

**2019 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**

**SB 2212**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2212  
1/31/2019  
Job Number 31934

- Subcommittee  
 Conference Committee

Committee Clerk: Marne Johnson

### Explanation or reason for introduction of bill/resolution:

A bill relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri project dams.

### Minutes:

2 Attachments

**Chair Unruh:** Opened the public hearing.

**Senator Brad Bekkedahl, District 1 (0:10-2:07) Introduced the bill, please see attachment #1.** This is to help clear up and audit problems they have, the department is trying to manage the resources on behalf of the state of North Dakota at time they have some issues with that, Jodie Smith will be able to explain further how her department managed it. I know that Industry has some concerns with this bill, I've talked to them and asked them to be here today.

**Jodie Smith, Commissioner and Secretary, Board of University and School Lands (2:25-6:16) Testified in favor, please see attachment #2.**

**Senator Piepkorn:** When we're talking about Department of Land Trusts?

**Jodie Smith:** Yes.

**Senator Piepkorn:** Who are the lessees, why the slowness? Are they individuals, corporations?

**Jodie Smith:** There are several reasons. We recognize there may be staffing issues with the operators, but when we're been waiting years for compliance from our operators and we're still unable to acquire the information we need. The only recourse that we have is to pull a lease, and that has direct implications on the economy of the state of North Dakota just because we have interest in so many wells. We really don't have any other tools in our belt other than litigation or to pull the lease, so we're looking for additional tools to work with the operators to make sure they come into compliance. The majority of them are in compliance, 20% are struggling to provide us with the documentation necessary, we'd like to be able to

work with those operators and just penalize them for being out of compliance versus pulling the leases from.

**Ron Ness, North Dakota Petroleum Council (8:20) Testified in opposition.** I started my career 30 years ago as a tax collector. We had people who didn't pay their income, sales, withholding, tax. We had no tools such as a \$5,000 per day fine, 31 days after the request. We were waiting years for major tax filings with other people's money. This isn't a tool; this is a sledgehammer. 30 days for these types of records. I suspect with a strong email we could make some headway with that 20% list. The people I reached out to had no idea. This is way above and beyond, there has to be a better way than \$5,000 penalty per day starting on day 31. Some of these requests are quite big. We request support from federal agencies as well, and it takes an awful long time sometimes. I think it's a wrong message to customers who contribute tens of thousands to billions of dollars into the trust fund, and we're going to punish them at \$5,000 a day or take their lease. I think there's a better answer. I urge the agency to contemplate an amendment that provides them a tool not a sledgehammer. Without that we're all in against this particular piece of legislation.

**Senator Piepkorn:** I can understand the severity of the penalty, and you're objecting to that, but this is news? That these lessees didn't know they weren't complying.

**Ron Ness:** News to me. I'm not the one getting these notices. Some of them certainly know or don't know. Imagine a system where you're on day 5 of noncompliance, you own us \$25,000. If we're going to do this, let's do it to all lessees. I assume farmers and ranchers who lease state lands have reports they have to file. I think everybody should get it. In addition, I believe the State Department of School Land Trusts has abandoned reclaimed lands, those have to be sent at a certain time, let's charge them \$5,000 a day for not following the mandate as well.

No neutral agency testimony.

**Chair Unruh:** Closed the public hearing.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2212  
2/14/2019  
Job Number 32742

- Subcommittee  
 Conference Committee

Committee Clerk: Marne Johnson

### Explanation or reason for introduction of bill/resolution:

A bill relating to authorization for the board of university and schools lands to impose a civil penalty for failure to produce records; and to provide a penalty.

### Minutes:

1 Attachment

**Chair Unruh:** Let's take a look at Senator Bekkedahl's introduction to the bill, he talks about what it is and why it was necessary. It deals with mineral leasing with the Department of Trust Lands and their authority to examine records regarding determination of royalty payments and revenue compliance by the board. We heard from the Commissioner about how difficult it has been to get some of this information and payments from these companies, in order to get some of that information, they had proposed a \$5000 per day fine until the records were made available. That was after 30 days of receiving notice from the board. What the amendments do (**please see attachment #1**), this was worked on extensively between industry and the Commissioner to try to come up with something that was feasible and reasonable. We didn't quite get there, but we got close. What we have in the amendments is a reasonable proposal. We've extended the point where this kicks in from 30 days to 90 days, and reduced the fee to \$1000 from \$5000. This is in line with the fee in Texas. Every other state has some type of penalty for these types of violations, I think it's appropriate for us to have something in code. I do think this is reasonable, although I'm sure it will continue to be worked on, if we get it passed out.

**Senator Piepkorn:** Can you expound on what you mean when you say 'we didn't quite get there'?

**Chair Unruh:** These amendments make both sides not super happy. Not that anybody is kicking and screaming, I didn't get a green light from either party, but I didn't get a huge red light from either party, either. Both were satisfactorily unsatisfied.

**Senator Piepkorn:** That's probably not a bad reaction.

**Senator Cook:** I move to adopt the amendment ending in .01001.

**Senator Roers:** I second.

Senate Energy and Natural Resources Committee  
SB 2212  
2/14/19  
Page 2

A voice vote was taken.  
Motion carries.

**Senator Roers:** Moved a Do Pass as Amended.  
**Senator Piepkorn:** I second.

A roll call vote was taken.  
Motion passes 6-0-0.

**Senator Piepkorn will carry.**  
**Chair Unruh:** Closed the meeting.

February 8, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2212

Page 2, line 12, replace the second "and" with ", the board shall send a letter to"

Page 2, line 12, remove "does"

Page 2, line 13, replace "not make the records" with "requesting the information necessary to conduct the board's audit together with the information"

Page 2, line 13, replace "available to" with ". The letter must be sent by registered mail, return receipt requested. If the requested information is not received by"

Page 2, line 13, replace "thirty" with "ninety"

Page 2, line 14, replace "receiving notice from the board" with "the date of receipt of the letter"

Page 2, line 14, replace "five" with "one"

Page 2, line 15, after "day" insert ", as determined by the board pursuant to board policies."

Page 2, line 15, after the underscored period insert "Each day's violation is a separate offense. The board, for good cause shown, may waive all or any part of the penalty provided by this subsection. A penalty paid under this section must be deposited in the common schools trust fund."

Renumber accordingly

Date: 2/14  
 Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2212**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0596.01001

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. Cook    Seconded By Sen. Roers

| Senators                | Yes | No | Senators                 | Yes | No |
|-------------------------|-----|----|--------------------------|-----|----|
| Senator Jessica Unruh   |     |    | Senator Merrill Piepkorn |     |    |
| Senator Curt Kreun      |     |    |                          |     |    |
| Senator Donald Schaible |     |    |                          |     |    |
| Senator Dwight Cook     |     |    |                          |     |    |
| Senator Jim Roers       |     |    |                          |     |    |
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Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote  
 Motion Carries*

Date: 2/14  
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2212

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0596.01001

- 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. Roers Seconded By Sen. Piepkorn

| Senators                | Yes | No | Senators                 | Yes | No |
|-------------------------|-----|----|--------------------------|-----|----|
| Senator Jessica Unruh   | X   |    | Senator Jim Roers        | X   |    |
| Senator Curt Kreun      | X   |    | Senator Merrill Piepkorn | X   |    |
| Senator Donald Schaible | X   |    |                          |     |    |
| Senator Dwight Cook     | X   |    |                          |     |    |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Piepkorn

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

**REPORT OF STANDING COMMITTEE**

**SB 2212: Energy and Natural Resources Committee (Sen. Unruh, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2212 was placed on the Sixth order on the calendar.

Page 2, line 12, replace the second "and" with ", the board shall send a letter to"

Page 2, line 12, remove "does"

Page 2, line 13, replace "not make the records" with "requesting the information necessary to conduct the board's audit together with the information"

Page 2, line 13, replace "available to" with ". The letter must be sent by registered mail, return receipt requested. If the requested information is not received by"

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Page 2, line 14, replace "five" with "one"

Page 2, line 15, after "day" insert ", as determined by the board pursuant to board policies."

Page 2, line 15, after the underscored period insert "Each day's violation is a separate offense. The board, for good cause shown, may waive all or any part of the penalty provided by this subsection. A penalty paid under this section must be deposited in the common schools trust fund."

Re-number accordingly

**2019 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2212**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2212  
3/7/2019  
33407

- Subcommittee  
 Conference Committee

Committee Clerk, Kathleen Davis by Marjorie Conley

### Explanation or reason for introduction of bill/resolution:

Relating to authorization for the board of university and school lands to impose a civil penalty for failure to produce records; and provide a penalty

### Minutes:

Attachment 1,2

**Chairman Porter:** Opened the hearing on SB 2212.

**Sen. Bekkedahl:** Presented **Attachment 1**.

**Rep. Keiser** I support the idea. I can't believe we even have to do this. How big of a problem is this?

**Sen. Bekkedahl:** You're right. 20% of these go non responded to.

**Jodi Smith, Commissioner of University and School Lands, ND Dept of Trust Lands:** presented **Attachment 2**. In support.

12:20

**Rep. Keiser:** if we cancel the lease, as I understand we might lose out. What provision is there other than canceling the lease and they don't willingly participate?

**Jodi Smith:** There is none other than to take them to court through the litigation process.

**Rep. Keiser:** But we could litigate and recover?

**Jodi Smith:** We could.

**Chairman Porter:** Questions? Further support? Opposition?

In opposition.

**Ron Ness, ND Petroleum Council:** We have been working trying to get the list of lessees.

**Jodi Smith:** We have 80 operators. We are currently in audit of 45 of those, 21% are out of compliance. When we are in an active audit we are not allowed to release that information. We try to partner with Ron Ness on these issues.

**Ron Ness:** 80 operators, let say they've lease to someone else, who has leased to someone else... that person is no longer with the company. Once we're able to find out who it is, the penalty even at \$1000 a day has no appeal. We've suggested certified letters. The Dept. of Mineral Trust, not a formal appeal process. I think \$1000 a day is too high. Maybe a 10 day notice that the penalty will begin in 60 days. We had looked at a judicial subpoena, more legal work for them but you do get your records.

**Rep. Keiser:** If I understood, School trust Lands, frequently only owns part of that total royalty of the payment. Does that mean that the others are not being paid?

**Ron Ness:** It could be any fraction of any lease that is out there. It could be sub divided, sub divided and sub divided again. This is just about audit records.

**Chairman Porter:** questions? Further testimony in opposition? Commissioner please come back up here.

18:00

**Jodi Smith:** It is a little bit complicated because we do receive payment. We are auditing those payments. Sometimes we disagree with payments whether we believe we are being under paid. Sometimes we are overpaid and we issue a refund back to the operator, based off our assessment of those royalty statements. We try to work with the operators.

**Rep. Keiser:** You said that if there's an issue you're in contact on a daily basis. If that's true, why aren't they sending in the information?

**Jodi Smith:** Usually it works really well. We do feel if we could assess a penalty that would be to our benefit. Our goal is not to cancel a lease. When we start cancelling those leases, it could have an impact on the taxes on the state of ND and the production that occurs here, so we are asking for another tool in our box and that we can work with all these operators and get them in compliance at this date.

**Chairman Porter:** Mr. Ness brought up subpoenas. Why not?

**Jodi Smith:** That puts the burden on us and I'd like to keep us out of court. The attorney general's office would issue that, it's not our first choice to do that.

**Rep Heinert:** Utilizing the courts, wouldn't that put out word that you're serious if you did that to a couple of them?

**Jodi Smith:** 23:30 Recently we assessed a fee for \$36,000 and they didn't even call to negotiate. The midsize operators if you assess them and cancelling leases, word will get out we're serious.

**Rep. Keiser:** When do you see assessing a fee?

**Jodi Smith:** Currently we send a certified letter to the operators, they have 90 days. After the 90 days we don't have any recourse if they're not providing that material. Under this new process we would issue a letter and it would be delivered by certified mail. They would have 60 business days to respond to that and get us the information. The board policy gives us a little room. I would like to see an escalating fee. I like the way Texas does this so for the first 30 or 60 days the fee would be at a lower amount and would escalate up to \$1,000. We would cap that at \$300,000. We feel that it we would give them more than a year to get in compliance. After they hit the cap of \$300,000, we would pull their lease.

**Chairman Porter:** Are we to take your proposed amendments as he proposed negotiations between you and Mr. Ness?

**Jodi Smith:** Yes sir.

Closed the hearing

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2212  
3/21/2019  
34076

- Subcommittee  
 Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to authorization for the board of university and school lands to impose a civil penalty for failure to produce records; and provide a penalty

### Minutes:

Attachment 1

**Chairman Porter:** Opened the hearing on SB 2212. Presented Attachment 1. The Petroleum Council and the Land Department agreed to disagree all the way to the end. I had an amendment drafted and moved the 90 back to 60, put a maximum of \$3000, and a subpoena power the board has. One of the things the commission asked for was the ability to do some of this outside of the board. All of the power in this chapter resides with the board and they have to assign the commissioner to do the work. None of the authority rests in the commissioner without going to the board. It gives them a civil subpoena they can serve on the person who is not providing the requested information. 60 business days and max penalty. Discussion?

**Rep. Devlin:** They apparently don't have subpoena power at this time?

**Chairman Porter:** they do not.

**Rep. Devlin:** what other agencies do we allow to have subpoena power or other state boards?

**Chairman Porter:** I don't have an answer for that.

**Rep. Keiser:** Very few. I can't give you the list.

**Chairman Porter:** Workers Comp does. The Insurance Commissioner does.

**Rep. Keiser:** Securities and Exchange.

**Chairman Porter:** I would say also the regulatory like DEQ would have it to get records on a spill or hazardous incident. I was looking at it from a standpoint, apparently for some bad operators inside of their lease obligation with the state, the state wasn't keen on canceling and going to the next level and the operators weren't really keen on complying with their lease to give up the records. I thought one more tool in their toolbox would give them a little bit of a hammer before they outright cancel the lease for failure to comply. The audits are directly related to leases and operations where they want to look and make sure there isn't an extra barrel going to their retirement fund that's supposed to be paid out to the state.

**Rep. Devlin:** If we didn't give them this power, what would be their procedure? Go to the Attorney General? This hasn't come up very often in my legislative career and I'm a little uncomfortable.

**Chairman Porter:** The procedure would be inside the existing law in 47-16.39 in the bill, they could take them for contract breach to district court. In the testimony, what I'm trying to avoid is that they do that and hold them in breach and try to give them a tool to give them a little more muscle to get the requested records to do their job and audit. They have one option now and that's take them to court to get the records. We're painting with a big brush for a couple bad actors.

**Rep. Keiser:** I have some concerns as well. I wonder if we couldn't restate it that the attorney general upon request of the board may, and leave the authority with the attorney general. That's a legal question and maybe we can research it further to see if there's an advantage to doing that because they have that authority upon the request of.

**Chairman Porter:** My only argument is we're not giving this authority to the commissioner, we're giving the authority to the board and the attorney general sits on the board. To issue the civil subpoena is a board action after all of the methods have been exhausted.

**Rep. Roers Jones:** My concern is the idea that this is just a couple bad actors; from the testimony we heard that it was more than 20% of the lessors were out of compliance and the average length of being out of compliance was 422 days. I think this is a problem, some of the people gaming the system relating to unemployment insurance. I'm not saying everyone is doing that. It seems there's no teeth for the Land Department to enforce or force these industries to comply. I'm wondering if we leave them with the subpoena power it's better than nothing. I like the idea of a penalty and having an accumulative affect so there's some incentive to not only comply but to comply quickly. If we're talking about people, then 20% of the industry being more than a year out of compliance, we're talking about people having something they're trying to hide.

**Chairman Porter:** further discussion? We'll lay this aside and get some answers on Rep. Keiser questions. Closed the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2212  
3/28/2019  
34328

- Subcommittee  
 Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to authorization for the board of university and school lands to impose a civil penalty for failure to produce records; and provide a penalty

### Minutes:

Attachment 1

**Chairman Porter:** Opened the hearing on SB 2212.

**Rep. Devlin:** presented Attachment 1- Amendment 19.0596.02002. Met with the Attorney General's office and the amendment was drafted by Legislative Council. The original was for the board to have subpoena power and some of us resisted that. The attorney general said that wasn't what they we're looking for. He would bring a case if needed. They're just trying to clean it up to get these records in order to get the payments. I think it's self-explanatory. The only thing the committee may want to talk about is the penalties in Subsection A are at \$2000 a day. The original language was \$1000 a day. That was a sum we talked about in his office. It's up to this committee if it should be more or less.

**Chairman Porter:** we're at a point where someone has refused all reasonable approaches to do what they're mandated to do by law. \$2000 per day is a hefty fine but they're totally ignoring their contract.

**Rep. Devlin:** it also serves as a deterrent. I will move the Amendment 19.0596.02002.

**Rep. Keiser:** second.

**Chairman Porter:** we have a motion and a second to amendment SB 2212 with version 2002. Discussion? Voice vote, motion carried.

**Rep. Devlin:** I would move a Do Pass as Amended SB 2212.

**Rep. Keiser:** second.

**Chairman Porter:** we have a motion and a second for a Do Pass as Amended to SB 2212. Discussion? Roll call vote: 13 yes, 0 no, 1 absent. Rep. Roers Jones is carrier.

DO 3/28/19

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2212

Page 1, line 2, replace "authorization for" with "the inspection of production and royalty payment records by"

Page 1, line 2, remove "to impose a civil penalty"

Page 1, line 3, remove "for failure to produce records"

Page 2, line 12, remove ", the board shall send a letter to the person"

Page 2, replace lines 13 through 21 with ":

- a. The records in subsection 1 must be sent electronically, or in a manner acceptable to the board, to a location designated by the board.
- b. Notwithstanding subsection 2, at the discretion of the board, a proceeding brought under this section may be brought in the district court of Burleigh County or in the county in which the oil or gas well is located.
4. If the board of university and school lands is successful in any proceeding brought under this section, the district court shall allow the board to recover court costs; reasonable costs, fees, disbursements, and expenses incurred by the board in inspecting the copying the oil and gas production and royalty payment records of the person obligated to pay royalties under the lease; and reasonable attorney's fees.
  - a. The district court also shall assess a civil penalty of two thousand dollars per day for each day the person obligated to pay royalties under the lease failed to send the oil and gas royalty payment and production records to the board in accordance with subsection 1.
  - b. The civil penalty under subdivision a ceases to accrue on the date the proceedings are initiated under subsection 1."

Renumber accordingly

Date: 3-28-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2212**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0596 .02002

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 Devlin    Seconded By Rep Keiser

| Representatives        | Yes | No | Representatives  | Yes | No |
|------------------------|-----|----|------------------|-----|----|
| Chairman Porter        |     |    | Rep. Lefor       |     |    |
| Vice Chairman Damschen |     |    | Rep. Marschall   |     |    |
| Rep. Anderson          |     |    | Rep. Roers Jones |     |    |
| Rep Bosch              |     |    | Rep. Ruby        |     |    |
| Rep. Devlin            |     |    | Rep. Zubke       |     |    |
| Rep. Heinert           |     |    |                  |     |    |
| Rep. Keiser            |     |    | Rep. Mitskog     |     |    |
|                        |     |    | Rep. Eidson      |     |    |
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Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment voice vote.    Motion carried

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

Date: 3-28-19  
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2212**

House Energy and Natural Resources 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 Devlin    Seconded By Rep Keiser

| Representatives        | Yes | No | Representatives  | Yes | No |
|------------------------|-----|----|------------------|-----|----|
| Chairman Porter        | ✓   |    | Rep. Lefor       | ✓   |    |
| Vice Chairman Damschen | ✓   |    | Rep. Marschall   | ✓   |    |
| Rep. Anderson          | ✓   |    | Rep. Roers Jones | ✓   |    |
| Rep. Bosch             | ✓   |    | Rep. Ruby        | ✓   |    |
| Rep. Devlin            | ✓   |    | Rep. Zubke       | ✓   |    |
| Rep. Heinert           | AB  |    |                  |     |    |
| Rep. Keiser            | ✓   |    | Rep. Mitskog     | ✓   |    |
|                        |     |    | Rep. Eidson      | ✓   |    |
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Total (Yes) 13    No 0

Absent 1

Floor Assignment Rep. Roers Jones

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

**REPORT OF STANDING COMMITTEE**

**SB 2212, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2212 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "authorization for" with "the inspection of production and royalty payment records by"

Page 1, line 2, remove "to impose a civil penalty"

Page 1, line 3, remove "for failure to produce records"

Page 2, line 12, remove ", the board shall send a letter to the person"

Page 2, replace lines 13 through 21 with ":

- a. The records in subsection 1 must be sent electronically, or in a manner acceptable to the board, to a location designated by the board.
  - b. Notwithstanding subsection 2, at the discretion of the board, a proceeding brought under this section may be brought in the district court of Burleigh County or in the county in which the oil or gas well is located.
4. If the board of university and school lands is successful in any proceeding brought under this section, the district court shall allow the board to recover court costs; reasonable costs, fees, disbursements, and expenses incurred by the board in inspecting the copying the oil and gas production and royalty payment records of the person obligated to pay royalties under the lease; and reasonable attorney's fees.
- a. The district court also shall assess a civil penalty of two thousand dollars per day for each day the person obligated to pay royalties under the lease failed to send the oil and gas royalty payment and production records to the board in accordance with subsection 1.
  - b. The civil penalty under subdivision a ceases to accrue on the date the proceedings are initiated under subsection 1."

Renumber accordingly

**2019 TESTIMONY**

**SB 2212**

Senate Energy and Natural Resources Committee  
January 31, 2019  
Honorable Senator Jessica Unruh, Chair  
Senate Bill 2212  
Testimony by Senator Brad Bekkedahl

Chair Unruh and Committee,

My name is Brad Bekkedahl, Senator from District 1, Williston and I am honored to introduce a couple of bills at the request of the Department of Trust Lands. The Department of Trust Lands is the administrative arm of and serves under the Board of Trust Lands. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and the Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent education 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:

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Moreover, by putting the lessees on notice of these potential consequences, the Department anticipates an increase in lessees' cooperation with the Department's efforts to ensure compliance with the terms of its lease. For these reasons Chair Unruh, I respectfully request a committee recommendation of Do Pass for SB 2212. Thank you for your attention and before I turn the podium over to Jodi Smith, the Commissioner of the Department of Trust Lands, I will now stand for any questions you may have.

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Jodi A. Smith, Commissioner

**TESTIMONY OF JODI SMITH**  
**Commissioner of University and School Lands**  
**North Dakota Department of Trust Lands**

**Senate Bill 2212**

Senate Energy and Natural Resources Committee  
January 31, 2019

Chairman Unruh and members of the Senate Energy and Natural Resources 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 Senate Bill 2212.

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.

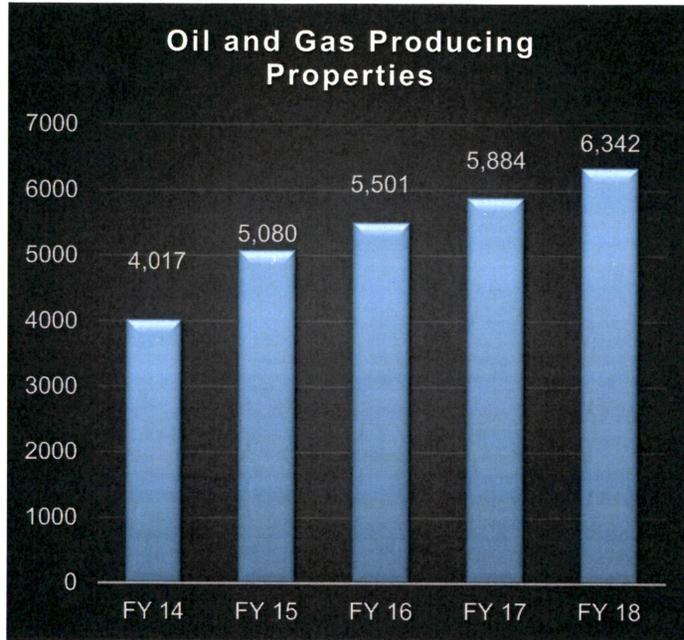
Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The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

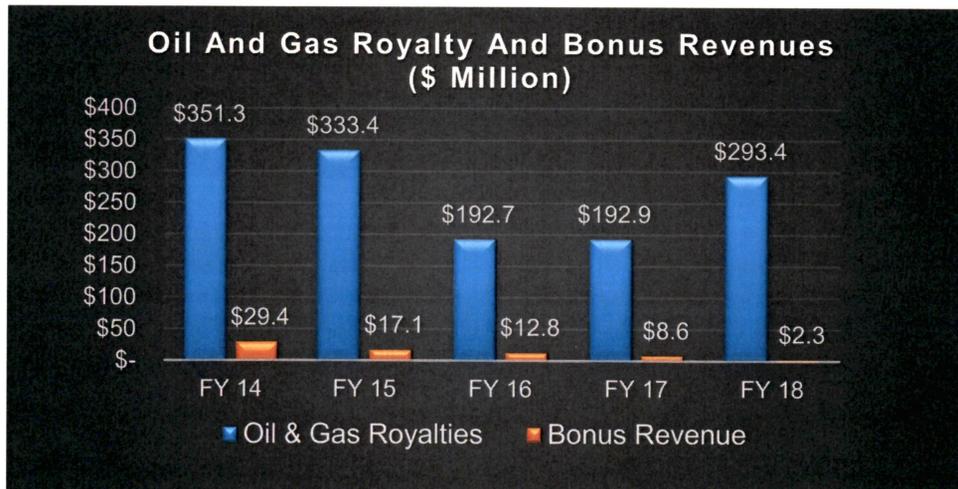
SB 2212  
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### OIL AND GAS ROYALTIES

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.



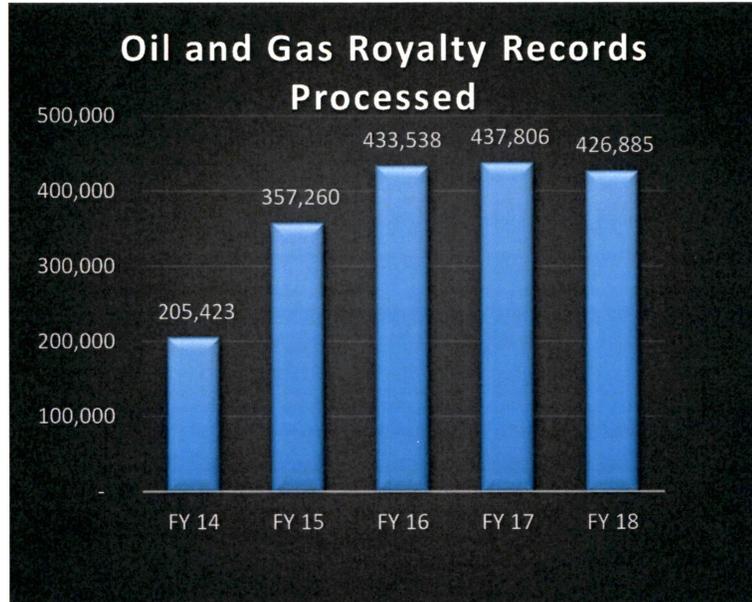
The Department collected oil and gas royalties of approximately \$192.9 million in FY 2017 and \$293.4 million in FY 2018. Bonus revenue received totaled \$8.6 million in FY 2017 and \$2.3 million in FY 2018 as the majority of favorable oil and gas production areas were already under lease. Subsequently, as the bonus revenues declined, the oil and gas royalties generally increased due to growth in production and increased oil and gas prices.



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**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 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          |
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## 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 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:

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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. Of the audits conducted by the Department, 20% of the auditees have not provided requested documents in a timely manner.

If a lessee fails or refuses to provide the requested information, the Department has little recourse under its lease and leasing policies other than to bring formal litigation or terminate the lease. The authority to impose a statutory penalty for failure to provide information requested under N.D.C.C. § 47-16-39.2 would establish consequences for failure to comply with the Department's request. It is anticipated these consequences would lead to increased cooperation by the lessees, with resulting increased compliance with the Board's lease, allowing the Department to complete its compliance audits in an orderly and timely manner.

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

SB 2212  
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#1

19.0596.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Unruh

February 8, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2212

Page 2, line 12, replace the second "and" with ", the board shall send a letter to"

Page 2, line 12, remove "does"

Page 2, line 13, replace "not make the records" with "requesting the information necessary to conduct the board's audit together with the information"

Page 2, line 13, replace "available to" with ". The letter must be sent by registered or certified mail, return receipt requested. If the requested information is not received by"

Page 2, line 13, replace "thirty" with "ninety"

Page 2, line 14, replace "receiving notice from the board" with "the date of receipt of the letter"

Page 2, line 14, replace "five" with "one"

Page 2, line 15, after "day" insert ", as determined by the board pursuant to board policies."

Page 2, line 15, after the underscored period insert "Each day's violation is a separate offense. The board, for good cause shown, may waive all or any part of the penalty provided by this subsection. A penalty paid under this section must be deposited in the common schools trust fund."

Renumber accordingly

**House Energy and Natural Resources Committee****March 7, 2019 2:00 PM****Honorable Representative Todd Porter, Chair****Senate Bill 2212****Testimony by Senator Brad Bekkedahl**

Chairman Porter and Committee,

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**Senate Bill 2212**

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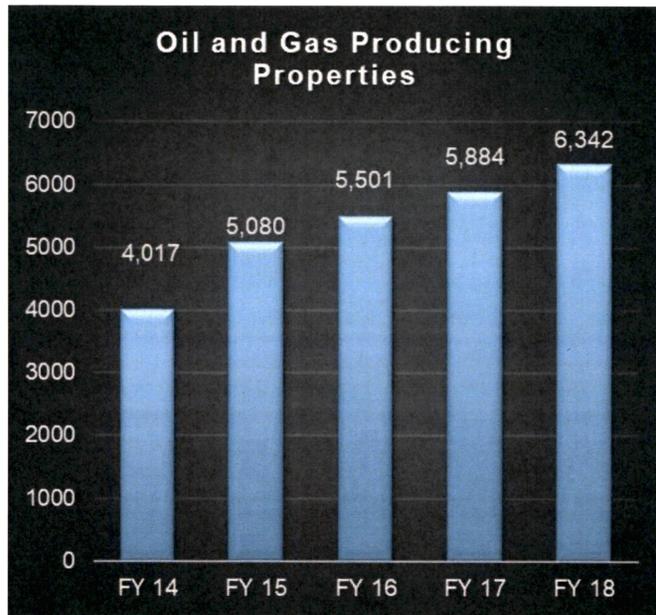
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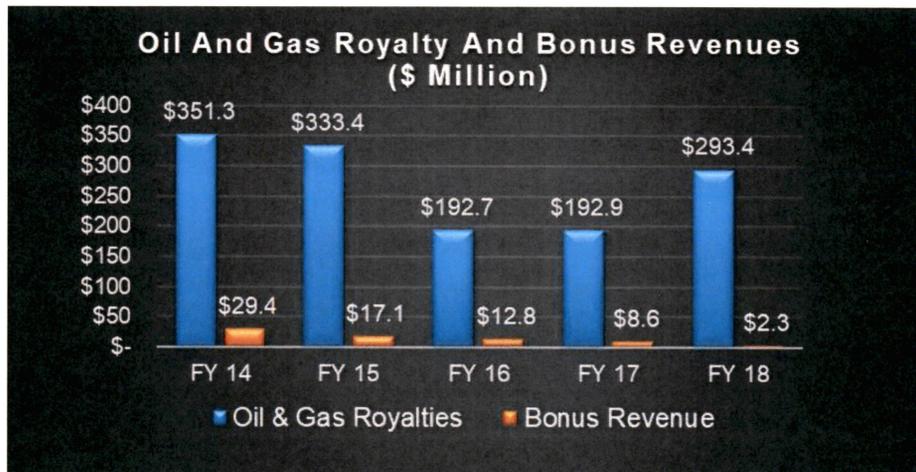
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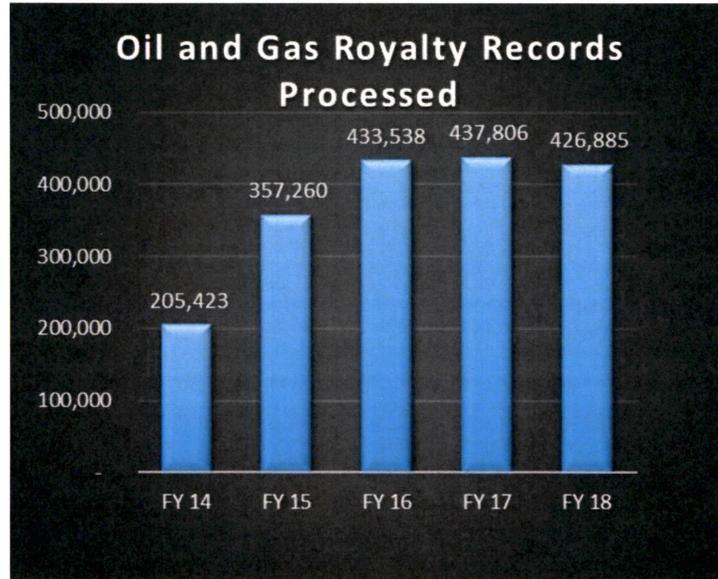


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Page 4 of 5  
Testimony of Jodi Smith  
March 7, 2019

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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. Of the audits conducted by the Department, 21% of the auditees have not provided requested documents in a timely manner. For example in August 2015, the Department issued a letter to an operator requesting documentation relating to an audit of its royalty statements. The requested information was not received until July 2018, despite numerous communications between the operator and the Department, including meetings to address the operator's lack of response.

If a lessee fails or refuses to provide the requested information, the Department's only recourse under its lease and leasing policies is to bring formal litigation or terminate the lease. The Department requested Senate Bill 2212 to establish a penalty for a lessee's failure to comply with the Department's request for information under N.D.C.C. § 47-16-39.2. As the Department's proposed penalty of up to \$5,000 per day was met with opposition, the Department agreed to lower the daily penalty amount to up to \$1,000 per day, an 80% reduction from the Department's initial request. Additionally, the Department worked with industry leaders to determine an appropriate timeframe for penalty assessment. It was determined that 60 business days is a sufficient timeframe for operators to provide the requested documentation and penalties would be assessed if the requested documentation is not received within the 60 business days.

The Department's request for the ability to assess a penalty will align the State with the Federal Office of Natural Resources Revenue regulations, 30 C.F.R. § 1241. Those regulations provide a cure period of at least 20 days for regulatory violations, such as failure to submit reports, after issuance of a Notice of Non Compliance (NONC). For any violation not corrected within 40 days after service of the NONC, the penalty may be imposed up to a maximum of \$12,211 per day for each violation.

Additionally, Texas law requires:

The commissioner may assess an administrative penalty against a lessee who fails to produce requested information in the time required under Subsection (a-1) or (a-2) by intentionally withholding information to which the land office is legally entitled. The penalty may not exceed:

(1) \$100 a day for each day after the deadline for producing the information that the lessee fails to produce the information until the 60<sup>th</sup> day after the deadline; and

(2) \$1,000 per day for each day after the 60<sup>th</sup> day after deadline for producing the information that the lessee fails to produce the information.

V.T.C.A., Natural Resources Code § 52.135(e).

It is anticipated the proposed penalty would lead to increased cooperation by the lessees, with resulting increased compliance with the Board's lease, allowing the Department to complete its compliance audits in an orderly and timely manner.

The Department proposes the following revisions to Page 2, Lines 16 – 20:

3. If a royalty owner, a royalty owner's assignee, or a designated representative is the board of university and school lands, the board shall send a letter to the person obligated to pay royalties requesting the information necessary to conduct the board's audit together with the information outlined in subsection 1. The letter must be sent by registered mail, return receipt requested. If the requested information is not received by the board within ~~ninety-sixty~~ business days of the date of receipt of the letter, the board may impose a civil penalty of up to one thousand dollars per business day, as determined by the board pursuant to board policies, until the records are made available, except that the maximum cumulative civil penalty under this section may not exceed a total of three hundred thousand dollars. Each day's violation is a separate offense. A business day is every day that is not a Saturday or legal holiday under N.D.C.C. § 1-03-01. The board, for good cause shown, may waive all or any part of the penalty provided by this subsection. The commissioner of university and school lands shall maintain all other authority vested under statute, regulation, rule, or policy notwithstanding the imposition of penalties under this section. A penalty paid under this section must be deposited in the common schools trust fund.

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2212

Page 1, line 2, after the second "to" insert "subpoena witnesses and records and"

Page 2, line 16, replace "ninety" with "sixty business"

Page 2, line 17, after "per" insert "business"

Page 2, line 18, after "available" insert ", except the maximum, cumulative civil penalty under this section may not exceed three thousand dollars"

Page 2, line 18, remove "Each day's"

Page 2, line 19, remove "violation is a separate offense."

Page 2, after line 21, insert:

"4. The board of university and school lands may issue a subpoena to compel the attendance of a witness to testify in relation to a lease for which the board is the royalty owner, royalty owner's assignee, or designated representative, or in any other matter related to subsection 3. The board may administer an oath or affirmation to any witness appearing before the board. The board also may issue a subpoena duces tecum to any person to compel the production of information and records included in subsections 1 and 3. A witness compelled to testify by a subpoena issued under this subsection is entitled to receive from the board the same fees and mileage as a witness testifying in a district court of this state. If a person refuses to obey a subpoena issued under this subsection, the district court, upon application by the board, may issue to the person an order requiring the person to appear and give evidence or to produce records requested by the board."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2212

Page 1, line 2, replace "authorization for" with "the inspection of production and royalty payment records by"

Page 1, line 2, remove "to impose a civil penalty"

Page 1, line 3, remove "for failure to produce records"

Page 2, line 12, remove ", the board shall send a letter to the person"

Page 2, replace lines 13 through 21 with ":

- a. The records in subsection 1 must be sent electronically, or in a manner acceptable to the board, to a location designated by the board.
  - b. Notwithstanding subsection 2, at the discretion of the board, a proceeding brought under this section may be brought in the district court of Burleigh County or in the county in which the oil or gas well is located.
4. If the board of university and school lands is successful in any proceeding brought under this section, the district court shall allow the board to recover court costs; reasonable costs, fees, disbursements, and expenses incurred by the board in inspecting the copying the oil and gas production and royalty payment records of the person obligated to pay royalties under the lease; and reasonable attorney's fees.
- a. The district court also shall assess a civil penalty of two thousand dollars per day for each day the person obligated to pay royalties under the lease failed to send the oil and gas royalty payment and production records to the board in accordance with subsection 1.
  - b. The civil penalty under subdivision a ceases to accrue on the date the proceedings are initiated under subsection 1."

Renumber accordingly