

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1380

Introduced by

Representatives Onstad, Kempenich, S. Meyer

Senator Lyson

1 A BILL for an Act to create and enact a new section to chapter 38-11.1 of the North Dakota
2 Century Code, relating to compensation for loss of agricultural production and income caused
3 by oil and gas production; and to amend and reenact sections 38-11.1-04 and 38-11.1-09 of the
4 North Dakota Century Code, relating to damage and disruption payments for damages caused
5 by oil and gas production.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 38-11.1-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **38-11.1-04. Damage and disruption payments.** The mineral developer shall pay the
10 surface owner a sum of money equal to the amount of damages sustained by the surface
11 owner and the surface owner's tenant, if any, for ~~loss of agricultural production and income~~, lost
12 land value, lost use of and access to the surface owner's land, and lost value of improvements
13 caused by drilling operations. The amount of damages may be determined by any formula
14 mutually agreeable between the surface owner and the mineral developer. When determining
15 ~~damages~~ damage and disruption payments, consideration must be given to the period of time
16 during which the loss occurs and the surface owner ~~may elect to be paid damages in annual~~
17 ~~installments over a period of time; except that the surface owner~~ must be compensated for
18 harm caused by exploration ~~only~~ by a single sum payment. The payments contemplated by
19 this section only cover land directly affected by drilling operations. Payments under this section
20 are intended to compensate the surface owner for damage and disruption; any reservation or
21 assignment of such compensation apart from the surface estate except to a tenant of the
22 surface estate is prohibited. In the absence of an agreement between the surface owner and a
23 tenant as to the division of compensation payable under this section, the tenant is entitled to

1 recover from the surface owner that portion of the compensation attributable to the tenant's
2 share of the damages sustained.

3 **SECTION 2.** A new section to chapter 38-11.1 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Loss of production payments.** The mineral developer shall pay the surface owner a
6 sum of money equal to the amount of damages sustained by the surface owner and the surface
7 owner's tenant, if any, for loss of agricultural production and income caused by drilling
8 operations. The amount of damages may be determined by any formula mutually agreeable
9 between the surface owner and the mineral developer. When determining damages for loss of
10 production, consideration must be given to the period of time during which the loss occurs and
11 the damages for loss of production must be paid annually. Payments under this section are
12 intended to compensate the surface owner for loss of production; any reservation or
13 assignment of such compensation apart from the surface estate except to a tenant of the
14 surface estate is prohibited. In the absence of an agreement between the surface owner and a
15 tenant as to the division of compensation payable under this section, the tenant is entitled to
16 recover from the surface owner that portion of the compensation attributable to the tenant's
17 share of the damages sustained.

18 **SECTION 3. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **38-11.1-09. Rejection - Mediation - Legal action - Fees and costs.** If the person
21 seeking compensation rejects the offer of the mineral developer, that person may seek
22 mediation of the amount of damages for lost land value, lost use of and access to the surface
23 owner's land, lost value of improvements caused by drilling operations, and loss of agricultural
24 production and income. If the person seeking compensation requests mediation, the board of
25 county commissioners of the county in which the property is located shall appoint one mediator,
26 the North Dakota petroleum council shall appoint one mediator, and the county extension agent
27 shall serve as the third mediator. The mediation panel shall determine reasonable surface and
28 loss of production damages. If the person seeking compensation rejects the determination of
29 the mediation panel, that person may bring an action for compensation in the court of proper
30 jurisdiction. If the amount of compensation awarded by the court is greater than that which had
31 been ~~offered~~ determined by the ~~mineral developer~~ mediation panel, the court shall award the

- 1 person seeking compensation reasonable attorney's fees, any costs assessed by the court, and
- 2 interest on the amount of the final compensation awarded by the court from the day drilling is
- 3 commenced. The rate of interest awarded must be the prime rate charged by the Bank of North
- 4 Dakota on the date of the judgment.