2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1264

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1264
01/27/2011
13655

☐ Conference Committee

Committee Clerk Signature Emjeth

Minutes: 3 "attached testimony."

Rep. Porter: At this time we will open the hearing on HB1264.

Rep. Meyer: I represent district 36, I am here today in support of HB 1264. In 1961 interim Natural Resources Committee created section 47-16 – 39.1 of the North Dakota Century Code. The history of this legislation is not only interesting but gives a background on how an important law, that has benefited royal owners in the past by giving the oil operator an incentive to get royalties paid by 150 days.
After that time frame an 18% interest rate starts to accrue. .HB 1264 is intended to clarify in the code, when the interest payments are to be paid in the event that royalty payments have not been paid for 150 days.
The issue of delayed royalty payments is once again serving in our western counties with the increased activity in the Bakken Formation. Calls regarding this issue have become a weekly occurrence. The state has ruled that when interest rates are due after 150 days and no royalty payments has been received and are due that this interest goes back to day one of production. I included a copy of the statement in the district court case that was pertinent. That was what the ruling was based on and with that all private royalty owners in addition to what the state does, can have interest back to day one of production.
(see attachment 1)

Rep. Porter: Are there any questions for Rep. Meyer? Is there further testimony for HB 1264?

Alan Kadrmas: I have been following the oil and gas division report. I know many friends and relatives that have not gotten payment in 150 days and they were not going to pay interest. I called Anschutz Exploration Corporation in Denver and she said" we will pay you". I waited 2 or 3 more months and called them and left another message. They did return the call and said" we will pay it, I will write the check this afternoon". I asked if they will pay the other Kadrmas members on that well and she said no" we pay on request only". Then I called Shirley Meyer and told her I would put an ad in the Dunn County Herald because every well they drilled has been in Dunn County.
After this ad I started getting phone calls and found that nobody has gotten paid. The school land had not been paid they don't pay that unless requested.

Rep. Porter: Are there any questions for Mr. Kadrmas? Is there any further testimony in support of HB 1264?

Sandy Clark: North Dakota Farm Bureau. We stand in support of the bill.

Rep. Porter: Is there any questions for Sandy Clark? Is there further testimony in support of HB 1264?

Derrick Braaten: I am an attorney in Bismarck. I do a fair amount of oil and gas law for the landowners and I stand in support of the bill and appreciate the language. My clients ask "do they have to pay from the first day of production or is it after the 150 days"? They usually do have to request payments and they usually go close to a year without payments. This bill is a clarification and what is needed.

Rep. Porter: Are there any questions for Mr. Braaten? Is there further testimony in support of HB1264?

Sheyna Strommen: I am with the North Dakota Stockmen's Association. We support this bill. (see attachment 2)

Rep. Porter: Are there any questions for Sheyna Strommen? Is there further testimony in support of HB 1264? Is there any opposition is support of HB 1264?

Todd Kranda: I am an attorney with Kelsh Law firm. I am here as a lobbyist of behalf of the North Dakota Petroleum Council to oppose HB 1264 as it is presented.
We have a web site for royalty owners, they can go there and click on different issues and find a contact person. That contact person is directed by the company to deal royalty problems that exist for land owners. I don't think HB 1264 is necessary, the proposal to remove that grace period of 150 days to make it retroactive would 18% interest is not reasonable. I urge a do not pass. (see attachment 3)

Rep Porter: Are there any further questions for Mr. Kranda?

Rep. Hunskor: There are some real concerns about some payments that are not received. What do you suggest to resolve this problem if this bill is not passed?

Todd Kranda: The web site for the royalty payment issues. That is what we have done to start resolving those concerns.

Rep. Hunskor: These folks have some severe concerns in their judgment and it seems like being a good neighbor there must be a good way you folks can work with them to resolve those problems.

Todd Kranda: The law change that is here we stand in objection to because of the first day of production. The rest of the language is something we don't have a problem with.

Rep. Kasper: you held up that book of the title opinion. Are all of the books that big?

Todd Kranda: Every title opinion would be different. This is one of the more complicated ones. That is what these 150 days is trying to help. When there are complicated opinions, it does take time. Some of them are not very complicated, but they all take time. We do need that 150 day grace period.

Rep. Kasper: I don't think the grace period is the issue at all. I think the issue is the interest. That book you brought, is that a typical title search?

Todd Kranda: This is a more complex case. We are getting more and more into this type of complex review and analysis to make sure we have the right royalty owner. They are going to get their money and if it is after 151days they start that 18%. I think line 17 and 18 can be removed but that date of first production is a difficult permission.

Rep Kasper: When someone does a title opinion for the oil companies, is it generally one person that works to put that book together?

Todd Kranda: All firms do it different. I do surface rights opinions which are a lot like that but a little less complicated. What takes so long is looking up the life of the property. Whether there is one or more people involved I don't know, I think it would be in the hands of one person to follow.

Rep. Kasper: What you are looking at then is find all of the information needed to put that 3 ring binder together?

Todd Kranda: The example that I shared in the testimony is the sequence of the different entries over time.

Rep. Kasper: When the well is drilled and the production starts. What is the first day that the mineral owner is entitled to receive a royalty check?

Todd Kranda: I understand it is the day of the sale. I don't have personal knowledge of that.

Rep. Kasper: There is a time when the royalties are due.

Todd Kranda: According to 471639.1 royalties are due and you pay interest on them if you don't pay them in 150 days.

Rep.Kasper: When are the royalties first due? What is the date?

Todd Kranda: Under that section lines 12-17 it starts out with if the operator of the oil and gas fails to pay the oil and gas royalties to the mineral owner after oil or gas produced under the lease is marketed and cancelled the lease or if he fails to pay the oil and gas lease to the unleased mineral interest owner within 150 days from initial production of the unleased oil interest.

Rep.Kasper: In line 17 it says "the operator shall pay the interest on the unpaid royalties." The royalties are sometime at the beginning to me that seems clear.

Todd Kranda: We are right. I don't know what further clarifications we need. For us it is line 17 and 18 with from "the date of first production making it retroactive."

Rep. Kasper: Your intent then is legislative history shows that when that bill was passed it was in the testimony that the grace period would not have any interest on it.

Todd Kranda: That is my position. 18% is a punitive rate, and if you bring it back to day one it's very difficult.

Rep. Keiser: Is the problem as the bill is drafted addresses one part but not the other part that there is opportunity for mutual agreement if we recognize that the mineral owner has rights whether they can be indentified or not within the 150 days. There are some earnings that will be generated off of those dollars and if the money can be sent out to the rightful owner can in turn make interest on that money. If it can't be sent out because we can't recognize the rightful owner in less than 150 days it could go into an escrow account. In that escrow account it could raise a reasonable return of interest, but 18% is punitive from day one.

Todd Kranda: Yes I agree with that.

Rep. Keiser: The oil companies aren't saying that they want to take advantage of that situation and not pay any interest. The 18% is punitive reasonable rate of interest and a reasonable return, but 18% is unreasonable.

Todd Kranda: I think that is an accurate statement. When the 150 days were negotiated and the 18% was established we had a range of 4-8 months for this.

Rep. Anderson: Where can the mineral owner find the date of sale?

Todd Kranda: The date of sale for the oil coming off the well, I don't know where that is available I can ask and get that information for you.

Rep. Nathe: Are you fine with the new language as the request requirement? Are fine with the mineral owner not having the request being paid the interest?

Todd Kranda: Yes, I think the law says "shall pay after 150 days.

Rep. Porter: Are there any further questions? Further testimony is opposition to HB 1264. Seeing none we will close the session on HB 1264.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1264
02/10/2011
14347
☐ Conference Committee

Committee Clerk Signature

Minutes:

Rep. Porter: We will open HB 1264

Rep. Hofstad: I make a motion a Do Not Pass

Rep. DeKrey: Second

Rep. Porter: Is there any discussion? Motion Carried

Yes 13 No 0 Absent: 2 Carrier: Nathe

Date: 2-10-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1264

House House Energy and Natural Resources Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Hofstad Seconded By Rep DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper					
Rep. Keiser					
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 13 No 0

Absent

Floor Assignment Rep Nathe

If the vote is on an amendment, briefly indicate intent:

27.0111

REPORT OF STANDING COMMITTEE

HB 1264: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1264 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1264

Testimony HB 1264

Shirley Meyer District 36

Chairman Porter and members of the Natural Resources Committee my name is Shirley Meyer and I represent District 36. I hope you will support HB 1264.

A 1961 interim Natural Resources Committee created Section 47-16-39.1 of the North Dakota Century Code. The history of this legislation is not only interesting, but gives you a background on an important law that has benefited royalty owners in the past by giving the oil operator an incentive to get the royalties paid by 150 days. After that time frame an eighteen percent interest rate starts to accrue. What brought this about in the eighties were operators delaying payment to royalty owners up to three years with the only remedy being District Court. The beneficiary of the use of this money should be the royalty owner because upon the sale of the oil, those monies are his. While oil companies may see this as punitive, remember this does give the operator five months of using the money interest free.

HB 1264 intent is to clarify in the Code when interest payments are to be paid in the event that royalty payments have not been paid for 150 days. Currently, some oil companies will only pay interest beginning on day 151 moving forward, and will only pay interest if it is requested.

HB 1264 clarifies that interest is due back to day one of production and it doesn't have to be requested.

The issue of delayed royalty payments is once again surfacing in our western counties with the increased drilling activity in the Bakken

formation. Although many of these wells came in and were big oil producers, royalty owners are still waiting on their first royalty checks. Calls from constituents concerning this issue are becoming a weekly occurrence.

I would urge you to adopt HB 1264

Meyer, Shirley J.

[redacted]om: Bayley, Keith W.
[redacted]nt: Wednesday, January 26, 2011 4:28 PM
To: Meyer, Shirley J.
Subject: Fuchs vs. Trans Texas for HB1264

Fuchs vs. Trans Texas Gas Corp.

"The Court finds that because the Defendants failed to pay royalties within 150 day after oil or gas was first marketed, interest at the rate of 18% per annum on unpaid royalties runs from the first day that oil or gas is marketed."

Attachment 2

North Dakota STOCKMEN'S ASSOCIATION

407 SOUTH SECOND STREET
BISMARCK, NORTH DAKOTA 58504
Ph: (701) 223-2522
Fax: (701) 223-2587
e-mail: ndsa@ndstockmen.org
www.ndstockmen.org

HB 1264

Good morning, Chairman Porter, and House Natural Resources Committee members. For the record, my name is ~~Julie Ellingson~~ Sheyna Strommen and I represent the North Dakota Stockmen's Association.

We rise in support of HB 1264, which removes from the mineral owner – the property owner – the burden of asking for interest owed to him or her due to late royalty payments and, simply, streamlines the process of collection for these parties.

A question we have is when the interest would kick in – on Day 151, as appears to be spelled out in statute now, or on Day 1, which the new language seems to suggest? Clarifying this issue would seem appropriate so all parties have a better understanding of the deadlines they must meet and the expectations they should have regarding late-payment interest.

attachment 3

Testimony in Opposition to
HOUSE BILL NO. 1264
House Energy and Natural Resources Committee
January 27, 2011

Chairman Porter, House Energy and Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council to oppose HB 1264 as presented.

As some of you may know, the North Dakota Petroleum Council represents more than 260 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. The North Dakota Petroleum Council is opposed to HB 1264 because, as written, it makes retroactive the payment of interest that is required which is contrary to the reasonable time frame established for the completion of the title work and the issuance of the royalty payment that was provided for when the original legislation was adopted in 1981.

The 150 day grace period provided for in Section 47-16-39.1 NDCC was established to allow a reasonable time period for the review of the title records and the completion of the title work necessary to determine the mineral owners before any royalty payments are issued.

HB 1264, as drafted, is a substantial change and causes significant problems for the industry with regard to making retroactive payments of interest during the first 150 day grace period. If this committee intends to make the payments retroactive and not

allow for the 150 day grace period then the punitive 18% interest rate should also be reevaluated and substantially reduced to potentially a prime rate formula similar to what is allowed for interest on judgment obligations under Section 28-20-34 NDCC.

There are certain amendments that might help make this bill acceptable as long as the provision for the retroactive application for the requirement for payment of interest is removed but at this point those amendments are not currently available.

The North Dakota Petroleum Council is willing to work with the committee to address or solve any problems that exist but the 150 day grace period is reasonable given the complexity of mineral title work and the legal title work to be completed before mineral royalties are paid.

As a general rule, before royalty payments are made, the companies want to have a Division Order Title Opinion advising them of the ownership rights, ownership percentages for each owner, and which owners have title defects before issuing payment to the owner. In addition, a drilling title opinion is also completed if time permits, but in recent years companies often drill the well without such a title opinion, as long as they know they have a minimum amount of interest, and then they figure out the specifics later after the title has been reviewed by an attorney.

The 150 day grace period was determined to be an appropriate time period to conclude title examinations and any other necessary administrative tasks before being hit with an interest penalty.

You should note that in 1981 the spacing units were much smaller. Since then we now have 1280 acre spacing units versus 160 acres, plus we have another 30 years more of title records to review. In 1981, the average title opinion was approximately 25 pages. Today, in certain oil producing counties such as McKenzie the average title opinion is 400-600 pages and often involves reviewing 10,000-25,000 pages of land records. Here is an example.

In preparing the example title opinion for a well in McKenzie County, over 20,000 pages of abstract entries were reviewed. The title opinion is over 500 pages and required several hundred hours for the land company to prepare the abstract from the county records, and over three months for the title attorney to prepare the title opinion. The first 54 pages list the names of the mineral owners, the next 50 pages lists the names of oil companies and overriding royalty owners. The last 100 pages or so sets forth the formulas and the decimal interests establishing each owners specific right of particpation in the well. The hundreds of pages in between lists the leases, assignments, and discusses the title problems associated with the well and what the company must do before issuing payments to certain owners.

Preparation of a title opinion is a cost to the company and often times is well over six figures for each well. After the company receives the opinion, depending upon its complexity, it then takes many weeks for the company staff to input the data to get the royalty payments started.

With the number of rigs, the activity going on, and the number of wells with this sort of title complexity, it just takes time to complete and resolve the title work in the 150 day grace period allowed, and all of that time and workforce costs are absorbed by the company.

Considering the changes since 1981, the increased complexity of title, and also realizing that the 18% interest rate was set back in a time when rates were at 10-14% instead of 1%, if anything it would seem there should possibly be an extension of time longer than 150 days to get title work completed, and a lesser interest rate than 18%. Accordingly, the proposed changes in HB 1264 are not fair and are in direct conflict with the original intent of the statute.

In conclusion I don't believe that HB 1264 is necessary. The proposal to remove the existing grace period of 150 days to make retroactive any payment of 18% interest is not reasonable under the circumstances involved with the title work and the process involved with the issuance of the payment of royalties.

Accordingly, I would urge a **DO NOT PASS** recommendation for **HB 1264.** I would be happy to try to answer any questions.