

2009 HOUSE NATURAL RESOURCES

HB 1071

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1071

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 1-16-09

Recorder Job Number: 7142

Committee Clerk Signature

Nancy L. Gehardt

Minutes:

Chairman Porter – Rep. Drovdal

Rep. Drovdal – I like to keep a bill to just 1 subject area. It pertains to developer's responsibility to pay mineral owners. Who are mineral owners? May be somebody who homesteaded in ND, they may have inherited the minerals or the royalty rights, they may have purchased them with or without land, or they may steal them for all we know. They are the parties that actually have the rights or ownership of what is gas, oil or coal or other mineral resources that are beneath the surface that is theirs to sell. The developers, in most cases today is oil developers, lease some or all of the minerals before they start developing. How they do it is part of the cost of doing business. It is not easy. There can be 160 acres of land, there can be 1 mineral owner or there can be 1,000 mineral owners. In some cases there are 100s of them. It is the advantage of the oil company to lease every single one. In most cases they do and they sign them. Some don't get signed. Why? Possibly because they couldn't locate the individual or located the wrong one. It could be the person that has the mineral rights doesn't like the terms and doesn't like the lease. Or it could be abandoned minerals. This doesn't deal with abandoned minerals. Once they lease the acres the developers have the right, we have given them dominance over the surface owner and they can go in and

develop that, because we want oil exploration. We are not changing that. The last oil boom, Rep. Jack Murphy, in 1981 introduced legislation to give some protection that the royalty owners would be paid in a reasonable time. In that bill he put a time in three of 150 days. This bill doesn't affect that. He also put what the penalty is – 18% and this doesn't affect that. The purpose was not to collect penalty, but to give payment to the royalty owner in a reasonable time. When he said royalty owners he meant ALL royalty owners whether they were leased or not leased. It came to my attention a couple years ago, some people felt it was too ambiguity in the law ????? In the law under this chapter. I talked to Legislative Council and they said it was supposed to be everybody. Lets clarify when we talk about royalty owners, or mineral owners, we are talking about protecting ALL mineral owners in ND. That is what this bill addresses. If you don't include non leased mineral owners. My goal was to make sure and clarify that the non leased mineral owners have the same protection as the leased mineral owners as far as getting paid their royalty. How much they get paid, that's another section of the law and I'm not dealing with that. Questions

Rep. Nottestad – Has there ever been a request for an Attorney Generals' opinion on clarification on this issue?

Rep. Drovdal – Not to my knowledge.

Chairman Porter – Questions?

Rep. Keiser – There are legitimate mineral right owners that may not sign the lease and this would protect them.

Rep. Drovdal – That is correct.

Vice Chairman Damschen - Is there any % of rights that have to be leased before any drilling?

Rep. Drovdal – I didn't researched it, in my limited knowledge I don't think there is a %, but I don't think it would be very advantageous for a developer to go in without having a high %.

Chairman Porter – What is the difference between an unleased mineral interest and someone who chooses to be a part owner of the activity?

Rep. Drovdal – If I own some minerals and I don't like terms or they don't get a hold of me for whatever reason and I don't sign, I'm a non leased mineral owner. Then I would be a nonparticipating mineral owner, falls into another chapter. That is where they would determine how they would the royalty payment.

Chairman Porter – If this is changed then the nonparticipating owner would fall under this chapter and the other chapter doesn't need to exist?

Rep. Drovdal – No – This only states that the nonparticipating or non leased owners will get their money within 6 months or the penalty takes effect.

Rep. Shirley Meyer – See **Attachment # 1, #2 & 3.**

Rep. Clark – Why 150 days?

Rep. Meyer – In 1981 the only recourse you had, you can cancel your lease. If you don't get paid your royalties you can cancel your lease. That has to go to district court to be proven. That was the problem. Cases were going to court over & over and that was a negotiable thing. What is a timely fashion? What is a timely manner? They went through a whole history of a debate on this. There are costs an oil company has to incur and there is paper work as we all know. There are costs to doing business and it helps them recover some of their costs. They settled on 150 days with no other punitive language. At the end of those 150 days they got paid. It gave them 5 months to get their business in order.

Rep. Pinkerton – Is there two issues here? 1 is the length of payment and the interest if it is not being made. Does this bill address the unleased owner they became a participating member of the well opposed to a leased mineral acre owner?

Rep. Meyer – No it doesn't. This will ensure they are under the 18% after 150 days they will also be included in that.

Rep. Pinkerton – I'm still not quite clear, if you didn't sign the lease when they drilled the well and you have mineral rights, do you become a participating member of the well, so you have a percentage of the whole operation if you pay your portion of the drilling cost?

Rep. Meyer – Yes, you become a producer.

Rep. Pinkerton – Is there an advantage for a person not to lease and hope the well comes in and they become a producer?

Rep. Meyer – That is a rare instance. There is very few people who would choose to help pay for a \$6,000,000 well. I could not afford to do that. It is a business decision. Where minerals are missed they become owners in the well. Often times you run into these small acres often times, their mineral owners as well as producers.

Rep. Keiser – If you don't sign the lease you have 2 options. 1) You become a mineral owner automatically. You could have the option say you want to be an owner, but then you have to pay. Is that correct?

Rep. Meyer – That is correct.

Rep. Keiser – 2) Drilling an oil well is not taken lightly. If the oil companies are doing everything they can to get everyone to sign the lease. With this new language, 6 months and they have to be paid. What about the cases where they know there is a mineral right owner but they don't find them? How would they pay them. Would they put in escrow?

Rep Meyer – You are correct. If you wish you can lease otherwise you are entitled to you risk penalty.

Chairman Porter – Rep. Meyer – In those situations you were missed and become an owner why should they get their money than the other people who invest their money to drill a well?

Rep. Meyer – They don't get it faster.

Chairman Porter - If they are an owner and they go through the risk period they should get their royalty payment even though the well hasn't been paid for.

Rep. Meyer – That is being an owner and producer. At the time the oil comes in those mineral acre owners, that is their property, they own that money. It is a chance that you have to take. If an owner operator comes in they may drill a dry hole. If you don't have to pay. Everyone gets paid, that's their money. These people are penalized under the risk penalty. They are assessed with the cost of producing that well.

Rep. Clark – Is he the only one not getting paid?

Rep. Meyer – This is an incentive to get the payment out.

Rep. Clark – Was that a yes or no?

Rep. Meyer – What was the question?

Rep. Clark – Was this guy the only one not getting paid?

Rap. Meyer – No. I have had 10. If it is happening to 10 people is could be happening to many more.

Rep. Drovdal – On unleased mineral royalty owners that divides down to participating and nonparticipating. Participating are those royalty owners who paid their % of the cost of the drill and they are working partners. Non participating are charged a risk penalty – 50% - of what their share was \$30,000 they have just a couple minerals, and they choose not to participate they are penalized up to \$15,000 before they are considered a full partners. They both only

get a percentage back until the well is paid for. In your statement you indicated a lot of developers utilize money up to 150 days with no interest. Do you know of any cases where they aren't paying within that first 30 or 60 days?

Rep. Meyer – Absolutely. A well doesn't come off confidential status for 6 months. I don't know anyone that has been paid within the first 30 days. Some have, but the vast majority does not pay out in the first 30 days.

Chairman Porter – Any other questions for Rep. Meyer? Any further testimony in support of HB 1071? Opposition to 1071?

Ron Ness – ND Petroleum Council - When we referred to 30 days that was in a bill regarding oil and gas tax revenues. Those taxes are paid to the state 30 days after the sale of oil & gas. The companies are required to pay their taxes to the state. It is not in regard to royalties.

What we have here is a statute in code you are looking at that is clearly written, designed, the lease interests who are under contract. There is another section of code that deals with unleased, non participating interests. You are now bringing them into this part of the code for this specific reason. It does not protect owners, partners, or other entities not under that employee owner obligation. We drilled 600 backen wells this year in ND and under each one of those well you may have many, many, many owners. When you choose to lease you move forward risk free. You will receive royalties if that well is successful, you are not going to have to participate. When you choose not to lease in most circumstances you become a partner in a well. You are charged an interest and you are charged at cost for your percentage of the well. Let's be careful that HB #1071 isn't creating more incentive not to lease. Leasing is good for development. The 18% interest was placed in statute around 1980. The 18% interest will apply to those unlocated – unleased minerals. The language tried to make that easier for the surface owner to claim those minerals back if they aren't located. You can place that money in

a trust, but you can't claim the money. They can claim the mineral estate, but not the money in that trust. That could sit there earning interest.

Craig Smith – Oil & Gas Lawyer – We locate the oil & gas owners, easement owners, surface owners, the mineral owners, anyone that owns an interest in the property. We determine the ownership interest, the % that everyone owns. We determine what all the problems are.

These titles are extremely complex. In 1988 most of the wells were drilled on 160 acres or 320 acres or patterns. Now with the Baken wells. What I could do in 1988 now takes 8 times as long or more. We also have another 20+ years being recorded. For instance, on one particular well, the title opinion is 362 pages. The well was drilled in July of 2007 and completed in September of 2007. To do the title opinion on this will the company hired a land company to build an abstract that took several months. The abstract is 12,000 pages, I read those 12,000

pages and prepare a summary that identifies owners. We have ten tracks, I have about 45 pages of owners just for this one well. I then go through all the 169 leases. Then I go through and explain all the problems, estates, probates. I do a calculation – division of interests – for this well was about 40 pages. Then I send it to the company and they figure out which owners they can pay and which ones they can't. They have to input into their accounting system all the data. In this particular well was completed in September 07 and the title opinion was done in September 08. In this instance the owners didn't get paid for over a year. During that entire time work was done on the title. They are now being paid. And they also got paid interest at 18 % from 150 days. This isn't unusual to have an opinion this long. The one I am working on now is longer. Our average opinions are around 150 to 180 pages. This one took me 11 weeks of Attorney hearing to prepare. There is a question on when you pay the unleased owners verses the leased owners. Typically everyone is going to be paid the same time.

Chairman Porter – Mr. Smith, Mr. Ness had mentioned there is a separate area of the law that deals with unleased minerals. Do you know what section that is?

Mr. Smith – Section 38-08-08

Rep. Drovdal – The oil companies start to sell that oil immediately upon production, and all this bill says is after 150 days if they don't pay those they lease from they have to pay penalties.

Rep. Pinkerton – What % of ownership is disputed and how much is clear that this is the owner?

Mr. Smith – It can vary dramatically from well to well.

Rep. Pinkerton – Most of the time they won't drill unless it is pretty much undisputed.

Mr. Smith – Every company has different levels of what they are comfortable with.

Rep. Pinkerton – I have a little problem understanding why you couldn't pay out that portion not disputed within the time frame.

Mr. Smith – Because they don't have the exact numbers until I'm done with everything. They don't know what everyone owns. From their accounting standpoint for their software they want to input everyone for that well.

Rep. Pinkerton - They're unwilling to make partial payments.

Mr. Smith – They do on occasions.

Rep. Pinkerton – So you are actually saying the royalty owner, it is their bookkeeping problems that prevent them from being paid, if 95% is undisputed. It is their unwillingness to make partial payment.

Mr. Smith – They don't agree with that because they don't have the title data that will conclusively say it is undisputed until I tell them is.

Rep. Drovdal – The way I understand the law is not just any owners are paid an average of those leased owners. If that is the case, on January 1 let's say the 150 days is up and you

have 100 leased owners. You know the average of those leased owners as of January 1. So you would know the % of those owners. On February 1 you may have 110 leases. Then you divide 110 into what all those leases are and you have an average for 110. Isn't that the way it works?

Mr. Smith – That is correct.

Rep. Drovdal – The point Mr. Smith is according to law you paid the average at that time so you would have no obligation to go back and pay if the % went up. Because you paid what that % was at that particular time.

Mr. Smith – That is part of the problem. Where is the time period where you determine the acreage where the average royalty is.

Chairman Porter – Further questions for Mr. Smith?

Mr. Herman – I just wanted to explain a little bit about the problem only occurs when we have a lot of activity. It is not taught in law school. There are only so many title attorneys. They have to learn it. He talked about the title opinion that gets done before the well. That is just the very preliminary information. The wells we operate it is not very complicated title we do pay estimated royalties. Once the opinion comes out adjustments will be made. We don't like paying that 18%. There are a limited number of title attorneys that can do the opinions. There's not anything we can do to change that.

Rep. Keiser – How would moving the unleased sector into the leased sector create an incentive to not lease?

Mr. Smith – Another benefit and be able to collect the 18% along with the leased interest owners. They are costing the operator additional funds to carry the interest.

Rep. Keiser – You drill a well, you pay the lease money when you lease it. If they don't lease they don't pay the lease payment. When you drill the well and it eventually starts producing,

when it starts producing the owner starts selling the oil and they get revenue coming in. My understanding is this bill says the propertyed royalty owners – the mineral right owners – that if you don't pay them their mineral rights whether their leased or not, at the end of 150 days you pay penalties. Aren't you going to pay them whether they sign the lease or not?

Mr. Smith – Yes, we're going to pay them it is just a matter of whether they can be subject to the interest payment or not.

Rep. Keiser – As long as you pay them on time there is no incentive to them to not lease. The incentive is to lease because you get some money there plus the interest if your late.

Mr. Smith – Some owners look at it as a way to get royalties without the cost.

Rep. Keiser – They can do that with the current law. As long as you pay them in a timely fashion that is their business decision to make.

Mr. Smith – None of the working interest owners are getting paid. We are trying to get these done as quickly as possible, and this is as quick as we can get them done. We're not using this to delay to use other people's money. That is not what is going on here at all. It is a matter of not having enough title attorneys to keep up with the work.

Rep. Drovdal – I acknowledge the amount of work is tremendous that you have to do. This bill doesn't affect it. I know that 95% is done before you even start drilling. You made the comment that your company doesn't like to pay 18% interest. That's good. Some companies out there currently are paying the 18% to both leased and non leased. Does your company currently do that?

Mr. Smith – We pretty much handle everyone the same. If we are out 150 days and we hadn't paid royalties we pay the rate the same.

Rep. Drovdal – So you're actually doing what this bill is telling you to do.

Mr. Smith – It would be more work to go back and try to split them out. Not that I agree they are entitled to it, but we handle them that way. We try to get them done before that. On the estimates we are doing we try to get them out prior to.

Chairman Porter – Further questions for Mr. Smith?

Ron Ness – See **Attachment # 4**.

Rep. Drovdal – What was the comment of the sponsor of this bill regarding these amendments.

Mr. Ness – I said we had talked these, but he has not seen these specifically.

Rep. Drovdal – What was his response?

Mr. Ness – I think his response was go file your own bill, but once a bill goes before the body it becomes the people's bill. Once you open a can of worms all cans are open.

Rep. DeKrey – Did you say something about line 13, because on the amendment I have there is nothing about line 13.

Mr. Ness – What I'm suggesting is to repeat the language on line 13 of the bill where it says "initial". That would be contradictory to the language above where it says "initial".

Chairman Porter – We would make it so the penalty starts the same whether it is a leased or unleased mineral. Any other questions for Mr. Ness? Further testimony in opposition to HB 1071? We will close the hearing on HB 1071.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1071

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 2-05-09

Recorder Job Number: 8837

Committee Clerk Signature	<i>Nancy S. Gerhardt</i>
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Minutes:

Chairman Porter – Open the hearing on 1071.

Rep. Drovdal – This bill simply clarifies the current law in the way it is being interpreted. See **Attachment # 1.**

Chairman Porter – Motion from Rep. Drovdal to accept the amendments. 2nd by Rep. Keiser

Discussion

Rep. Keiser – Could you give me an example of the average how that works?

Rep. Drovdal – They do 99% of this paper work before they start drilling the well. They go through and sign leases. They add all them up by acreages and divide what the average ????

is. That is what the unsigned or nonparticipating owner gets. That average of all ---

Rep. Keiser – Some people get 18% and some people get 14% some people 10%.

Rep. Drovdal – That is correct.

Rep. Keiser – Then you weigh it by how many acres are in there. They can pay 16% or they can figure out an average way to do it.

Chairman Porter – Any other discussion on the proposed amendments? Other discussion?

All those in favor – voice vote in unison - opposed – none – motion carries

We have an amended bill in front of us.

Rep. Hofstad – I move a Do Pass

Chairman Porter – Rep. Hofstad has moved a Do Pass As Amended is there a 2nd from Rep.

Keiser Discussion Clerk will call the roll on HB 1071.

Yes 11 No 0 Absent 2 Carrier Rep. Drovda

VR
2/5/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1071

Page 1, line 1, after "reenact" insert "subsection 1 of section 38-08-08 and"

Page 1, line 2, after the first "to" insert "the provisions of pooling orders and the"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 1 of section 38-08-08 of the North Dakota Century Code is amended and reenacted as follows:

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission upon the application of any interested person shall enter an order pooling all interests in the spacing unit for the development and operations thereof. Each such pooling order must be made after notice and hearing, and must be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, that owner's just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order must be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. For the purposes of this section and section 38-08-10, any unleased mineral interest pooled by virtue of this section before August 1, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit, but in no event may the royalty interest of an unleased tract be less than a one-eighth interest. An unleased mineral interest pooled after July 31, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit or, at the operator's election, a cost-free royalty interest of sixteen percent. The remainder of the unleased interest must be treated as a lessee or cost-bearing interest. ~~Any unleased mineral interest pooled prior to July 1, 1983, is entitled to the cost-free royalty interest and working interest as provided in this section from and after July 1, 1983."~~

Page 2, line 3, overstrike "or" and insert immediately thereafter an underscored comma

Page 2, line 4, after "payments" insert ", or when a mineral owner cannot be located after reasonable inquiry by the operator"

Renumber accordingly

Date: 2-5-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1071

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Hofstad Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey			Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton		
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Drovdal

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

REPORT OF STANDING COMMITTEE

HB 1071: Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1071 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 1 of section 38-08-08 and"

Page 1, line 2, after the first "to" insert "the provisions of pooling orders and the"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 1 of section 38-08-08 of the North Dakota Century Code is amended and reenacted as follows:

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission upon the application of any interested person shall enter an order pooling all interests in the spacing unit for the development and operations thereof. Each such pooling order must be made after notice and hearing, and must be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, that owner's just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order must be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. For the purposes of this section and section 38-08-10, any unleased mineral interest pooled by virtue of this section before August 1, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit, but in no event may the royalty interest of an unleased tract be less than a one-eighth interest. An unleased mineral interest pooled after July 31, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit or, at the operator's election, a cost-free royalty interest of sixteen percent. The remainder of the unleased interest must be treated as a lessee or cost-bearing interest. ~~Any unleased mineral interest pooled prior to July 1, 1983, is entitled to the cost-free royalty interest and working interest as provided in this section from and after July 1, 1983.~~

Page 2, line 3, overstrike "or" and insert immediately thereafter an underscored comma

Page 2, line 4, after "payments" insert ", or when a mineral owner cannot be located after reasonable inquiry by the operator"

Renumber accordingly

2009 SENATE NATURAL RESOURCES

HB 1071

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1071

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 6, 2009

Recorder Job Number: 10396

Committee Clerk Signature



Minutes:

Senator Lyson opens the hearing on HB 1071, relating to the provisions of pooling orders and the failure to pay royalties to un-leased mineral interest owners.

Representative David Drovda I was dealing with an oil company, which was very fair to me.

The discussion came around after they drilled the well as to whether I, as a non participating mineral owner, had the right to have them pay me within a set period of time. If they didn't they would have to pay a penalty. That has been described in North Dakota law since 1981. The company was a little hesitant but they did pay it. I checked with 2 other oil companies in North Dakota and they also pay the interest and they consider everybody. I want to get the ambiguity out of the law and make it plain and simple that all mineral owners regardless whether they are leased or un-leased the producers have a responsibility and a reasonable amount of time to make their payments to them. The second part of this bill was to address the problems they thought were for the oil developments to come up with the average weighted unit in those 150 days. I did agree to an amendment that they would pay 1/6 royalty to those non-participating or working interests through that period of time or the average weighted unit at their discretion.

The average weighted unit is less than the 1/6 right.

Ron Ness, President of North Dakota Petroleum Council, I am in support of this bill. We had a little dispute on the House side, but i think we worked out our differences. It was our position on the House side that when you decide you are not leasing your interests you essentially become part of the ownership in the well. It was the industry's position that as an un-leased interest you should not be paid the interest. Some companies do pay the interest and others do not. We have agreed to an amendment on this bill. We think it will also address a number of other provisions.

Senator Lyson closed the hearing on HB 1071.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1071

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11671

Committee Clerk Signature



Minutes: **Senator Lyson, Chairman**

Committee work

Committee says there was no opposition to this bill.

Senator Triplett motions a do pass

Senator Schneider seconds

Vote – 7 – 0

Senator Lyson will carry

Date: 4/2/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee

Bill #: 1071

Legislative Council Amendment Number _____

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

Motion Made By Sen. Triplett Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	✓		Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett	✓	
Senator Layton W. Freborg	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen. Lyson

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

REPORT OF STANDING COMMITTEE

HB 1071, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1071 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1071

ATTACHMENT #1

Testimony HB 1071

Shirley Meyer District 36

Chairman Porter and members of the Natural Resources Committee my name is Shirley Meyer and I represent District 36. I hope you will support HB 1071.

A 1961 interim Natural Resources Committee created Section 47-16-39.1 of the North Dakota Century Code. I have provided you with copies of that interim study and also copies of the bill that amended that section in 1981. Please note how the interest in this section of the code rises and falls right along with the oil actively in North Dakota.

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

HB 1071 expands this interest rate to include an unleased mineral interest owner. I believe the original intent of the law has always been to include all royalty owners and the unleased owners were inadvertently omitted from the language in this section. HB 1071 corrects this misconception and treats all royalty interests equal.

The issue of delayed royalty payments is once again surfacing in our western counties with the increased drilling activity in the Bakken formation. Although many of these wells came in and were big oil producers, royalty owners are still waiting on their first royalty checks. Calls from constituents concerning this issue are becoming a weekly occurrence.

I would urge you to adopt HB 1071

1981

Attachment

#2

(CONTINUED)

03/04 HOUSE SIGNED BY GOVERNOR

PAGE 183
HJ1434

HB 1523

REP. KOSKI

A BILL FOR AN ACT TO AMEND AND REENACT SECTIONS 39-22-02, 39-22-03, AND 39-22-05 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO MOTORCYCLE DEALERS' LICENSING REQUIREMENTS; AND TO PROVIDE AN EFFECTIVE DATE.

01/23 HOUSE	INTRODUCED, FIRST READING, REFERRED INDUSTRY BUSINESS AND LABOR	HJ 332
01/28 HOUSE	REQUEST RETURN FROM COMMITTEE	HJ 405
	REREFERRED TO TRANSPORTATION	HJ 405
02/06 HOUSE	COMMITTEE HEARING 0212	
02/13 HOUSE	REPORTED BACK, DO PASS, PLACED ON CALENDAR Y 009 N 004	HJ 863
02/17 HOUSE	SECOND READING, FAILED TO PASS, YEAS 038 NAYS 057	HJ 933

HB 1524

REP. HUGHES

A BILL FOR AN ACT TO AMEND AND REENACT SECTION 39-08-04.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO LIABILITY ARISING OUT OF EMERGENCY CARE PROVIDED AT THE SCENE OF AN ACCIDENT.

01/23 HOUSE	INTRODUCED, FIRST READING, REFERRED JUDICIARY	HJ 332
01/29 HOUSE	REQUEST RETURN FROM COMMITTEE	HJ 433
	REREFERRED TO TRANSPORTATION	HJ 433
01/30 HOUSE	COMMITTEE HEARING 0205	
02/06 HOUSE	REPORTED BACK, DO PASS, PLACED ON CALENDAR Y 015 N 000	HJ 656
02/10 HOUSE	SECOND READING, PASSED, YEAS 092 NAYS 000	HJ 698
02/12 SENATE	RECEIVED FROM HOUSE	SJ 646
02/13 SENATE	INTRODUCED, FIRST READING, REFERRED TRANSPORTATION	SJ 683
02/17 SENATE	COMMITTEE HEARING 0220	
02/20 SENATE	REPORTED BACK, DO PASS, PLACED ON CALENDAR Y 000 N 000	SJ 872
02/25 SENATE	SECOND READING, PASSED, YEAS 049 NAYS 000	SJ 978
02/27 HOUSE	RETURNED TO HOUSE	HJ1344
03/03 HOUSE	ENROLLED	HJ1387
	SIGNED BY SPEAKER	HJ1398
03/03 SENATE	SIGNED BY PRESIDENT	SJ1098
03/03 HOUSE	SENT TO GOVERNOR	HJ1418
03/05 HOUSE	SIGNED BY GOVERNOR	HJ1500

HB 1525

REP. HUGHES, R.ANDERSON, MURPHY
SEN. R.CHRISTENSEN, BAKEWELL

A BILL FOR AN ACT TO AMEND AND REENACT SECTION 47-16-39.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO OBLIGATIONS OF OIL AND GAS PRODUCERS TO PAY INTEREST ON UNPAID ROYALTIES.

01/23 HOUSE	INTRODUCED, FIRST READING, REFERRED INDUSTRY BUSINESS AND LABOR	HJ 332
01/30 HOUSE	COMMITTEE HEARING 0204	
02/12 HOUSE	REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR Y 015 N 000	HJ 809
02/13 HOUSE	AMENDMENT ADOPTED, PLACED ON CALENDAR	HJ 820
02/16 HOUSE	ENGROSSED	HJ 871
02/17 HOUSE	SECOND READING, PASSED AS AMENDED, YEAS 095 NAYS 000	HJ 934
02/19 SENATE	RECEIVED FROM HOUSE	SJ 848
	INTRODUCED, FIRST READING, REFERRED INDUSTRY BUSINESS AND LABOR	SJ 864
02/27 SENATE	COMMITTEE HEARING 0302	
03/05 SENATE	REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR Y 000 N 000	SJ1154
03/06 SENATE	LAID OVER ONE LEGISLATIVE DAY	SJ1169
03/09 SENATE	AMENDMENT ADOPTED, PLACED ON CALENDAR	SJ1192
03/10 SENATE	SECOND READING, PASSED AS AMENDED, YEAS 047 NAYS 001	SJ1232
03/12 HOUSE	RETURNED TO HOUSE (12)	HJ1666
03/17 HOUSE	CONCURRED	HJ1780
03/18 HOUSE	MOTION TO RECONSIDER FAILED	HJ1811
03/19 HOUSE	LAID OVER ONE LEGISLATIVE DAY	HJ1910
03/20 HOUSE	RECONSIDERED	HJ1938
	REFUSED TO CONCUR	HJ1938
	CONFERENCE COMMITTEE APPOINTED	HJ1938
03/23 SENATE	CONFERENCE COMMITTEE APPOINTED	SJ1632
03/25 HOUSE	CONFERENCE COMMITTEE REPORT ADOPTED	HJ2064

CHAPTER 466

HOUSE BILL NO. 1525
(Representatives Hughes, R. Anderson, Murphy)
(Senators Bakewell, R. Christensen)

INTEREST ON UNPAID OIL AND GAS ROYALTIES

AN ACT to amend and reenact section 47-16-39.1 of the North Dakota Century Code, relating to obligations of oil and gas producers to pay interest on unpaid royalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-39.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-39.1. OBLIGATION TO PAY ROYALTIES - BREACH. The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or his assignee, or to deliver oil or gas to a purchaser to the credit of such mineral owner or his assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of such obligation may constitute grounds for the cancellation of such lease in such cases where it is determined by the court that the equities of the case require cancellation. In the event the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or his assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought, the unpaid royalties shall thereafter bear interest at the rate of eighteen percent per annum until paid. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located shall have jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section shall be entitled to recover any court costs and reasonable attorney's fees. This section shall not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, or in the event of a dispute of title existing which would effect distribution of royalty payments.

Approved April 6, 1981

Forty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL No. 1525

Introduced by

Representatives Hughes, R. Anderson, Murphy

Senators R. Christensen, Bakewell

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2 the North Dakota Century Code, relating to obligations of oil
3 and gas producers to pay interest on unpaid royalties.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
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10 obligation arising under an oil and gas lease to pay oil or gas
11 royalties to the mineral owner or his assignee, or to deliver
12 oil or gas to a purchaser to the credit of such mineral owner
13 or his assignee, or to pay the market value thereof is of the
14 essence in the lease contract, and breach of such obligation
15 may constitute grounds for the cancellation of such lease in
16 such cases where it is determined by the court that the
17 equities of the case require cancellation. In the event the
18 operator under an oil and gas lease fails to pay oil or gas
19 royalties to the mineral owner or his assignee within sixty
20 days after oil or gas produced under the lease is marketed and
21 cancellation of the lease is not sought, the unpaid royalties
22 shall thereafter bear interest at the rate of eighteen percent
23 per annum until paid. This section shall not apply when
24 mineral owners or their assignees elect to take their
25 proportionate share of production in kind, or in the event of a
26 dispute of title existing which would effect distribution of
27 royalty payments.

HOUSE INDUSTRY, BUSINESS AND LABOR

February 4, 1981

HB 1525 - Obligations of oil and gas producers to pay interest on unpaid royalties (Tape 19, Side 1)

REP. MURPHY, Killdeer, 36th District, Sponsor

He said this bill would require that if oil payments are not made after 60 days after production, that an interest rate of 18% be applied to the money unless it is returned to the royalty owner. What brought this about is that in many cases they delayed payment for as much as two to three years.

REP. HUGHES, Williston, 1st District, Sponsor

He said this is an important piece of legislation that deals with a growing problem that people of western North Dakota are having.

DICK LOMMEN, State Land Commissioner, Proponent

He said that in the Land Department regarding oil and gas leases, they allow 90 days before first royalties are to be paid. He felt, however, that it is proper that these royalties draw interest, especially in cases where it is a prolonged withholding for title searches or for other reasons. The beneficiary of the use of this money should be the royalty owner because upon the sale of this product, those monies are his. He said they allow additional time on a title dispute. He wondered if 18% was a penalty or a going rate. He was in favor of the concept, however. Mr. Lommen suggested a going interest rate or a savings interest rate. He thought to attach a percentage in the statute might not be the best way to go.

REP. VANDER VORST asked him if he would go along with the interest rate at the Bank of North Dakota.

MR. LOMMEN replied absolutely.

MARVIN KAISER, Williston, Attorney and Royalty owner, Proponent

He covered the procedures of an oil and gas business development from a title opinion standpoint. Initially there is a lease acquisition. The next stage is two to three years from then which is a drilling opinion done from verbatim abstracts. After the drilling of the well, a division order title opinion is prepared. This is an updated drilling opinion to set forth the designated interests. Thereafter, there is a division order prepared that sets forth the division of interests, and in some instances, the conditions under which the oil and gas will be paid. (See attached example) He said that as an attorney he has dealt with the problem as it affects the landowner from the time that the drilling of the well has been accomplished to the time the final division order has been submitted. It is probably the second highest incidence of inquiry he has in oil and gas matters.

MR. KAISER, continued

He said he didn't appear today on behalf of any clients, but he presented examples for the committee's edification. He had a letter from Mr. Michael McIntee illustrating examples of the kinds of delays (See attached letter). Another statement was from A. D. Macmaster of Williston (See attached statement). He said in very few instances is the first payment received in less than seven months after the date of first production. After that, the durations and abuses vary from company to company. In some instances, the allegation is made that there are title problems or difficulties that justify the non-dispersement of the monies. Mr. Kaiser said he is currently waiting for payment on the same well that Mr. MacMaster received payment on the 31st of January, which is more than 10 months. He also has members of his family that have waited over 18 months for royalty payment on existing wells. He then presented an economic illustration of the amounts of revenue (See attached hand out). His conclusion from this was that there is a year's worth of production in suspense (revenues from oil and gas production have not been distributed to royalty owners). He said the State of North Dakota is the largest single royalty owner in the state, and he submitted that they stand to benefit the most from HB 1525. In his view, the provision for 60 days interest is benevolent. This money does not belong to the company and should benefit the royalty owner. He said the aspect of title problems are a smokescreen for that reason.

JOHN GUYERMAN, Williston, Oil business, Proponent

He gave examples of instances from his files whereby production was obtained and payment was not made in a timely manner. In one instance Hunt is the operator of the well and the purchaser of the oil, the well is in Williams County, was indicated productive in May of 1979, the division order was cut in May of 1980, and payment received in June of 1980--an 11-month delay. Hunt again in Billings County, productive in September of 1979, the division order cut in February of 1980, and first payment received in April of 1980--a 7-month delay. Hunt again, productive in September of 1979, and first payment received in July of 1980--a 10-month delay. Another operator that he has been involved with is Coke Oil, the purchaser was Amoco, properties in Billings County, indicated productive in May of 1979, the division order issued in July of 1979, and payment received in August of 1979--a 4-month delay. This shows it can be done if the companies are willing to do so. In another instance with the same company, Coke Oil, it was indicated productive in June of 1979, and the first payment was made in July of 1980--a 13-month delay. In some instances payment is made in a timely manner and in other instances, the tendency is to hold the money for their own uses.

MR. GUYERMAN, continued

Another operator, Texaco, the well located in McKenzie County, indicated productive in June of 1980, they haven't seen a division order yet. Another operator, Shell Oil, Renville County, purchaser was Shell, discovery made in October of 1977, and the royalties were made in 1980. He felt from his experience that when the operator is also the purchaser, they seem to take longer to get their division orders out. The companies, as long as they have the use of the money, should pay a fair rate of interest on those monies.

ART BAUER, Bismarck, Oil Business, Proponent

He said he has been in the oil business for 30 years on both sides of the fence as an independent operator, as a royalty owner, and as a manager of an oil company that distributes production. He agreed 100% with Mr. Kaiser. He said if you are a royalty owner, the recipient of the funds, you are at the mercy of the purchaser. The purchaser loves to hold that money interest free. Mr. Bauer said he didn't think the question of dispute of title should be used as a smokescreen to try to defeat the purpose of this bill. Another excuse that a purchaser will use to delay royalty payments is they will say they cannot distribute any of the funds until all the division orders have been in. That means it isn't a question of distribution of title, but they have adopted within their company a policy not to distribute any of the funds until they have all these signed division orders. In regard to the interest rate, he thought it should be geared to a fluctuating rate, such as the prime rate of the Bank of North Dakota plus one or minus one.

LEE HANSON, Bismarck, Royalty owner, Proponent

He said he has been involved with Gulf for four years and has been trying to get an assignment of a royalty interest changed with this company for over two years. He has sent eight copies, including one to the chairman of the board, to get action on this transfer and it still has not been done. They have been using his money for two years. His only recourse is to go the legal route and force the issue. In one case they have a dispute on a title and that has been used as an excuse to withhold the money. There is no question that they have a 1/8 interest on the acreage involved. They have two leases, one which gives them more royalty. By using an after-acquired title opinion, there is a lower lease percentage to a substantial acreage. Mr. Hanson said in any event, there is no less than 1/9 due them. Their money has been withheld since 1978. He feels the division order is a crude attempt to remake the lease. There are several provisions in the division order which are not agreed to when making the lease, one of which is that they can hold this money, as long as there's dispute, indefinitely without interest. Mr. Hanson thought they should operate on the original lease.

MR. HANSON, continued

He gave another example of a lady in her 70's who has requested an accounting from the oil company on how much money is in this escrow account. Each time they send back another copy of that division order. The reason she won't sign the division order to get the money is because the division order states that they don't have to pay interest. This has been going on for 2 1/2 - 3 years. She has upwards of \$100,000 coming. They want to get the deal completed on their terms.

LOWELL RIDGEWAY, Bismarck, North Dakota Petroleum Council, Opponent

He said the previous examples in testimony given are obviously disputes in title. He also said that starting on line 23 of the bill it states that this section shall not apply in cases of dispute of title. He also felt that the 18% interest rate was totally punitive. As Mr. Kaiser related, there are legitimate time delays. He thought 90 days would be better than 60 days. Furthermore, he said that this act states if you do not receive your royalties in due time, that this is a breach of the obligation of the mineral developer and that constitutes grounds for cancellation of the lease. He didn't know how many times the mineral owner or his attorney bring that to the attention of the purchaser; but if that was utilized, it might speed up paying of royalties. He again said that the 60 days time limit was far too minimal. He thought if there is a long-term dispute in the title that a company should be willing to pay an amount of interest. He said the passage of HB 152. in its current form is a law that will retard the business climate in the state and make it more difficult for oil developers to go about their business. He thought there could be an amendment put on to say if there is a dispute in title, the purchasing company would place his royalties in an escrow account and let the funds accrue to the royalty owner. This way you are not punishing the company for something he has no control over.

REP. RUED asked if he was aware of any court cases whereby the oil lease was broken because the royalties were not paid.

MR. RIDGEWAY replied he was not aware of any.

REP. PELTIER asked what the normal lagtime was between production and payment.

MR. RIDGEWAY replied five to six months is not at all unusual. If there is a two-year period, then there's obviously a title dispute.

REP. DOTZENROD asked if they would be willing to put that money in an interest bearing escrow account.

MR. RIDGEWAY replied yes.

REP. VANDER VORST asked if they would go along with the interest rate at the Bank of North Dakota.

MR. RIDGEWAY replied no because you would still be punishing the company.

REP. RUED asked Rep. Murphy if he would be willing to change the 18% interest rate to the prime rate of the Bank of North Dakota and the 60 days to 90 days.

REP. MURPHY (see tape) He thought title dispute was a stall and it shouldn't go beyond 90 days. He also thought he shouldn't have to sign a division order since he had already signed a lease.

REP. RUED asked if you have six people that own the oil rights and only four of those people can be contacted, do the companies pay those four in proportion to their interest in the lease and hold up on the other two or do they hold payment of all six. He asked if HB 1525 would help pay those people.

MR. BAUER replied it depends on the company and he did agree that HB 1525 would help these people.

There was some discussion about the costs of a court case and that it wouldn't be worth it both in terms of money and time. That's why there are no records of court cases.

MR. KAISER said that North Dakota is the only state that provides for cancellation of lease.

REP. RUED asked if there was any other state that had implemented a bill such as 1525.

MR. RIDGEWAY replied to his knowledge there wasn't.

REP. KLOUBEC asked about the escrow account.

MR. KAISER said we do have a statute that provides for escrow accounts on disputes of this kind for oil companies.

REP. RUED appointed a sub-committee: Rep. Vander Vorst, Rep. Kloubec and Rep. Larson.

GERALD BEHM, Pres. Sunbehm Gas, Inc., Minot
He said they met with the subcommittee and that his administrative supervisor, Bonnie Deutch, put together information for them.

BONNIE DEUTCH, Sunbehm Gas, Minot
(See attached written testimony)

REP. MURPHY, Sponsor
He thought it would be wise to go to the Industrial Commission for more information.

BONNIE DEUTCH responded to a question about the title. She said they have an attorney draft a drilling title opinion which indicates any mortgages or liens on that property, any lessors or lessees involved in the property; however, it is not designed to distribute revenue. It doesn't research enough information. The distribution of minerals handed down to your children would not appear. When production is established, it is the division order title opinion that indicates the ownership.

WES NORTON, Bismarck, Geological Survey
He said the timing on advertising for hearing is a minimum of ten days. Some of the county newspapers only publish once a week, so they end up closing their docket. They have three weeks to make sure they meet the public notice advertisement requirement. There is a three-week lag from the time the last case comes in to the time of hearing. However, there can be as long as six weeks if a case comes in after the docket is closed. He said the way they space an unspaced area is to put the well on the docket for spacing as soon as they receive the completion report on the well.

REP. RUED asked from the time they complete their hearing until the parties are notified what time delay do they have there.

MR. NORTON said the Commission has to sign an order within 45 days. Normally the orders are signed a month following the hearing.

REP. RUED said that looks like 7 weeks at the minimum.

MR. NORTON said the range is 3 - 7 weeks. If timing is a problem, in extreme cases the Commission has the authority to issue an emergency order and sign it and make it effective the date they heard it.

REP. KLOMBEC asked about the mechanics of filing a completion report.

MR. NORTON said that prior to running oil from the lease they need a transporter's form (Form 8). The Commission won't sign that form until they have received the completion report.

MR. NORTON, continued

He said the completion report is supposed to be filed when the well is tested through wellhead equipment.

REP. PELTIER asked how many documents at a monthly meeting.

MR. NORTON said last month they had 37 or 39 cases on the docket.

REP. KLOUBEC asked if royalties could be paid within 60 or 90 days of production when the producers claim that the mechanics take approximately 4 - 5 months before they can determine what the percentage is.

MR. NORTON said the Industrial Commission couldn't be involved in it if the area is already spaced. They should know in a month or two what the spacing is. In some cases there may be people that are abusing it and some cases where the delay might be justified. One of the delays could be that the people who write the title opinions are overworked.

REP. KLOUBEC explained the amendments (See attached amendments) The wording on the first one comes from Oklahoma.

REP. HAUGLAND moved to accept the second amendment on page 1, line 19.

REP. HEDSTROM seconded. Motion carried.

REP. KLOUBEC moved a Do pass as amended.

REP. HAUGLAND seconded. Motion carried: 15 aye, 1 absent.

REP. KLOUBEC will carry the bill on the floor.

REPORT OF STANDING COMMITTEE

Mr. Speaker. Your Committee on INDUSTRY, BUSINESS AND LABOR

to whom was referred HOUSE

Bill No. 1525 has had the same under consideration and recommends, by a vote of

Ayes, 15 Nays, 0 Absent, 1 that the same

☐ do pass.

☐ do not pass.

☐ be placed on calendar without recommendation.

☒ be amended as follows:

On page 1, line 19, delete the word "sixty" and insert in lieu thereof "one hundred eighty"

And renumber the lines and pages accordingly

And when so amended, recommends the same do pass.

HOUSE

Bill No. 1525

Rep. Ross Chairman

was placed on the 6th

order of business on the calendar for the succeeding legislative day.

FORM 10

The Industry, Business, & Labor Committee met at 9:00 AM with all members present.

HOUSE BILL 1525

HB 1525 - A bill relating to obligations of oil and gas producers to pay interest on unpaid royalties.

Tape 36
Side 1
001-422
490-end

Tape 38
Side 2
001-404

Rep. Steve Hughes, sponsor, stated that the purpose of the bill is where a situation has happened in the last few years - have had difficulty in collecting their royalty interest and feels that this is unjustified.

Rep. Jack Murphy, sponsor, stated that oil producers are taking this money that belongs to the royalty owner - that money should be put in escrow at that time. We required that after 60 days that they pay 18% interest. This bill was amended - it was changed to 90 days - then to 180 days. We would ask that you consider to change it back to 60 days plus the other submitted amendment. Stated the purpose of the amendment that under the bill there is no provision to have the loser in the lawsuit pay the costs. Personal experience - you have to have substantial sums in order to fight the oil producers (amendment attached)

Rep. Hughes - we thought that 60 days was a legitimate time frame - however, we would go along with 90 days. Also stated that mineral identification is done before the oil companies get the lease to drill a well..

Sen. Reiten - You're talking about the interest on the money that's not paid - he still owes the royalty payment from the time it goes into production - you're talking about the interest on withheld royalties?

Ans. - Yes - they can withhold the royalties for as much as 4 years and they don't pay any interest - they have just neglected to pay it.

Sen. Tennefos - Once the royalty payments start then there's no more delays?

Ans. - Not that I know of

Rep. Rued stated he didn't believe this bill would be here if the oil companies would have been paying their royalties in 6 months or less.

Sen. Bakewell stated he would like to see the 180 days reduced or else interest paid from the date of production.

Russell Mather, attorney appeared to discuss the bill - was neither for or against. Stated what we're dealing with here is a matter of individuals who are concerned with oil and gas lease terms. This is when you get down to the question of negotiations of oil and gas leases and you are involved in a

complex situation. That's why we have counselors, attorneys, etc. The question of what is the obligation to paying a royalty, signed lease documents, etc. comes up. Now when do you pay a royalty - I don't think there's any question that somebody is owed a royalty. Mr. Murphy stated that when you lease these properties you have your title checked. This may result in title disputes. I don't think the majority of landowners have a problem in getting their royalties.

Sen. Reiten - You're maintaining its the dispute of title that's holding up the payment?

Ans. - I would say that in the majority of instances in which I have been involved - yes - we have title problems.

Mr. Loman, appeared. Stated the reason for his testifying is to pass on information that governs their interests - State Land Dept. I'm not here to advocate 60 day, 180 days, etc. I do like the context of the bill. Mainly here to report that in our case we do, according to law that we promulgated ourselves, for our own selfish interests, require that within 90 days following initial production the lessee shall file with the commissioner a production and royalty statement (attached). We've had some problems (few) where royalties are held in suspense. We can understand this - at some point in time we

~~have to clarify that title~~

Sen. Mutch - Until they determine who is the proper person to pay and how much - what do they do with it - are they required to put the money in escrow? What happens to this money - where is it?

Ans. - to my knowledge it's held in escrow.

Marv Kaiser, attorney, Williston, stated he thinks the whole concept of title examination is irrelevant to this bill. The point of the bill is that they money that is due to royalty owners under any conditions does not belong to the oil companies. You have asked where the money is - it's in their account. The only time it has not stayed in their account is whereby court order they have made a deposit. The people we are addressing today are not those that have title disputes or title issues. I think the motivation here is to say is that we would like to remove the belief that that money is being used for their own purposes interest free and would opt for the situation in which we would either legislate to require all the money would be deposited from day one with the Bank of ND at whatever the interest rate - the bank would pay or go with something like we're talking about here.

Lee Hanson, land owner, appeared to give comment. His own personal experience in dealing with the oil companies on his property - in relation to previous testimony on late payment of the original royalty (after initial production) -

Senate Industry, Business, and Labor HB 1525

there are other cases that need be addressed because they are abused. Stated that in his file (case 1) there are 3 assignments of royalty interest that were made in the end of 1978 - they were filed with the oil company approximately 1 month later - follow up assignments have been sent to them - to date, these have not been honored and there is no title dispute. That's 2 years they have kept the use of this money. Don't know what else I can do to get that money - suppose I could sue them. The point was made - why don't I go to an attorney but there still is no obligation for them to pay interest on this money.--(2nd case)--where small amount of royalty interest paid --wrote to the commission, company, etc. attempting to cancel lease. I did invoke legal counsel then and was told that no time has one ever been successfully challenged in ND. The company finally agreed to start paying but in the meantime they paid no interest on this money they were using.--(3rd case)---Involves State of ND, Land Dept, Tax Dept. as well as a number of us mineral owners - this again involves a major oil company (Gulf Oil Co.) Mentioned name because he stated they are the violators in each of these cases. They were producing these wells - started out paying no royalty. When they were pressured by the State of ND, Tax Dept., etc. we finally received a small amount of royalty. Stated he don't think its right they can use our money for that length of time without paying interest. Stated he hopes committee considers passing this legislation and would encourage amending it back to either 60 or 90 days. (attached)

John Gueyrman, Williston, oil and gas leasing business, appeared and cited cases where it took anywhere from 14-18 months before the 1st revenues were received. Whatever the case may be I feel they are using my money interest free but when I have to have capital I have to go to the bank and pay for the privilege of using other people's money.

Michael McMaster, and A.D. McMaster appeared in favor (testimonies attached)

Morris Lassey, mineral owner, appeared in favor. Stated this bill is very important.

Walt Ridgeway, Petroleum Council, stated they support the bill as it came out of the House. Said the average time to issue royalty payments is 5-6- months.

Bonnie Deutch, Sunbehm Gas Inc., Admn. Supervisor and offered testimony on time element involved in distributing revenues from oil and gas properties (testimony attached).

Mr. Ridgeway stated they have no objection to the propsed amendment. (attached)

No further testimony

3-4-81

Tape 43
Side 2
B3C-end

Committee Discussion

COMMITTEE ACTION

Motion made by Sen. Quail and second by Sen. Parker to accpet amendment with 5 AYES and 2 NAYS. Motion carried.

Motion made by Sen. Quail and seconded by Sen. Parker for Do Pass with 5 AYES and 2 NAYS. Motion carried

Ser. Christensen will carry the bill

Jan Mumma
Committee Clerk

Report of Standing Committee

Mr. PRESIDENT Your Committee on INDUSTRY, BUSINESS, & LABOR
to whom was referred HOUSE Bill No. 1525

Has had the same under consideration and recommends that the same

☐ do pass ☐ do not pass ☐ be placed on calendar
without recommendation

☒ be amended as follows:

On page 1, line 19, of the engrossed bill, delete the
word "one"

On page 1, line 20, of the engrossed bill, delete the
words "hundred eighty" and insert in lieu thereof
the word "ninety"

And renumber the lines and pages accordingly

And when so amended recommends the same do pass.

HOUSE Bill No. 1525 Senator Reiten Chairman
was placed on the Sixth

order of business on the calendar for the succeeding legislative day.



CONGRESSIONAL PUBLICATIONS

Form 200

Same report to the House
Report of Conference Committees

Mr. PRESIDENT: Your Conference Committee to whom was referred
red HOUSE Bill No. 1525 has had the same under
consideration and recommends:

That the Senate recede from its amendments; and that engrossed
House Bill No. 1525 be further amended as follows:

On page 1 of the engrossed bill, line 20, delete the word "eighty"
and insert in lieu thereof the word "fifty"

On page 1 of the engrossed bill, line 23, after the period, insert
the following: "Provided, that the operator may remit semi-
annually to a person entitled to royalties the aggregate of
six months' monthly royalties where the aggregate amount is
less than fifty dollars. The district court for the county
in which the oil or gas well is located shall have juris-
isdiction over all proceedings brought pursuant to this section.
The prevailing party in any proceeding brought pursuant to
this section shall be entitled to recover any court costs
and reasonable attorney's fees."

And renumber the lines and pages accordingly

*There are no
Conference Committee
minutes!*

For the Senate

For the House

Sen. R. Christensen

Rep. Kloubec

Sen. Quail

Rep. Vander Vorst

Sen. Grotberg

Rep. B. Larson

Sen. R. Christensen

moved that the report be adopted, which motion

prevailed.

HOUSE Bill No. 1525 was placed on the 7th

order of business on the calendar for the succeeding legislative day.

2-11-81

AMENDMENT TO HOUSE BILL 1525

On page 1, line 17, after the word "cancellation." insert the following language "The district court for the county in which the oil or gas well is located shall have jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section shall be entitled to recover any court costs and reasonable attorney's fees."

Murphy

And renumber the lines accordingly.

AMENDMENT TO HOUSE BILL 1525

Kingland

On page 1, line 19, delete the word "sixty" and insert in lieu thereof "one hundred and eighty"

And renumber the lines accordingly.

ECONOMICS OF PROPOSED BILL TO REQUIRE
INTEREST PAYMENTS ON SUSPENSE ROYALTY

115,000 BARRELS OF OIL PER DAY (1900 N.D. AVE.)

X 30.5 DAYS PER MONTH

3,484,500 BARRELS OF OIL PER MONTH

\$25 - AVE PRICE (NEW OIL LESS WINDFALL + SCRAPED OIL)

\$87,112,500 GROSS MONTHLY REVENUE

X .125 1/8 ROYALTY

\$10,889,062.50 - MONTHLY ROYALTY REVENUE

X 12 MONTHS

\$130,668,744 ANNUAL ROYALTY REVENUE

X 20% CURRENT INTEREST

\$26,133,748 ANNUAL INTEREST LOST TO N.D.

ROYALTY OWNERS

CONSIDERATIONS:

1) LOST INTEREST TO N.D. ROYALTY OWNERS

\$26.133 MILLION

2) LOST INCOME TAX ON INT. EARNED

INDIVIDUAL \$1.9 MILLION CORP. - \$2.22 MILLION

3) LOST DEPOSITS TO N.D. BANKS

\$130,668,744 - ANNUALLY

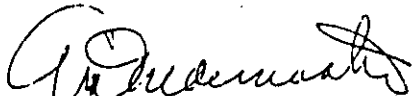
February 3, 1981

My name is A. D. MacMaster, of Williston, North Dakota, and I am giving this statement in support of legislation pending before the North Dakota Legislature that would provide for payment of interest on accrued unpaid royalties after sixty days following the first run made on a producing oil and gas well.

On January 30, 1981, I received my first check from Northwest Exploration Company for an oil well named Rye No. 1 located in the North Half of Section 19, Township 158 North, Range 95 West in Williams County, North Dakota, despite the fact that this well began producing in April of 1980. This payment did not include any interest whatsoever.

I believe this practice is very unfair to mineral estate owners such as myself. I know it is common practice, however. I am aware of several other instances in the past where the mineral estate owners have had to wait longer than nine months following the first run to obtain a payment.

I and others in my position should be legally entitled to interest at a reasonable rate during this waiting period.


A. D. MACMASTER
Box 218
Williston, North Dakota 58801

MICHAEL R. McINTEE
FRED E. WHISENAND
TERRY R. LORENS

McINTEE & WHISENAND
ATTORNEYS AT LAW
P. O. BOX 1307
WILLISTON, NORTH DAKOTA 58401

TELEPHONE
(701) 774-0024

February 3, 1981

Mr. Marvin L. Kaiser
Attorney at Law
Box 1366
Williston, ND 58801

Re: Committee Hearing on
House Bill #

Dear Mr. Kaiser:

I find that I will be unable to attend the committee hearing scheduled for 8:00 a.m. on Wednesday, February 4, 1981, therefore would ask that you submit to the committee this letter in support of the captioned House Bill.

For many years I have received numerous complaints from clients in which they have complained of the delays by oil companies in submitting to them division orders after completion of an oil well.

A good example of these delay tactics by oil companies involves Kissinger Petroleum Company. The facts are as follows:

1. There are three owners of all of the minerals involved in the land on which the oil well was drilled.
2. The well was successfully completed on July 3, 1980.
3. On August 22, 1980, I telephoned Kissinger and was advised that a division order would be forwarded within thirty days.
4. On September 23, 1980, I personally met with the Vice-President of Kissinger Petroleum Company.
5. On October 1, 1980, I again telephoned Kissinger and was then advised that it would be another month to six weeks before they would be sending a division order.
6. On November 26, 1980, I again telephoned Kissinger and was advised that a division order would be forwarded no later than December 5, 1980.
7. On January 8, 1981, I wrote to Kissinger demanding that they forward a division order.

Mr. Marvin L. Kaiser
Page 2
February 3, 1981

8. On January 15, 1981, Kissinger ordered supplemental abstracts covering the property in question after which they were to have forwarded the same to their attorneys for examination. Nothing has been heard from them since.
9. Since July 3, 1980, oil is being produced from the well in question and has been sold by Kissinger to a purchasing company, without any of the profits being distributed to the mineral and royalty owners.

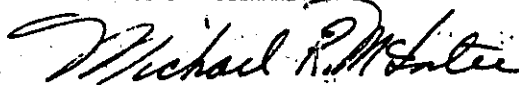
It is understandable that a reasonable time should be allowed for the oil companies to take care of their "housekeeping duties" to see that the title is in order. However, eight months is an unreasonable length of time to wait and it might be a great deal longer in this particular instance. Some limits must be made on the length of time an oil company is allowed to circulate division orders and commence royalty payments. If this is not done, the law should provide the payment of interest from the date of completion of the well, and an additional severe penalty be provided that would force the oil company to comply with the law.

The above example could be duplicated dozens of times, and I trust the Legislature will pass an appropriate statute that would protect the mineral and royalty owners so that they will receive their just payments of royalty within a reasonable time.

Thank you for submitting this letter on my behalf.

Sincerely,

McINTEE & WHISENAND



Michael R. McIntee

MRM:cs

H.B. 1525
Bernie Switzer

February 10, 1981

SEQUENCE OF EVENTS INVOLVING DISTRIBUTION OF
REVENUE ON OIL AND GAS PROPERTIES

A. COMPLETED WILDCAT WELL IN AN UNDEFINED FIELD

1. Upon completion of a well a completion report is submitted to the State Industrial Commission.
2. The Commission places the completed well on the regularly scheduled hearing docket for defining the field outline, spacing requirements and necessary rules and regulations governing field definition.
3. The Commission, meeting on a monthly basis will act and execute a formal Field Spacing Order at the regular hearing the following month.
4. To pool diverse mineral interests into a spacing unit the Industrial Commission must grant a Force Pooling Order, or the Operator can prepare a Voluntary Pooling Order to be executed by all parties having an interest in such production. The request for a Force Pool is placed on the hearing docket in the same manner as the Spacing Order. In the State of North Dakota the establishing of spacing requirements and pooling of interests with diverse ownerships requires separate formal Orders.
5. The Attorney will draft the Division Order Title Opinion evidencing ownership in the Oil and/or Gas revenue relative to the Spacing and Pooling Orders.
6. The Division Orders are prepared and submitted to all parties evidencing ownership in a particularly spaced property. The Division Orders must be executed and returned before revenue checks are drafted.

ACTUAL CASE STUDY

Norman Rod #1 well
Twp. 149N. Rge. 102W
McKenzie County, North Dakota

First Production Removed from Lease	7-26-79
Well placed on Commission Docket	9-24-79
Formal Spacing Order executed by Commission	10-23-79
First Revenue received from Purchaser	11-20-79
Force Pooling Order executed by Commission	1-21-80
First Revenue Distributed to Interest Owners	1-28-80

Page 2
February 10, 1981
SEQUENCE OF EVENTS INVOLVING DISTRIBUTION OF
REVENUE ON OIL AND GAS PROPERTIES

B. COMPLETED WELL IN A DEFINED FIELD

1. The Field Spacing Order executed by the Industrial Commission will govern the completed well if the well is completed in the same producing zone as the initial order. The Force Pooling Order will also serve to pool diverse interests in the property if the well is to be pooled in the same zone as the existing Order.
2. When this is not the case the same steps must be followed to establish ownership in production that are set out under procedure "A".
3. When the well is completed in a zone already Spaced and Pooled under prior Formal Orders and/or Voluntary Pooling Agreements the Attorney will draft the Division Order Title Opinion evidencing ownership.
4. The Division Orders are prepared and the revenue checks are drafted in like manner as described in "A-6".

ACTUAL CASE STUDY

Roger Sanders #1 well
Twp. 149N. Rge. 102W
McKenzie County, North Dakota

First Production removed from Lease	2-09-80
First Revenue received from Purchaser	3-18-80
Division Order Title Opinion Prepared	4-01-80
First Revenue Distributed to Interest Owners	6-25-80

** NOTE The above case study was a completed well covered by prior Formal Spacing and Pooling Orders. Steps "A-2" thru "A-4" did not require satisfying before drafting the Division Order Title Opinion.

CASE PENDING BEFORE THE COMMISSION

Lloyd Powell #1
Section 1
McKenzie County, North Dakota

Completion Date	12-15-80
First Production Removed from Lease	12-09-80
Hearing date set on Commission Docket	2-19-81

Page 3
February 10, 1981
SEQUENCE OF EVENTS INVOLVING DISTRIBUTION OF
REVENUE ON OIL AND GAS PROPERTIES

CASE PENDING BEFORE THE COMMISSION CONT.

** NOTE The case pending before the Commission is for a Wildcat well
in an undefined field. The format for establishing ownership
will be the same as set forth in "A-1" thru "A-6".

The above illustrated information is taken from the files of Sun-
Behm Gas, and defines the time element involved in distributing revenues
from Oil and Gas properties.

SUNBEHM GAS, INC.,


Gerald Behm, President


Bonnie L. Deutch, Administrative Supervisor

1961 Session Laws

466

CHAPTER 295

PROPERTY

PROPERTY**CHAPTER 295**

S. B. No. 44

(Legislative Research Committee)

OBLIGATION TO PAY ROYALTIES**AN ACT**

Relating to the obligation to pay royalties under oil and gas leases and providing remedies for breach of such obligation.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or his assignee, or to deliver oil or gas to a purchaser to the credit of such mineral owner or his assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of such obligation may constitute grounds for the cancellation of such lease in such cases where it is determined by the court that the equities of the case require cancellation. This section shall not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, or in the event of a dispute of title existing which would effect distribution of royalty payments.

Approved March 11, 1961.

Natural Resources

House Concurrent Resolution A-2 was an outgrowth of a joint hearing of Committees of the Senate and House of Representatives of the Thirty-sixth Legislative Assembly on the subject of oil and gas conservation laws. In the words of the Resolution the Legislative Research Committee was directed to "study the laws of this state relating to the exploration, production, and conservation of oil and gas, including among other things the protection of the correlative rights of landowners". This study was assigned by the Legislative Research Committee to its Subcommittee on Natural Resources consisting of Senator Frank A. Wenstrom, Chairman, Senators Lloyd M. Erickson, Walter R. Fiedler, Rolland Redlin; Representatives Walter Dahlund, James W. Johnston, Halvor Rolfsrud, M. E. Vinje, R. W. Wheeler, Ralph M. Winge, and Orville P. Witteman.

It was contemplated by the Legislative Assembly that it would probably be necessary for the Committee to hire a petroleum engineer to assist them in their work. After consultation with officials in the Interstate Oil Compact Commission, the Committee procured the services of Mr. R. R. Spurrier, formerly director of the New Mexico Oil and Gas Conservation Commission for a period of nine years, and recommended as one of the most capable persons in the field of oil and gas conservation. Mr. Spurrier had no connection with the oil and gas industry in North Dakota, and his services were entirely paid for by the Committee from appropriations made by the Legislative Assembly for that purpose.

Since the Resolution called for a study of conservation of property laws with special emphasis on "correlative rights" of landowners, the Committee at its organizational meeting decided to begin its study with a series of hearings in the "oil country" at the cities of Westhope, Tioga, Columbus and Watford City. The purpose of these hearings was to give the individual landowners and royalty owners an opportunity to appear personally before the Committee on an informal basis, explain their problems, and make recommendations for changes in laws and regulatory practices. Over 300 landowners attended the series of hearings, which were held on four consecutive days. The landowners made excellent presentations in regard to their problems and stated their opinions with frankness and clarity.

Perhaps the most common problem mentioned by landowners was the difficulty in obtaining prompt drilling of offset wells to prevent drainage in cases where oil companies were reluctant to drill. Another commonly mentioned problem was the difficulty landowners encountered in determining if cases before the Industrial Commission affected their particular property and the inconvenience in attending hearings in Bismarck in order to present their views upon these matters. A suggestion was made by numerous landowners in the Westhope and Columbus area for modification of Rule 505 of the Industrial Commission, relating to the use of the depth factor in prorating production to spacing units. Other problems and recommendations brought to the attention of the Committee ranged from the possibility of a tax exemption to encourage the construction of pipelines, to permitting the Industrial Commission to employ a separate staff for the enforcement of conservation laws or to use the staff of the State Geologist as the Commission might prefer.

The minutes of the Committee contain almost 150 pages of statements and abstracts of testimony received in the course of these hearings, and it is impossible for the Committee to cover all of the many items presented and discussed without permitting this report to become unreasonably long. However, complete sets of these minutes are available in the offices of the Committee and can be made available to any interested person.

Following the meetings in the oil country, a two-day hearing was held in Bismarck, to which representatives of oil companies and professional representatives of landowners' associations were invited to appear. Again, there was excellent attendance at the hearing, and a high amount of interest was found among all persons attending. In general, the oil companies expressed satisfaction with our conservation of property laws and their administration. The opinion that such laws and their administration were probably the best in the nation was often stated. Oil company representatives did stress, however, that it was necessary that there be an acceleration in unitization programs in order to increase the ultimate maximum recovery of oil and gas and to keep the costs of producing this oil and gas competitive with other suppliers in our marketing area.

At subsequent meetings, during which the Committee carefully studied and evaluated all the testimony received, three objectives were set forth to guide the Committee in its work. First, the Committee deemed it desirable to better protect correlative rights by finding ways to more nearly equalize the bargaining power of the landowners when dealing with major oil companies in matters relating to rights under oil and gas leases. Second, the Committee sought methods to bring state government, and specifically the oil and gas regulatory activities of the Industrial Commission, closer to the landowners so that they could better present their evidence and views to the Commission and be more fully aware of matters before the Commission that would affect their property. Finally, it was deemed essential that all fair and practical methods be made available for increasing the ultimate recovery of oil and gas natural resources from all fields. In all these matters the Committee agreed that it should attempt to improve the position of landowners and promote greater ultimate recovery of oil and gas without prejudicing the rights of oil companies or materially discouraging exploration and development of oil and gas resources.

From the 30 or more proposals originally considered, the Committee in subsequent meetings reduced the matters down to eight subjects upon which bills were drawn for hearing and discussion purposes. Thereafter, a two-day meeting was held in the city of Williston at which representatives of oil companies and of landowners' associations and individual landowners very forcefully and ably presented their points of view to the Committee. In general, the representatives of the landowners' associations and individual landowners tended to support the bills under consideration with some recommended amendments. The representatives of oil companies favored several bills, recommended substantial amendments to several others, and expressed opposition to the balance. As a result of these hearings, it was possible for the Committee to better evaluate the merits of the bills under consideration and to improve them through amendments.

At its final meeting, the Committee approved substantial amendments to the bills and recommends the eight bills to the Legislative Assembly. In addition, a recommendation in regard to Rule 505 is made.

From this point, the Committee's report will consist of an explanation of the bills that are rec-

ommended for introduction at the next session of the Legislative Assembly, together with a discussion of their purpose.

Recommendations

1. The Committee recommends a bill to make the obligation to pay oil and gas royalties due a mineral owner the essence of the lease contract, and to make the breach of the obligation to promptly pay such royalties grounds which the court, in its discretion, might use as the basis for cancellation of the oil and gas lease. A number of landowners reported that at times there appeared to be an unreasonable lag in the payment of royalties and since their only apparent remedy was to sue in the courts for a recovery of the royalties due, they felt this was not sufficient penalty to ensure conscientious efforts to make prompt payments. In the Committee's opinion, the proposed bill would make the failure to promptly pay royalties a more serious matter, but since cancellation would be at the discretion of the courts, it would not unduly penalize a lease operator if he has reasonable grounds for failing to make prompt payment.
2. The Committee recommends that the conservation laws be amended to specifically authorize the current practice of the Industrial Commission in establishing more than one marketing area in the state and in allocating separate allowables to each marketing district. This has been the practice of the Industrial Commission for several years and appears to be authorized under present laws. However, a good deal of concern was expressed by some people that such authority might not in fact exist, and that the orders of the Industrial Commission establishing more than one marketing district might be overturned by the courts. Therefore, the Committee recommends an amendment of the law to specifically authorize this practice.
3. The Committee recommends an amendment of our laws to authorize the Industrial Commission, in its discretion, to select either the State Geologist as the director of oil and gas conservation, or appoint a separate independent staff to administer oil and gas conservation laws. It was pointed out by a number of people appearing before the Committee that it was inconsistent with normal governmental principles to require the Industrial Commission to use as head of its staff a person appointed as Professor of Geology by the President of the University, who in turn was

ex officio State Geologist, and who, as State Geologist, would automatically head the staff for the Industrial Commission. Those persons who pointed out this unusual condition were often quick to state that the present organization has operated well because of the cooperation of the State Geologist, but it was suggested that such a degree of cooperation might not always exist in the future, with personnel changes. It is the opinion of the Committee that it is presently desirable for the State Geologist to continue as Director of Oil and Gas Conservation since this permits the joint use of facilities of the University and personnel of the Geological Survey in oil and gas conservation work, and has other advantages that naturally flow between the University and office of State Geologist. In the event the past degree of cooperation continues, the Committee can see no benefit in making a change in the oil and gas conservation staff when the possible additional costs of separate facilities and staff duplication are considered. However, the Committee recognizes the inconsistency of the present administrative organization and, therefore, believes that the option should exist on the part of the Industrial Commission to employ a separate staff in the event they deem it necessary. Before such a change could be made, however, it would be necessary for the Legislative Assembly to appropriate funds to the new staff of the Industrial Commission and, consequently, the Legislative Assembly would have an opportunity to review the propriety of this change prior to its implementation.

4. The Committee recommends the amendment of the conservation laws in regard to the payment of costs of developing and operating property that is pooled to make a full spacing unit. Present law permits the Industrial Commission to order the pooling of fractional tracts to make a full spacing unit for its exploration and development in the event that the individual owners should be unable to agree upon its development.

The amendment proposed by the Committee would permit the operator designated by the Industrial Commission to develop and operate the premises and recover his costs from the share of the oil allocated to the nonconsenting owners of the property. The posting of a bond to ensure proper handling of the funds would be required and such operator would account to the Industrial Commission for his expenditures. At present, it is necessary to foreclose a lien upon the nonconsenting owner's share of the oil in

the same manner a chattel mortgage is foreclosed. This method of recovering the operator's costs is considered too cumbersome.

5. The Committee recommends that the oil and gas conservation laws be amended to specifically authorize the use of an examiner system to conduct hearings for the Industrial Commission. In a survey made by the Committee of the cases considered by the Industrial Commission during an 18-month period, it was found that the overwhelming majority of them were routine in nature and generally noncontroversial. In the opinion of the Committee, these can adequately be handled by an examiner designated by the Commission without requiring the attendance of the elected public officials who constitute the Industrial Commission. The designated examiner could then make a report to the Industrial Commission in regard to the matters presented at the hearing, together with his recommendations, and the Industrial Commission could issue its order in the case. Adequate provision is made for a rehearing before the full Industrial Commission, or for appeal to the courts in the event of dissatisfaction on the part of the parties to the hearing.

The use of an examiner system has two real advantages. First, it lightens the load upon elected public officials who are pressed for time in carrying out the other duties of their offices. It authorizes them to delegate routine cases to an examiner, yet permits them to personally hear more important controversial cases where their presence is required. Second, it will permit and make practical the holding of hearings in the field in the areas near the property concerned. This will result in the landowners being better informed of matters before the Industrial Commission affecting their property and make it more convenient for them to attend and present their evidence and views. In addition, it will permit field hearings even in the more important or controversial cases when desirable, in that the Commission may designate an examiner to hold field hearings to take a portion of the testimony from those persons who cannot reasonably attend the meetings of the Commission in Bismarck. The use of this system will result in bringing the oil and gas regulatory activities much closer to the landowner so that he may better know of, and understand, actions that might affect his property as well as making it convenient to present his evidence and views to the Commission.

6. The Committee recommends an amend-

ment of the conservation law relating to the approval of voluntary unitization agreements by the Industrial Commission. In essence, the Committee recommends that any operator desiring to develop a pool on a unit basis may at his option submit the plan to the Industrial Commission for approval, but such approval would be only for the purpose of relieving the operator from a suit charging the violation of state anti-trust or monopoly laws. Approval by the Commission would be given only if the Commission finds the agreement would protect the correlative rights of all parties having legitimate interests in the common pool, including owners of royalties and mineral rights affected by the agreement. All persons having valid interests in any portion of a common pool must be given an opportunity to participate upon a fair and reasonable basis. However, such approval by the Commission could not be construed as a defense to any action for damages or other remedy in the courts for any cause of action resulting from the unit operation. In the event the operator should decide to proceed with a unitization program without Industrial Commission approval, he then might be subject to suit under the anti-trust laws, and again would be fully subject to any suit for damages or injunctive relief that might be provided by the courts. No supersedeas bond would be necessary to bring an action in the courts in regard to any rights that were affected by the voluntary unitization program regardless of whether it received the prior approval of the Industrial Commission.

In the opinion of the Committee, this amendment will have the desirable effect of permitting fringe area mineral owners who have provable supplies of oil and gas under their property to participate in the unit agreement and receive proportionate payments for the oil and gas that may be produced from the wells in the unit even though the amount underlying their premises is not sufficiently large by itself to warrant the drilling of a well for its extraction. In the event a fringe area landowner is not properly included in the unit plan, the operator would be subject to all the remedies provided by the courts.

7. The Committee recommends the passage of a compulsory unitization law in the state of North Dakota which when approved by 75% of the oil and gas operators, by 75% of the mineral owners, and by the Industrial Commission, could require the participation of any nonconsenting landowners. In the opinion of the Committee, it is essential that unitization programs be encour-

aged in North Dakota in order to provide for the maximum recovery of the oil and gas in place. It has been demonstrated many times that unitization programs which encompass the drilling of strategic wells for the production of oil or gas and the use of others wells for repressuring, recycling, or water flooding can result in very substantial increases in the total recovery of oil and gas in a reservoir, that without such programs would otherwise forever remain unrecovered. The failure to recover the maximum amount of oil and gas in place is a complete waste of vital natural resources and should not be countenanced by the state. In addition, since under a unitization program everyone shares in the total production of the field in accordance with his proportionate share in the pool regardless of whether the oil is produced upon his own property or upon his neighbor's, such a program will go far in removing the problem of drilling offsets and of drainage. It can permit the payment to fringe area landowners of their proportionate share of oil in the pool even though the oil underlying their tract may not in itself be in sufficient quantity to warrant the drilling of a well upon the premises for its recovery.

The bill recommended by the Committee closely parallels the compulsory unitization bill recommended as a Model Act by the Interstate Oil Compact Commission with certain exceptions specifically inserted by the Committee for the protection of the correlative rights of mineral owners. The principal deviation from the Model Act is found in the proposed section 38-08-09.8 of the bill, which prohibits approval by the Industrial Commission if the plan embraces less than the entire common pool unless it is shown that those tracts not included within the proposed unit but which contain oil or gas within the common pool, will not have oil or gas drained by the unit operation or that the amount of oil underlying such tracts is so small as to make it impossible to measure or estimate or the measurement is extremely speculative, or that all persons having valid interests in tracts but not included within the proposed unit have had or will have an opportunity to become parties to the agreement upon a fair and reasonable basis.

8. The Committee recommends a bill which would establish a presumption of drainage in the event an undeveloped tract of land lies adjacent to a producing oil and gas well and a portion of such undeveloped tract is within the radius of a circle centered at the producing well containing the number of acres prescribed by the In-

dustrial Commission as the proper spacing unit for the well in question. Such a presumption could arise in the event the owner of the undeveloped tract makes a demand upon the lessee for the drilling of a protection well and such well is not commenced or drilled with due diligence within one year after such demand. In such event, the lessor may commence suit in the district court and will have the benefit of the presumption that his property is being drained. It would then be necessary for the lease owner to carry the burden of proof by showing that the land is not being drained, or that a reasonably prudent lessee under similar circumstances could not be expected to drill a well with reasonable expectation of producing oil or gas in commercial quantities; or that any well that may have been commenced is being drilled with due diligence; or that a valid contract exists between the lessor and lessee for payments in compensation of drainage in lieu of drilling a well as provided in the Act. In the event the holder of the lease should fail to show such justification for his failure to drill a well, the court may order the lease cancelled, or order the holder of the lease to drill a well within a period of time stated by the court, or to pay to the mineral owner a sum determined by the court as compensation for oil or gas being drained from the undeveloped tract, and award damages if any are due.

A large number of landowners expressed the opinion in the course of the hearings that it was difficult for them to go into court to protect their rights in the event an oil company failed to drill a protection well to prevent drainage of oil from their property. Geological information or engineering data to prove the existence of the oil and its drainage was generally unavailable to them, and they often lacked the financial or other resources to obtain such information. It was therefore the general opinion of landowners and their attorneys that suits for cancellation of leases for failure to drill offset wells was not a practical and workable remedy. In the opinion of the Committee, the proposed bill will go far in equalizing bargaining power between landowners and the oil companies in these matters. It will be possible for the landowner to simply prove the existence of a producing well on adjacent property and that a portion of his property is within the radius of a circle centered at the producing well encompassing the number of acres of the spacing unit. The burden of proof will then immediately shift to the oil company to show why a well should not be drilled. In the opinion of the Committee, this is the proper place for the burden to rest since it is usually

the oil company that has the geological and engineering data to prove the case as well as the professional talent to present it. It seems no more than fair that the person best able to provide this evidence should bear the burden of proof.

Rule 505. As mentioned earlier in the report, a substantial number of landowners in the Westhope and Columbus area recommended that Rule 505 of the Industrial Commission be modified by removing or modifying the use of the depth factor in the allocation of market allowables. In general, the depth factor is a mathematical index intended to be in proportion to the costs of developing and producing deeper wells. For instance, under Rule 505 all wells under 5,000 feet in depth receive a depth factor of 1, while wells between 8,000 and 9,000 feet receive a depth factor of 3. The Industrial Commission, in distributing the monthly market allowables among the various wells in a marketing district, allocates such production on the basis of 40-acre units. Therefore, if it was determined in any given month that the market allowable for each 40-acre unit was 10 barrels, all wells under 5,000 feet in spacing units of 40 acres would receive a market allowable of 10 barrels per day. However, in the event wells under 5,000 feet were on an 80-acre spacing pattern, the allowable for each well would be that allowed each 40-acre tract in the spacing unit, or a total of 20 barrels per day. A well in a field having spacing units of 160 acres would, of course, receive four times the daily 40-acre allowable, or 40 barrels per day. However, in the event the producing wells in the field were of greater depth than 5,000 feet, for instance 8,000 feet, the depth factor of 3 would apply. Therefore, you would multiply the daily allowable of 10 times 3 for each 40-acre tract in the spacing unit in order to determine the total daily allowable for the well. For instance, an 8,000 foot well on a 160-acre spacing unit would receive an allowable of 10 barrels for each 40 acres in the unit multiplied by 3, or a total of 120 barrels per day.

Some landowners appearing before the Committee recommended that the depth and acreage factors in allowables be entirely eliminated and that the same allowables be given to all wells regardless of their depth or the size of the spacing unit. Other landowners suggested that allowables be on the basis of the number of 40-acre tracts contained within the spacing unit and that no depth factor whatsoever should be used. Perhaps the most common suggestion received was

that all allowables be based upon the number of 40-acre tracts contained in a spacing unit, but that the depth factor be applied only to the 40-acre tract upon which the well was located, or at most, to the 40-acre tract containing the well plus one additional 40-acre tract in the spacing unit.

While the Committee made no formal finding or recommendation in regard to the depth factor, since the factor was created by regulation of the Industrial Commission and not specifically provided in the law, it was generally recognized that some consideration should be given to the costs of finding and producing oil from deep formations in order to encourage deep drilling. However, it is the opinion of the Committee that the use of a depth factor should be reviewed in the light of the larger size spacing units that have been approved in recent years. It seemed to the Committee that while allowables should be based upon the number of 40-acre tracts contained in every spacing unit and that the depth factor could legitimately be considered in regard to the 40-acre tract upon which the well was located, the application of the depth factor to all other 40-acre tracts might not be entirely justifiable since no well had been drilled upon the other tracts and, therefore, there were no costs to recover. In the event that it should be found that such change might unduly restrict deep exploration and production, it might be possible to authorize the use of the depth factor in determining allowables for the 40-acre tract in the spacing unit upon which the well was located, plus one additional 40-acre tract.

It was the consensus of the Committee that it does not seem justifiable to continue to authorize the full application of the depth factor to all 40-acre tracts within a spacing unit in view of the fact that an increasing number of 160-acre spacing units have been approved and, in one instance, a 320-acre spacing unit has been approved. The full application of the depth factor to large spacing units may actually have the effect of discriminating against the shallower wells when both shallow and deep wells are found within the same marketing districts.

The Committee met with the Industrial Commission and urged the Commission to hold a hearing in regard to Industrial Commission rules, with special reference as to the equities of the full use of the depth factor under Rule 505 upon all 40-acre tracts in a spacing unit.

COMMENTS

This report of necessity omits many of the details of the proposals being recommended by the Committee, and in the interest of brevity, does not go into full detail regarding all the various reasons for the Committee recommendations. Neither does the report attempt to cover the more than 20 proposals that were seriously considered by the Committee but which were not recommended upon the grounds that they were not practical or equitable. However, a full discussion of such matters can be found in the files and minutes of Committee meetings. The details of the recommendations of the Committee can be found in an examination of the bills recommended by the Committee which accompany this report.

Explanation of Legislative Research Committee Bills

Senate Bills

Senate Bill No. 1 - North Dakota Century Code

This bill consists of the entire 14 volumes of the North Dakota Century Code, which is intended to be passed as an emergency measure by both houses as the first matter of business in each house and signed as a law by the Governor. See Committee report on Judiciary and Code Revision.

Senate Bills Nos. 2 through 38 - Appropriation Bills

Senate Bill No. 39 - Presumption of Drainage

This bill, under certain conditions, would establish a presumption of drainage when a producing oil well exists upon land adjacent to an undeveloped tract. See report of Committee on Natural Resources.

Senate Bill No. 40 - Fractional Interests, Integration

This bill provides a method of recovering the cost of drilling and operating an oil well when fractional tracts are pooled by the order of the Industrial Commission to make up a minimum-size drilling unit. See report of Committee on Natural Resources.

Senate Bill No. 41 - Voluntary Unitization Agreements

This bill revises present law in regard to voluntary unitization agreements. Such agreements may be submitted to the Industrial Commission for approval in order to remove the possibility of prosecution under anti-trust laws, but also permits voluntary unitization programs to be placed in operation without the approval of the Industrial Commission. If Industrial Commission approval is given, it must be shown that all tracts in the pool containing measurable amounts of oil and gas are permitted to participate in the unit agreement. See report of Committee on Natural Resources.

Senate Bill No. 42 - Compulsory Unitization

This bill authorizes the Industrial Commission, upon petition of 75% of the oil operators in a given pool and 75% of the mineral owners of pool, to order a field-wide unitization program

in order to provide the greatest maximum recovery of oil and gas from the reservoir. See report of Committee on Natural Resources.

Senate Bill No. 43 - Marketing Districts - Appointment of Director of Oil and Gas Conservation

This bill authorizes the Industrial Commission to establish separate marketing districts in the proration of oil and gas allowables in the state. In addition, it authorizes the State Industrial Commission to select the State Geologist as its staff, or an independent staff selected and appointed by it, with concurrence of the Legislative Assembly. See report of the Committee on Natural Resources.

Senate Bill No. 44 - Obligation to Pay Royalties

This bill would make the obligation to pay royalties to the mineral owner the essence of the contract, and under certain conditions the breach of this obligation might constitute grounds for cancellation of the oil and gas lease in the discretion of the court. See report of Committee on Natural Resources.

Senate Bill No. 45 - Field Examiner System

This bill would authorize the Industrial Commission to establish a field examiner system for the purpose of holding field hearings in matters relating to oil and gas conservation in the area of the state affected. See report of Committee on Natural Resources.

Senate Bill No. 46 - Licensing of Restaurants, Motels, Hotels, etc.

This bill would eliminate duplication in licensing or inspection of this type of establishment by transferring all authority from the State Laboratories Department to local health authorities and in some areas to the State Health Department. See the report of the Committee on Governmental Organization.

Senate Bill No. 47 - Community Mental Health Service Units

This bill would authorize counties, cities, districts or any combination thereof to establish local mental health service units or "community clinics"

Petroleum Council Proposed Amendment to House Bill 1071

On page 1, line 15 after the word "within" overstrike ~~one hundred~~
~~fifty~~ and replace with "two hundred"

On page 1, line 17 after the word "of" overstrike ~~eighteen~~ and
insert "twelve"

On page 1, line 20 after the word "of" overstrike ~~eighteen~~ and
insert "twelve"