2019 SENATE ENERGY AND NATURAL RESOURCES

SB 2274

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2274
1/24/2019
Job Number 31375

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to integration of fractional tracts; and to provide a penalty.

Minutes: No Attachments

Chair Unruh: Opened the hearing.

Ron Ness, North Dakota Petroleum Council (0:50-7:00) This is a complex topic, and one that the 2003 Legislature decided early on to pass this bill, in an attempt to encourage oil and gas activity, and ensure that all partners weren't writing down the cost of another operator's expense. This is an industry-industry squabble. The technical experts have found a fatal flaw in the design. I would ask you to not act on this bill until we have some amendments. The Department of Mineral Resources also acknowledges that by putting this in existing sections, it makes a significant different impact on existing partners prior to. We probably would have to reword an entire new section to deal with refracks.
Let's assume Senator Piepkorn is the operator of an apartment complex, and the four of you are minor partners. You buy this property for $1M, and you all go in initially and you do this like you're going to complete a well, which was the 2003 bill. You all have to participate in risk of the well, because it may or may not be successful. If you choose not to participate, prior to that, you would get a percentage of proceeds, but he took all the risk. What that bill said, if you don't participate in the costs of the operation, even though you're a lease-holder or a minor interest partner, he can assess you, send you a ballot saying you're in or you're out. If you're out, he gets to recover his costs, plus 200%, before you get a dollar back. It ensures that project goes forward because he didn't carry all the risk at his expense. The concept of this bill, Senator Piepkorn does to this apartment complex and says, I think I can increase the rental value of my building if I put in improvements, we'll change an extra $5,000 a month, and he has to carry all that risk, because you can elect to participate or not participate. The current law didn't allow anything for that. Essentially, as a minor participating interest, you could say, I'm out. He carries all the risk; you still get the incremental value off the veil. That's the concept that some of our companies are going through as minor interest parties. You're out but you're really in. You're out on the cost, but you're in on the profit. In theory, this makes sense. The fatal flaw is that if he sent you the ballot on the initial apartment complex and you were in; but now you want to be out on the upgrades under this bill you wouldn't get any of the traditional rent from the part of the project which you were in. You

would not get paid, not just for the incremental oil, you wouldn't get paid anything until he recovered fully his cost plus 200% on the upgrades. That's not necessarily fair to you, you were in on the original purchase of the big project, but were out on the upgrades. So we've got a problem in how this is drafted, it's a squabble between industry, the Commission gets these issues before them, they have the clarity, they know how to rule, there have been a couple in which the primary operator said I want to share the risk and others said I'm out. He tried to add them into the cost; the Commission ruled that the law isn't clear that refracts would be involved. The intent of the concept I think is solid, it will take some work, we may or may not have the time, I ask you to hold off, let us see what we can come up with.

Senator Cook: I'm a partner, and I don't want to participate in the refrack, what are my options as far as selling my shares?

Ron Ness: I don't know that you want really ever want to sell your shares in one of these deals, you probably want to ride the upside. You can always go out and peddle your shares, but everyone wants to continue to keep that interest in that well. It's more of a fight, am I going to get penalized, or am I going to get to ride the primary operators down. That was the intent of the original bill, if you recall.

Senator Cook: Am I guaranteed some time to sell?

Ron Ness: No, absolutely not. You get a 30-day election period on the original well. Currently, there's really not a ballot.

Bruce Hicks, Assistant Director, Oil and Gas Division (9:05) Testified in favor. This bill has the original participation on whether or not you're going to pay up front your cost of drilling and completing the well. Refracks, we had ruled in past do not fall under the penalty requirements. So now this bill is here to fix this, any refrack would cause a new election to be made. The way it's presently written, it doesn't do that. According to what we understand, the sponsor does want that election to be made, we do think that amendments should be submitted on this, and try to fix the bill. We do believe that refracks have been good for the state, they do cause a lot of new reserves out there, there has been an EERC study that that was done in August, it did conclude in a vast majority of these they are very beneficial. We do think it needs some work, we will work with any party or industry that wants to propose something.

Senator Piepkorn: It seems it's a business issue between private parties conducting business; what's the state's interest in this?

Bruce Hicks: The state wants to promote oil and gas development in the state. We believe that there's no risk penalty that's allowed on this process, that some of these refracks won't be done. We've seen enough of them where we think it's a beneficial thing to do. I believe Lawrence Bender indicated that there is a poll taken on these refracts. Right now there's no mechanisms to get any penalty. If a number of these non-participating working interest owners decided not to go with the refracking, it may not be done. If we had the risk-penalty out there of 200%, the operator of the well may go ahead and do it based upon getting the return on that investment of the additional 200% penalty.

Senator Piepkorn: I was the primary owner, and these people didn't want to assume risk I might not go ahead and refrack it and it wouldn't be producing?

Bruce Hicks: That's right.

Senator Piepkorn: That's where the state is interested, that would mean less oil, less revenue.

Bruce Hicks: That's correct.

Chair Unruh: Closed the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2274
2/7/2019
Job Number 32356

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to integration of fractional tracts; and to provide a penalty.

Minutes: No attachments

Chair Unruh: Opened committee action, asked Ron Ness to provide more information.

Ron Ness, North Dakota Petroleum Council: This was the bill that we brought in and said that there were technical difficulties; we were not able to correct those technical difficulties, we would request that this bill be saved for another day.

Senator Cook: moved a Do Not Pass.
Senator Piepkorn: I second.

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

Chair Unruh will carry.

Chair Unruh: Closed committee action.

Date: 2/7
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2274

Senate 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 Sen. Cook Seconded By Sen. Piepkorn

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn	X	
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Unruh

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

REPORT OF STANDING COMMITTEE

SB 2274: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2274 was placed on the Eleventh order on the calendar.