\$78) * Create Free Sample
 Excel Report	Data Analysis Revenue XLS for E570203599	2023-02-03 10:16:08 AM	 Click to Purchase (\$80.34) * Create Free Sample

**1** "Revenue St ... 022-12.pdf" is password protected and cannot be exported. To export this document remove the protection and try again.

## HOUSE BILL 1520 – SECTION 2

### 38-08-06.3 of the North Dakota Century Code

Information statement to accompany payment to royalty owner - Penalty

#### HB 1520 adds requirement that mailing addresses be made available to the commission:

- There is no current requirement for industry to provide contact information
- No penalty or recourse when certified mail is undeliverable
- Director Lynn Helms provided the following testimony on January 20, 2023, for SB 2194:
  - “The most common concern is the inability to find and maintain a consistent and helpful contact within the operator’s mineral owner department.”
- The commission and royalty owners should have easily obtainable, up-to-date contact information for all companies to address concerns



## HOUSE BILL 1520 – SECTION 3

### 38-08-06.6 of the North Dakota Century Code

Resolution for disputes involving how royalties are calculated

Commission role and requirements

- ❑ **Three components in determining a decimal interest which is used to pay royalties:**
  - 1) The number of mineral acres owned
  - 2) The royalty percentage agreed to on the lease
  - 3) The spacing unit information
- ❑ **Mineral owner responsible for:**
  - Knowing what they own, i.e., copies of the mineral deeds and leases
- ❑ **Commission responsible for:**
  - Determining the spacing unit
    - Issuing cases and orders related to spacing units
      - Currently no search function for specific wells or land descriptions
  - The information is behind a paywall but should be made available for free to individuals
    - Department said legislation in 1985 requires them to charge a fee

**HOUSE BILL 1520 – SECTION 3**  
**38-08-06.6 of the North Dakota Century Code**  
Do companies comply with existing requirements to resolve disputes?

Individual mineral owners can research data at the county courthouse

T-R	Sec	Doc No	Doc Date
149-97-17	SW4, SE4	35669	2/14/1916
149-97-17	S2	83982	6/16/1924
149-97-17	S2	102356	2/28/1929
149-97-17	S2	124253	7/26/1945
149-97-17	S2	125097	3/29/1946
149-97-17	S2	128030	3/29/1948
149-97-17	S2	134689	7/20/1951

Or they can hire a company to do the research

DECIMAL INTEREST	NET ACRES	LEASE STATUS
.007576	0.91	Clearion et al HBP Exp. 1/4/85 Book 257M, Page 1
	120.00 gross	

Note: The wells are located in NE4NW4-21, SW4SW4-22, NE4SW4 & NE4NE4-23-154-100

Industry completes a title opinion for ownership in well

OWNERSHIP

Our examination of the aforesaid records and documents of title reflect that, as of \_\_\_\_\_, at 8:00 a.m. CST, record title to the captioned land, consisting of **640.00 acres**, more or less, was vested as follows, subject to the Comments and Requirements hereinafter set forth:

SURETY

Joe Allen Nixon et ux, Gayla J. Nixon

FRACITION INTEREST  
8/8 1.000000000

OIL AND GAS LEASED

OWNER / FRACTION	INTEREST	NET ACRES	LEASE ROYALTY	LEASE
Geneva Ashby Smith (1/2 x 3/4)	.37500000	240.0000	1/6	L1
Robert H. Ashby (1/2 x 3/4)	.37500000	240.0000	1/6	L2
Sherry G. Lundberg (1/2 x 1/4)	.12500000	80.0000	1/6	L3
Joe Allen Wilson et ux, Gayla J. Wilson (1/2 x 1/4)	.12500000	80.0000	1/6	L4
	1.00000000	640.0000		



## HOUSE BILL 1520 – SECTION 3

### 38-08-06.6 of the North Dakota Century Code

#### Example of constructive dialogue and resolution of dispute

- Initial response – company sticking by the title opinion:

Our title opinion captured all of the documents in your write up, however, it appears there were previous conveyances which would have lowered the amount of interest which Minnie had available to convey. For starters, the tract was only 160 acres as opposed to the 240 that was reflected in the conveyances. The opinion credits [REDACTED].

Doc No.	Doc Type	Tract Name(s)	Address	Tract Recording	Mineral Interest Covered by (Acres)	Tract Acres	Tract Acres	Mineral Acres	Tract OR MINERAL ACRES ("P&M")	TOTAL UNIT FOR ACRES ("P&M")	TOTAL UNIT FOR ACRES ("P&M")	Typical Interest
1	LANDOWNER SOLELY INTERESTS (LOR)	8	5122	[REDACTED]	0.02303733	0.2	160	1280	0.0416666	1.666	0.0022222	0.666

- Follow-up response after relevant information was pinpointed:

Yes, we are planning on making the updates in February for the February check write, we are having to review who all through the chain needs to be updated as we will follow the dates in the chain of title for the increase/decreases in interest.

- What caused the discrepancy?
  - The data in the title opinion showed 10 mineral acres for all three deeds conveying mineral acres to other parties
  - Incorrect because one of the deeds was for 5 mineral acres

of [REDACTED] Spilling, North Dakota  
 hereinafter called Grantor (whether one or more) as undivided 10/240 (Ten mineral acres) interest in and under and that may be produced from the following described lands situated in Burke Cou

Township 161 North, Range 92 West of the 5th P.M.

Section 34: S34N24, N61E24

Section 35: S34

It is the intent of the grantor to convey ten mineral acres.

of [REDACTED] Spilling, North Dakota  
 hereinafter called Grantor (whether one or more) as undivided 10/240 (Ten mineral acres) interest in and under and that may be produced from the following described lands situated in Burke County, Dak

Township 161 North, Range 92 West of the 5th P.M.

Section 34: S34N24, N61E24

Section 35: S34

It is the intent of the grantor to convey ten mineral acres.  
 Grantor reserves unto himself all gravel rights on this property.

of [REDACTED] Spilling, North Dakota  
 hereinafter called Grantor (whether one or more) as undivided 5/240 (Five mineral acres) interest in and under and that may be produced from the following described lands situated in Burke County, Dak

Township 161 North, Range 92 West of the 5th P.M.

Section 34: S34N24, N61E24

Section 35: S34

It is the intent of the grantor to convey five mineral acres.  
 The grantor reserves unto himself all gravel rights on this property.

## HOUSE BILL 1520 – SECTION 3

### 38-08-06.6 of the North Dakota Century Code

Examples of companies unwilling to help resolve disputes

- **Too many companies refuse to provide information or ignore requests altogether** even though 47-16-39.4 requires them to help resolve disputes:
  - “I really have no other information to give you. We are not obligated to mail each owner a calculation as to how their interest was calculated,”
  - “I apologize that only the WI owners seemed to be in the loop in regard to the allocation, but there is not more I can tell you, except the acreage noted when the allocation well was set up.”
  - “The computer took separate wells that were already set up, and pulled in certain percentages and created the numbers for us.”
  - “If you’re still under the impression that the acres are wrong, we would have to know who we need to be taking acres “away from” in order to give it to you”
- When companies will not respond or refuse to provide relevant information it creates distrust
  - There needs to be a remedy to cross check documents and verify where the discrepancy lies
- If the only remaining recourse is to go to court, then the court can assess a penalty for wrongfully withheld information

## HOUSE BILL 1520 – SECTION 4

### 47-16-39.1 of the North Dakota Century Code

Obligation to pay royalties – Breach.

- Legislature previously declared companies are obligated to pay royalties within 150 days and if they fail to do so must pay interest on the unpaid royalties without the mineral owner having to request it
  - Many companies do not comply with the statute and ignore requests for payment of the interest
- Clarifies that payment of the royalty does not relieve liability for unpaid interest
- Provides the relevant section of the Century Code related to the limitations period
- Inserts a penalty for noncompliance
  - Current statute has no recourse or remedy when it is ignored
  - Hiring an attorney to send a demand letter can cost more than the interest owed

## **HOUSE BILL 1520 – SECTION 5**

### **47-16-39.2 of the North Dakota Century Code**

Inspection of production and royalty payment records – Penalty.

- ❑ Section 5 adds individual mineral owners to the existing statute
- ❑ Senate Bill 2212 was passed in the 2019 Session
  - The updates requested today are the same that were added in 2019 for the board of university and school lands
    - Requires records be made available in electronic format
    - Adds a penalty for wrongfully withheld information
  - Chair Unruh stated, “Every other state has some type of penalty for these types of violations. I think it’s appropriate for us to have something in code.”
  - Individual mineral owners in North Dakota respectfully request the same rules be applied for them

## **HOUSE BILL 1520 – SECTION 6**

### **47-16-39.4 of the North Dakota Century Code**

#### **Resolution of spacing unit ownership disputes - Penalty**

- Section 6 adds additional language to the existing statute
- Provides clarity for the information companies are required to provide to help resolve disputes
- Adds a penalty for noncompliance or wrongfully withheld information which the court can determine

## HOUSE BILL 1520 – FINAL COMMENTS

- Legislature required certain information be provided on royalty statements in 1983
- Comments from the minutes related to the 1983 legislation:
  - Letter from Shell Oil Company to Allen I. Olson, Governor, State of North Dakota, “Testimony offered by Representative Jack Murphy and other royalty owners at the hearing indicated that their main concern was the **lack of meaningful communication** between the royalty owner and producer when the royalty owner posed a question regarding his royalty payment. **Representative Murphy testified that many times he would have to wait long periods of time for a response to his royalty-related inquiries and, in some instances, he testified he never received a reply.**”
- Royalty owners still face these same issues today
- There are no consequences or remedies in the Century Code when companies choose to ignore statutes
- The proposed penalties in HB 1520 are either already in the Century Code for the board of university and school lands or are similar amounts that other states impose

## HOUSE BILL 1520 – FINAL COMMENTS

- ❑ Additional comments from the minutes related to the 1983 legislation:
  - Letter from Rocky Mountain Oil & Gas Association, Inc., “Until recently, the industry had perceived North Dakota as a state which welcomed exploration and development of this and other industries. Unfortunately, the regulations being considered now by the Industrial Commission further damage this perception and will, I fear, have a further **chilling effect in the consideration of North Dakota as a choice for exploration whenever alternatives exist. ....many purchasers will find the paperwork to be unjustified, and....will undoubtedly direct their crude oil purchases out of State.** Secondly, the expense of maintaining these per well records, will undoubtedly result in the decision to eliminate purchases of small quantities from stripper and marginal wells with the result we predict with certainty the plugging of many of these wells, with the resultant loss of production and loss of tax revenue to the State as well as income to the royalty owner.”
- ❑ Industry did not leave the state as a result of the legislation that was passed to protect mineral owners
  - If industry opposes the changes requested in HB 1520 today, then what is their solution for solving the issue of companies not complying with current statutes?

## HOUSE BILL 1520 – FINAL COMMENTS

### Perceptions can distort reality

- ❑ Royalty owners should just litigate these issues and have the courts resolve the disputes
  - A multi billion-dollar corporation has an overwhelming advantage
- ❑ Numerous families own mineral rights because they homesteaded in North Dakota or were farmers and ranchers that settled in western North Dakota decades ago
  - Many receive a few hundred or few thousand dollars a year in royalty payments
  - Costs far more to hire an attorney than they receive in royalties
- ❑ House Bill 1520 will provide royalty owners access to their information, so they do not need to go to court to request it

Thank you for the opportunity to present testimony today.

I respectfully ask for your favorable consideration of House Bill 1520.