

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1253

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1253

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7251

Committee Clerk Signature

Ellen Letang

Chairman Keiser: Opened the hearing on HB 1253 relating to payment of oil and gas royalties.

Bob Skarphol~Representative from District 2. Explain difficulty of people getting their royalty money from the oil & gas companies. First change is line 13, the second is interest, and third is the title issue getting paid. We do not have enough attorneys for this issue with titles.

Tom Trenbeath~I'm neutral and just want to relate of some of the thing I had that resulted in this bill. The Attorney General takes no position. I did speak to these companies and I don't think they follow through very well. I do have a letter from one of these companies, which is highlighted, that you must request in writing that you are due interest payable under section so and so and so. I got some conflicting information. In short, no shortage of cooperative people on the other end of the phone and I don't have the direct knowledge of that results of that but Representative Skarphol says that it sporadic at best.

David Peterson~Resident of North Dakota on behalf of myself. We have received promices and have not received anything.

Shirley Meyer~Representative from District 36. We had the same issue last week. This is a good bill and you should consider passing. I think it will correct a lot of things. I had a person who wanted me to show her when the 18% accrued and I couldn't.

Anyone in opposition.

Ron Ness~North Dakota Petroleum Council. I appear before you in opposition of this bill.

Certainly there are a number of issues out there in any business place. This bill really makes three changes. The first change on line 13 on page 1, we believe it's very clear. It when it's marketed, that when it's sold. If you change that to "when the oil or gas is first produced", there is no value. When you sell, now it has value. The second change on line 21 & 22. I think there is merit to this point. **Hands out administrative code and goes over it**

(attachment 1). The third change on the back page, notifying royalty owners any title dispute and explain the title issue to the royalty owner. We intentioned, immediately is unreasonable and burdensome.

Representative Ruby: Are the title issues settled before a hole is punched?

Ness: Traditionally yes, lease payment is paid up front.

Representative Ruby: So that would be applying to the check for the mineral right leases rather than the oil that is produced?

Ness: The lease payment is done up front. This is royalty payments after the well is put on production.

Representative Thorpe: Is there large number of royalty owners that have their checks held up because of title?

Ness: I have no idea.

Representative Clark: This is going to cost a lot of money, what happens when you drill a dry hole.

Ness: When you drill a dry hole, there is no money; there is no money to distribute, so it doesn't become a problem.

Craig Smith~Title Attorney We are having trouble getting title issues completed because of the surge of new wells being drilled and with so little man power to get the titles completed. There is a lot of research involved in getting a title. Operators prefer to drill with what is called a drilling title opinion. But in many cases the title back log has been so bad, but what they have done is rely on their land man of what interests they own out there. If meets a certain criteria, they do so. Go on to explain title opinions and why it takes so long to do a title.

Representative Thorpe: Out of the 219, how many are lost?

Smith: It varies.

Chairman Keiser: Do you believe there is a problem in some companies not pay on a timely bases and paying the interest.

Smith: I'm not of aware of companies not paying the interest.

Chairman Keiser: You support the second issues on the change of this bill?

Smith: No, our royalty check detail is very specific and there is a long list of requirements.

Chairman Keiser: On the third one, if there is a title dispute, it's everyone advantage, don't you think it's appropriate that you are required to somebody? It's good business.

Smith: I agree.

Robert Harms~Northern Alliance of Independent Producers. We are also in opposition. Give reason for delay in check and title issues. Key issues, number one is the notice issue and the last provision in the bill the notify where is the concern with content.

Vice Chairman Kasper: New acquirer, go find the other company?

Harms: I going to look who ever signed my lease to begin with.

Anyone here in the neutral position to testify?

Representative Skarphol: Spoke of problem in escrow.

Chairman Keiser: Can you tell us what a division order.

Skarphol: Division orders are a notification you receive as a mineral owner as to what your decimal interest in a well.

Vice Chairman Kasper: Do you see a workable solution?

Lynn Helmes~Director of Mineral Resources. I have a great deal of sympathy for the second two parts of the bill. The first part I really disagree with the starting of the clock. Try to fix a time because it's really not clear. To reintegrate, I think it should be "when the oil is marketed" is the time with the interest. Do a separate check and statement. They should be notification in a timely manner.

Closes the hearing on 1253.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1253

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7304

Committee Clerk Signature

Ellen Letang

Chairman Keiser: Opened the committee work session on HB 1253.

Chairman Keiser: Natural Recourses almost has a twin companion bill. The similarities are striking. Representative Skarphol and does agree it the 150 day should be related to the marketing not the production. Bottom line is the people are not getting paid in a timely fashion.

Representative N Johnson: I thought the question was to the 150 days?

Chairman Keiser: Right, it starts the day it is marketed and when does the penalty start?

Representative Boe: May question is what do we consider marketed, set the price or when it's delivered?

Chairman Keiser: I don't know how you define it, but they have lived with it so far. The second issue, the check or check detail must identify the oil & gas royalties and interest accrued by month. On the third one on page two, which was notifying, immediately is a bad word.

Representative Schneider: You could simply add a number of days.

Chairman Keiser: Let's add 15 days.

Representative Schneider: Get something drafted.

Representative N Johnson: I have one more area I have a question. In the testimony they had an issue with "explain the title issues", they have some heartburn with that.

Chairman Keiser: How about notify them if there is a title dispute.

Representative Schneider: On the first change, are we going to go back to marketed language?

Chairman Keiser: Yes, but do we want clarification with the penalty starting on day one, after marketing forward if the royalty has not been paid?

Vice Chairman Kasper: What does marketed mean? Is it actual receipt of money?

Chairman Keiser: I believe so, but I can't answer that.

Representative Clark: I would think it's when the money changes hands.

Chairman Keiser: When they sell it, it's marketed.

Representative Sukut: I'll ask some oil people.

Closes committee work session on HB 1253.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1253

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8421

Committee Clerk Signature

Allen Letane

Chairman Keiser: Opened the committee working session on HB 1253.

Representative Schneider: I talked with Ron Ness and came up with some amendments, see attachment.

Ron Ness~North Dakota Petroleum Council. I will vote for the amendment. This bill did three things, none of which we really liked but we provided some amendments. The first change was words on line 13 really didn't make sense because you can't value oil, so we over struck the language. The second amendment we struck out page two, line three and inserted new language. The third amendment, the word immediately but we reworded it.

Representative Schneider: Moves the amendments.

Representative N Johnson: Seconded.

Voice vote with all aye's and zero nay's.

Chairman Keiser: What are the wishes of the committee?

Representative Schneider: Moves a Do Pass as Amended.

Representative N Johnson: Seconded.

Voting roll call was taken on HB 1253 for a Do Pass as Amended with 12 aye's, 0 nay's,

1 absent with Representative Schneider the carrier.

Petroleum Council Proposed Amendment to House Bill 1253

Page 1, line 13 – overstrike “is first”

Page 1, lines 21 and 22 overstrike “The check or check detail must identify the oil and gas royalties and interest accrued by month.”

On Page 2, Line 3, after the word “however,” overstrike “~~the operator shall notify royalty owners immediately of any dispute of title, explain the title issue to the royalty owners, and the operator must make royalty payments to those mineral owners whose title and ownership interests is not in dispute.~~”

Replace with after the word “however,” insert “if the operator withholds royalty payments due to a dispute of title, the operator must notify the royalty owner of the title issue and the reason for withholding royalty payments. The operator must make royalty payments to those mineral owners whose title and ownership interest is not in dispute.”

February 2, 2009

VR
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1253

Page 1, line 13, remove "is first"

Page 1, line 21, remove "The check or check detail must identify the oil and gas"

Page 1, line 22, remove "royalties and interest accrued by month."

Page 2, line 3, overstrike "the" and insert immediately thereafter "if the operator withholds royalty payments due to a dispute of title, the operator shall notify the royalty owner of the title issue and the reason for withholding royalty payments. The"

Page 2, line 4, remove "notify royalty owners immediately of any dispute of title, explain the title issue to"

Page 2, line 5, remove "the royalty owners, and"

Renumber accordingly

Date: Feb 2 - 2009Roll Call Vote # 1**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**BILL/RESOLUTION NO. 1253House House, Business & Labor Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	}		Representative Amerman	}	
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigasaa					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

all ayes, 0 nays.

Date: Feb 2 - 2009
Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1253

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Schneider Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigasaa	7				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Schneider

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

REPORT OF STANDING COMMITTEE

HB 1253: Industry, Business and Labor Committee (Rep. R. Kelsch, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1253 was placed
on the Sixth order on the calendar.

Page 1, line 13, remove "is first"

Page 1, line 21, remove "The check or check detail must identify the oil and gas"

Page 1, line 22, remove "royalties and interest accrued by month."

Page 2, line 3, overstrike "the" and insert immediately thereafter "if the operator withholds
royalty payments due to a dispute of title, the operator shall notify the royalty owner of
the title issue and the reason for withholding royalty payments. The"

Page 2, line 4, remove "notify royalty owners immediately of any dispute of title, explain the
title issue to"

Page 2, line 5, remove "the royalty owners, and"

Renumber accordingly

2009 SENATE NATURAL RESOURCES

HB 1253

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1253

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 6, 2009

Recorder Job Number: 10399

Committee Clerk Signature



Minutes:

Senator Lyson

Opens the hearing on HB 1253, relating to payment of oil and gas royalties.

Representative Bob Skarphol, this is a result of a few frustrations that were expressed to me by royalty owners over the interim. During the interim I was made aware by royalty owners of the fact that there are wells out there that have been drilled and put on production as long ago as September of 2007 that currently have royalties not paid to mineral owners. I understand the issues with not being able to locate people, but these are people who live in the area and whose families have owned the minerals since the land was homesteaded that are not receiving payments. I also understand that there has been a transfer of ownership on the part of the operators and that has been part of the problem. In an effort to clarify the law I have had the Attorney General's office do some work with regards to this and it has become apparent that the law is not clear enough to be enforceable. The best we can do at this point in time is to ensure there is an understanding if royalties are not paid after 150 days there will be interest beginning at a rate of 18% per annual.

Ron Ness, President of the North Dakota Petroleum Council, we concur with the previous speaker and we hope you accept the amendments and the bill. 18% is a very high number but we understand there is a penalty and we have agreed to leave this amount in place.

Robert Harms, Northern Alliance Independent Producers, I agree with both of the speakers.

We agree with the amendments as well.

Senator Lyson Closed the hearing on HB 1253.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1253

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 6, 2009

Recorder Job Number: 10399

Committee Clerk Signature



Minutes:

Senator Lyson opens the discussion on HB 1253.

Senator Pomeroy moves to adopt the amendments.

Senator Erbele seconds the motion.

A voice vote was taken and the amendments were adopted.

Senator Pomeroy moves a do pass as amended on HB 1253.

Senator Schneider seconds the motion.

Roll call was taken and the bill received a do pass as amended on a vote of 6 to 0.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1253

Page 1, line 13, overstrike "produced" and insert immediately thereafter "is first marketed"

Page 2, line 3, after the second "operator" insert ", upon request," and replace "notify" with "inform"

Renumber accordingly

Date: March 6, 2009

Roll Call Vote #: #1 1253

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90459.0203

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

Motion Made By Senator Pomeroy Seconded By Senator Erbele

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) 6 No 0

Absent Senator Hogue

Floor Assignment _____

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

Voice vote on amendments only.

Date: March 6, 2009

Roll Call Vote #: #2 1253

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Pomeroy Seconded By Senator 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) 6 No 0

Absent Senator Hogue

Floor Assignment Senator Pomeroy

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

REPORT OF STANDING COMMITTEE

HB 1253, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1253 was placed on the Sixth order on the calendar.

Page 1, line 13, overstrike "produced" and insert immediately thereafter "is first marketed"

Page 2, line 3, after the second "operator" insert ", upon request," and replace "notify" with "inform"

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1253

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1253

House Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12135

Committee Clerk Signature



Chairman Sukut opened the Conference Committee on HB 1253 relating to payment of oil and gas royalties.

Representative Sukut: Our issue with this bill is on lines 15 & 16 of the engrossed version of the Senate .0300. You will find a phrase in there on the right hand side that says from the 151st day after marketing. What we are looking for is to eliminate that particular phrase from the bill as it stands right now. By eliminating that phrase, we are back into the interest being calculated at 18% on the unpaid royalties from the date the oil was marketed. We would be going back to what we basically calling day 1. The amended version as it sets now, with the phrase in there, from the 151st day after marketing, specifically states that the interest would not start being calculated until the 151st day. If everything is paid within the 150 days, everything is fine. The House position is partially based on a court case that the court ruled that the interest would start from day one. The Senate has taken the position that the interest would not start being calculated on the 151st day. Our discussions will be centered around these 2 opposing opinions. I've asked the bill sponsor and Ron Ness to give us a brief summary.

Representative Skarphol~District 2: My original intent was to define better in the law when the interest payments start. In attempting to do that, I wanted to insert a very simple word into that and that was when the oil is first marketed. When it came over to the Senate side, there had been a grammatical error that needed to be corrected and we began discussing and an amendment was purposed which was I thought was going to be adopted, I was not supportive of the language is currently. The amendment I thought we had agreed upon would have addressed the issue of the fact that if you used first marketed, as I suggested, a well was produced for a period of time, shut down for an extended period of time and started back up, that there would have been interest due during that time frame when it should not have been. It's a very complexed grammatical to get corrected, I would ask the committee to eliminate this language and revert back to current law and we will address the issue more adequately the next session. I'm certainly not supportive of the legislative if it is passed today, I will be absolutely opposed to the 1st.

Representative Sukut: Would you explain to the committee when the oil is marketed.

Representative Skarphol: Is marketed is different from is produced. In oil jargon, you can produce oil but until you sell it, you don't receive any revenue for it. There is no oil royalties until the oil is sold. I believe interest should be that interest should be paid from once the oil is marketed.

Representative Clark: Is there a difference between the day it is marketed and the day payments received? Are talking about the same date there?

Representative Skarphol: It depends on the purchaser, some do have time delay and some do electronic transfers immediately. It varies.

Representative Schneider: How is the Senate language is different that the current statue is?

Skarphol: The new language on page 1 that is underlined is new. If you would take that out, it would be just fine.

Representative Schneider: I understand the language but how would this make the statute different.

Skarphol: It triggers the beginning of the interest payments on the 151st day. There is no interest paid on days 1-150 and it's my opinion that there should be interest paid at those times.

Representative Sukut: Further questions?

Ron Ness: I'm going to have Lawrence Bender, lawyer, and provide our comments and I also handing out some testimony (see attachment). Our understanding that Representative Skarphol brought the agreed amendments to the Senate that we agreed to previously.

Bender: Ron asked me to come here today to give you a little bit of background on the court case that you mentioned earlier. I was involved in that court case towards the tail end of the matter but first I would like to address the questions that Representative Clark and Representative Schneider. With respect to marketing, oil is usually sold during the month and payment usually doesn't come to the royalty owner until the 20th of the following month. If you remove this language you will create a potential problem where interest would be due before payment is actually received. What would happen if that language would be removed, we would go back to the statute as it currently exists, however I think Representative Skarphol correctly noted, that there is some ambiguity with the statute right now. I think all purchasers and operators take the position that if payment is late by more than 150 days, interest starts on day 151. Talks about the court case in Stark County District Court in Dickinson and the title opinions were very complex. It wasn't a published opinion and it wasn't decided in front of the North Dakota state supreme court. I would conclude, there is a problem with suggesting that

you have to pay royalties from the date of marketing. It takes a certain amount of time to do these title opinions and some of these title opinions are complex. Sometimes 150 days is not enough but I think industry has been willing to accept the requirement that you pay interest after day 151. I don't think that we would want to go in the other direction where you pay interest from the date of marketing. Another misunderstanding that there is this idea when oil is marketed that the operator of the well is hanging on to the money, that's not usually the case. Most of the oil that is produced in the state of North Dakota is sold to marketers and they royalty payments are made by those first purchasers.

Senator Lyson: Help me out with this 151st day as a new thing. You don't have to pay any interest until after the 150th day?

Bender: The way operators have been interpreting the law and it's a very valid interpretation, if you do not payments within 150 days, from day 151 forward, you have to pay interest at 18%. That's the way operators are interpreting the law but the way I think as a clarification to make it absolutely clear to do away with any ambiguity, this language makes it clear.

Representative Schneider: So current practices, you advise your clients as such, that the first 150 days, no interest, but if they exceed the 150 days, interest from day 1?

Bender: No, interest from day 151.

Representative Schneider: That what the Senate amendment said?

Bender: Yes, what we are doing is taking away any ambiguity and put into law what has been the practice of the operators in the state of North Dakota.

Representative Schneider: The current statue isn't clear at all.

Representative Clark: Is there a conflict where Representative Skarphol says cash on the barrel for payment which would indicate to me as soon as the purchaser is buys it, he's paying cash. You indicated that the purchaser is not paying the operator but a host of people?

Bender: You have an operator of the well, in conjunction with the operator; we have various working interest companies or individuals who may have paid for the drilling of that well. We also have mineral owners who have executed oil and gas leases and in those leases there are royalty clauses. When the operator sells that oil to a purchaser, many times, rather than the money coming from the purchaser to the operator, the purchaser will make the payments to the various parties which is called a provision order.

Senator Lyson: Can you tell me how many complaints is the industrial commissioner receiving by not being paid by the 151st day?

Bender: Very sporadic call now and then from royalty owners. The way I handled those calls, I would put them in contact with my client and we tried to get the matter resolved. If companies don't pay within 150 days, it's usually a title issue.

Senator Lyson: I think we are looking at a boogie man that's not hitting us.

Representative Sukut: What I would like to do is give us an opportunity to digest this over the night and I will schedule another meeting. Adjourns the Conference Committee hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1253

House Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: April 23, 2009

Recorder Job Number: 12162

Committee Clerk Signature 

Chairman Sukut opened the Conference Committee hearing on BH 1253.

Senator Erbele: After listening to what was brought to us the other day, it seems that language of 151st day really clarifies the language.

Senator Erbele: Move that the House accede to the Senate amendments.

Representative Clark: Second.

Representative Sukut: Further discussion?

Voting roll call was taken on the HB 1253 for the House accedes to the Senate amendment with 6 yes, 0 nays, 0 absent and Representative Sukut is the carrier.

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number 1253 (, as (re)engrossed):

Date: Apr. 22, 2009
Apr.

Your Conference Committee _____

For the Senate:

For the House:

	YES / NO		YES / NO
<u>Sen Lyson</u>	<u>*</u>	<u>Ch. Surut</u>	<u>*</u>
<u>Sen Erbele</u>	<u>*</u>	<u>Rep Clark</u>	<u>*</u>
<u>Sen Pomeroy</u>	<u>*</u>	<u>Rep Schneider</u>	<u>*</u>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 0919 - _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1253 was placed on the Seventh order of business on the calendar.

DATE: Apr. 23, 2009

CARRIER: Surut

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Sen Erbele

SECONDED BY: Rep. Clark

TE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1253, as engrossed: Your conference committee (Sens. Lyson, Erbele, Pomeroy and Reps. Sukut, Clark, Schneider) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 0919 and place HB 1253 on the Seventh order.

Engrossed HB 1253 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1253

This is a model statute used by ND Oil & Gas Division.

43-02-06-01. ROYALTY OWNER INFORMATION STATEMENT. Whenever payment is made for oil or gas production to an interest owner, whether pursuant to a division order, lease, servitude, or other agreement, all of the following information must be included on the check stub or on an attachment to the form of payment, unless the information is otherwise provided on a regular monthly basis:

1. The lease, property, or well name or any lease, property, or well identification number used to identify the lease, property, or well; provided, that if a lease, property, or well identification number is used the royalty owner must initially be provided with the lease, property, or well name to which the lease, property, or well name refers.
2. The month and year during which sales occurred for which payment is being made.
3. One hundred percent of the corrected volume of oil, regardless of ownership, which is sold measured in barrels, and one hundred percent of the volume of either wet or dry gas, regardless of ownership, which is sold or removed from the premises for the purpose of sale, or sale of its contents and residue, measured in thousand cubic feet.
4. Price.
 - a. Oil. Weighted average price per barrel received by the producer for all oil sold during the period for which payment is made. The price would be the net price received by the producer after purchaser's deductions. The purchaser's deductions are to be explained pursuant to subsection 6.
 - b. Gas. Weighted average price per thousand cubic feet [28.32 cubic meters] received by the producer for all gas sold during the period for which payment is made. The price would be the net price received by the producer after purchaser's deductions. The purchaser's deductions are to be explained pursuant to subsection 6.
5. Total amount of state severance and other production taxes.
6. Any other deductions or adjustments. Those not explained on the statement or in a separate mailing must be explained to the royalty owner upon inquiry to the disbursing agent.
7. Net value of total sales after deductions.
8. Owner's interest in sales from the lease, property, or well expressed as a decimal.
9. Owner's share of the total value of sales prior to any tax deductions.
10. Owner's share of sales value less deductions.
11. An address where additional information may be obtained and any questions answered. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request.

History: Effective November 1, 1983; amended effective April 1, 1984; November 1, 1987; May 1, 1992.
General Authority Law Implemented
NDCC 38-08-06.3 NDCC 38-08-06.3

From: ND Petroleum Council

In 1981 the Legislature passed HB 1525. The bill originally proposed that the operator would have to pay interest on unpaid royalties after sixty days from marketing. After much debate, the legislature settled on 150 days. The legislature looked at actual case studies of the time it took for operators to make payments after first day of sales. Factors included the operator needing to obtain at its own cost administrative orders for spacing and pooling, preparation of division order title opinions, and the time it takes to incorporate the title opinions in their pay systems. In the best case study scenario it was around 120 days from first sale. Others average 150 to 180 days or even more. The legislature settled on 150 days as a compromise, and thereafter the 18% interest penalty would kick in.

What has changed since 1981? A Division Order Title Opinion for a typical McKenzie County well in 1981 was about 40-50 pages and took 40 hours to prepare.

In 2008 a McKenzie County Division Order Title Opinion can exceed 350 pages and involve hundreds of owners. As just one example, Burlington Resource's Lillibridge 11-23H well consumed nearly 500 attorney hours. Burlington also retained an independent landman/attorney last year to work with the mineral owners and Conoco inhouse staff to perform curative measures for those owners with title defects to try and get as many people in pay status as possible. This landman has worked 650 hours solely at Burlington's expense on just this one well to assist over 60 mineral owners and their families with curing their title to get them in pay status. The title attorney and the landman spent 1150 hours to get the Lillibridge well in pay status.

In summary, industry is working extremely hard on this issue and making great progress. Increasing the interest penalty is not a fair response to industry's efforts. Thank you.