

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1080
(Representative Dockter)

AN ACT to amend and reenact sections 15-05-10 and 47-16-39.1 of the North Dakota Century Code, relating to the obligation to pay oil and gas royalties on leases owned and managed by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Oil leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty ~~shall be~~ may not be less than twelve and one-half percent of the gross output of oil from the lands leased. Oil leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays must be made by the board in such annual payments as are determined by the board.
2. The obligation arising under an oil and gas lease to pay oil or gas royalties to the board of university and school lands, to deliver oil or gas to a purchaser to the credit of the board, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in any case in which it is determined by the court that the equities of the case require cancellation. If the lessee or the lessee's representative or assignee under an oil and gas lease fails to pay oil or gas royalties to the board within the time prescribed by administrative rule and cancellation of the lease is not sought, the lessee or the lessee's representative or assignee thereafter shall pay interest on the unpaid royalties at a rate of three-quarters of one percent per month, not to exceed nine percent per annum. The commissioner may waive all or a portion of the interest under this subsection for good cause.
3. If a lessee or the lessee's representative or assignee fails to respond or refuses to file an amended royalty statement and pay the royalty owed within ninety days of receiving written notice by mail of an underpayment, as provided by rule 4 of the North Dakota Rules of Civil Procedure, the board may impose a penalty of one-half percent per month, not to exceed six percent per annum. A party is deemed to have failed to respond if the party has not responded within ninety days of receipt of the written notice, or the party in response to the notice affirmatively indicates the intent not to pay the royalty or amounts due. The commissioner may waive all or a portion of the interest under this subsection for good cause.
4. If a lessee or the lessee's representative or assignee disputes a royalty assessment or demand by the board, the lessee or the lessee's representative or assignee may tender full payment of the disputed amount under protest any time after an assessment or demand is made by the board. Upon payment of the disputed amount under protest, all interest and penalties must cease to accrue. If it is determined that the payment of the disputed amount resulted in an overpayment, the party that made the payment is entitled to a refund of the overpayment amount plus interest at the rate established under section 28-20-34.

5. If a lessee or the lessee's representative or assignee fails or refuses to comply with demands by the board to pay royalties, interest, or penalties under this chapter, the board may file an action to cancel the lease, recover unpaid royalties, and recover interest and penalties on the unpaid royalties. Notwithstanding chapter 28-01, an action under this subsection must be commenced within seven years of the date oil or gas was produced under a lease. An action to cancel a lease, recover unpaid royalties, or recover interest or penalties on unpaid royalties may not be filed for production that occurred under a lease before August 1, 2013.
6. The board may adopt rules regarding annual payments and royalties under this section.

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

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

1. The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases wherein which it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days after oil or gas production is marketed from the unleased mineral interest owner's mineral interest, the operator thereafter shall pay interest on the unpaid royalties, without the requirement that the mineral owner or the mineral owner's assignee request the payment of interest, at the rate of eighteen percent per annum until paid, ~~except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that~~ if the aggregate amount is less than fifty dollars, the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties ~~where the aggregate amount is less than fifty dollars~~. The district court for the county in which the oil or gas well is located has jurisdiction over ~~all proceedings~~ any proceeding brought pursuant ~~to~~ under this section. The prevailing party in any proceeding brought pursuant ~~to~~ under this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply ~~when~~ if mineral owners or their assignees elect to take their proportionate share of production in kind, in the event of a dispute of title existing that would affect distribution of royalty payments, or ~~when~~ if a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.
2. This section does not apply to obligations to pay oil and gas royalties under an oil and gas lease on minerals owned or managed by the board of university and school lands.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1080.

House Vote: Yeas 82 Nays 10 Absent 2

Senate Vote: Yeas 39 Nays 7 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State