

**2019 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1490**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau A Room, State Capitol

HB 1490

1/24/2019

31429

☐ Subcommittee

☐ Conference Committee

Committee Clerk	Kathleen Davis
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### Explanation or reason for introduction of bill/resolution:

relating to loss of oil and gas production payments

### Minutes:

Attachment 1, 2
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**Chairman Porter** called the hearing to order on HB 1490.

**Rep. B. Anderson:** turned it over to Troy Coons

**Troy Coons, NW Landowners Association:** presented Attachment 1.

4:15

**Rep. Lefor:** At the bottom it states the tenant is not entitled to receive notice under this statute and refers to different sections of code. What notice is it referring to?

**Coons:** We're not making or requesting that the developer try to determine who the tenant is. Hopefully between the developer, tenant and landlord it can get figured out.

**Rep Bosch:** How does the developer have a relationship with the tenant? Don't they normally work with the owner? How would they know who that is?

**Coons:** The developer usually goes to the property owner and mineral owner. They normally don't have a relationship with the tenant. This would bring the tenant into the conversation so they'd get compensated.

**Rep Heinert:** How does the developer know who the tenant is?

**Coons:** This is going to highlight that in the conversation between the developer and landlord and bring the tenant into the conversation. The tenant is the party that loses in this situation.

**Rep Heinert:** How can you ask the developer to be responsible for the tenant? Isn't it the landowner's responsibility to keep the tenant in that conversation?

**Coons:** Yes it is but it's a constant ongoing issue. I feel some of onerous is on the developer. But yes, it's an issue with the landowner as well.

**Chairman Porter:** Why is some of the onerous on the developer. Why would he be responsible when he has nothing to do with the contract between the landowner and tenant?

**Coons:** The key to the problem that exists is, many times we talk about the multiplier effect, the angst for trying to get easements. Many of these tenants are also property owners and left out of the discussion. So we hear it's hard to get easements. The relationship between industry and property owners or tenants is escalating and more and more frustration. We're just trying to help solve one of those problems.

**Chairman Porter:** I appreciate opening up the lines of communication but you're dragging the developer a party to and between a landlord and tenant.

**Coons:** I understand your take. This would be a simple way to solve some of the ongoing issues in those relationships?

**Chairman Porter:** further support? Opposition?

**Todd Kranda,** attorney with Kelsch, Ruff Kranda Nagle & Ludwig Law Firm, Mandan, ND: Presented Attachment 2.

**Chairman Porter:** questions? Opposition? Closed the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau A Room, State Capitol

HB 1490

1/25/2019

31465

☐ Subcommittee

☐ Conference Committee

Committee Clerk

Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

relating to loss of oil and gas production payments

Minutes:

**Chairman Porter** called the hearing to order on HB 1490. Discussion?

**Rep. Roers Jones:** I would move a Do Not Pass.

**Rep. Zubke:** second.

**Chairman Porter:** We have a motion for a Do Not Pass and a second. Discussion? Seeing none the clerk will call roll on Do Not Pass to HB 1490.

13 yes    0 no    1 absent. Rep. Zubke is carrier.

Date: 1-25-19  
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1490**

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 Roers Jones Seconded By Rep Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson		AB	Rep. Roers Jones	✓	
Rep Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Zubke

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

**REPORT OF STANDING COMMITTEE**

**HB 1490: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1490 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1490**

Troy Coons  
Northwest Landowners Association  
House Energy and Natural Resources Committee  
Testimony for HB 1490  
January 24, 2019

HB 1490  
1.24.19  
Attachment 1

Good afternoon, Chairman Porter and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons, and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am an unpaid lobbyist.

Northwest Landowners Association is in favor of HB 1490 which gives tenants the right to make a claim against the mineral developer for loss of production payments. Our members have identified this as a very sensitive issue for a tenant to present to a landlord. Under the language of this Bill, the tenant is not entitled to receive the notice under the statute, and cannot recover attorneys' fees under the statute. Again, the tenant only receives loss of production payments. Typically this is only an issue for the tenant with respect to growing crops. Yield losses on an ongoing basis could be dealt with in a future or amended lease between the landlord and tenant.

Thank you for taking the time to consider our comments. I am available for any questions.

Sincerely,



Troy Coons, Chairman  
Northwest Landowners Association



Testimony in Opposition to

HOUSE BILL NO. 1490

House Energy and Natural Resources Committee

January 24, 2019

HB 1490  
1.24.19  
Attachment 2

Chairman Porter, House Energy and Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council (NDPC) to oppose HB 1490.

NDPC represents more than 500 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, and has been representing the energy industry since 1952.

HB 1490 amends Section 38-11.1-08.1 NDCC regarding loss of production payments that are made by a mineral owner for damages sustained for loss of agriculture production caused by oil and gas operations. Initially, HB 1490 seems to be harmless but it creates confusion, uncertainty, is duplicative and unnecessarily interjects a tenant into a situation that should only involve the surface owner and the mineral developer. HB 1490 provides for payments not only to the surface owner but now adds payments to a tenant of a surface owner for loss of production and creates a separate legal action against the mineral developer by the tenant.

Current law already requires the mineral developer to reimburse and pay to the surface owner any loss of agriculture production caused by oil and gas operations. Accordingly, the mineral developer is already reimbursing and paying damages for loss of agriculture production to the surface owner which include those amounts owed to the tenant of the surface owner. In fact, on page 1 of HB 1490, lines 7-9, clearly show that the current law already has the requirement that: ***“The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner’s tenant, if any, for loss of agricultural production...”*** (Emphasis Added.)

The attempt by HB 1490 at line 15 to add the tenant of the surface owner is unnecessary,

causes confusion and could create significant problems. The mineral developer has no privity of contract with nor any other legal relationship or connection to the tenant of the land, and should only deal with the surface owner, not the tenant of the surface owner. The best parties to determine to what extent a payment is to be divided up with the tenant is the surface owner and tenant themselves, not between the tenant and mineral developer.

Furthermore, HB 1490 at lines 20-22 creates a separate legal action available to the tenant of the surface owner against the mineral developer, which would be independent of and not include the surface owner. The primary transaction regarding the development of the minerals is between the surface owner and the mineral developer, not the tenant of the surface owner.

The tenant of the surface owner should not be designated separately and should not be elevated to a status of a “quasi-owner” of the land simply because of a separate lease or contractual arrangement that exists solely between the surface owner and the tenant. The rights and obligations of a tenant are limited and are contingent upon those as exist in the negotiated arrangement with surface owner. The tenant should remain involved only subject to the oversight of the surface owner, and not included as an independent party with the negotiations that occur with the mineral developer.

HB 1490 at lines 19-20 attempts to remove the obligation of the surface owner to compensate the tenant from the amount of damages that are paid by the mineral developer to the surface owner for loss of agricultural production. HB 1490 could negatively impact and cause delays as well as unnecessary litigation with the payment of loss of production damages to a surface owner because the mineral developer would also need to deal directly with the tenant of the surface owner.

In conclusion, NDPC urges your opposition to **HB 1490** and respectfully requests a **Do Not Pass** recommendation. Thank you and I would be happy to try to answer any questions.