

HOUSE BILL NO. 1080

Introduced by

Representative Dockter

1 A BILL for an Act to amend and reenact sections 15-05-10 and 47-16-39.1 of the North Dakota
2 Century Code, relating to the obligation to pay oil and gas royalties on leases owned and
3 managed by the board of university and school lands.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **15-05-10. Royalties from oil leases - Obligation to pay - Rents from other leases -**
8 **Breach - Rules.**

9 1. Oil leases must be made by the board of university and school lands at such annual
10 minimum payments as are determined by the board, but the royalty ~~shall be~~ may not
11 be less than twelve and one-half percent of the gross output of oil from the lands
12 leased. Oil leases made by the board may authorize a royalty of less than twelve and
13 one-half percent for production from stripper well properties or individual stripper wells
14 and qualifying secondary recovery and qualifying tertiary recovery projects as defined
15 in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand
16 and gravel, road material, building stone, chemical substances, metallic ores, or
17 colloidal or other clays must be made by the board in such annual payments as are
18 determined by the board.

19 2. The obligation arising under an oil and gas lease to pay oil or gas royalties to the
20 board of university and school lands ~~or the board's assignee~~, to deliver oil or gas to a
21 purchaser to the credit of the board ~~or the board's assignee~~, or to pay the market
22 value thereof is of the essence in the lease contract, and breach of the obligation may
23 constitute grounds for the cancellation of the lease in any case in which it is
24 determined by the court that the equities of the case require cancellation. If the

1 ~~operator~~lessee or the lessee's representative or assignee under an oil and gas lease
2 fails to pay oil or gas royalties to the board ~~or the board's assignee~~ within ~~one hundred~~
3 ~~fifty days after oil or gas produced under the lease is marketed~~the time prescribed by
4 administrative rule and cancellation of the lease is not sought, the ~~operator~~lessee or
5 the lessee's representative or assignee thereafter shall pay interest ~~and penalties~~ on
6 the unpaid royalties at a rate ~~to be no greater than the prime rate as established by~~
7 ~~the Bank of North Dakota plus four percent per annum, without the requirement that~~
8 ~~the board or the board's assignee request the payment of interest and penalties. If the~~
9 ~~aggregate amount is less than fifty dollars, the operator may remit semiannually to the~~
10 ~~board the aggregate of six months' monthly royalties. The district court for the county~~
11 ~~in which an oil or gas well is located has jurisdiction over any proceeding brought~~
12 ~~under this section. The prevailing party in a proceeding brought under this section is~~
13 ~~entitled to recover court costs and reasonable attorney's fees~~of three quarters of one
14 percent per month, not to exceed nine percent per annum. The commissioner may
15 waive all or a portion of the interest under this subsection for good cause.

16 3. If a lessee or the lessee's representative or assignee fails to respond or refuses to file
17 an amended royalty statement and pay the royalty owed within ninety days of
18 receiving written notice by mail of an underpayment, as provided by rule 4 of the North
19 Dakota Rules of Civil Procedure, the board may impose a penalty of one-half percent
20 per month, not to exceed six percent per annum. A party is deemed to have failed to
21 respond if the party has not responded within ninety days of receipt of the written
22 notice, or the party in response to the notice affirmatively indicates the intent not to
23 pay the royalty or amounts due. The commissioner may waive all or a portion of the
24 interest under this subsection for good cause.

25 4. If a lessee or the lessee's representative or assignee disputes a royalty assessment or
26 demand by the board, the lessee or the lessee's representative or assignee may
27 tender full payment of the disputed amount under protest any time after an
28 assessment or demand is made by the board. Upon payment of the disputed amount
29 under protest, all interest and penalties must cease to accrue. If it is determined that
30 the payment of the disputed amount resulted in an overpayment, the party that made

1 the payment is entitled to a refund of the overpayment amount plus interest at the rate
2 established under section 28-20-34.

3 5. If a lessee or the lessee's representative or assignee fails or refuses to comply with
4 demands by the board to pay royalties, interest, or penalties under this chapter, the
5 board may file an action to cancel the lease, recover unpaid royalties, and recover
6 interest and penalties on the unpaid royalties. Notwithstanding chapter 28-01, an
7 action under this subsection must be commenced within six years of the date oil or
8 gas was produced under a lease. An action to cancel a lease, recover unpaid
9 royalties, or recover interest or penalties on unpaid royalties may not be filed for
10 production that occurred under a lease before August 1, 2015.

11 6. The board may adopt rules regarding annual payments and royalties under this
12 section.

13 **SECTION 2. AMENDMENT.** Section 47-16-39.1 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **47-16-39.1. Obligation to pay royalties - Breach.**

16 1. The obligation arising under an oil and gas lease to pay oil or gas royalties to the
17 mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser
18 to the credit of the mineral owner or the mineral owner's assignee, or to pay the
19 market value thereof is of the essence in the lease contract, and breach of the
20 obligation may constitute grounds for the cancellation of the lease in cases wherein
21 which it is determined by the court that the equities of the case require cancellation. If
22 the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral
23 owner or the mineral owner's assignee within one hundred fifty days after oil or gas
24 produced under the lease is marketed and cancellation of the lease is not sought or if
25 the operator fails to pay oil or gas royalties to an unleased mineral interest owner
26 within one hundred fifty days after oil or gas production is marketed from the unleased
27 mineral interest owner's mineral interest, the operator thereafter shall pay interest on
28 the unpaid royalties, without the requirement that the mineral owner or the mineral
29 owner's assignee request the payment of interest, at the rate of eighteen percent per
30 annum until paid, ~~except that the commissioner of university and school lands may~~
31 ~~negotiate a rate to be no less than the prime rate as established by the Bank of North~~

1 ~~Dakota plus four percent per annum with a maximum of eighteen percent per annum,~~
2 ~~for unpaid royalties on minerals owned or managed by the board of university and~~
3 ~~school lands. Provided, that~~If the aggregate amount is less than fifty dollars, the
4 operator may remit semiannually to a person entitled to royalties the aggregate of six
5 months' monthly royalties ~~where the aggregate amount is less than fifty dollars.~~ The
6 district court for the county in which the oil or gas well is located has jurisdiction over
7 ~~all proceedings~~any proceeding brought ~~pursuant to~~under this section. The prevailing
8 party in any proceeding brought ~~pursuant to~~under this section is entitled to recover
9 any court costs and reasonable attorney's fees. This section does not apply ~~whenif~~if
10 mineral owners or their assignees elect to take their proportionate share of production
11 in kind, in the event of a dispute of title existing that would affect distribution of royalty
12 payments, or ~~whenif~~if a mineral owner cannot be located after reasonable inquiry by the
13 operator; however, the operator shall make royalty payments to those mineral owners
14 whose title and ownership interest is not in dispute.
15 2. This section does not apply to obligations to pay oil and gas royalties under an oil and
16 gas lease on minerals owned or managed by the board of university and school lands.