

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1392

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1392
1/31/2019
31960

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to confidentiality of records received by the board of university and school lands; and to provide a penalty

Minutes:

Attachments 1, 2, 3

Chairman Kasper opened the hearing on HB 1392.

Rep. Denton Zubke appeared in support of HB 1392. Attachment 1. There are some amendments coming. (:17-4:40)

Rep. Rohr: Has there been problems?

Rep. Zubke: I don't know.

Rep. Karls: Who asked for the bill, and was there a problem somewhere?

Rep. Zubke: The department of lands asked for the bill. You can imagine all of the information that some of those oil companies might be supplying.

Rep. Schauer: Here you are dealing with the government and you need open records law. Is this just an effort to clarify this?

Rep. Zubke: Correct. It is to specifically state that those records are confidential. They are not simply exempt and not part of the open records.

Jodi Smith, Commissioner, North Dakota Department of Trust Lands, appeared in support. Attachment 2. (7:22-12:34)

Vice Chair Steiner: Could you give me an example of a third party.

Jodi Smith: We do contract our audits from time to time, and we do need the assistance of an additional CPA or firm.

Rep. P. Anderson: Have you had a request for information you are uncomfortable with and did that bring out this bill?

Jodi Smith: Yes, we have. We regularly get requests for information. If there was any elected official that had any buy in to any operating company, we get additional requests from them. We get significant requests for the _ pertaining particularly around a lawsuit that we may be engaged in. As we have lawsuits brought forward to us by operators, there is particular interest around some of what we would deem confidential information. There is some unclarity within the statue. We have worked with the attorney general's office. There are members in the attorney general's office that have deemed the statue is a little bit unclear at this point in time, so we are seeking clarification.

Brady Pelton, ND Petroleum Council, appeared in support. Attachment 3. (14:35-16:01)

Rep. Laning: Have you seen the proposed amendment by the commissioner?

Mr. Pelton: I have, and we actually collaborated on that particular amendment.

Rep. Laning: Have you shared your version with the commissioner.

Mr. Pelton: Yes, I have.

Chairman Kasper: Which version do the two of you like better?

Mr. Pelton: The language substance is identical. The petroleum council would appreciate the version that I handed out to committee.

Jodi Smith: We are comfortable with the ND Petroleum Council's amendment.

Rep. P. Anderson: Rep. Zubke stated the majority of information is confidential. If anyone requests any information about a particular audit, nothing would be available?

Jodi Smith: No. When we get those royalty statements in, that is subject to open records requests. In order to confirm those are accurate statements, we have to access the operators' information. We consider that information we would be confirming to our royalty statements to be proprietary information and that we don't own that information. We are just using that.

Rep. C. Johnson: Do we have a consistent royalty?

Jodi Smith: They are different per their lease. Depending on when the lease was negotiated is depending on what the royalty rate would be. That is subject to open records request. It is primarily when we get that information and when we do the auditing of those royalty statements that we consider that information we are using to ensure what they are putting on that royalty statement is true and accurate that we would consider having a little concern around because we consider it proprietary information.

David Straley, North American Coal, appeared in support. On the coal side, we go through the same issue. We are looking for the state to make sure they get a fair market based price for their coal. Of course, that triggers an audit. That triggers them to come out to look at a lot of paperwork from a lot of different folks. It is easier on us how we keep those records that they come in and do an audit on those. Regarding Rep. Johnson's question, the board does have a fiduciary duty to negotiate in fair and good faith.

Chairman Kasper closed the hearing on 1392.

Rep. Louser moved the Brady Pelton amendment.

Rep. Laning seconded the motion.

Voice vote. Motion carries.

Rep. Louser made a motion for a DO PASS AS AMENDED.

Rep. Schneider seconded the motion.

A roll call vote was taken. 12-0, 2 absent.

Rep. Louser will carry the bill.

January 31, 2019

DP/3/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 11, remove "disclose the record as necessary in an audit report or to"

Page 1, line 12 replace "enforce the terms of the board's lease" with "furnish information to the attorney general, other state agencies, a prosecuting official requiring the information for use in the prosecuting official's official duties, or for legislative investigations under chapter 54-03.2. Confidential information furnished by the board to any third party under this section remains confidential while in the possession of the third party. Confidential information received by the board from any third party under this section remains confidential while in the possession of the board"

Renumber accordingly

Date: 1-31-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1392**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.0990.01001
Brady Pelton Amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Louser Seconded By Rep. Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Pamela Anderson		
Vice Chair Vicky Steiner			Rep. Mary Schneider		
Rep. Jeff Hoverson					
Rep. Craig Johnson					
Rep. Daniel Johnston					
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Karen Rohr					
Rep. Austen Schauer					
Rep. Steve Vetter					

Vote
Vote
motion
carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 1-31-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB1392**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Louser Seconded By Rep. Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	X	
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	A				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	A				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter	X				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Louser

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

REPORT OF STANDING COMMITTEE

HB 1392: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1392 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "disclose the record as necessary in an audit report or to"

Page 1, line 12 replace "enforce the terms of the board's lease" with "furnish information to the attorney general, other state agencies, a prosecuting official requiring the information for use in the prosecuting official's official duties, or for legislative investigations under chapter 54-03.2. Confidential information furnished by the board to any third party under this section remains confidential while in the possession of the third party. Confidential information received by the board from any third party under this section remains confidential while in the possession of the board"

Renumber accordingly

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1392

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

HB1392
2/28/2019
32993

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to confidentiality of records received by the board of university & school lands; provide a penalty.

Minutes:

Att #1- Rep. Zubke; Att #2- Adam Otteson, Att #3 – Brady Pelton;

Chairman Davison: Let's open the hearing for HB1392. The Land Board has a meeting today. We can open it again next week if needed.

Rep. Denton Zubke, Dist 39: I am here to support his bill. (see att # 1) (1.17-4.50)

Adam Otteson, N.D. Dept. of Trust Lands: I am here in support and to read this testimony for Jodi Smith. (see att # 2) (5.05-10.5)

Sen. Erin Oban: If something changes over the course of time, how have we been operating without this confidentiality language? Was there a request of information? Why important now?

Adam: In August 2015, we started doing audits. From those audits, we issued some findings. Some people got interested and we have had lots of requests for information. We reviewed all these with lawyers, and they felt that a lot of information should not be disclosed to the public. We got push back when we redacted stuff.

Chairman Davison: You are changing the law to align with what you are doing now. You believe the intent is there. You are making it more black and white.

Adam: Most of our information is confidential, and we want it in Code. (13.36)

Chairman Davison: Any more in support?

Brady Pelton, N.D. Petroleum Council: (see att # 3) We support this bill. We stand with over 500 companies involved in all aspects of oil and gas. We feel it adds clarity and safe guards in Code on confidential status. Please DO PASS (15.30)

Chairman Davison: Any more in support?

David Straley, North American Coal: We support this bill. (16.02-16.39) We open up our books and we always thought this was confidential. We need clarity. I can answer questions on coal, not oil.

Chairman Davison: Any more in support? Any against? The hearing is closed. (17.23)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

HB1392
3/14/2019
33736

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to confidentiality of records received by the board of university & school lands; provide a penalty.

Minutes:

Chairman Davison: Look at HB1392. This was from Jodi Smith.

Vice Chair Meyer: I move a DO PASS.

Sen. Kristin Roers: I second.

Chairman Davison: Discussion.

Sen. Kristin Roers: Seemed straight forward to me.

Chairman Davison: Take the roll: **YES -- 7 NO -- 0 -0-absent. HB1392 PASSED.**
Sen. Meyer will carry the bill.

(Sen. Marcellais just walked in and voted 'yes'.)

3-14-19

Date:
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES *HB 1392*
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Chair Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	/	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 7 No 0

Absent -0-

Floor Assignment Sen Meyer

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

REPORT OF STANDING COMMITTEE

HB 1392, as engrossed: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1392 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1392

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1-31-19

Testimony to the Governmental and Veterans Affairs Committee
Chairman Kasper
House Bill 1392
Representative Denton Zubke

Good Morning Chairman Kasper and members of the Governmental and Veterans Affairs Committee. My name is Denton Zubke and I am the representative from District 39 which encompasses the counties of Adams, Billings, Bowman, Golden Valley, Slope, McKenzie and parts of Dunn. I am here to support HB 1392.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

Board policies on mineral leasing provides the Department with authority to examine records regarding the determination of royalty payments and revenue compliance by lessees of Board issued leases, as follows:

The cuttings, cores, and well logs of all wells on the leased premises and all books, accounts, receipts, and discharges of all wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the oil and/or gas or other products produced on the leased premises shall at all reasonable times be subject to examination and audit by the commissioner or [commissioner's] representative.

In accordance with Board policies, the Department conducts periodic audits to determine revenue compliance by its lessees. In connection with these audits, the Department requests the lessee submit copies of sales invoices, contracts, operations details, and volume and pricing information. The majority of the information requested is considered confidential by the lessees and is critical to creating and maintaining a competitive advantage in the marketplace. It is not clear, however, if this information would all be considered "confidential" under the North Dakota open records laws, N.D.C.C. ch. 44-04. The Department uses information from the submitted documents to create working papers for compliance analysis, which are included in the final audit report. The Department ensures that the final audit report, related findings, and any attached schedules identify issues in generalities without disclosing any information deemed confidential by the lessee.

The ability to maintain the confidentiality of records submitted by the Department's lessees in connection with revenue compliance audits is crucial. Specifically, it ensures that if a request for

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this information is made, the Department will not be required to disclose information. Any disclosure could impair the Department's future ability to obtain necessary audit information as a release could cause substantial competitive injury to the party who provided the information. This bill is necessary to ensure this information remains protected from public disclosure.

I encourage your support for HB 1392 and will try to answer any questions.

Respectfully

Representative Denton Zubke

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Jodi A. Smith, Commissioner

**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

House Bill 1392

House Government and Veterans Affairs Committee
January 31, 2019

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of House Bill 1392.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the Common Schools Trust Fund.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

The Department's Revenue Compliance Division is responsible for developing and implementing procedures to assure the timely and accurate accounting of all royalties, bonuses, rentals, and other revenues received. A significant amount of time is dedicated to evaluating the accounting and collection of oil and gas royalties.

FORMAL AUDITS

The Department adopted a comprehensive audit program in August 2015. Since then the Department has initiated 45 oil and gas, six salt water disposal, and three coal royalty audits. The Board's policies

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1-31-19

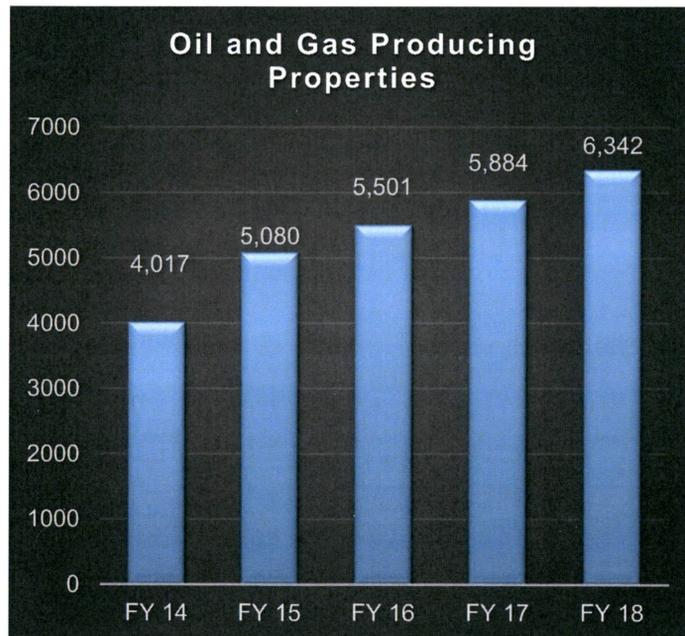
on mineral leasing provides the Department with authority to examine records regarding the determination of royalty payments and revenue compliance by lessees of Board issued leases, as follows:

The cuttings, cores, and well logs of all wells on the leased premises and all books, accounts, receipts, and discharges of all wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the oil and/or gas or other products produced on the leased premises shall at all reasonable times be subject to examination and audit by the commissioner or [commissioner's] representative.

In accordance with Board policy, the Department conducts periodic audits to verify compliance with lease terms by its lessees. In connection with these audits, the Department requests the lessee submit copies of sales invoices, contracts, operations details, and volume and pricing information. The majority of the information requested is considered confidential by the lessees as it includes what they deem to be critical to creating and maintaining a competitive advantage in the marketplace. It is not clear, however, if all of the information provided would be considered "confidential" under the North Dakota open records laws, N.D.C.C. ch. 44-04, specifically whether under N.D.C.C. § 44-04-18.4 the information constitutes trade secrets or commercial, financial, or proprietary information, thereby rendering it accessible to the public pursuant to an open records request. The Department uses detailed information from the submitted documents to create working papers for compliance analysis performed as part of the audit.

OIL AND GAS ROYALTIES

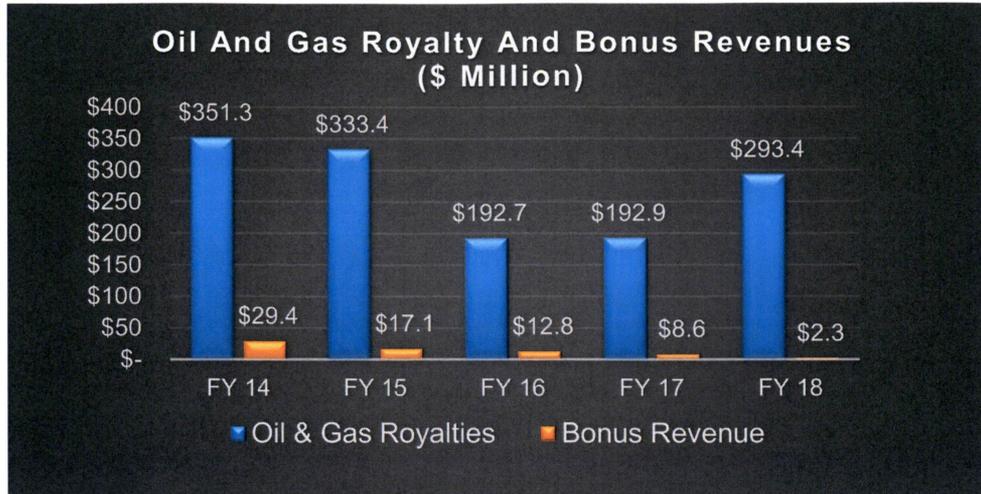
As of June 30, 2018, the Department managed an interest in over 42 percent of the 14,794 producing wells in North Dakota. Production from 6,342 producing properties, including both unitized fields and wells, was monitored during Fiscal Year (FY) 2018, which was up from 5,884 producing properties in FY 2017.



The Department collected oil and gas royalties of approximately \$192.9 million in FY 2017 and \$293.4 million in FY 2018. Bonus revenue received totaled \$8.6 million in FY 2017 and \$2.3 million in FY 2018

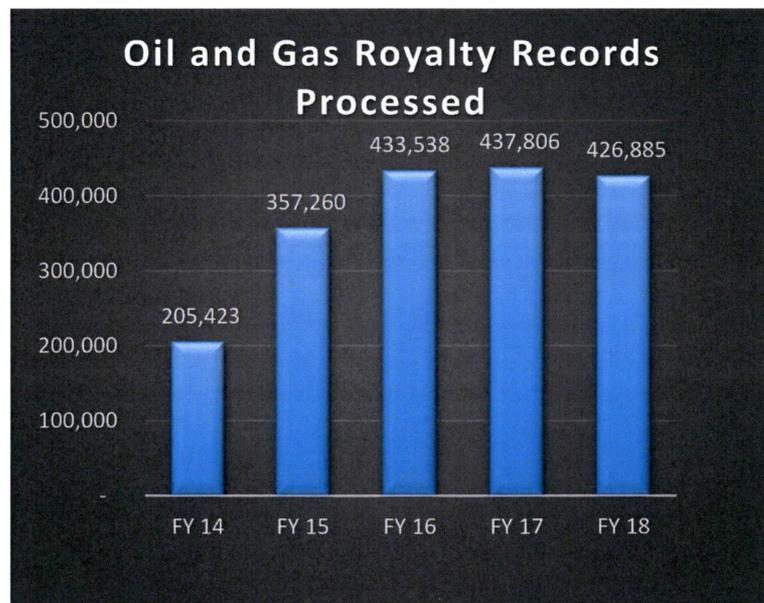
#2
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as the majority of favorable oil and gas production areas were already under lease. Subsequently, as the bonus revenues declined, the oil and gas royalties generally increased due to growth in production and increased oil and gas prices.



PAYMENT RECORDS

The volume of royalty records processed has remained steady over the past three years after several years of unprecedented growth. Royalty records include prior period adjustments and current period payments. Often, multiple transactions will occur on the same statement for the same property due to multiple tracts in the same spacing unit, reporting of various products, and prior period adjustments. Fluctuating oil prices do not have an immediate effect on the volume of royalty records processed.



COLLECTIONS

Royalty data is reviewed for discrepancies in volume, ownership, valuation, and lease terms. Reported volume data is compared with the North Dakota Industrial Commission's data to identify variances. Additionally, division orders and submitted royalty reports are reviewed to identify potential issues. These

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efforts have brought additional revenue to the trusts that may not have otherwise been collected. The enhanced efforts have resulted in additional royalty collections over the prior four fiscal years. The table below details the results of these efforts.

Collections				
	FY 15	FY 16	FY 17	FY 18
Additional Royalties Collected	\$ 2,467,181	\$ 915,778	\$ 295,678	\$ 81,436
Repaid Taxes and Deductions Taken in Error	471,200	353,256	42,580	797,882
Penalties Collected	339,525	486,998	306,473	293,365
Total Collections	\$3,277,906	\$1,756,032	\$644,731	\$1,172,683

The ability to maintain the confidentiality of records submitted by the Department's lessees in connection with revenue compliance audits is crucial. Specifically, it ensures that if a request for this information is made, the Department will not be required to disclose information. Any disclosure could impair the Department's future ability to obtain necessary audit information as a release could cause substantial competitive injury to the party who provided the information. This bill is necessary to ensure this information remains protected from public disclosure.

The Department proposes the following revisions to Page 1, Lines 11 & 12:

A record received by the board of university and school lands from a private entity for purposes of the board's audit of the entity's coal, oil, gas, or other royalty payments to the board is confidential. However, the board may disclose the record as necessary in an audit report or to enforce the terms of the board's lease. However, the commissioner may furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential under chapter 44-04 remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential under chapter 44-04 remains confidential in the commissioner's possession.

I look forward to working with the committee on these issues and would be happy to answer any questions.

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House Bill 1392
Testimony of Brady Pelton
House Government and Veterans Affairs Committee
January 31, 2019

Chairman Kasper and members of the House Government and Veterans Affairs Committee, my name is Brady Pelton, government affairs manager of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 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 1392.

Conceptualized by state Land Commissioner Jodi Smith and the Department of Trust Lands, this bill provides clarity on the confidential status of information submitted to the Board of University and School Lands (“Land Board”) for audit purposes. An amendment to HB 1392, described by Commissioner Smith moments ago, has been drafted by the Petroleum Council and is attached for committee consideration. NDPC has discussed the proposed amendment with the Commissioner, who has indicated support.

The amendment was designed to create clear parameters on how the Land Board may share audit information received from oil and gas producers. The amendment guarantees confidentiality at the moment potentially sensitive information is shared with the Land Board and ensures that the confidentiality of the information runs with it should it be transferred to other necessary third parties. Confidentiality of this type of information is critical to protecting competitive marketplace advantages held by producers.

The North Dakota Petroleum Council respectfully urges this Committee to adopt the proposed amendment and supports a Do Pass as Amended recommendation for House Bill 1392. Thank you, and I would be happy to answer any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

#3
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1-31-19

Page 1, line 11, remove "disclose the record as necessary in an audit report or to"

Page 1, line 12, replace "enforce the terms of the board's lease" with "furnish information to the attorney general, other state agencies, a prosecuting official requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the board to any third party that is confidential under this chapter shall remain confidential in the possession of the third party. Information confidential under this chapter received by the board from any third party shall remain confidential while in the board's possession"

Renumber accordingly

Testimony to the Governmental and Veterans Affairs Committee
Chairman Davison
House Bill 1392
Representative Denton Zubke

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2-28-19
AH #1
pg 1

Good Morning Chairman Davison and members of the Governmental and Veterans Affairs Committee. My name is Denton Zubke and I am the representative from District 39 which encompasses the counties of Adams, Billings, Bowman, Golden Valley, Slope, McKenzie and parts of Dunn. I am here to support HB 1392.

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original

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make copy

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2-28-19
AH #1

pg 2

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I encourage your support for HB 1392 and will try to answer any questions.

Respectfully

Representative Denton Zubke

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Jodi A. Smith, Commissioner

HB 1392
2-28-19
Att #2
Pg 1

**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

House Bill 1392

Senate Government and Veterans Affairs Committee
February 28, 2019

Chairman Davison and members of the Senate Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of House Bill 1392.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

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FORMAL AUDITS

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Att #2

pg. 2

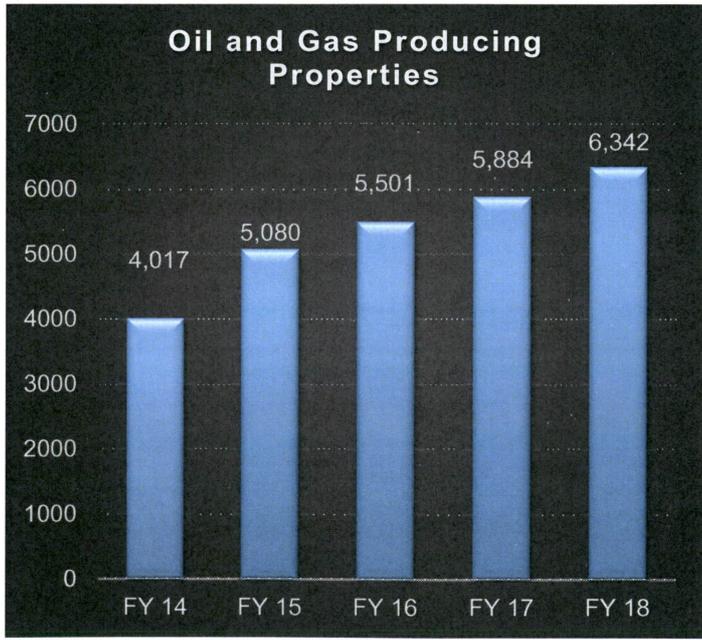
on mineral leasing provides the Department with authority to examine records regarding the determination of royalty payments and revenue compliance by lessees of Board issued leases, as follows:

The cuttings, cores, and well logs of all wells on the leased premises and all books, accounts, receipts, and discharges of all wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the oil and/or gas or other products produced on the leased premises shall at all reasonable times be subject to examination and audit by the commissioner or [commissioner's] representative.

In accordance with Board policy, the Department conducts periodic audits to verify compliance with lease terms by its lessees. In connection with these audits, the Department requests the lessee submit copies of sales invoices, contracts, operations details, and volume and pricing information. The majority of the information requested is considered confidential by the lessees as it includes what they deem to be critical to creating and maintaining a competitive advantage in the marketplace. It is not clear, however, if all of the information provided would be considered "confidential" under the North Dakota open records laws, N.D.C.C. ch. 44-04, specifically whether under N.D.C.C. § 44-04-18.4 the information constitutes trade secrets or commercial, financial, or proprietary information, thereby rendering it accessible to the public pursuant to an open records request. The Department uses detailed information from the submitted documents to create working papers for compliance analysis performed as part of the audit.

OIL AND GAS ROYALTIES

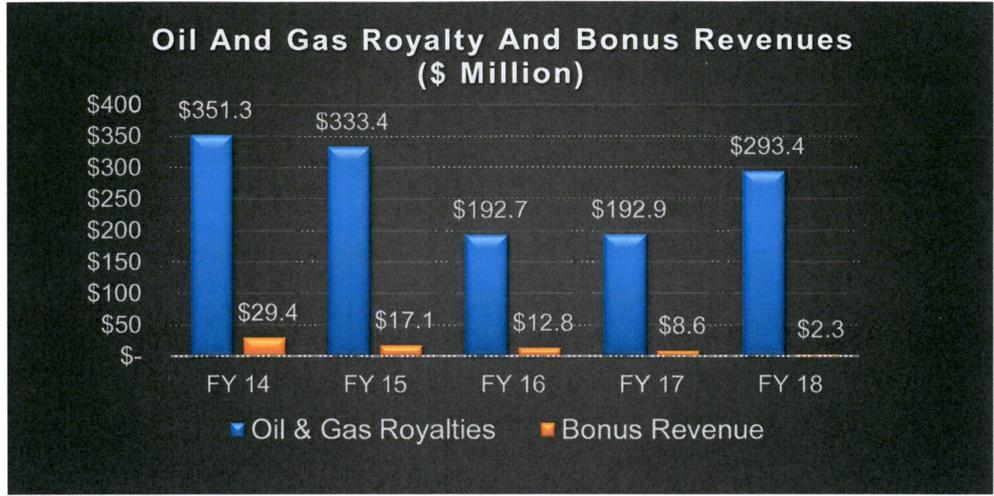
As of June 30, 2018, the Department managed an interest in over 42 percent of the 14,794 producing wells in North Dakota. Production from 6,342 producing properties, including both unitized fields and wells, was monitored during Fiscal Year (FY) 2018, which was up from 5,884 producing properties in FY 2017.



The Department collected oil and gas royalties of approximately \$192.9 million in FY 2017 and \$293.4 million in FY 2018. Bonus revenue received totaled \$8.6 million in FY 2017 and \$2.3 million in FY 2018

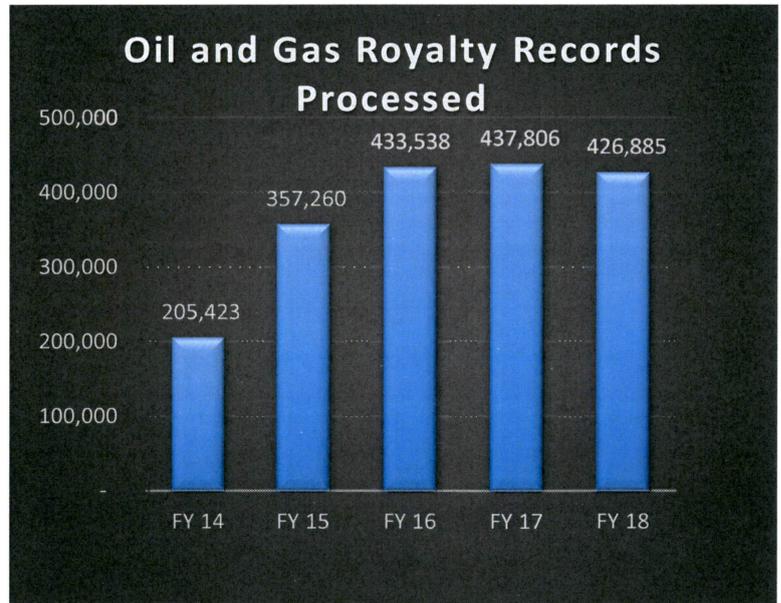
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as the majority of favorable oil and gas production areas were already under lease. Subsequently, as the bonus revenues declined, the oil and gas royalties generally increased due to growth in production and increased oil and gas prices.



PAYMENT RECORDS

The volume of royalty records processed has remained steady over the past three years after several years of unprecedented growth. Royalty records include prior period adjustments and current period payments. Often, multiple transactions will occur on the same statement for the same property due to multiple tracts in the same spacing unit, reporting of various products, and prior period adjustments. Fluctuating oil prices do not have an immediate effect on the volume of royalty records processed.



COLLECTIONS

Royalty data is reviewed for discrepancies in volume, ownership, valuation, and lease terms. Reported volume data is compared with the North Dakota Industrial Commission's data to identify variances. Additionally, division orders and submitted royalty reports are reviewed to identify potential issues. These

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efforts have brought additional revenue to the trusts that may not have otherwise been collected. The enhanced efforts have resulted in additional royalty collections over the prior four fiscal years. The table below details the results of these efforts.

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Collections				
	FY 15	FY 16	FY 17	FY 18
Additional Royalties Collected	\$ 2,467,181	\$ 915,778	\$ 295,678	\$ 81,436
Repaid Taxes and Deductions Taken in Error	471,200	353,256	42,580	797,882
Penalties Collected	339,525	486,998	306,473	293,365
Total Collections	\$3,277,906	\$1,756,032	\$644,731	\$1,172,683

The ability to maintain the confidentiality of records submitted by the Department's lessees in connection with revenue compliance audits is crucial. Specifically, it ensures that if a request for this information is made, the Department will not be required to disclose information. Any disclosure could impair the Department's future ability to obtain necessary audit information as a release could cause substantial competitive injury to the party who provided the information. This bill is necessary to ensure this information remains protected from public disclosure.

The language in House Bill 1392, as approved by the House, was amended from the originally introduced bill. The Department worked with industry partners to ensure amended language is satisfactory to both the State and industry partners.

I look forward to working with the committee on this bill and would be happy to answer any questions.



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Engrossed House Bill 1392

Testimony of Brady Pelton

Senate Government and Veterans Affairs Committee

February 28, 2019

Chairman Davison and members of the Senate Government and Veterans Affairs Committee, my name is Brady Pelton, government affairs manager of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 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 Engrossed House Bill 1392.

Conceptualized by state Land Commissioner Jodi Smith and the Department of Trust Lands, this bill provides clarity on the confidential status of information submitted to the Board of University and School Lands (“Land Board”) for audit purposes. Engrossed House Bill 1392 creates clear parameters on how the Land Board may share audit information received from oil and gas producers. As passed by the House, the bill guarantees confidentiality at the very moment potentially sensitive information is shared with the Land Board and ensures that the confidentiality of the information runs with it should that information be transferred to other necessary third parties.

Confidentiality of this type of information is critical to protecting competitive marketplace advantages held by producers. The North Dakota Petroleum Council therefore respectfully urges this Committee to issue a Do Pass recommendation for Engrossed House Bill 1392. Thank you, and I would be happy to answer any questions.