

FISCAL NOTE
Requested by Legislative Council
02/12/2015

Amendment to: SB 2251

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$9,100		\$9,100	
Appropriations			\$9,100		\$9,100	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The amended measure requires legislative management to consider a study on plugging and reclamation bonds in title 38 of the NDCC and title 43 of the NDAC.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 would require working with the bond administrative assistant on the various bonds required, bond amounts, where deposited, how long held, and requirements for release of bonds. The section also would require comparison of bonds to the cost and time of clean up.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This measure has no revenue effects.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures are estimated at \$9,100 (10% of Administrative Assistant).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Oil & Gas Division expenditures as mentioned in 3B are general fund expenses, and are not included in the executive budget.

Name: Robyn Loumer

Agency: Industrial Commission

Telephone: 701-328-8011

Date Prepared: 01/22/2015

FISCAL NOTE
Requested by Legislative Council
01/19/2015

Bill/Resolution No.: SB 2251

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$825,000		\$825,000
Expenditures			\$824,000		\$824,000	
Appropriations			\$824,000		\$824,000	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The measure amends enforcement of conservation of oil and gas rules to create a floor for civil penalties. It also restricts compromise, requires deposit of proposed penalty, and requires payment of ALL penalties before the release of ANY bond held.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This measure requires the Oil & Gas division to hire qualified individuals to provide site assessments, reclamation plans, and costs of remedying a violation; oversee an increased number of Administrative Law Judge (ALJ) hearings; manage an increased amount of legal paper work and civil penalty payments; and administer an increased amount of bond release reviews.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Based on 2013-2014 penalty suspensions, it is estimated that the increase in hearings will increase collections by \$412,500 per year. Revenue from civil penalties assessed is required (see lines 18 and 19 of bill) to be deposited into the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund (AWPSRF). AWPSRF is a continuing appropriation fund.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures per biennium include \$200,000 for a Petroleum Engineer to oversee site reclamation, manage reports, and participate in ALJ hearings; \$144,000 for Legal Assistant to manage legal paper work, track civil penalty payments, participate in ALJ hearings, and administer bond release reviews; \$120,000 for increased ALJ hearing expenses and filing in District Court to collect penalties (estimate 24 cases per biennium at \$5,000 each); \$360,000 for qualified individuals to prepare site assessments and reclamation plans on violations (estimate 12 per biennium at \$30,000 each).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Oil & Gas Division expenditures as mentioned in 3B are general fund expenses, and are not included in the executive budget. NDCC §38-08-04.5(3) limits the use of AWPSRF funds. A new continuing appropriation fund for penalty deposits and refunds will be required.

Name: Robyn Loumer

Agency: Industrial Commission

Telephone: 701-328-8011

Date Prepared: 01/22/2015

2015 SENATE JUDICIARY

SB 2251

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2251
2/2/2015
22946

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1,2,3,4,5,6,7,8,9,10

Sen. David McConnell: Sponsor, support. I'm a landowner and I farmed around oil wells for 30 years, so I know what the people who are testifying today are talking about. In fact, some of the testifiers approached me a little over 30 years ago. They approached me 30 years ago with this problem. The problem has gotten larger over that period of time. I don't know how many hundreds of thousands of dollars they have spent out of their pocket trying to get relief. Some of the testifiers have experienced this for a long time. The soil companies are good neighbors. Once in a while you run into somebody who isn't a good neighbor and basically the people are asking for these problems to be fixed. If you make a mess, clean it up. I would say that 99.9% are good operators but then you run into the one that makes a bag name for the rest.

Ch. Hogue: Thank you. Further testimony in support.

Christine Peterson, Antler, ND: Support (see attached 1).

Sen. Luick: Can you define some of those problems that you are having other than what is in your testimony; go into detail about the other violations.

Christine Peterson: There will be testimony following me that will go into that. Yes, we have salt spills that have happened many times. It's taken out the land, because of that.

Ch. Hogue: You did mention that perhaps the word "vigorously" is not the best choice of words for line 7 through 9. That goes to my question. Assume that we pass this bill and it became law, how would we know whether or not the law is being enforced, more or less vigorously.

Christine Peterson: With all the violations, I don't think vigorously is a word that is being used at all right now. There has to be more enforcement; maybe more people speaking up and saying that the land is being ruined and unusable. There are always signs regarding poachers, call if you see someone poaching. When they get the violation, maybe they should be fined to cover those violations. If they're just told not to do it, that doesn't go very far.

Ch. Hogue: Do you have any alternative suggestions to the adverb "vigorously".

Christine Peterson: No I don't.

Ch. Hogue: Thank you. Further testimony in support.

Daryl Peterson, Antler, ND: Support (see attached #2).

Ch. Hogue: It looks like you have three aerial photographs.

Daryl Peterson: Yes.

Ch. Hogue: The first one is dated 6/29/12. Were the other two photos taken at the same time?

Daryl Peterson: The other two were taken by aerial photography that he did not have it stamped dated. The next photo is 2013, which has a flax crop on it and the following photo is 2014, with a soybean crop on it.

Sen. Luick: So the flax crop has a tinted blue, blossoming by the oil tanks.

Daryl Peterson: That is correct.

Sen. Grabinger: How long did the company that did this work on the property to try and put it back into use where you could plant there.

Daryl Peterson: I guess they spent a couple of months excavating. They started, realized that they thought they were done; did some testing. I did my own testing, found that they weren't there. Started again, I asked for more testing. They said no, that wasn't within their job description to do. They decided that they had spent enough money and moved on. I think they put

this reclamation company, put a lot of information out, then they changed the goals and the Dept of Mineral Resources and Health Dept. went along with their decision to do that.

Sen. Grabinger: Did you reach a settlement with the company to the point that you were satisfied with what they did.

Daryl Peterson: That did not happen. I vigorously tried to defend my property and told them not to stop because the job is not done. Through the process I had three different testing companies come in and do testing. A couple of reclamation experts and they advised me to try to stop the process, but I was told that if you try to stop this, we'll walk away and just leave it; then you will be stuck with an open pit.

Sen. Luick: The area in this picture, which identifies this would be the excavated area, is that correct.

Daryl Peterson: That is correct. That was the initial plan, but they didn't go as far as their plan of action, what they were supposed to do. You will notice how straight that line, there is a pipeline running there. Over that pipeline, it was very contaminated and they even admitted that, but they decided not to choose to take the soil out over that pipeline and left me with the contamination. Also to the right, you can see black dirt. They removed a minimum amount of dirt there as well.

Sen. Luick: On the other two maps, the areas in the left-hand corner here and across the road and these areas all over here, are they saline soil also, or are there problems with natural salts in those areas.

Daryl Peterson: Much of that area was not cropped. It was a very wet year, so there were 2,000 prevent plant. We desired to try and plant the reclaimed area so we could test to see if it did bring a crop. A good share of the reclaimed area in 2013 did raise a crop, but there were already signs of salt coming up to the top and there were weak spots. If you look at the 2014 map, you can see those areas expanded greatly.

Sen. Luick: When did the spills occur?

Daryl Peterson: The spills have accumulated over a number of years.

Sen. Luick: In the same area.

Daryl Peterson: Yes. There's been dozens of spills and violations on this property. The well file can verify that. The 2011 to 2013 spills had a great deal to do with what's remaining contamination.

Ch. Hogue: Thank you. Further testimony in support.

Daryl Peterson: I would like to read testimony from Mike Artz (see attached #3).

Ch. Hogue: Thank you. Further testimony in support.

Larry Peterson, Antler, ND: Support (see attached #4).

Sen. Luick: The activity that is taking place in the last few years, the increase in that activity, are you seeing better quality work being done. Is this damage coming from older installed pipelines, older tanks, older situations; is there something in place today with the new construction that is improving the situation.

Larry Peterson: Many of these are from older wells. Some of the newer installations on pipelines I've seen have been inaccurate. I believe the people doing the work of the pipeline installations aren't doing a proper job as of today even.

Sen. Luick: The pipes that are rupturing, are they a PVC pipe, are they steel, cast iron, or what.

Larry Peterson: Well, the steel pipes are corroding out, some of the older ones. I saw a week ago people were hauling some of the fiberglass PVC pipe on a trailer that should have been the length of the pipe. The pipe was hanging out the back and the pipe was flopping off the back, which caused cracks before it was even installed in the ground. There has to be more inspection on the whole process through the installation of the pipe.

Sen. Luick: Do you know what kind of pressures they run on the saltwater pipes.

L. Peterson: Some of the injector wells are up to 1100 lbs.; disposal 300-800 lbs. whatever they are certified to be pressured at.

Ch. Hogue: Have you pursued any private remedy against the company.

L. Peterson: No.

Ch. Hogue: Thank you. Further testimony in support.

Matthew Peterson, Antler, ND: Support (see attached #5).

Ch. Hogue: You mentioned a large spill on you and your father's land. Is that Larry Peterson or Daryl Peterson.

M. Peterson: My father is Darwin Peterson.

Ch. Hogue: Your spill does not relate to Mr. Daryl Peterson or Larry Peterson.

M. Peterson: Neither.

Sen. Luick: The picture that you show us here, is this the area that you are talking about.

M. Peterson: This is the picture of our land. The excerpt from the Journal is where my quote is also.

Sen. Luick: Where did the spill originate on the picture?

M. Peterson: You can see on the left-hand side in the middle, there's a darker area up to the left a little more. From those two points it went to the northeast; that picture is facing to the northeast east. So the road there goes north to south. It spread to the north and south. Where the water meets the road, is where it spilled over onto the adjacent land.

Sen. Luick: Is that water here now, is this rainwater, runoff water, or salt water.

M. Peterson: It's a combination of both. The salt stays on the top there and the rainwater will stay on the top, it will blend a little bit, but most of that is rainwater.

Ch. Hogue: Do you know the date that this picture was taken.

M. Peterson: It is 8/18/2014 picture.

Ch. Hogue: Thank you. Further testimony in support.

Galen Peterson, NW Landowners Association: Support (see attached 6).

Ch. Hogue: Thank you. Further testimony in support.

Rep. Kenton Onstad: Support (see attached #7). I presented you with a rule that is present in the current oil and gas division, 43-02-03-30.1; Leak and Spill Cleanup. It states that at no time shall any spill or leak be allowed to flow over, pool, or rest on the surface of the land or infiltrate the soil. The last few testimonies have shown that that's really not the case. That's the reason this SB 2251 is in front of you. It's not about frustration; it's about lack of action, and the requirement to do so. The other testimony talks about abandoned wells. I have an abandoned well 3 miles south of my place, east of Parshall. Three years ago it was abandoned; today it just sits. Nothing has happened; it has not produced anything, that landowner wants that reclaimed. He's farming land around that, he sees the information and asks where are the rules with abandoned wells one year. This is about frustration, lack of action, and not moving forward. They ask that the laws that are currently on the books currently with oil and gas division be enforced; and we are discussing "vigorously". It is because of a lack of action that the term is placed. Spills are supposed to be reported, but it's after the fact. Do we not have enough people on the ground, then we have to get more people on the ground.

Sen. Casper: Is there any other place in the code where essentially we have a law that allows for enforcement but then we're also going to put language in there requiring enforcement.

Rep. Onstad: I'm not sure of that. The point is that the rule is there, it says "at no time shall any spill or leak be allowed to infiltrate the soil". It must be basically cleaned up. I would be reasonable; it must be a reasonable amount of time. Is it 30 days, 60 days, is it 3 years. Somewhere we have to make that decision of a timeline, and we need to enforce this law. We have to be aware of it, the legislature has to be aware of it, and we have to realize that it's an ongoing problem. If we don't address it soon, it's not going to go away on its own. It will come back later to haunt all of us.

Sen. Grabinger: I was privy to a legislative tour out west and we visited a well site that was reclaimed, by Watford City. Isn't there a well head reclamation

fund set up and are we not utilizing that or is it not funded properly, or is it just the fact that we're not enforcing this and getting it done.

Rep. Onstad: Yes, we do have a well claim reclamation fund. A lot of these instances that I'm talking about is when it leaves the pad it's in the hands of the State Health Dept. and they have an environmental restoration fund, is it adequate to do this, it's all about finding the dollars to put it in place. We're using that fund to clean up well sites that are 10-15 years old. I think the director will probably speak about this bill. He can talk more about the fund and the dollars that are available, is it enough, no. Is the original bond enough. Multi-wells, pipelines currently are not bonded. We're asking for those companies to be bonded. A \$50,000 bond on a well site, is that enough to deal with that one, no it's not.

Sen. Luick: Are you familiar with any of the violations, the fees or the fines being paid, or what the % of that happening is. Are some of them being paid, some of them just being reduced?

Rep. Onstad: I'm not familiar with the amount of that. I've heard statements made by the director, about 90% of those fines are forgiven. Is that accurate, I'm not sure. If you look at the minutes of the Industrial Commission, when they move forward you don't see those fines. You probably get an initial fine made out there, but the final settlement, I don't know about that. There's no verification of what was actually collected.

Ch. Hogue: Thank you. Further testimony in support of SB 2251.

Kristi Schlosser Carlson, ND Farmers Union: Support. I want to emphasize what you've heard today that these aren't the only folks that have these problems. In looking at the bill, I can't help but think about my conversation with my 3 year old this morning; he said "no seriously, I really want you to follow the rules that I've given you". So I understand that that is probably more of just a statement. Nonetheless, it is clear and I'm sure that there will be opposition that will explain why certain penalties are forgiven or reduced. Maybe there are incentive reasons or something like that. There seems to be some gaps in our policies between the abandoned reclamation fund, the current penalties, the bonds that are required on some, but not imposed on other companies, or other pieces of development. This seems like an effort to close off those gaps. We are in support of those efforts.

Ch. Hogue: Thank you. Further testimony in support.

John Miffel: I wasn't planning on testifying but I can give some insight. I know a lot of about metals. First of all, you have pipes that have carbon in them. The high carbon stops electrolysis. Electrolysis is when one material running across another material that creates and eats away steel, cast iron and most metals. Most of the pipes are about 1" thick. In order to avoid it, they pump it into the Missouri River. I have repaired and put plastics in too that cuts down the electrolysis. It just eats all the metal away. With electrolysis it is created when you have oil going to the pipe that eats the pipe away after a certain period of time. The same thing that does it with water that is like a static electricity it literally eats the material away. If you put in an ordinary pipe for oil, it's going to eat away very fast and it's going to create a leak faster. If you put plastic in there it helps it; the more modern plastic you put in it, the less electrolysis you get on it, so it was used up at Garrison Dam. They know the problem with electrolysis and so they have to change the pipes going through the dam in order to stop the leakage so that there isn't a big burst of water going through those pipes all at once.

Ch. Hogue: Thank you. Further testimony in support.

Vincent Dooley: I believe that we have partially described but truthfully described. We have the "rule of capture". In discussing administrative law the writers talk about the rule of capture. That occurs when an industry that is vigorous and forceful and capable of hiring lobbyists and influencing the course of enforcement or the lack of enforcement, captures the agency. That's a harsh description. I just want to challenge you to think in those terms. The pattern of non-enforcement is so apparent, so gross. If you go to Nagasaki or Hiroshima, I speak of two townships in Bottineau County. These are areas where wells have been placed; 1 for 40 acres, I believe. So you have an overlap of leaching and you really can't understand the magnitude of this problem without going there. Sen. Wardner went there and was shocked. He had been teaching in Mohall and had driven by those for years. We have a vast devastation and perhaps a permanent devastation of thousands of acres of land in Bottineau County. Bottineau County continues in the Bakken, we will have the same thing there. Consider an accounting, an independent count of these acres that are destroyed. I know that it's directly relative here, but it's an outgrowth. This problem has progressed for 50-60 years. It's not going to get solved by this law, but at least you can begin to get ahold of the problem. The denial has gone on too long. There is a problem, it's serious and we don't know how good it is, until and unless we have an account.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition.

Todd Kranda, ND Petroleum Council: Opposed (see attached #8).

Sen. Luick: Obviously you can see the problems that we're having here. What would be your recommendation to make sure that the laws are enforced?

Todd Kranda: It seems like some of the problems that they are suffering is from older pipe leakage, older wells, and older siting situations. I think technology is better today but I think that the Dept. of doing what they can. I think that there is also a statute that I forgot to mention, 38-08-17 sub 2, where if a private individual is dissatisfied with the process, basically it gives them a private cause of action. A private right to pursue their own litigation if they don't think that the Dept. is doing enough to recover or penalize or pursue recovery and reclamation. I think that even the prime sponsor said 99.9% of the companies are doing an adequate and appropriate job. I think that you're hearing some problems and I don't disagree that some of the scenarios that I've heard this morning are certainly a problem; saltwater contamination is what I've heard as being a recurring difficult issue to resolve. In terms of technology I think they are developing better methods and you will probably hear from the Dept. as to the process and what they are requiring. I think it is adequate the way it is. I think it's just taking some time.

Ch. Hogue: You mentioned the private remedies. I know one of the other things that tends to play out between the judicial and legislative branches, the legislature passes laws that provides for criminal sanctions and penalties and either victims or other folks come forward and say the penalties aren't being enforced vigorously enough, so along comes the legislature in response and says all right, "judges you are not appropriately sanctioning the defendants". Now we're going to have mandatory minimums. Are there any mandatory minimums in terms of fines in either the administrative code or the century code? If so, is that another good solution for these cases?

Todd Kranda: No, I think the law adequately provides and it's even in the bill. You can read lines 10-12, \$12,500 per violation. My understanding from discussions that I've had on this bill, the Dept. in the past, had had lower amounts. My understanding is that now they are going right to the maximum, \$12,500. They are going to the top and then discussing any compromise or settlement on a lesser amount. I think they are more aggressive in getting the

company's attention but then as I understand it, from discussions about clean-up and processes to make sure that the companies addressing the concern will then compromise down rather than starting at a lower amount and hold firm, you have a little more of the company's attention and I think it's adequate the way it is. I also think I've heard of legislation where you are being asked to loosen up some of that discretion for judges on minimum sentencing guidelines. Minimum amounts and guidelines aren't the answer. It gives some discretion depending on the circumstances, if you have 99.9% of the companies adequately performing/responding; it's only that one bad actor or multiple numbers within the large number of companies that are acting that you really want to get their attention. I don't think you want to go that direction.

Sen. Luick: Are you aware of how many of these companies have been paying fines in the past.

Todd Kranda: I don't know.

Sen. Grabinger: We heard testimony and this is a little different. This is on the reclamation point here; we heard testimony that some of these wells have been abandoned 20-30 years ago. Obviously we're not getting that reclaimed and we're not doing what needs to be done. Do you think this bill is going to help us in that respect to try and get these well sites taken care and cleaned up?

Todd Kranda: No, I don't think that hits the point of what you're hearing in saltwater clean-up and problems. I think it's a very difficult process to clean up saltwater spills and the contamination. I think there is a separate fund created for that. I think this legislation would do clean up reclamation. I think there are efforts being made and it just takes some time.

Ch. Hogue: Thank you. Further testimony in opposition.

Lynn Helms, Director, Dept of Mineral Resources, Oil and Gas Division:
Opposed (see attached 9 and 10).

Ch. Hogue: I know we have been adding personnel to your department over the last several biennia. You mentioned the inspectors. Do you feel like you have adequate personnel for enforcement and prosecution of the claims that you decide to go to civil complaints.

Lynn Helms: The answer to that would be no. This last biennium was very successful. We were granted 22 FTE positions, almost all of them field positions; we hired 19 of those FTEs. We've run into a roadblock here lately. Our budget request is for 9 additional people to do exactly what you're talking about here and three support staff in Bismarck to back them up, so that these civil procedures can move forward at a more rapid pace.

Sen. Grabinger: I want to talk about the reclamation. In your opinion, do we have enough money/funding in order to get the reclamation processes that we need for these abandoned wells and are we getting the job done there. I saw a reclaimed piece of property up by Watford City, it was a nice job. You wouldn't know that there ever was a well there. But yet I see the testimony from these people and hearing that wells have been abandoned and sitting there for years and years with no one looking at them. In your opinion, what needs to be done and what is being done incorrectly to not get these done.

Lynn Helms: The wells that were addressed about being in an abandoned status are probably in temporary abandoned status or they are inactive or abandoned because of neglect on the part of the operator. In order to resolve that problem, we always end up going through the district court, because that operator has an investment in that well. In order to take their property, we have to adjudicate that through the court. So the commission doesn't have authority to just step out and force a well to go away. We do utilize 38-08-04, which is a statute that sets out timeframes for accomplishing that. We do use that. ND is the exception to the rule. ND has one orphaned wells. Other states have tens of thousands; in PA, they have 40,000 wells that they don't have the physical location of. We have one orphaned well. It is a long time consuming process to deal with those abandoned wells. The fund, the Abandoned Well Site Restoration fund, I believe has adequate money in it. It is setting at \$11.2 million dollars and is funded now, instead of just through fees and fines, it's funded by a small percentage of the oil extraction tax. It is growing at a very good rate. I believe that the funding and the cap are adequate. The flaw in the fund, which is being looked at to correct it in a bill that's going to come over to you from the House is that it only allows that fund to apply to anything that was built or drilled after August 1, 1983. So these legacy problems are often sites, wells were drilled long before that day or built long before that and the fund cannot be applied to those. The change that is being worked on is to set up a program identical to the Public Service Commission's Abandoned Mine Lands Program and to fund it with somewhere between \$1.5 and \$3 million dollars per biennium into that program to take care of those legacy sites. We need to identify them all, put them on a priority

list and take the money as appropriated by the legislature and work our way down from the top of the list to the bottom, the same way that the Public Service Commission has dealt with the mine collapses and environmental problems associated with early 20th century mining in the state of ND. I think the fund has enough money; the fund is super at responding to something like a current date illegal dumping incident or an orphaned well. That well will get plugged this year. There's a flaw and the fix is in the works.

Sen. Luick: The type of salt that's used in this process is it a natural salt that leaches through the soil similar to what natural salts to becoming up from aquifers and then leach up and down through the soil profile. Does this salt act that way as the natural salts.

Lynn Helms: The salt that results in the soil damage is similar because it is high in sodium; but the natural salts are typically sodium sulfate. This is sodium chloride, so it is a lot more mobile and it's a much higher concentration. It causes damage to the typical clay soils that we have in ND. That's the stuff that spilled. The mediation process involves replacing that salt with a calcium salt, which is not natural. There are new amendments to what can be done. When I started this job, the only amendment was gypsum, wall board, very hard to dissolve and very slow to do any good. There are a lot of new products that work much faster. There has been a recent, greater breakthrough in that you could apply those amendments, but all that could ever do, was drive the sodium salts down, which hopefully they got trapped by deeper clays and didn't come back up. The advent of modern tiling systems has actually allowed some of the sites you heard about today, have been tiled and the process is being tested to remove the salty water from that tiling system, pump it out and put it into the saltwater disposal system and then add calcium amendments at the surface and allow precipitation to move the sodium salt out of the soil, pick it up, pump it deep into the Dakota Formation and get rid of it. Again, part of the fix to that abandoned well site restoration fund is going to be in the bill that I saw, if it survives, is some pilot project funding through EERC to try and speed up those processes as well.

Ch. Hogue: Thank you. Further testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2251

2/9/2015

23542

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: This is the bill that would director to enforce the laws "vigorously" and set the amount of penalties that must be levied.

Sen. Casper: Just to start the discussion on this bill. I don't think it is a good idea to start adding words like "vigorously". I oppose that part of this bill. Essentially the laws are put in place and departments are put in place to enforce them. I don't think we need to legislate the action here. I don't think it is prudent to start using words like vigorously or we will find that all over the NDCC with anyone's dislike of something that's happening or not happening.

Sen. Grabinger: I agree with Sen. Casper that the word "vigorously" should be removed and I don't think anybody really argued with that. I think the bill has merit in that we're looking to make sure that we get the cost of enforcement and remedying is really difficult to determine those costs and that leaves some discretion. At the same time, I think it's important that when they assess a penalty, that they look at whether or not it is at least recouping our costs that were associated with the event. I would support it if we removed the word "vigorously".

Ch. Hogue: The second feature of the bill I think was where Mr. Helms objected to removing his discretion and the Dept of Mineral Resources approach to levying fines which is to try to secure some change in behavior through the lengthy suspended period for the fines. That's the other policy issue behind this bill.

Sen. Casper: I think the testimony was that the research that they had conducted and they provided us with some of that information. They found it was more effective to have an ongoing potential penalty, than a big fine

upfront. I think, if I remember correctly it was, instead of serve the large fine upfront, dissuading some of these activities, the research had shown in their findings that it was better to have a large fine upfront and then they would reduce it, but leave that larger amount hanging over the violator's head for a period of time to make sure that they got the work done. That was the testimony from the Dept.

Sen. Armstrong: That testimony was on Sen. Axness' bill, but they are interconnected.

Sen. Nelson: These are the Peterson family bill, there were like five members of the family. It seems to me like there was a huge lack of communication; they kept saying that the company did stuff for two years and then they disappeared. Mr. Helms got up and said, well we did suffer two years and now we have to let it settle to see what happens and whether stuff rises and we'll be back. The Petersons didn't seem to think that they would ever be back. They got the message that they were done and not coming back. I think there needs to be a whole lot more communication between the parties. They are all bringing forth different messages. If someone was going to fine me \$100,000 and you've got to pay it and it's going to go into this fund and if after 10 years things are cleared up you can get it back. I would work pretty hard to get the money back. Maybe it doesn't mean as much to the oil companies but it certainly would to me. It would be some sort of thing that would tell the people who are being aggrieved that there is money sitting there for you if they don't get the job done.

Sen. Grabinger: I move the amendment with removing the word "vigorously" in section 1, line 7.

Sen. Nelson: Second the motion.

Ch. Hogue: There is a motion and a second to remove the word "vigorously" from page 1, line 7 of SB 2251. Discussion. We will take a voice vote.
Motion carried.

Sen. Grabinger: I move a Do Pass as amended.

Sen. Nelson: Second the motion.

Sen. Armstrong: I'm not going to support the Do Pass motion and I think one of the problems is when you start dealing with major spills and issues and you

start codifying this kind of language, you have a problem with understanding what the cost is at the onset. I don't know how you would set that fee when you are initiating these investigations as to what the cost of remediation would be. These salt water spills in these areas that they are talking about, there are a couple of things that we need to keep in mind. A lot of these people aren't the landowners. These are old, old cases. These cases are historic in nature, in that a previous landowner has often settled with an oil company prior to these things occurring. Just more important, from the codification standpoint, there is no way to know at the onset of these cases what the cost of enforcement will be or the remedy of the violations. As a practical matter, you won't know on some of these things. You may not know for 10 years, unless you set the fine at \$1 billion dollars to make sure you cover it, I'm not sure how you would mechanize this language, given the types of things that occur and what happens in the cost of remediation and the time constraints involved in the remediation.

Ch. Hogue: That would be hard to estimate, particularly for a larger spill, so when you detect a violation, or a spill that is just one type of violation potentially, it's going to be hard upfront to know what the cost of remedying the violation is going to be. So you require them to deposit that with the Dept. of Mineral Resources upfront. I suppose the good part is that you've made them put a lot of money upfront, so there is a carrot there, but I don't think it is a workable way of administering violations when you put that money in upfront. I tend to agree with Sen. Armstrong.

Sen. Nelson: If we further amended to say that the estimated cost of enforcement and remedying is the amount they would pay. You never know exactly what something is going to cost. But with a down payment of the estimated costs, you put it down. If it's a huge spill and you say it's going to be a \$1 million dollars that is the estimated cost. It might be more than that but at least you have something in the bank that's fair and a positive thing for the person who owns the land.

Ch. Hogue: That would be a potential amendment.

Sen. Grabinger: I do like her idea with that. I would be willing to withdraw my Do Pass motion from the floor.

Sen. Nelson: I withdraw my second.

Ch. Hogue: The Do Pass motion is off the floor. You want to talk about furthering the amendment.

Sen. Casper: Are we discussing another amendment.

Ch. Hogue: A potential amendment.

Sen. Casper: I don't think I would support the amendment. I think that with the concerns that have been expressed in this part of the bill, it wouldn't change that much to me, if you put "estimated" in there. You would have to try and prove what the estimate is all the time. Then I could see there would be a bunch of the same people are going to be back here next time complaining that the estimated values are too low, and then we would need to "vigorously" estimate it, or highly estimated, closely estimated.

Sen. Nelson: I don't want to put in an absolute amount because there are small spills and large spills. It could be a little bit or a lot. It talks about \$12,500 for each offense and each day's violation is a separate offense. If they'd actually enforce that, it would be nice. Are they actually going after that money? From the Petersons' it didn't sound like it.

Sen. Grabinger: I see the problem up there. There definitely seems to be a lack of communication, you could call it that. I am looking at these folks and it is going on 10 years that the property has been damaged to the point where it isn't much use; there's no benefit to them; their families are their business. With the development out west, I'm afraid we are going to see a whole lot more of this. That's probably my biggest fear, is that we've seen it happen, are we going to see a whole lot more and we're not going to take action and we got the opportunity to try and put something in the law. Maybe this isn't the best language and maybe we need more work on it. Maybe it needs to be a study, I don't know. I certainly want to try and get those folks some help and make sure that they we don't have this same mess going on out west even more.

Sen. Casper: Since we are talking about generalities in the bill, at the hearing it was discussed about who owned the land during the hearing. These folks certainly have recourse beyond what is here. This legislation does not necessarily make these folks whole. The courts are probably their best recourse. I suppose there is an issue there because they don't own the land, being renters, and what the action of the landowner is. A part of me is concerned that we are passing a bill for one family that all have the same last

name because for whatever reason they want the state to come up with their recourse, rather than themselves.

Sen. Grabinger: Actually they showed more than one site. They were different properties.

Sen. Nelson: There were five different properties.

Sen. Grabinger: It wasn't just the same property.

Ch. Hogue: The basic policy behind this bill is to take some discretion away from Mr. Helms and his department, and start putting in some mandatory minimums in place for the fines and to require that those fines be deposited upfront before the remediation occurs and before the enforcement is complete. It would require him to try and figure out what is the cost of remediation. What is it going to take me to enforce this violation in terms of attorneys' fees and make them pay that upfront? That's the policy issue.

Sen. Nelson: What would happen if we deleted the change in lines 14-18; that would include the overstrike on such? It would then say any such civil penalties may be compromised by the Commission. That would remain but the rest would go, but you would still have the director shall enforce the rules and on the back page you would still have that the commission may not release any bond required by law which has been paid by the violator until any civil penalties imposed are paid. You would still have something there and a directive to him that he has to do this.

Sen. Luick: Don't we have that in law right now. Another item I want to look at here is the conversations when they were testifying about the age of these particular spills, the different materials that are being used today versus what was used in the past. Are we looking at something that we have to look at, or is it something is going to be an ongoing problem with different technology that they have today. Are we looking at just making sure that these people or events that had happened in the past are compensated for? There is another bill in the Ag committee that is dealing with these particular items through the Ag commissioner. Basically it is a fund that's going to be set up with an ombudsman to identify these particular areas and try and get them straightened out. Maybe we should look at that also and see if there is a mixture of something we could put together.

Sen. Armstrong: This bill has a fiscal note. We need to get it out today. If we are going to talk about amendments we should have them. The conversation is fine but if we are spinning our wheels. Before I vote on anything I want to see the amendments. I don't think we can do this amendment sitting around the table. If somebody puts together an amendment and get it to us, I guess we should take it up. Otherwise I don't know where we are at exactly. We have to vote on this today right?

Ch. Hogue: Yes. That's why we are discussing it. The Chair senses that there is opposition to the bill; but some would like to throw it a lifeline. If you have an amendment for it, we will meet this afternoon and take it up this afternoon.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2251
2/10/2015
23556

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will take a look at SB 2251.

Sen. Armstrong: Explained the amendment (see attached 1). This will provide for a possible Legislative Management study during the interim.

Sen. C. Nelson: Does this need to state it is only for bonds related to oil and gas.

Sen. Armstrong: It is in Title 38 of the NDCC and Title 43 of the ND Administrative Code.

Sen. Luick: Are they identified by surety bond.

Lynn Helms, Dept. of Mineral Resources: If we're talking about bonds that pertain to the bill as introduced as SB 2251. Those are plugging and reclamation bonds. That definition would cover any type of bond that the Industrial Commission would require. They are for the purpose of either plugging a well or reclaiming a well site, or reclaiming a well site or a facility site; reclaiming a spill site; reclaiming a treatment plant site. The terminology we use in 38.08 is plugging and reclamation bonds. They can take different forms. Surety bonds are the most common type but we also have cash bonds, which is a cash deposit for the full bond amount that is held at the Bank of ND that we charge an administrative fee on, and that fee goes into the abandoned well plugging site/restoration fund. There is also the provision in 38.08 and in our rules for the Industrial Commission to approve other types of bonding; such as letters of credit, etc. We have not ever used those to this point; the only types that have been used up to this point have been surety bonds and cash bonds. That philosophy also extends into the geological

survey and those types of bonds are required for people that do seismic work, geothermal work, but they are all titled plugging and reclamation bonds.

Sen. Armstrong: Does that include pipelines.

Lynn Helms: It does. As it stands right now, the only type of bonding that applies to a pipeline is, if it is connected to a well site. Our rule calls it an appertance to the well or facility. The well on the bond covers its associated facility and any pipe that connects the well to a facility. Pipelines from a production facility downstream, that are transferring saltwater to another operator or another facility aren't currently bonding. They would be defined the same way, if bonding was required under 38-08 they would be defined as plugging and reclamation bonds because there are four reclaiming any damage or abandonment costs of the well, the site, the facility, the pipeline, spills, just to name a few.

Sen. Armstrong: If we just cited 38-08 that would cover it.

Lynn Helms: I think we should bring 08.1 into it, that is geophysical and we would probably need to bring 38.22. I can provide a list because 38-22 is Co2 storage, and there is a whole series of bonding required there.

Sen. Armstrong: If we just said plugging and reclamation bonds under chapter 38, would that cover it without having to list them all.

Lynn Helms: Yes, it would.

Ch. Hogue: Are there any in the administrative code or are they all in the NDCC.

Lynn Helms: The bonding requirements are all identified in the statutes in the Century Code. There are rules in the administrative code that govern authority to deny a bond and exactly how a bond can be transferred, or a well transferred. The bonding requirements are all laid out in the statute.

Sen. C. Nelson: So if it just said plugging and reclamation bonds you would have free access to go to the Code, the administrative rules, whatever was necessary.

Lynn Helms: Yes. Title 43 of the administrative code; you could do that. You could say chapter 38 of the NDCC and title 43 of the administrative code and it would all be covered as well.

Sen. Armstrong: (See amendment language 15.0703.01001, title 02000).

Sen. C. Nelson: Is there something somewhere else that attacks the salt spills. This is one part of the problem but in talking with the Majority Leader the other day, it sounded like there might be something floating around that might have an impact on the salt spills.

Sen. Armstrong: There are a couple of House bills that are dealing with appropriating some money which is probably the most important thing out of the abandoned well reclamation fund that is going to deal with some of these pre-1987 issues. I think 1987 was the year.

Sen. Grabinger: What are the House bill numbers? I agree it's hard to do this and pass this, but I certainly want us to do something to assist that area. In talking with several people, it seems to me that there is a lack of communication going on too that needs to be corrected. By the same token, this has gone on for years and years. I certainly don't want to see this happen when this oil boom ends. We've got to protect this. Hopefully we're doing that and we won't see this happen again.

Ch. Hogue: If we're going in this direction, I have a couple of edits of this amendment (see attached language in 15.0703.01001, title 02000).

Sen. Armstrong: I move the amendment, 15.0703.01001, title 02000 as further amended.

Sen. Casper: Second the motion.

Ch. Hogue: We will take a voice vote. Motion carried.

Sen. Armstrong: I move a Do Pass as amended.

Sen. C. Nelson: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Sen. Grabinger

February 11, 2015

TD
2/11/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2251

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of plugging and reclamation bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying plugging and reclamation bonds in title 38 of the North Dakota Century Code and title 43 of the North Dakota Administrative Code. The study must include a review of the various bonds required in all areas of development and the adequacy compared to the cost and time of clean up related to oil and gas development. In addition, the study must examine bond amounts, where bonds are deposited, how long bonds can be held, and the requirements for release of bonds. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 2/9/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2251

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Technical Correction - remove "vigorously"
in section 1, line 7.
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Grabinger Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote: Motion Carried

Date: 2/10/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2251

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 15. 0703.01001 Title 02000

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Armstrong Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote : Carried

Date: 2/10/15Roll Call Vote #: 22015 SENATE STANDING COMMITTEE
ROLL CALL VOTEBILL/RESOLUTION NO. 2251

Senate

JUDICIARY

Committee

☐ SubcommitteeAmendment LC# or Description: 15.

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____Motion Made By Sen. Armstrong Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0Absent 0Floor Assignment Sen. Grabinger

REPORT OF STANDING COMMITTEE

SB 2251: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2251 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of plugging and reclamation bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying plugging and reclamation bonds in title 38 of the North Dakota Century Code and title 43 of the North Dakota Administrative Code. The study must include a review of the various bonds required in all areas of development and the adequacy compared to the cost and time of clean up related to oil and gas development. In addition, the study must examine bond amounts, where bonds are deposited, how long bonds can be held, and the requirements for release of bonds. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 SENATE APPROPRIATIONS

SB 2251

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2251
2/18/2015
Job # 24060

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Emmery Prothery for Rose Laning

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide for a legislative management study of plugging and reclamation bonds.

Minutes:

Attachments: n/a

Legislative Council - Chris Kadrmas
OMB - Nick Creamer

Chairman Holmberg called the committee to order on SB 2251.

Senator O'Connell, District 6, Bill Sponsor: Introduced SB 2251. The bill would consider plugging some of the wells and releasing the bonds in title 38 of the century code. There seems to be a little trouble when it comes to plugging wells. The bonds have been released and there's no way to get anyone to clean up the mess.

Chairman Holmberg: Are you talking about the old wells or fracked wells?

Senator O'Connell: The old wells. The bonds have been paid off and they have been sold for 5-6 times and most of the wells were drilled in the early 1960s so there's no one to go after.

Chairman Holmberg: If we pass this bill, there is no appropriation. We will get the industrial commission in the 2nd half if this bill is passed coming to let us know that we are asking them to pay out of their \$30M budget \$9,100.

Senator O'Connell: I don't know where the \$9,000 comes from.

Senator Carlisle: That bill would be listed on the green sheet if it passes?

Chris Kadrmas, Legislative Council: Yes, the ones that are listed on the green sheet are significant to the agency.

Senator Bowman: This bill updates what we have to see if it's sufficient. With as many wells as are being produced, it's good policy to update these. When wells have been reclaimed correctly, you can't tell where it's been.

Senator Bowman moved Do Pass on SB 2251.

Senator O'Connell seconded the motion.

Senator O'Connell: In my area, one company has sold a well several times. The soil is bad and has never been cleaned up; it's anywhere from 10 -15 acres.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0

The bill will go back to the Senate Judiciary Committee.

Date: 2-18-13
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2251

Senate Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Bowman Seconded By O'Connell

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Heckaman	✓	
Senator Bowman	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator O'Connell	✓	
Senator Carlisle	✓		Senator Robinson	✓	
Senator Sorvaag	✓				
Senator G. Lee	✓				
Senator Kilzer	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Judiciary Grabeniger

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

REPORT OF STANDING COMMITTEE

SB 2251: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2251 was placed on the Eleventh order on the calendar.

2015 HOUSE ENERGY AND NATURAL RESOURCES

SB 2251

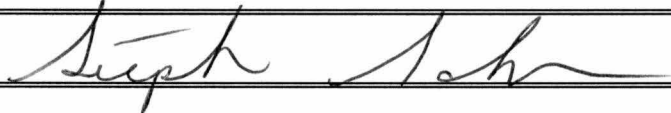
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

SB 2251
3/5/2015
Job # 24409

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study of plugging and reclamation bonds.

Minutes:

Attachments 1

Chairman Porter opens hearing

Senator David O'Connell, District 6: There is a mess from my district, the wells were drilled in the 1960s. What's happened is that a lot of times the bonds were released before the work got done and the work was never finished.

Chairman Porter: I have a fiscal note with the bill, but there should not be a fiscal note with this bill, now because that component of the bill was amended out in the senate?

O'Connell: Yes, that's correct.

Rep. George Keiser: What is the study going to add to what we have done already?

O'Connell: I think Mr. Peterson can answer that better.

Galen Peterson, NW Landowners Association-Secretary; written testimony #1

Rep. Bob Hunsakor: Has there been an improvement in the release of bonds?

Peterson: There may have been some improvement.

Rep. Bob Hunsakor: In HB1358 there is provision in that bill for old well clean up. What would we gain from the study?

Peterson: There is a company sitting out there with six wells, if the company doesn't have money to take care of them the State Reclamation Fund would have to pick up these locations.

Chairman Porter: How much of this bill is directly related to the legacy side of the industry, pre 1983, and how much is related to current Bakken wells?

Peterson: I don't think this is an issue with the Bakken. Looking to the future the Bakken wells will probably end up in this category? If you look through the well index there are roughly 240 abandoned wells out there that have been abandoned for a number of years. The vast majority are wells that are in the Madison Formations.

Chairman Porter: So there are fair number of the wells are legacy wells.

Peterson: Yes, that's correct.

Rep. Roger Brabandt: You say there are about 240 abandoned wells, what counties are they primarily in?

Peterson: There are quite a number in Mountrail Bottineau, Burke, Renville counties. They are scattered throughout the Madison formation.

OPPOSITION: None.

Chairman Porter asks Mr. Helms to the podium.

Chairman Porter: After 1358 and coming back to a study, what information will we gain with this study?

Helms: I think you will find out that our bonding rates compared to our neighbor states are the same or very similar. I heard the number 240 abandoned wells, I don't think that's accurate. If you count all the wells with the term abandoned in their title, it might be right. It's the "abandoned wells" that we are most concerned about. That is where the operator has pulled the equipment off or just and walked away. A lot of that was dealt with six years ago when we added to 3804, which allowed us to require a full cost plugging and reclamation bond for any well that falls into that category. There are legacy problems but 1358 attacks those. Most of the problems came prior to the 1980s oil boom, when top soil did not have to be stock piled. The language in 1358 will put those on a priority list to be reclaimed. This bond study would be a very comprehensive look at all energy development bonding. We do not oppose the study, but I don't know if it will turn up much new information.

Chairman Porter: We can pass the study and send it to Legislative Management and they are going ask me what are we going to learn?

Helms: North Dakota has one orphan well, usually we have none. WY is has 8,000, PA has 40,000, OH 11,000, OK over 10,000. The one well we have we filed a complaint, sold their equipment and reclaimed the well the following year. We have a very good process and it has worked extremely well.

Chairman Porter: Abandoned and not plugged, improperly plugged...are those Legacy wells?

Helms: That's correct.

Rep. Roger Brabandt: Define orphan wells

Helms: An abandoned well has a responsible party attached to it. Orphaned well has no responsible party other than the state.

Rep. Bob Hunskor: I would assume that a study would include the current policy on the release of the bonds.

Helms: Yes.

Rep. Bob Hunskor: Today, with 1358, this scenario is cleaned up?

Helms: Yes.

Rep. Glen Froseth: What type of bonds are there?

Helms: We have surety bonds, an insurance operator standing behind the company. The other is a cash bond.

Rep. Glen Froseth: What happens to the cash bond if no one claims it?

Helms: It becomes unclaimed property and goes to the state land department.

Rep. Roger Brabandt: Are surety bonds getting more difficult to get?

Helms: Since the oil prices have plummeted, it is more difficult.

Rep. Bob Hunskor: What would the condition of the site be to release a bond?

Helms: It has to go through three growing seasons and the production has to be 80% of surrounding lands. If there has been a spill, we have a reclamation supervisor oversee the reclamation.

Rep. Roger Brabandt: How far down does salt water leach?

Helms: It depends on the soil, we have found salt water 10-12 feet down. We have found leaching 40 feet below salt water pits.

Rep. Mike Nathe: The information we are looking to gather in this bill, you have at your fingertips, we're not digging very deep here are we?

Helms: I agree.

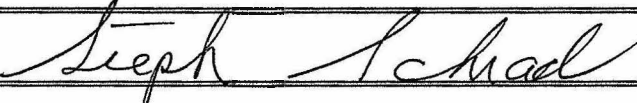
Chairman Porter closes hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2251
3/12/2015
Job # 24772

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	
---------------------------	--

Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study of plugging and reclamation bonds.

Minutes:

Attachments 0

Chairman Porter opens discussion.

Rep. Mike Lefor moves a Do Not Pass.

Rep. Dick Anderson seconds.

Vote: Yes 10, No 3, Absent 0.

Rep. Dick Anderson: Carrier.

Chairman Porter: Closes discussion.

Date: 3/12/15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2251

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Lefor Seconded By Rep. D. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	<input checked="" type="checkbox"/>		Rep Hunskor		<input checked="" type="checkbox"/>
Vice Chairman Damschen	<input checked="" type="checkbox"/>		Rep Mock		<input checked="" type="checkbox"/>
Rep D Anderson	<input checked="" type="checkbox"/>		Rep Muscha		<input checked="" type="checkbox"/>
Rep Brabandt	<input checked="" type="checkbox"/>				
Rep Devlin	<input checked="" type="checkbox"/>				
Rep Froseth	<input checked="" type="checkbox"/>				
Rep Hofstad	<input checked="" type="checkbox"/>				
Rep Keiser	<input checked="" type="checkbox"/>				
Rep Lefor	<input checked="" type="checkbox"/>				
Rep Nathe	<input checked="" type="checkbox"/>				

Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep. D. Anderson

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

REPORT OF STANDING COMMITTEE

SB 2251, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2251 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2251

for #1-1A
2-2-15

Chairman Hogue, Members of the Judiciary Committee.

My Name is Christine Peterson from Antler, North Dakota. I am here in support of SB 2251.

This 1997 letter, submitted with written testimony shows you how very long we have been asking for the state to require operators to obey the rules and regulations. Since that time we have dealt with numerous spills that have resulted in huge damage to our land.

You also have before you a letter from Oil and Gas dated March 22, 2011. This shows that the violations were noted and required to have action taken to repair. The company did install a well flare, but after only a few months, the flare was not operational. Inspectors were told and must have noted this violation when they were there to inspect the well site. In Oct. of 2013 Cody Vanderbush, field inspector of NDIC, noted the flare was not burning, but apparently took no action. This violation went on until legislators visited the site during a tour this past August, 2014 and they reported to Dave Glatt from Health Department, and they inspected and issued a violation with a fine. This may sound like an unimportant violation, but levels of raw methane and h₂s from this site have been at dangerous levels.

The rules on the highway have enforcement, or many would ignore speed limits, or stop signs or impaired driving. Loss of drivers license and large fines are what is required to stop repeat offenders. I'm sure the poacher who decided to take that deer out of season and got caught is missing his gun, pickup and hunting privileges.

I understand the words vigorously is a harsh, but well files show the same violation is often repeated without any consequences. When the oil company has repeated offenses that cause damage and their back is covered by the regulators, how is a landowner to protect his or her property. The regulators are quick to say that you can take the problem to mediation, or litigation

1-2A
2-2-15
file 9916 SB 2251

March 31, 1997

State of North Dakota
Oil and Gas Division
Bismarck, ND 58501

I, Daryl G. Peterson would like to request that the Oil and Gas Division of the Industrial Commission file on our behalf, a complaint against Ballantyne Oil for frequent salt water spill that have caused severe land damage on the west side of the salt water disposal well on SE 1/4 of sec 32, 162 - 81. It appears that the dikes have eroded away through out the years. I have made phone calls complaining about this matter over the past several years to the Oil and Gas division, and field reps. and gotten little response.

Please check this out and take appropriate action on this matter, and advise us as to what legal action can be taken. A written response to this request would be appreciated.

Thank you for your attention.

Daryl G. Peterson 3-31-97
Daryl G. Peterson Date

Christine Peterson - wife 3/31/97
2521 99th St. NW
Artler, ND, 58741

Testimony in support of SB2251
February 2, 2015

Chairman Hogue, Members of the Committee,

My name is Daryl Peterson. I am a semi-retired farmer from Antler, in Bottineau County.

We have had dozens of spills and violations at the Peterson 2 SWD, File #9916 over the past 20 years. There have been 7 verifiable spills from 2011 to 2013 at the location. Four of these spills were not reported as is required by regulations. This fact was verified by recent depositions of employees of the Department of Mineral Resources and North Dakota Department of Health. No violations were issued.

In 2012 the oil company removed a large amount of contaminated soil declaring cleanup was satisfactory and was also approved by Department of Mineral Resources and Department of Health. The pictures provided you shows reclamation of 2012, and crop on location in 2013 and 2014.

I have hired independent testing, that shows more contamination remaining and area reclaimed also is contaminated by salts moving up through the soil profile. My land can not be mortgaged because of the contamination. I have paid out huge dollars for soil testing, litigation and monitoring, trying to defend my property.

This could have been prevented if proper enforcement and accountability had been required. I would be happy to provide any additional information to the committee if they so desire. If policy does not change, Western North Dakota's agricultural future is in great peril.

SB2551
#2-2
2/2/15



06/29/2012

SB 2251
2-3
2-2-15



2013

152295
2-4
2/2/15

2014



Testimony in support of SB2251
February 2, 2015

for #31

Chairman Hogue, Members of Judiciary Committee,

I am sorry I am not available to stand before you today, but hope that you will take my written testimony. My name is Mike Artz a farmer from Antler, ND.

A high pressure salt water pipeline ruptured on my land in August 2013. This huge spill of oil and saltwater resulted in a large cleanup effort, but much contamination and permanent damage remains. The pictures and inspection report show this well was completely out of compliance. The well had no road access and the site was over ridden with weeds, which are both violations.

The spill is reported at 0 barrels. Company employees admitted they could not get to the well on a daily basis. Crop staging clearly shows pipe leaked for several weeks.

An investigation was requested. Lynn Helms reported investigation showed everything was apparently in compliance. The Inspection report from regulators show well was not accessible majority of the time and not inspected yet no violations were issued.

The conditions that existed at this location were seen by Senator Wardner, many legislators, Ag Commissioner Doug Goehring and Health Department Chief Dave Glatt.

The field inspection report that dates back to 2011 shows that this company was in violation many times, which ended at great financial loss to me and my family.

Enforcement would have been a solution.

Thank you for your time.

Industrial Commission of North Dakota
Oil and Gas Division
Spill / Incident Report

#3-2

Date/Time Reported : Aug 14 2013 / 10:10
State Agency person :
Responsible Party : MUREX PETROLEUM CORPORATION
Well Operator : MUREX PETROLEUM CORPORATION
Date/Time of Incident : 8/9/2013 12:00:00 AM
NDIC File Number : 90074
Facility Number :
Well or Facility Name : LEO HALLOF 1
Type of Incident : Valve/Piping Connection Leak
Field Name : NORTH HAAS
County : BOTTINEAU
Section : 21
Township : 163
Range : 82
Quarter-Quarter :
Quarter :
Distance to nearest residence : 0.25 Miles
Distance to nearest water well : 0.25 Miles
Release Oil : 0 barrels
Release Brine : 0 barrels
Release Other : 0 barrels
Recovered Oil : 0 barrels
Recovered Brine : 0 barrels
Recovered Other : 0 barrels
Has/Will the incident be reported to the NRC? : Unknown
Was release contained : Yes - Within Dike
Description of other released substance :

Immediate risk evaluation :
Followup Report Requested Y/N : Y

SB 2251
2-2-15

Inspection Report

Leo Hallof # 1

NDF # 90074

<u>Date</u>	<u>Comments</u>
5/8/2014	Could not reach well, wet conditions.
3/18/2014	Could not reach well.
1/29/2014	Talked to pumper, SWD will be in operation soon. Could not check gauges, location has snowfall and dirt work needs to be done. Equipment is still on location.
10/23/2013	Strata on site waiting on confirmation samples, hauling in clean fill to start back-filling once the results come back. Planning on putting in some tile drain. Have a hole between 3 and 4' deep.
8/22/2013	Earthmovers digging contaminated soil, stockpiling by Ralph Smith for hauling.
8/14/2013	Dead vegetation down to the water line to the east, Strata/Earthmovers track-hoe at location, holes dug around the area, oil on the ground around break. Still need a spill report.
8/12/2013	Received spill notice call from Johann. Line leak, out in field between Hallof and Ralph Smith, oil and saltwater. Will send in spill report. Will contact landowner. Having Earth Movers do cleanup.
5/16/2013	Checked gauges, tubing gauge is broken.
9/21/2012	Checked gauges, pumping.
4/25/2012	Checked gauges, not pumping.
3/8/2012	Checked gauges, not pumping.
2/17/2012	MIT passed.
1/19/2012	Checked gauges.
1/3/2012	Checked gauges, pumping @ 480 psi.
9/26/2011	Checked gauges.
7/13/2011	Checked meter. Could not reach well.
5/25/2011	Could not reach wellhead. Checked meter.
4/6/2011	Could not reach wellhead. Checked meter.
2/1/2011	Could not reach wellhead.
12/22/2010	Could not reach wellhead. Needs better diking. Could not reach pump.
9/29/2010	Needs better diking. Could not reach wellhead. Checked meter. Took TP off Murphy switch.
8/13/2010	Checked meter. Needs some work on diking. Could not reach wellhead.
6/25/2010	Checked meter. Could not reach wellhead.
4/29/2010	Checked gauges.
3/8/2010	Could not reach wellhead. TP taken off Murphy switch. Checked meter.
1/19/2010	Could not reach wellhead. Checked meter and took TP off Murphy switch.
11/24/2009	Checked gauges. Could not reach wellhead. TP taken off Murphy switch.

SB 2251
2/2/15

3-4

Inspection Report

Leo Hallof # 1

NDF # 90074

10/6/2009 Checked meter. Roustabouts laying in cattle guard. Well shut in.
7/30/2009 Checked meter. Could not reach wellhead.
6/1/2009 Checked meter. Couldn't reach wellhead.
4/17/2009 Checked meter. Couldn't reach wellhead.
2/3/2009 Ran MIT w/ Shannon Holter and Hamm's Well Service hot oiler.
1/20/2009 Shannon Holter called in a spill. About 2 barrels. Line break. Will clean what they can, and send in a spill report.
12/22/2008 Couldn't reach wellhead or meters. Snowed in.
10/13/2008 Could not reach wellhead. Checked meter.
7/29/2008 SI Working on pump. Couldn't reach wellhead.
5/1/2008 SI Couldn't reach wellhead. Some additional cleanup done.

SB 2251
2/2/15



35
2/2/15
SB 2251

5/12/15
see 85

#3-6

MUREX
PETROLEUM CORPORATION

LEO HALLOF 1
UIC # W009550409D
NE/4 SW/4 SEC. 21 T163N R82W
PERMIT NO 90074 API NO 3300990074
IN CASE OF EMERGENCY CALL 1-800-776-5110

08/28/2013 12:10


6/2/2015
582251
3-7-9



09/03/2014

4-1

Testimony in support of SB2251
February 2, 2015



Chairman Hogue, Members of the Committee,

My name is Larry Peterson from Antler, ND. I am a farmer, contract oil field pumper, land and mineral owner. I have worked in the oil fields for 30 plus years and am disturbed by the oil field violations that occur. I have been witness to many violations such as spills, inadequate equipment and dikes, and the many abandoned wells. The commission has regulations for these violations but they are ignored and put off until a later date, sometimes even years. My testimony might sound familiar, but we must keep repeating our story. The enforcement has not changed as Mr. Helms promised in the past years. If fines were levied and not forgiven, some of these very costly problems could be taken care of.

The Jespersen 31-29 Salt Water Disposal (a 30 year old well), file #11772 has 3 zones where the casing has failed and could contaminate fresh water aquifers. This well will be squeezed with concrete, only forcing leaks at other locations in the future. This well did not hold pressure as required by testing for the past several years, but was accepted by state inspectors. These files are available on the North Dakota Industrial Oil and Gas site. There are many disposal wells in Bottineau County that have questionable test results and could cause contamination to fresh water zones and even come to the surface. Why are we taking these risks with our ND water resources?

The pictures, spill report (that states the spill was contained within the dike), and inspection report are from this same well site. The pictures show an oil and saltwater spill from collapsed tank. The dike was required to hold about 900 barrels. Lynn Helms reported at a meeting in Antler in August of 2014 that dike was approved in 2011, so no violation occurred. The pictures show almost no dike. This was a clear violation , but company was not held accountable. I believe passing SB2251 will be a step in the right direction to achieve responsible, accountable oil development.

Industrial Commission of North Dakota
Oil and Gas Division
Spill / Incident Report

#4-2
2/2/15
SB2251

Date/Time Reported : Jul 30 2014 / 08:43
State Agency person :
Responsible Party : MUREX PETROLEUM CORPORATION
Well Operator : MUREX PETROLEUM CORPORATION
Date/Time of Incident : 7/29/2014 12:00:00 AM
NDIC File Number : 11772
Facility Number :
Well or Facility Name : JESPERSON 31-29
Type of Incident : Tank Leak
Field Name : NORTH HAAS
County : BOTTINEAU
Section : 29
Township : 163
Range : 82
Quarter-Quarter : NE
Quarter : NW
Distance to nearest residence : 2650 Feet
Distance to nearest water well :
Release Oil : 5 Barrels
Release Brine : 260 Barrels
Release Other :
Recovered Oil :
Recovered Brine :
Recovered Other :
Has/Will the incident be reported to the NRC? : No
Was release contained : Yes - Within Dike
Description of other released substance :

Immediate risk evaluation : None
Followup Report Requested Y/N : Y

SB 2251
4-3
2/2/15

Inspection Report

Jespersion 31-29

NDF# 11772

Date	Comments
8/11/2014	Heavy equipment still on location. The clean-up process is still on-going, most of the contaminated soil has been removed. Tank has been removed.
7/30/2014	North Country Oil Inc. is using suck truck and taking a squeegee to the fluid and working back from the main road to the location. Stan Bergstrom has diked the field and will be doing the dirt work with backhoe and dozer. Farden will be hauling contaminated dirt. Talked with Les and Rick Hummel on location. Bob Artz is landowner. Tank collapsed, took out pump house building. Spill went over road on location to the west ditch of the lease road. Some in the field. Les will be working with the Health Department for possible soil testing to determine how much to remove. Fluid going to Prairie Disposal (Minot). Well head did not seem to be affected. Well has hole in casing, and rig had been on it a few weeks ago. Tank seemed to have collapsed on the west side of the tank. Phone call of spill from Kyle (#833-6002) at 6:15 PM on 7-29-14. Had tank collapse on location, and plumbing connected to additional tank so it also drained out. Approx. 500-600 bl SW. People on location, and trucks on way. Les will manage spill cleanup. Will contact landowner, and send in spill report.
7/11/2014	Shut-In. Pipe stored on location. Water inside dike.
5/8/2014	Shut-In. Equipment on location/could not reach/wet conditions.
3/18/2014	Shut-In. Pipe stored on location.
1/29/2014	Shut-In. Equipment on location.
11/20/2013	Shut-In. Work-Over Rig on location.
11/1/2013	Mechanical Integrity Test Failed, ask company to SI well.
8/15/2013	checked gauges.
5/16/2013	Checked gauges.
2/14/2013	checked gauges.
2/21/2012	checked gauges, pumping.
4/25/2012	checked gauges, not pumping
3/8/2012	Checked gauges, not pumping
1/19/2012	Checked gauges.
1/3/2012	Checked gauges, not pumping, catwalk up on tank.
9/26/2011	Oil cleaned up and working on upgrading diking. Catwalk on ground. Checked gauges.
7/13/2011	Checked gauges. Location has a small amount of oil on the ground in dike. Catwalk on ground.
5/25/2011	Checked gauges. Has catwalk on ground.
4/6/2011	Checked gauges, Could not reach meter.
2/1/2011	Could not reach.
12/22/2010	Could not reach meter. Checked gauges. Catwalk on location.
9/29/2010	Could not get into meter. Catwalk on location. Checked gauges
8/13/2010	Checked gauges. Has some catwalk on ground. Could not look at meter.
7/23/2010	Shannon Holter called in spill of about 10 barrels of Salt Water. 2" nipple failed. Contained in dike. Will send in spill report and clean it up. Going to be re-doing this battery.
6/25/2010	Checked gauges.
4/29/2010	Checked gauges.
3/8/2010	Checked gauges.
1/19/2010	Checked gauges.



07/29/2014

H-4 #
9/15/18
1900 98



SB 2251
2/2/15
#4-5



SB 2251
4-6
9-2-15

07/29/2014

Testimony in support of SB2251
February 2, 2015

Chairman Hogue and members of the Committee,

My name is Matthew Peterson. I am a farmer and rancher from Antler. I would first like to state that I am in favor of oil production but am extremely concerned about the care of the land and those that only have surface rights. Now on that matter my father and I have one of the largest salt water spills in North Dakota on a piece of land that we rent; even though it is rented we treat it as our own. To have this devastation on "our" land is very disappointing and aggravating. It is disappointing in the fact that it happened and destroyed all the land it did but also aggravating that it seems no one cares! On 9/17/14 the Crosby Journal had an article where Alison Ritter was quoted saying "They (the oil companies) are required by law to report accurately. " I have a hard time believing that the "accurately reported" 300 barrels could do this much damage. The affected acres are reported "officially" at only about 25.

This past summer salt water spilled over the road onto the neighbors land contaminating it too. Kris Roberts of the NDHD blamed this on the excessive rain that fell but if the water on our side had been pumped down or hauled out like it should have this wouldn't have happened. It seems a lot of these problems could be prevented if the industry was more proactive rather than reactive.

My concerns in this matter are that these types of situations are continuing and nothing is being done about it. Another example is the fines that are levied very often are reduced significantly. Are fines not meant to deter from events happening again instead of likening to a slap on the hand? I feel it can only get worse if these issues are not addressed immediately.

Thank you for your time,
Matthew Peterson



#5-2

Cumulative effect of n

(Editor's Note: This is the second of two part looking at issues surrounding state-required reporting of oil spills.)

By John D. Taylor

Alison Ritter, spokesperson for the state Department of Mineral Resource, Oil & Gas Division (OGD) said the agency has a low threshold for reporting spills – If a single barrel of oil spills, the responsible oil company must report this, she said.

"Companies are diligent about getting this done," Ritter said. "They are required by law to report accurately. If 50 barrels spilled, 50 barrels spilled."

State environmental incident reports from Divide County show seven spill events in August, with 78 barrels of brine, 36.5 barrels of oil, and 70 barrels of "drilling mud," a diesel fuel and asphalt oil borehole lubricant. Of this, 76.5 barrels of brine, 33 barrels of oil and 67 barrels of mud were reportedly recovered during clean-up.

In Burke County, in four incidents, 271 barrels of brine and two barrels of oil were spilled during August. Reclaimed were 131 barrels of brine and one barrel of oil.

Williams County, by far the larger oil producer of the three counties, showed nine incidents that put 420 barrels of brine, 237 barrels of oil and 20 barrels of drilling mud into the environment. Reclaimed were 420 barrels of brine, 231 of oil and 20 barrels of mud.

To keep oil companies honest, Ritter said, OGD has 32 field inspectors working full time in its Minot, Williston and Dickinson offices. These inspectors visit oil rigs twice weekly; oil and saltwater injection wells once a month; and producing wells once per quarter.

The Department of Health (DOH) has far fewer field people. Scott Radig, director of the Waste Management Division of DOH said there are just six full-time people, and "several" part timers on its spill and emergency response teams. Just two



This map shows oil spills since 200 details of the spills.

people are in the field daily; one north of Lake Sakakawea, one south of the lake.

Cumulative effects

Both Ritter and Radig said the state takes oil spills seriously.

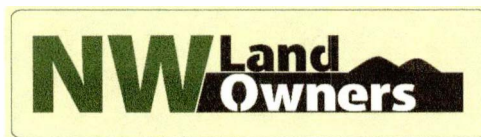
"We do as good a job as we can to respond to spills," Radig said. "There's also concern over the cumulative effect of the spills, but many factors are involved."

Much depends on how the spills are cleaned up: Petroleum spills will degrade over time, he said, but saltwater malingers, Radig said.

Ritter said lumping spills represented in the environmental reports together isn't a good idea.

"No spill is a good spill," she said, "but each is different."

If a spill is contained at the well site by the dikes built to contain it, the impact is less than if it gets into waterways, Ritter said.



**6050 Old Hwy 2
Berthold, ND 58718**

**For responsible development of
North Dakota's resources**

Troy Coons	President
Tom Wheeler	Vice President
Bob Grant	Treasurer
Galen Peterson	Secretary
Website	nwlandowners.com
Contact Us	gpete72@gmail.com

Donnybrook, ND
Ray, ND
Berthold, ND
Maxbass, ND

Northwest Landowners Association's Testimony in support of SB2251
Senate Judiciary Committee
February 2, 2015

Chairman Hogue and members of the Senate Judiciary Committee,

I am Galen Peterson from Northwest Landowners Association (NWLA). We currently have 450 members--farmers, ranchers, and landowners, mostly from north central, northwest, and west central North Dakota. We strive for responsible development of our natural resources.

Most companies operating in the oil fields do a good job and follow the rules. When an inspector brings to their attention that something needs correcting, they promptly take care of it. That is the system working as it should.

However, as the previous testimonies demonstrate, that is not always the case. There are 2 wells in my area, #17632 and #17606, that were drilled in 2009, never produced, and now the plugging and reclamation reports are overdue. Neither have been reclaimed. Well #17906 was drilled in 2009, the pit was reclaimed in July of 2010, at that time was self proclaimed to be temporally abandoned, and its current status is drilling. What will it take to get these wells plugged and the sites reclaimed so the land can be used again?

Penalties for situations that arise from negligence or lack of maintenance should not be forgiven. Penalties need to be issued and enforced to prevent situations that jeopardizes the productivity of the land.

This bill may not be perfect and undoubtedly that will be presented. But, there is a problem and a solution is needed.

#7-1
Farmers Union
for 2/2/15

43-02-03-30.1. LEAK AND SPILL CLEANUP. At no time shall any spill or leak be allowed to flow over, pool, or rest on the surface of the land or infiltrate the soil. Discharged fluids must be properly removed and may not be allowed to remain standing within or outside of diked areas, although the remediation of such fluids may be allowed onsite if approved by the director. Operators must respond with appropriate resources to contain and clean up spills.

SB 2251

History: Effective April 1, 2012.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-31. WELL LOG, COMPLETION, AND WORKOVER REPORTS. After the plugging of a well, a plugging record (form 7) shall be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. Prior to completing the well, the operator shall cause to be run a log from which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived or postponed by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the director free of charge. Logs shall be submitted as one digital TIFF (tagged image file format) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on new permits, except the operator name, well name, location, spacing or drilling unit description, spud date, rig contractor, central tank battery number, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period shall commence on the date the well is spudded. The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the director deems it necessary to protect the public's health, safety, and welfare.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, spacing or drilling unit description, spud date, rig contractor,

**Testimony in Opposition to
SENATE BILL NO. 2251**

Senate Judiciary

February 2, 2015

Against
#8-1

Chairman Hogue, Senate Judiciary Committee members, for the record my name is Todd D. Kranda. I am an attorney with the law firm of Kelsch, Kelsch, Riff & Kranda in Mandan and I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council to oppose SB 2251.

The North Dakota Petroleum Council represents more than 550 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota and has been representing the industry since 1952.

The North Dakota Petroleum Council (NDPC) is opposed to SB 2251 because it is unnecessary and a duplication of the statutory provisions that already exist in law for the enforcement of the rules and orders with regard to oil and gas activity. In fact, a substantially similar bill, SB 2290, was previously considered in the 2009 Session and was given a Do Not Pass recommendation from the Senate Natural Resources Committee and was defeated in the Senate (34 to 13).

Chapter 38-08 of the North Dakota Century Code provides authorization for the North Dakota Industrial Commission regarding control of oil and gas resources. Furthermore, there are additional enforcement provisions provided for within the North Dakota Administrative Code, namely Chapter 43-02-03, regarding oil and gas conservation.

The North Dakota Industrial Commission already has the necessary tools and authority for enforcement of all laws, rules and orders concerning oil and gas

8-2

operations. The responsibility for enforcement of the rules and orders is already being used by the North Dakota Industrial Commission through the Department of Mineral Resources. Shown below is Section 43-02-03-05 NDAC, the general enforcement provision for the oil and gas regulations.

“43-02-03-05. Enforcement of laws, rules, and regulations dealing with conservation of oil and gas. The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to the conservation of oil and gas. However, it shall be the responsibility of all the owners or operators to obtain information pertaining to the regulation of oil and gas before operations have begun.”(Emphasis added).

There is not a reasonable justification nor need for this new legislation. The Department of Mineral Resources already applies the existing laws for the enforcement of the oil and gas regulations.

Furthermore, the existing oil and gas regulations within Section 38-08-16 NDCC already provides the commission with authority for imposing a civil penalty of \$12,500 for each individual offense and each day's violation is considered a separate offense. In addition, Section 43-02-03-15 NDAC provides for the bond requirements. See copy attached. The commission already has the authority to have the bond forfeited in the event the conditions are not satisfied which includes full compliance with Chapter 38-08 NDCC along with the any administrative rules and orders of the commission.

In conclusion, the laws of North Dakota already provide for a the reasonable and appropriate enforcement authority regarding the existing oil and gas regulations. The civil penalty, bond conditions and bond release terms are already appropriately addressed under the law of North Dakota as well. SB 2251 is simply not necessary nor appropriate.

Accordingly, I would urge a **DO NOT PASS** recommendation for **SB 2251**.

I would be happy to try to answer any questions.

SB 2251
2/1/12

8-3

**CHAPTER 43-02-03
OIL AND GAS CONSERVATION**

7. **Variances.** Variances from all or part of this section may be granted by the commission on the basis of economic necessity providing the variance does not affect measurement accuracy. All requests for variances must be on a sundry notice (form 4).

A register of variances requested and approved must be maintained by the commission.

History: Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000; July 1, 2002.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. **Bond amounts and limitations.** The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial disposal operations must be bonded in the amount of fifty thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged;
 - b. A well that is plugged and the site is not properly reclaimed; and
 - c. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned

SB 2251
2/2/15

8-4

status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. **Bond terms.** Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal must proceed as follows:
 - a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter,

SB2251
2/2/15

section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.
 - c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is

86

transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

7. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
8. **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014.

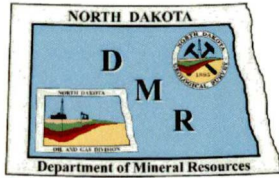
General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16. Application for permit to drill and recomplete. Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed well location to the nearest tenth of a second, the ground elevation, confirmation that a legal street address has been requested for the well site, and well facility if separate from the well site, and the proposed road access to the nearest existing public road. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, the proposed pad layout, including cut and fill diagrams, and the proposed amount of cement to be used, including the estimated top of cement.

SB2251
2/2/15



Senate Bill 2251
Senate Judiciary Committee
February 02, 2015

Testimony of Lynn D. Helms, Director

The North Dakota Industrial Commission – Department of Mineral Resources – Oil and Gas Division has had jurisdiction to propose civil penalties for violations of oil and gas statutes, rules, and orders since 1981.

This bill as introduced would create significant problems for the Oil and Gas Division penalty enforcement program:

Problem 1

The first problem presented by SB 2251 is the new requirement for the director of the department of mineral resources to “vigorously” enforce all laws concerning oil and gas conservation on behalf of the commission. Vigorously is an undefined adverb that is not used in the job description of any other enforcement official. Placing such a term in statute creates an enormous opportunity for litigation by operators, surface owners, activists, or any other party that might wish to complicate an enforcement proceeding by convincing a judge that enforcement should have been more or less vigorous.

I will use the following 2014 statistics to illustrate the Oil and Gas Division’s very vigorous enforcement process:

- 3,073 Notices of Violation
- 2,839 violations resolved in less than 30 days with verbal Notice of Violation
 - 57 resolved with written Notice of Violation and deadline
 - 13 civil complaints
 - 177 remain under investigation

Problem 2

The second problem created by SB 2251 is the requirement to determine the cost of remedying the violation before setting the minimum amount of the penalty. The most serious violations we are aware of are salt water spills and can take from three to more than ten years to remediate. Under those conditions it is not possible to determine the cost of remedying the violation before remediation is complete meaning the minimum penalty amount could not be determined for more than a decade.

Problem 3

The third problem created by SB 2251 is the requirement that the full amount of any proposed penalty be deposited with the commission before a settlement agreement could be reached. There is currently no continuing appropriation fund into which the alleged violator could deposit the proposed penalty or get a refund, nor does the bill create one.

Problem 4

The fourth problem created by SB 2251 is the requirement that the violation be found to be the direct result of circumstances beyond the violator's control before any settlement could be reached. This requirement could only be fulfilled by adjudicating the matter, negating the potential of or need for any settlement.

Problem 5

The fifth problem created by SB 2251 is the requirement to hold all bonds of any operator that has a civil penalty pending or suspended. I simply want to point out that NDAC 43-02-03-15 already grants this authority to the oil and gas division but does not make it mandatory.

Mr. Chairman and members of Senate Judiciary the North Dakota Industrial Commission urges a DO NOT PASS for SB 2251.

2/2/15

**OIL AND GAS PRODUCTION DAMAGE COMPENSATION
CHAPTER 38-11.1**

38-11.1-01. LEGISLATIVE FINDINGS. The legislative assembly finds the following:

1. It is necessary to exercise the police power of the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.

Source: N.D. Century Code.

38-11.1-02. PURPOSE AND INTERPRETATION. It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and 38-11.1-05 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons.

Source: N.D. Century Code.

38-08.1-07. CIVIL AND CRIMINAL PENALTIES.

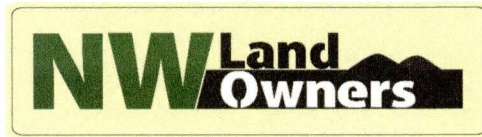
1. A person who violates any provision of this chapter or commission rule or order is subject to a civil penalty imposed by the commission not to exceed one thousand dollars for each offense, and each day's violation is a separate offense. A penalty imposed under this section, if not paid, may be recovered by the commission in the district court of the county in which the defendant resides, or in which any defendant resides if there is more than one defendant, or in the district court of any county in which the violation occurred. Payment of the penalty does not legalize the activity for which the penalty was imposed, or relieve the person upon whom the penalty was imposed from liability to any other person for damage caused by the violation.
2. Notwithstanding this section, a person who willfully violates any provision of this chapter or a commission rule or order is guilty of a class C felony.

Source: N.D. Century Code.

PROPOSED SB 2251

Sen Armstrong
2/10/15
1-1

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying bond amounts, the various bonds required in all areas of development, and the adequacy compared to the cost and time of clean up related to oil and gas development. If conducted the study must examine bond amounts, where bonds are deposited, how long bonds can be held, and the requirements for release of bonds. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.



**6050 Old Hwy 2
Berthold, ND 58718**

**For responsible development of
North Dakota's resources**

Troy Coons
Tom Wheeler
Bob Grant
Galen Peterson
Website
Contact Us

President
Vice President
Treasurer
Secretary
nwlandowners.com
gpete72@gmail.com

Donnybrook, ND
Ray, ND
Berthold, ND
Maxbass, ND

Northwest Landowners Association's Testimony in support of SB2251
House Natural Resources Committee
March 5, 2015

Chairman Porter and members of the House Natural Resources Committee,

I am Galen Peterson from Northwest Landowners Association (NWLA). We currently have 450 members--farmers, ranchers, and landowners, mostly from north central, northwest, and west central North Dakota. We strive for responsible development of our natural resources.

We agree with the study of bonding requirements as laid out in this bill. There are areas that need to be improved.

One item in particular to review would be:
43-02-03-15. BOND AND TRANSFER OF WELLS item #2.

A company is allowed to have up to six wells in aggregate that are
Abandoned and not plugged,
Improperly plugged,
And not properly plugged and not properly reclaimed.

Any one of these sites can cost over \$100,000 to plug and/or reclaim. Especially when there has been produced water spills on the location.

One \$100,000 bond for this situation is inadequate and leaves the state in an unfavorable position.

We believe this one example justifies a study. The study may reveal other areas where bonding requirement are inadequate for the longterm.

NWLA supports this bill asks for your favorable consideration.