

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1102

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Yolanda Rickford  
Operator's Signature

10/2/03  
Date

2003 HOUSE NATURAL RESOURCES

HB 1102

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Valosta Rickford  
Operator's Signature

10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1102

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 10, 2003

Tape Number	Side A	Side B	Meter #
1	xx		0-1755
Committee Clerk Signature <i>Ed Murphy</i>			

Minutes:

**Chair Nelson:** opened the hearing on HB 1102 relating to appeals from the decisions of the water commission and the state engineer.

**Ed Murphy:** testified on behalf of HB 1102 (see attached testimony).

**Rep. Keiser:** How are you depositing property?

**Ed Murphy:** We are attempting to model it on the Oil and Gas Division. The wording is based from thier statute. They do not accept property. I'm not sure why this is in the bill. There is cd deposited at the Bank of North Dakota. The interest would revert back to the company.

**Rep. Keiser:** Would a letter of credit from a bank be acceptable?

**Ed Murphy:** Not what we are proposing to do under our rules. The oil and gas division does not accept letters of credit.

**Rep. Drovedal:** Not to reflect on any particular company, but we get fly-by-nighters that use the property, which is difficult to valuate. When the soil activity is going on it is worth more money

Page 2  
House Natural Resources Committee  
Bill/Resolution Number HB 1102  
Hearing Date January 10, 2003

and when the oil activity quits it becomes a liability. I can see you having property with contamination on it.

**Ed Murphy:** I need to consult with the Attourney General's office, but I would have no problem removing this language from it.

**Rep. Clark:** Is it possible to use other assets?

**Ed Murphy:** I do not have that answer.

**Rep. Nottestad:** If the law reads that property will be accepted and they do not accept property what is the scenario for that?

**Ed Murphy:** There has been no problem within oil and gas.

**Rep. Nottestad:** I recommend finding that out.

**Chair Nelson:** We are attempting to contact Lynn Helms the Director of the Oil and Gas Commision of the Industrial Commision.

**John Dwyer:** Testified in favor of HB 1102 (see Attachment). We do not have any objection to removing the property section of the bill. We only accept cash anyway so it will not affect the industry.

**Rep. Keiser:** What is the dollar level of the bond we are talking about? We are talking about taking working and investment capital and putting them in a non-operating catagory. This can have a negative effect. Because of this I ask again why are we not allowing a letter of credit in leiu of a cash bond?

**John Dwyer:** We do not have a problem with that. You make a good point. We can get you that language of the public sevice commision that provides for a performance bond in 38.14.

Page 3

House Natural Resources Committee

Bill/Resolution Number HB 1102

Hearing Date January 10, 2003

**Dean Peterson:** Spoke on behalf of North American Coal Corporation. These bonds are only \$10,000 bonds. It provides us some down pressure on the assurity companies. If they try to hijack us with respect to premiums it gives us another tool in the tool box. The cash option is the only thing we are interested in. We won't speak to this.

**Chair Nelson:** So you are at the mercy of the assurity company.

**Dean Peterson:** This is just another tool.

**Chair Nelson** closed the hearing.

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*Y. Costa Rickford*  
Operator's Signature

*10/2/03*  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1102

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 23, 2003

Tape Number	Side A	Side B	Meter #
1		xx	6100-end
2	xx		0-268

Committee Clerk Signature

*Cornelia Meyer*

Minutes:

Rep. Drovedal introduced an amendment related to the cash or property language.

Amendment Moved by Rep. Solberg, seconded by Rep. Keiser. Passed by voice vote.

Rep. Keiser moved a do pass on HB 1102 seconded by Rep. Clark. Passed by a vote of 13-0-1.

Rep. Keiser will carry.

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Operator's Signature

*Yalosta Rickford*

10/2/03

Date

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1102

Page 1, lines 13 through 15, replace "cash or property under the terms and conditions as the industrial commission may prescribe." with "surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the industrial commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 1, lines 22 through 24, replace "cash or property under the terms and conditions as the industrial commission may prescribe." with "surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the industrial commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 2, lines 5 through 7, replace "cash or property under the terms and conditions as the industrial commission may prescribe." with "surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the industrial commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

PROPOSED AMENDMENT TO N.D.C.C. 38-08-04

SECTION 1. AMENDMENT. 38-08-04(1)(d) is amended as follows:

Replace "cash or property under the terms and conditions as the industrial commission may prescribe." with "surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the industrial commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

38057.0101  
Title.0200

Adopted by the Natural Resources  
Committee

January 23, 2003

VR  
1/24/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1102 NAT RES 1-27-03

Page 1, line 1, after "reenact" Insert "subdivision d of subsection 1 of section 38-08-04,"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Subdivision d of subsection 1 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission prescribed to govern the production of oil and gas on public and private lands within the state, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit ~~cash or property under such terms and conditions as the industrial commission may prescribe~~ a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.

Page 1, line 14, replace "~~cash or property under the terms and conditions~~" with "a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 1, remove line 15

Page 1, line 23, replace "~~cash or property under the terms and conditions~~" with "a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 1, remove line 24

HOUSE AMENDMENTS TO HB 1102

NAT RES 1-27-03

Page 2, line 6, replace "~~cash or property under the terms and conditions as~~" with "a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 2, remove line 7

Renumber accordingly

Yolanda Rickford  
Operator's Signature

10/2/03  
Date



Date:  
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1102

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass 1102

Motion Made By Meiser Seconded By Secured

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark	✓				
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Lyle Hanson					
Rep. Bob Hunsakor	✓				
Rep. Dennis Johnson	✓				
Rep. George Keiser	✓				
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland	✓				
Rep. Darrell Nottestad	✓				
Rep. Dorvan Solberg	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Meiser

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

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Yalston Rickford  
Operator's Signature

10/2/03  
Date

REPORT OF STANDING COMMITTEE (410)  
January 27, 2003 8:33 a.m.

Module No: HR-15-1089  
Carrier: Kelsner  
Insert LC: 38057.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**  
HB 1102: Natural Resources Committee (Rep. Nelson, Chairman) recommends  
**AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1102 was placed on the  
Sixth order on the calendar.

Page 1, line 1, after "reenact" Insert "subdivision d of subsection 1 of section 38-08-04,"

Page 1, after line 6, Insert:

**"SECTION 1. AMENDMENT.** Subdivision d of subsection 1 of section  
38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission prescribed to govern the production of oil and gas on public and private lands within the state, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit ~~cash or property under such terms and conditions as the industrial commission may prescribe~~ a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.

Page 1, line 14, replace "~~cash or property under the terms and conditions~~" with "a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 1, remove line 15

Page 1, line 23, replace "~~cash or property under the terms and conditions~~" with "a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 1, remove line 24

Page 2, line 6, replace "~~cash or property under the terms and conditions as~~" with "a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter."

Page 2, remove line 7

Renumber accordingly

2003 SENATE FINANCE AND TAXATION

HB 1102

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*Yalosta Rickford*

Date

*10/2/03*

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1102

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
1	X		1430-2890
Committee Clerk Signature <i>Margaret Lindsey</i>			

Minutes:

Senator Urlacher opened the hearing on HB1102. All committee members are present. This bill relates to an election to deposit cash or property in lieu of a bond for coal exploration, subsurface mineral exploration and development and geothermal production.

Ed Murphy, representing ND Geological Survey (mtr #1446) - Testified in support of HB1102.

Written testimony is attached along with proposed amendments. Explained how the bill and the amendments would effect the Oil and Gas Division. Reviewed each section of the amendment and explained the impact to the bill.

Senator Nichols (mtr #2117) - Question regarding the reluctance to accept letters of credit. Why is that and is it addressed with the amendments.

Mr. Murphy (mtr #2139) - Oil & Gas Division had not accepted letters of credit in the past. Our understanding is that letters of credit would be accepted under the amendment.

Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number HB1102

Hearing Date March 3, 2003

John Dwyer, President, Lignite Energy Council (mtr #2254) - Testified in support of the bill and the proposed amendments. Explained why this bill is important to the mining industry. Written testimony is attached.

Senator Urlacher (mtr #2430) - Clarified his understanding that the amendments bring uniformity to the bill.

Mr. Dwyer (mtr #2439) - Agreed.

Senator Wardner (mtr #2475) - Clarified that the bill before us, is there a part that is not supported?

Mr. Dwyer (mtr #2485) - Not that we are against the bill as it is, it wasn't the intent of the bill as originally introduced but do support amendments by ND Geological Survey.

Lynn Helms, Director of the Oil and Gas Division of the ND Industrial Commission (mtr #2540) - Testified in support of the bill and the amendments. The amendments that have been introduced are very important. It is also important to standardize mining exploration bonding rules. Written testimony is attached. In response to an earlier question, we are reasonably certain that the amendments would provide for the acceptance of letters of credit.

Senator Wardner (mtr #2677) - Clarified his understanding that Mr. Helms was not in full agreement with the House version of the bill.

Mr. Helms (mtr #2700) - That is correct. Explained why the Oil & Gas Division did not support the House version.

Senator Urlacher (mtr #2763) - Given no additional testimony or opposition, closed the hearing on HB1102.

Page 3  
Senate Finance and Taxation Committee  
Bill/Resolution Number HE1102  
Hearing Date March 3, 2003

Senator Wardner (mtr #2835) - Would prefer a day to look at the testimony, and will get official amendments from the Legislative Council.

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*Yalosta Rickford*

Date

*10/2/03*

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1102

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 4, 2003

Tape Number	Side A	Side B	Meter #
2	X		1220-1625
Committee Clerk Signature <i>Mary Kay Lusk</i>			

Minutes:

Senator Urlacher opened the discussion on HB1102.

Senator Wardner (mtr #1222) - Passed out a proposed amendment, reviewed and clarified the amendment. Amendments were recommended by the Oil & Gas Division.

Senator Wardner moved to amend as proposed. Second by Senator Nichols. Voice vote 6 yea, 0 nay, 0 absent. The bill is amended.

Senator Urlacher (mtr #1499) - The bill is before us.

Senator Wardner moves a Do Pass as Amended. Second by Senator Nichols.

Roll call vote 6 yea, 0 nay, 0 absent. Carrier is Senator Nichols.

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*Valosta Rickford*  
Operator's Signature

*10/2/03*  
Date

38057.0201  
Title.0300

Prepared by the Legislative Council staff for  
Senator Wardner  
March 3, 2003

*JS*  
3-5-3  
1012

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1102

Page 1, line 11, overstrike "prescribed to govern the production of oil"

Page 1, line 12, overstrike "and gas on public and private lands within the state"

Page 1, line 14, remove the overstrike over "~~under such terms and~~"

Page 1, line 15, remove the overstrike over "~~conditions as the industrial commission may prescribe~~" and remove "surety bond."

Page 1, line 16, replace "deposit" with "cash" and replace "a bond issued under the state surface" with "or"

Page 1, line 17, remove "mining and reclamation bond fund."

Page 1, line 18, replace "a permittee" with "an operator"

Page 1, line 19, after "chapter" insert "and the rules and orders of the industrial commission"

Page 1, line 24, overstrike "regulations" and insert immediately thereafter "orders"

Page 2, line 3, remove "surety bond."

Page 2, line 4, replace "deposit" with "cash" and remove "a bond issued under the state surface mining and reclamation bond"

Page 2, line 5, replace "fund." with "or"

Page 2, line 7, after "chapter" insert "and the rules and orders of the industrial commission"

Page 2, line 12, overstrike "regulations" and insert immediately thereafter "orders"

Page 2, line 15, remove "surety bond."

Page 2, line 16, replace "deposit" with "cash" and replace "a bond issued under the state surface mining and reclamation bond" with "or"

Page 2, line 17, remove "fund."

Page 2, line 19, after "chapter" insert "and the rules and orders of the industrial commission"

Page 2, line 23, after "with" insert "this chapter and" and after "rules" insert "and orders"

Page 2, line 25, remove "surety bond.", replace "deposit" with "cash", and replace the second "a" with "or"

Page 2, line 26, remove "bond issued under the state surface mining and reclamation bond fund."

Page 2, line 29, after "chapter" insert "and the rules and orders of the industrial commission"



Renumber accordingly

2.52

Page No. 2

38057.0201

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Yolanda Rickford  
Operator's Signature

10/2/03  
Date

Date: 3 4 03  
Roll Call Vote #: 8

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1102

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken No Pass as amended

Motion Made By Sen. Urlacher Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher - Chairman	/		Senator Nichols	/	
Senator Wardner - Vice Chairman	/		Senator Seymour	/	
Senator Syverson	/				
Senator Tollefson	/				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Nichols

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

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Yolanda Rickford 10/2/03  
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
March 5, 2003 11:34 a.m.

Module No: SR-39-3931  
Carrier: Nichols  
Insert LC: 38057.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1102, as engrossed: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1102 was placed on the Sixth order on the calendar.**

Page 1, line 11, overstrike "prescribed to govern the production of oil"

Page 1, line 12, overstrike "and gas on public and private lands within the state"

Page 1, line 14, remove the overstrike over "~~under such terms and~~"

Page 1, line 15, remove the overstrike over "~~conditions as the industrial commission may prescribe~~" and remove "surety bond."

Page 1, line 16, replace "deposit" with "cash" and replace "a bond issued under the state surface" with "or"

Page 1, line 17, remove "mining and reclamation bond fund."

Page 1, line 18, replace "a permittee" with "an operator"

Page 1, line 19, after "chapter" insert "and the rules and orders of the industrial commission"

Page 1, line 24, overstrike "regulations" and insert immediately thereafter "orders"

Page 2, line 3, remove "surety bond."

Page 2, line 4, replace "deposit" with "cash" and remove "a bond issued under the state surface mining and reclamation bond"

Page 2, line 5, replace "fund." with "or"

Page 2, line 7, after "chapter" insert "and the rules and orders of the industrial commission"

Page 2, line 12, overstrike "regulations" and insert immediately thereafter "orders"

Page 2, line 15, remove "surety bond."

Page 2, line 16, replace "deposit" with "cash" and replace "a bond issued under the state surface mining and reclamation bond" with "or"

Page 2, line 17, remove "fund."

Page 2, line 19, after "chapter" insert "and the rules and orders of the industrial commission"

Page 2, line 23, after "with" insert "this chapter and" and after "rules" insert "and orders"

Page 2, line 25, remove "surety bond.", replace "deposit" with "cash", and replace the second "a" with "or"

Page 2, line 26, remove "bond issued under the state surface mining and reclamation bond fund."

Page 2, line 29, after "chapter" insert "and the rules and orders of the industrial commission"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-39-3931

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Operator's Signature

*Yolanda Rickford*

Date

10/2/03

2003 TESTIMONY

HB 1102

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Halima Rickford  
Operator's Signature

10/2/03  
Date

**TESTIMONY BEFORE THE  
HOUSE NATURAL RESOURCES COMMITTEE  
House Bill No. 1102  
Ed Murphy, North Dakota Geological Survey  
January 10, 2003**

Good Morning Chairman Nelson and members of the House Natural Resources Committee, my name is Ed Murphy and I am a geologist with the North Dakota Geological Survey. I am here to testify in favor of House Bill 1102.

The Geological Survey administers three regulatory programs for the Industrial Commission that require the operators to obtain performance bonds:

- 1) **Subsurface Mineral Exploration, Development, and Production** – all minerals other than oil & gas, coal, and sand & gravel.
- 2) **Coal Exploration** – the exploration for coal outside the boundaries of existing coal mines
- 3) **Geothermal Energy Production** – geothermal energy production for nonresidential facilities – primarily closed-loop systems.

Under the present statutes, these companies must obtain surety bonds (generally in the amount of \$10,000) – we do not have authority to accept cash bonds. This past summer, I was informed by several coal companies that they were having difficulty obtaining these bonds due to a crisis in the surety bond market. The companies eventually obtained surety bonds but experienced delays and the annual premium payment of one company increased from \$40 to \$400.

As a means of easing the burden on the natural resource industry, we are proposing to amend the statutes for these three programs to enable us to accept cash bonds in lieu of surety bonds. Several companies have informed me that, under normal circumstances, they will continue to seek surety bonds but welcome the added flexibility that this gives them.

*Yalosta Rickford*  
Operator's Signature

*10/2/03*  
Date



John P. Bluemel, State Geologist

## North Dakota Geological Survey

### INDUSTRIAL COMMISSION

John Hoeven - Governor, Chairman  
Wayne Stenehjem - Attorney General  
Roger Johnson - Commissioner of Agriculture

### TESTIMONY BEFORE THE SENATE FINANCE AND TAXATION COMMITTEE

House Bill No. 1102

Ed Murphy

March 3, 2003

Good Morning Chairman Urlacher and members of the Senate Finance and Taxation Committee, my name is Ed Murphy with the North Dakota Geological Survey. I am here to testify in favor of House Bill 1102.

The Geological Survey administers three regulatory programs for the Industrial Commission that require the operators to obtain performance bonds:

- 1) Subsurface Mineral Exploration, Development, and Production
- 2) Coal Exploration
- 3) Geothermal Energy Production.

In addition, the Oil and Gas Division requires performance bonds in their oil and gas program.

Under the present statutes, these companies must obtain surety bonds (generally in the amount of \$10,000) - the Geological Survey does not have authority to accept cash bonds. This past summer, I was informed by several coal companies that they were having difficulty obtaining these bonds due to a crisis in the surety bond market. As a means of easing the burden on the natural resource industry, we introduced this bill to enable us to accept cash bonds in lieu of surety bonds.

The Oil and Gas Division has had authority to accept cash bonds for several years. When I drafted the original bill, I took the language from their program (NDCC 38-08-04) to give us this authority. However, the language contained reference to property which the House Natural Resource Committee found unacceptable. In addition, the committee wanted to make sure that the Geological Survey could accept letters of credit in lieu of bonds or cash. To obtain this flexibility, the committee amended the bill by inserting language from the definition of performance bonds in the Public Service Commission statutes (NDCC 38-14.1). In addition, since I testified that I had purposely used language from NDCC 38-08-04 to be consistent within programs under the Industrial Commission, the committee added NDCC 38-08-04 into the bill and amended that language.

The Geological Survey agrees with the intent of the engrossed bill. However, we are offering amendments for two reasons: 1) to clarify and make the sections more readable, and 2) to remove any reference to the surface mining and reclamation bond fund. The fund does not exist, and even if it did, we do not think it would be appropriate for these other programs to be tied into it.

I presented these amendments to Rep. Nelson, Chair of the House Natural Resources Committee, on February 5th (the Senate received the bill on January 30th) and he agreed with our proposed changes.

600 East Boulevard Avenue ♦ Bismarck, North Dakota 58505-0840 ♦ Phone (701) 328-8000 ♦ Fax (701) 328-8010

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Operator's Signature

*Yalosta Rickford*

Date

10/2/03

38057.0200

Fifty-eighth

Legislative Assembly  
of North Dakota

Introduced by

Natural Resources Committee

(At the request of the Geological Survey)

## FIRST ENGROSSMENT

### ENGROSSED HOUSE BILL NO. 1102

#### EXAMPLE

- 1 A BILL for an Act to amend and reenact subdivision d of subsection 1 of section 38-08-04,
- 2 subdivision a of subsection 1 of section 38-12-02, subdivision a of subsection 1 of
- 3 section 38-12.1-04, and subdivision d of subsection 1 of section 38-19-03 of the North Dakota
- 4 Century Code, relating to an election to deposit cash or property in lieu of a bond for coal
- 5 exploration, subsurface mineral exploration and development, and geothermal production.

#### 6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 7 **SECTION 1. AMENDMENT.** Subdivision d of subsection 1 of section 38-08-04 of the
- 8 North Dakota Century Code is amended and reenacted as follows:

- 9 d. The furnishing of a reasonable bond with good and sufficient surety,
- 10 conditioned upon the full compliance with this chapter, and the rules and
- 11 orders of the industrial commission prescribed to govern the production of oil
- 12 and gas on public and private lands within the state, except that if the
- 13 commission requires a bond to be furnished, the person required to furnish
- 14 the bond may elect to deposit cash or property under such terms and
- 15 conditions as the industrial commission may prescribe a surety bond,
- 16 collateral bond, self-bond, deposit cash, a bond issued under the state surface
- 17 mining and reclamation bond fund, any alternative form of security approved
- 18 by the commission, or combination thereof, by which a permittee or operator
- 19 assures
- 20 faithful performance of all requirements of this chapter and the rules and orders of
- 21 the industrial commission.

- 22 **SECTION 2. AMENDMENT.** Subdivision a of subsection 1 of section 38-12-02 of the
- 23 North Dakota Century Code is amended and reenacted as follows:

- 24 a. The furnishing of a reasonable bond with good and sufficient surety,
- conditioned upon the full compliance with the provisions of this chapter, and
- the rules and ~~regulations~~ orders of the commission prescribed to govern the

Page No. 1

38057.0200

Fifty-eighth Legislative Assembly

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1 exploration, development, and production of subsurface minerals on state and  
2 private lands within the state of North Dakota. The person required to furnish  
3 the bond may elect to deposit a surety bond collateral bond, self-bond,  
4 deposit cash, a bond issued under the state surface mining and reclamation bond  
5 fund, any alternative form of security approved by the commission, or  
6 combination thereof, by which a permittee assures faithful performance of all  
7 requirements of this chapter and the rules and orders of the industrial commission.

8 **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 38-12.1-04 of the  
9 North Dakota Century Code is amended and reenacted as follows:

10 a. The furnishing of a reasonable bond with good and sufficient surety,  
11 conditioned upon the full compliance with the provisions of this chapter, and  
12 the rules and regulations orders of the commission prescribed to govern the  
13 exploration for coal on state and private lands and roads used in coal  
14 exploration within the state of North Dakota. The person required to furnish  
15 the bond may elect to deposit a surety bond, collateral bond, self-bond,  
16 deposit cash, a bond issued under the state surface mining and reclamation bond  
17 fund, any alternative form of security approved by the commission, or  
18 combination thereof, by which a permittee assures faithful performance of all  
19 requirements of this chapter and the rules and orders of the industrial commission.

20 **SECTION 4. AMENDMENT.** Subdivision d of subsection 1 of section 38-19-03 of the  
21 North Dakota Century Code is amended and reenacted as follows:

22 d. The furnishing of a reasonable bond with good and sufficient surety,  
23 conditioned upon the full compliance with the provisions of this chapter and the rules  
24 and orders of the commission relating  
25 to the extraction of geothermal energy. The person required to furnish the  
26 bond may elect to deposit a surety bond, collateral bond, self-bond, deposit cash, a  
27 bond issued under the state surface mining and reclamation bond fund, any  
28 alternative form of security approved by the commission, or combination  
29 thereof, by which a permittee assures faithful performance of all requirements  
of this chapter and the rules and orders of the industrial commission.



## VARIOUS METHODS OF DRILLING PERMITTED UNDER THESE REGULATORY PROGRAMS

HB 1102



### Subsurface Mineral Program

Probing for salt on a frozen playa lake near Grenora in southeastern Divide County.



### Coal Exploration Program Subsurface Mineral Program Geothermal Program

The majority of holes under these three programs are drilled with truck-mounted rotary rigs.



### Subsurface Mineral Program Oil and Gas Program

Drilling for oil and gas in Billings County. This type of rig would also be used to drill for deep salts in the Williston Basin.

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*Yalosta Rickford*

Date

10/2/03

**Testimony of John Dwyer  
President, Lignite Energy Council**

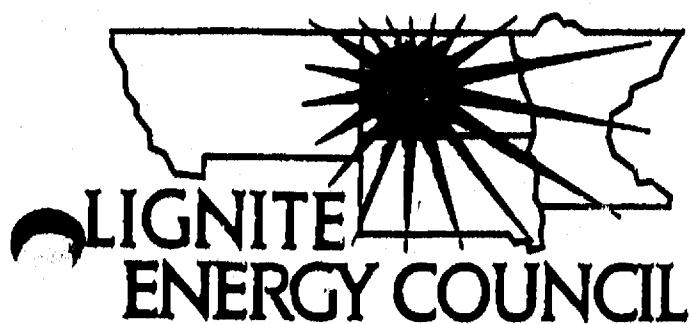
**In Support of HB 1102**

**March 3, 2003**

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*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date



October 15, 2002

Mr. Edward C. Murphy  
North Dakota Geological Survey  
North Dakota Industrial Commission  
Oil and Gas Division  
900 East Boulevard Avenue  
Bismarck, ND 58501

Dear Mr. Murphy:

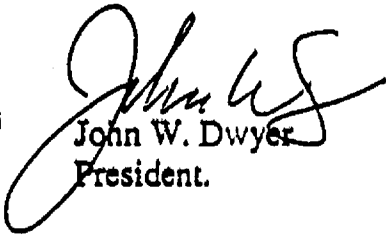
As you know, mining companies throughout the State of North Dakota have recently been experiencing difficulties obtaining surety bonds as a form of financial assurance associated with coal exploration compliance. The sole form of financial assurance provided for pursuant to North Dakota Century Code 38-12.1-04 is that of surety bonds. Given the extent of the current surety crisis, it is anticipated that mining companies may continue to experience problems acquiring surety bonds for exploration compliance. The attached summary, prepared by the National Mining Association, provides further background related to the surety crisis. Testimony by The Surety Association of America before the U.S. House of Representatives Subcommittee on Energy & Mineral Resources in July of this year is also attached and offers further insight.

Given the limitations imposed by NDCC 38-12.1-04, the Lignite Energy Council supports a second financial assurance option, whereby a mining company would be allowed to provide a cash bond, in addition to maintaining the surety option. As you know, forms of cash or equivalent are considered virtually risk-free, as well as being readily available if needed. We would anticipate that the form of cash would be limited to negotiable certificates of deposit assigned to the State, in writing, and issued by the Bank of North Dakota, and would exclude other forms of cash or collateral, e.g., irrevocable letters of credit. Any interest earned would be paid to the mining company.

Your assistance in initiating the necessary legislative modifications is appreciated. Please contact me if you require further information.

Sincerely,

LIGNITE ENERGY COUNCIL

  
John W. Dwyer  
President.

**RECEIVED**

OCT 18 2002

Land Office

Lignite Coal: America's Abundant Energy Resource  
[www.lignite.com](http://www.lignite.com)

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10/2/02  
Date

## BONDING CRISIS THWARTS MINE DEVELOPMENT

### Issue:

Economic and extraordinary events over the past two years have caused severe constraints in surety bond capacity to satisfy financial assurance requirements for existing and new mining operations. The inability to access surety to satisfy various regulatory requirements for financial assurance jeopardizes the continuation of existing mine operations and thwarts the development of new operations. The Federal and State governments must partner with the mining and surety industries to find solutions that will restore additional capacity and affordable alternatives to surety to satisfy regulatory program requirements.

### Background:

Prior to 2000, the surety industry experienced 10 years of uninterrupted profitability. With the economic downturn in 2000, losses mounted with increased business failures throughout most business sectors. Business failures reached an all-time high in 2000, and in 2001 they were twice the number from the year before. A tightening of credit markets was already underway before the horrific events of 9/11. The events of 9/11 resulted in losses estimated between \$60-80 billion for the insurance industry, removing a considerable amount of capital from the market. In 2001, the surety industry (a relatively small segment of the entire insurance industry), reported a \$2.5 billion loss, or an 80% loss ratio as compared to a typical loss ratio of about 30%. Many of these losses are attributed to several high-profile bankruptcies such as Enron, Kmart and Global Crossing. Sureties attempt to spread the risk of the obligations they underwrite through reinsurance. Reinsurance companies suffered serious losses as well, and reinsurance support for the market is virtually absent today. Six of the top fifteen surety underwriters have exited the surety market in the last two years, others have announced their intent to withdraw, and several longstanding participants have effectively withdrawn by curtailing their exposures so substantially.

### Factors Affecting Surety Capacity and Cost

Availability and cost of surety bonds are a function of risk. When a surety company writes a bond, it is extending credit on the basis of its assessment of the bonded entity's (the principal's) financial health and the nature and complexity of the obligation during the term of the bond. As the obligation extends further into the future, that assessment becomes more uncertain which leads to a perceived increase in risk. In short, sureties are hesitant to underwrite obligations that extend, five, ten or fifteen years into the future. Sureties control risk by reducing their exposure. Today, risk management means underwriting only the most benign obligations and for a short duration. The Surety Association of America reports that the loss ratios for mining bonds were well below those for all surety bonds. However, the large amounts of required coverage, the duration of the obligations, and the lack of any reinsurance support has left the mining industry wanting for surety capacity at any price. Sureties indicate the following factors make mining operations a challenging underwriting candidate:

\*Duration of the obligations.

\*Large bonding amounts typically exceed the aggregate capacity sureties will underwrite for a single principal.

\*Complexity of the obligations under applicable regulatory programs.

\*Bonding requirements often include speculative assumptions and costs that artificially inflate the bond amounts.

\*Increasing and changing regulatory requirements and burdens.

Impact:

Inability to access surety bonds or acceptable alternatives to secure performance of obligations can become a barrier to market entry or continuation due to regulatory programs that require bonds as a condition to obtain permits or other authorizations to operate. When mining companies are forced to curtail existing operations or discontinue plans for new or expanded operations due to the lack of bonding capacity, this in turn poses grave consequences for direct and indirect employment, federal, state and local revenues, and the supply of mineral resources critical to our Nation's economic well-being.

Federal and  
State Role:

Federal and State agencies with financial assurance requirements must partner with the mining and surety industries to find solutions to assist in the restoration of a responsive surety market for mining operations and to develop alternatives to surety to satisfy requirements in the meantime. Programs should be evaluated and reformed to: (1) remove existing impediments that discourage sureties from underwriting regulatory obligations for mining; (2) develop and allow more alternatives to surety to satisfy financial assurance requirements; and, (3) assist the mining industry in bringing additional credit/capacity to the market as primary or secondary support for financial assurance requirements imposed by their regulatory programs.

# The Surety Association of America

Before the U.S. House of Representatives  
Subcommittee on  
Energy & Mineral Resources



Testimony of Lynn M. Schubert  
President

1101 Connecticut Avenue, NW, Suite 800  
Washington, DC 20036  
Email: [information@surety.org](mailto:information@surety.org)  
Website: <http://www.surety.org>

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*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

**Before the U.S. House of Representatives  
Subcommittee on Energy & Mineral Resources**

**Testimony of  
The Surety Association of America  
By Lynn M. Schubert  
President**

**Availability of Bonds to Meet Federal Requirements  
for Mining, Oil and Gas Projects**

**Introduction**

The Surety Association of America is a voluntary, non-profit association of companies engaged in the business of suretyship. It presently has approximately 600 member companies, which collectively underwrite the overwhelming majority of surety and fidelity bonds written in the United States, and seven foreign affiliates. The Surety Association of America is licensed as a rating or advisory organization in all states, as well as in the District of Columbia and Puerto Rico, and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience.

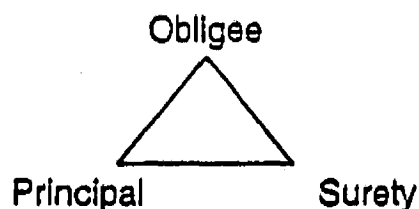
Surety bonds provide a fundamental service to consumers, taxpayers and the U.S. treasury and have been a vital part of business in America for more than 100 years. The role of surety bonds is to reduce or eliminate uncertainty in a variety of business transactions. For example, the majority of surety bonds are written for construction of our nation's infrastructure, which accounts for 10% of the Gross Domestic Product. In 2000, nearly \$175 billion in public works projects were under construction in the United States with surety bonds providing qualified contractors and protection against contractor failure. Surety is vital to public construction, saving taxpayer dollars and spurring economic activity. Surety also has been written for mining, gas and oil projects for many years. Again, the fact that bonds have stood behind miners and drillers has allowed the government to be sure that these projects would be undertaken responsibly and with a third party available if the permittee did not perform. The capability of the surety industry continues to be there to meet the challenges and needs of American business. However, surety bonds cannot be a panacea for all potential problems. The surety industry continues to support the need for responsible mining and drilling, reclamation and general protection of the environment, and we look forward to working with Congress, regulators, environmental groups and contractors to find a way to best do this.

SAA is aware of the difficulty that permittees are having in acquiring bonds and has been working with regulators and other stakeholders to seek ways to address this issue. We believe that the limited availability of bonds required in

connection with mining, oil and gas operations results from a change in the requirements as well as a change in the current marketplace. Bonding remains a viable option to address the concerns surrounding many of the risks associated with these projects, but the responsibility of the surety must be clearly defined and must be able to be underwritten.

### What Are Surety Bonds

In analyzing the availability of any type of surety bond it is critical to understand the concept behind surety bonds, how they differ from traditional lines of insurance, and why they are underwritten the way they are. The fundamental concept behind a surety bond is to guarantee that someone will perform a duty. Whether it is a duty imposed by contract, such as to build a building, pay a lease, etc., or a duty imposed by law, such as to pay customs duties or to reclaim a mining site, the bond provides an independent third party to ensure that the principal, the person who agrees to the duty, performs, or that there is money available to complete that obligation. The surety is only secondarily liable. The principal remains primarily liable. Unlike traditional insurance, a bond creates a tripartite relationship: the principal, the surety, and the obligee, the one receiving performance. This relationship is best explained by a triangle:



Each of the parties has rights and responsibilities with regard to the other. While the surety has the obligation to the obligee to either perform the obligation of the principal if the principal defaults, or pay a sum of money, up to the amount of the bond, for performance, the principal remains obligated for that performance. By performing on the principal's behalf, the surety steps into the shoes of the obligee and the principal is obligated to reimburse the surety for any money paid. Theoretically, therefore, a surety should never have a loss. Similar to a bank issuing a line of credit, the surety stands behind the principal, allowing a third party to rely on that principal, knowing a third party is guaranteeing the obligation. Unlike a bank, however, sureties do not always take collateral or have the right of set off of the principal's bank account to recover amounts paid on the principal's behalf. Therefore, the surety must prequalify the principal as to performance and financial strength.

It is critical to understand that the beneficiary of the bond is not the principal; it is the obligee. Unlike a homeowners or auto policy where there are only two parties to the contract and the beneficiary of the policy is the policyholder, in the case of a surety bond, the beneficiary of the bond is the obligee. In the case of the bonds under discussion today, that obligee is the government. The principal remains liable for performance. Therefore, in analyzing whether or not to write a bond, a surety will review two crucial items: the likelihood that the principal will



perform its obligations, and the likelihood if the principal defaults and the surety performs, that the principal will be able to repay the surety for its losses. If the surety decides to write the bond, whether or not the surety is correct in its analysis, the obligee obtains the benefit of the bond. Understanding these relationships makes it easier to understand that a surety must be able to know the specific promise it is guaranteeing and assess the risk of loss. An increase in the duties imposed under reclamation and other bonds, as well as serious increases in losses for sureties over the last two years, have contributed to the current market situation.

#### Federal Mining, Oil and Gas Project Bonds

As mentioned above, SAA is quite aware of the difficulty that permittees are having in acquiring bonds in today's surety market, and we are in active dialogue with regulators and mining industry to seek a resolution to the issue. For example, SAA is working closely with the Department of the Interior's Bonding Task Force to provide information and recommendations regarding bonding availability. In addition, we recently participated in a bonding meeting sponsored by the Interstate Mining Compact Commission, an organization of twenty state regulatory authorities. We believe that the limited availability of bonds required in connection with mining, oil and gas operations is a result the risk characteristics of such bonds as viewed by an industry that has returned to tighter underwriting standards. We hope to provide information to this Subcommittee that will assist it in developing solutions.

#### Risk Characteristics of These Bonds

First let us address the risk characteristics of these bonds and why they present a concern to sureties. We reference specific types of bonds for illustrative purposes.

##### Long-term Duration

A primary risk characteristic that concerns sureties is the long-term duration of these obligations. For example, with respect to mining operations, the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") requires the permittee to provide a bond to the regulatory authority which is conditioned upon the faithful performance of the requirements of the SMCRA, the applicable regulatory program and the approved permit, and the completion of the reclamation plan (30 U.S.C § 1259(a)). The form of bond and the required bond amount depends on the controlling statute and regulation (either federal or state). However, in any case, reclamation bonds for surface mining operations are long-term obligations. A mining operation under a permit can last thirty or forty years. Considering that the duration of a reclamation bond obligation must be for the duration of the mining and reclamation operation (30 C.F.R. § 800.13), and that the bond is non-cancelable (30 C.F.R. 800.20), a surety's liability could conceivably extend for

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thirty to forty years as well<sup>1</sup>. This creates a high degree of uncertainty and risk for the surety. To determine if a permittee qualifies for a bond, a surety makes a judgment about the operational and financial viability of the permittee. The surety essentially is making a prediction about the permittee's future performance thirty or forty years in the future. As the duration of the obligation extends further into the future, the surety's judgment becomes less certain and its risk increases. Of course, a thirty or forty year duration assumes that the operation does not have water issues such as acid mine drainage. In these cases, the regulatory authorities are holding the bond to secure treatment that may be perpetual. This raises the surety's risk to unworkable levels.

Another type of bond that illustrates the long-term and uncertain duration of bonds, this time for oil and gas operations, is the lease bond required by the Minerals Management Service ("MMS"). MMS requires lessees of Outer Continental Shelf mineral leases to provide a bond to secure compliance of all the terms and conditions of the lease (30 C.F.R. § 256.52). The leases have an initial term of five or ten years and continue for as long as oil and gas is produced in paying quantities (30 C.F.R. § 256.37). While the lease bond is cancelable, cancellation does not release the surety from liability that accrued while the bond was in effect, unless the replacement surety assumes prior liabilities (30 C.F.R. § 256.58). Further, the bond may be reinstated after cancellation if any payment of any obligations of the bond principal (the lessee or operator) is rescinded or must be restored (30 C.F.R. § 256.58(c)). Thus, the duration of the surety's liability is uncertain, even after cancellation.

#### *Expanding Scope of the Obligation*

Over the years the obligation covered by surety bonds for mining, oil and gas operations has expanded considerably and introduced risks that are better covered by an instrument other than a surety bond. The clearest example of this phenomenon is the relatively new requirement by regulatory authorities that liability for acid mine drainage be covered by the SMCRA reclamation bond. Under current regulation, the surety bond is fully released after completion of the three phases: backfilling and regrading, revegetation and monitoring (30 C.F.R. § 800.40). With respect to actual reclamation activities - moving the dirt - the surety has a clear understanding of the scope and duration of the mining company's obligation and consequently the scope of its liability. However, the presence of acid mine drainage and the requirement to treat the water clouds prolongs the surety's obligation considerably. Historically, regulatory authorities reduced the bond penalty at the completion of phases one and two. Now, however, regulatory authorities are not reducing the bond penalty when phases one and two are completed if the site has water issues that must be treated.

The defaults that a surety can underwrite and address effectively are defaults of the permittee's performance: events that can be prevented through sound practices and compliance with the reclamation plan. A surety cannot underwrite

<sup>1</sup> The regulation allows a bond to be replaced by other bonds that provide equivalent coverage. 30 C.F.R. § 800.30.

effectively unanticipated acid mine drainage problems that require treatment in perpetuity. It appears that the problem of acid mine drainage requires a funding vehicle, and a surety bond is not a funding vehicle, but rather an assurance of performance which can be controlled. The post mining water issues should be resolved outside of the surety bond, and the surety bond obligation should be the phases of reclamation.

#### *Limited Choices in Remediating a Default*

A second risk factor is the limited approaches available to a surety in addressing a bond default. A surety often is faced on these types of bonds with forfeiture of the entire bond penalty as its only means to discharge its obligations. In the case of reclamation bonds required by SMCRA, state regulatory authorities may require the surety to forfeit the full penal sum of the bond rather than giving the surety the option to reclaim the site at possibly a lower cost. As another example, under the Federal Coal Management Program, the Bureau of Land Management requires bonds to secure lease obligations (43 C.F.R. § 3474.1). If a lease is canceled or terminated, all rentals and royalties already paid are forfeited (43 C.F.R. § 3452.3(b)). Therefore, the surety may be liable for a substantial sum rather than having the opportunity to step in and cure the default by undertaking the monthly lease payment. The likelihood of a full bond payout without opportunity to mitigate the loss to the obligee by undertaking performance increases the surety's risk and limits the availability of the bond only to those entities that have significant financial resources.

#### State of the Surety Market

Sureties recently have refocused on the risk characteristics discussed above as a result of a return to tighter underwriting standards. This adjustment is the culmination of a decade long underwriting cycle that recently generated significant losses in 2001. According to the report entitled "Top 100 Writers of Surety Bonds," released by SAA on May 21, 2002, the industry reported the following results for the year ended December 31, 2001:

Direct Written Premiums:	\$3,473,100,578
Direct Earned Premiums:	\$3,330,170,608
Direct Losses Incurred:	\$2,748,411,932
Direct Loss Ratio:	82.5%

The results reflect significantly increased losses compared to prior years. Although we are not privy to the company-specific information that would be necessary to provide an explanation that includes each and every factor, we are able to share with you some of the dynamics in general terms that led to the 2001 results. The 2001 results are a continuation of a trend that first was manifested in 2000 and are a result of market activity over the past decade. There is no one event that instantly triggered the 2001 results.

For over a decade, the surety industry had experienced considerable profitability. The positive results attracted new players to the surety market and caused

existing players to battle for greater market share. Two mechanisms to attract greater market share are to reduce pricing and to relax underwriting standards. The combination of relaxed underwriting and softened pricing can create a tenuous condition, especially considering that surety theoretically is written to a 0% loss ratio.

A significant factor in surety results is the financial strength of bond principals as affected by the general health of the economy. A surety bond is written with the expectation that the bond principal will perform its obligations or hold the obligee harmless if it defaults. Therefore, financial health is crucial. According to the percentage change in Gross Domestic Product, the economy began to experience some softening in the latter part of 2000.

The softened underwriting and pricing combined with declining financial strength (as indicated by GDP) led to a downturn in results in 2000. The 2000 Top 100 Writers Report reflected a loss ratio of 45.4%, compared to a 29% loss ratio in 1999.<sup>2</sup> Further, according to the 2000 Insurance Expense Exhibit, the industry had an underwriting loss (including incurred losses and operational expenses) of \$216.3 million. The 2001 results are a continuation of the 2000 results and magnified by losses attributable to some high profile bankruptcies.

To reverse this trend, we suspect that sureties have reversed the factors that played a role in the downturn, softened underwriting and pricing. We likely will see a firming of pricing and tightened underwriting requirements in the coming years. For example, surety companies have become especially hesitant to underwrite any type of obligation that extends five, ten or fifteen years into the future. Sureties seek to control risk in part by writing obligations that have a reasonable duration.

Reinsurance companies suffered serious losses in this surety market downturn as well. In response, reinsurance companies are requiring primary sureties to retain more risk and have tightened the terms and conditions in reinsurance treaties. For example, we are aware anecdotally that certain reinsurance treaties exclude coverage for long-term obligations such as self-insured worker's compensation bonds or reclamation bonds unless specifically consented to by the reinsurer. This in turn impacts the primary sureties' underwriting decisions.

The correction in the surety market also includes a changed perspective on underwriting risk. In the past, a determination of the risk of a particular type of bond has been based on historical loss experience. If a particular type of bond generated reasonably low losses in the past it will have similar results in the future. The results of 2000 and 2001 have altered that approach. Now sureties determine risk by determining the probable maximum loss on a particular type of

<sup>2</sup> The 1999 loss ratio is based on the SAA Top 50 Writers Report. This report was used in order to make a meaningful comparison. The results of 2000 and 2001 Top 100 Reports are gross and before reinsurance. The 1999 Top 100 Report's results are net of reinsurance. Therefore, the 1999 Top 50 Writers Report which reflects gross results was used for the sake of consistency.

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bond. Sureties assess their exposure by considering bond amount, duration and the likelihood of full bond forfeiture. In the case bonds required in connection with mining, oil and gas operations, the potential exposure is high, and sureties make their underwriting decisions accordingly.

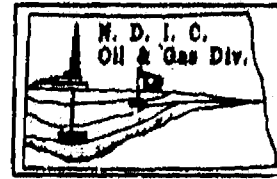
The September 11, 2001, terrorist attacks did not impact surety companies directly. However, the impact was felt by the property and casualty insurance companies that are the sureties' parent companies and affiliates. The terrorist attacks caused an erosion in capital as property and casualty losses were paid out. Although much of this capital has returned to the market, insurance companies have become especially careful how capital is used. This decision regarding capital usage affects underwriting decisions as well.

#### Developing Workable Solutions

The surety industry has played a vital role in securing obligations to the federal government so that public interests are protected. As the surety industry returns to financial health it will continue to provide this protection. With respect to bonds for mining, oil and gas operations, we believe that it is important to examine the current bonding requirements and policies to address concerns of the permittees and their sureties, particularly the duration of reclamation and lease obligations. Such a review likely would create a market effect and encourage surety participants to meet ongoing bonding needs of mining operations. For example, we believe that the bond obligation should be well defined and cover a specific scope of work. With respect to reclamation, the bond should be limited to the three phases and should not cover the obligation for water treatment that is uncertain and long-term. In addition, we believe that regulatory authorities should consider inserting a cancellation provision in bond forms that currently lack one. Once cancelled, the obligee should not have the ability to reinstate the bond. In addition, authority should consider that the bond term should be tied to the permit term. At the end of the permit term, the surety should have the option of renewing or not renewing the bond. We also encourage regulators to provide additional options to sureties in addressing claims short of a full bond forfeiture. As to the issue of acid mine drainage, we urge Congress and regulators to look at all options such as finite risk insurance products, pools, trust funds and other similar mechanisms.

We look forward to continued discussion with the Subcommittee, the Department of Interior, state regulatory authorities and other stakeholders to develop concrete solutions.

Engrossed House Bill 1102  
Senate Finance and Taxation Committee  
Testimony By  
Lynn D. Helms  
Director, Oil & Gas Division  
North Dakota Industrial Commission  
2/19/03



Mr. Chairman and members of the committee, my name is Lynn Helms, and I am the Director of the Oil & Gas Division of the North Dakota Industrial Commission (NDIC).

The NDIC regulates geophysical exploration; drilling, development, and production of oil and gas; disposal of oil field brine; and plugging and reclamation of abandoned wells through the Oil & Gas Division.

The NDIC Oil & Gas Division supports the Intent of Engrossed HB 1102 and the proposed amendments. I am here to offer our perspective.

**Intent of Engrossed HB 1102 and House Natural Resources Amendments**

This bill originally proposed changes to three statutes but was amended by House Natural Resources to change four statutes with the intent of making all coal, gas, geothermal, oil, and subsurface mineral bonding as consistent as possible. The NDIC Oil & Gas Division agrees with the intent of Engrossed HB 1102, but urge this committee to adopt the proposed amendments in order to maintain continuity with our current bonding program.

**Amendments**

The amendments appear quite extensive, but are actually two brief amendments one of which must be repeated four times.

The first amendment removes some archaic language from NDCC 38-08-04 and restores NDIC authority to set conditions of acceptance for the various types of bonds through the rule making process.

The second amendment makes the statutes readable and eliminates duplication plus an inappropriate reference to the surface mining and reclamation bond fund. This amendment is repeated four times in order to address each statute altered by Engrossed HB 1102.