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House Bill 1080
Testimony of Ron Ness
House Finance and Taxation Committee
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Chairman Headland and members of the Finance and Taxation Committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 650 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of House Bill 1080.

House Bill 1080 creates a separate subsection to Section 15-05-10 of the North Dakota Century Code relating to royalties from oil and gas leases owned and managed by the North Dakota Board of University and School Lands (“Land Board”). Specifically, the bill relocates the obligation to pay royalties on minerals produced from such leases to the Land Board’s section of the Century Code. House Bill 1080 also adjusts the consequences for a breach of the obligation to pay royalties to a more equitable and fair rate. Currently, state law combines the obligation and consequences for breach for both Land Board-managed leases and leases held privately, with maximum interest on unpaid royalties set at a rate of eighteen percent. Through the North Dakota Administrative Code, the Land Board also has the authority to assess an additional penalty of up to twelve percent on unpaid royalties from state leases. This allows the Land Board to assess and collect combined interest and penalties on unpaid royalties at a rate of up to 30%. This is unreasonable and must be changed. Even U.S. Internal Revenue Service regulations do not go this far.

The statute allowing eighteen percent interest on unpaid royalties owed on private leases was enacted in 1981 when the prime interest rates were hovering in the fourteen to eighteen percent range. N.D.C.C. 47-16-39.1 was enacted and pertained specifically to “Obligation to Pay Royalties” with specific intent to benefit North Dakota mineral owners. A separate provision was later added applying specifically to Land

Board owned and managed leases, allowing the Board to negotiate an interest rate less than eighteen percent but no less than the prime rate plus four percent up to a maximum of eighteen percent. Unlike private mineral owners, the Land Board has its own auditors, attorneys, and tools to track and collect royalties it deems due. Therefore, House Bill 1080 proposes to remove the language in Section 47-16-39.1 pertaining to the Land Board, relocates the obligation to pay royalties to the State to a more appropriate section, and adjusts the combined maximum interest and penalty rates for breach of state royalty payment requirements to one that is equitable and consistent with what is fair and reasonable.

A combined 30% interest and penalty rate for late or unpaid royalties is unnecessarily punitive and inhibits a healthy business relationship between the State and those producing its mineral resources. In a short time, combined penalty and interest amounts owed for underpaid or unpaid royalties can far exceed any principal amount that may originally be owed, and there is nothing to prevent accrual of those amounts. This has been a contentious issue as oil operators continue to legally dispute the gas royalty deduct determination and the Land Board continues to seek payment for those disputed royalties retroactive to as many as forty years. As a comparison, all other businesses are subject to a statute of limitation of six years for contractual breaches with a maximum interest rate of six percent. Additionally, a private mineral owner cannot assess a penalty in addition to the eighteen percent interest rate prescribed by law. Once again, not even the IRS can go back 40 years on unpaid amounts. Such an unlimited statute of limitations is well beyond any reasonable record retention rules and is simply irrational.

The North Dakota Petroleum Council, on behalf of its members, requests fairness and consistency in the laws affecting the oil and gas industry and a reasonable yet effective combined penalty and interest rate for the Land Board to use to for royalty collections when no other solution exists. House Bill 1080 modernizes the language by using prime plus four percent instead of including a punitive rate in the statute from the early 1980's when interest rates were three to five times the prime rate of today.

We therefore urge a **Do Pass** on House Bill 1080. I would be happy to answer any questions.