

Sixty-first  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO.**

Introduced by

Representatives Onstad, S. Meyer

1 A BILL for an Act to amend and reenact section 38-11.1-04 and 38-11.1-09 of the North Dakota  
2 Century Code, relating to compensation for damages caused by oil and gas production.

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

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

6 **38-11.1-04. Damage and disruption payments.** The mineral developer shall pay the  
7 surface owner a sum of money equal to the amount of damages sustained by the surface  
8 owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost  
9 land value, lost use of and access to the surface owner's land, and lost value of improvements  
10 caused by drilling operations. The amount of damages may be determined by any formula  
11 mutually agreeable between the surface owner and the mineral developer. When determining  
12 damages, consideration must be given to the period of time during which the loss occurs and  
13 the surface owner may elect to be paid damages in annual installments over a period of time;  
14 ~~except that the surface owner must be compensated for harm caused by exploration only by a~~  
15 ~~single sum payment~~ must be paid annually. The payments contemplated by this section only  
16 cover land directly affected by drilling operations. Payments under this section are intended to  
17 compensate the surface owner for damage and disruption; any reservation or assignment of  
18 such compensation apart from the surface estate except to a tenant of the surface estate is  
19 prohibited. In the absence of an agreement between the surface owner and a tenant as to the  
20 division of compensation payable under this section, the tenant is entitled to recover from the  
21 surface owner that portion of the compensation attributable to the tenant's share of the  
22 damages sustained.

23 **SECTION 2. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is  
24 amended and reenacted as follows:

1           **38-11.1-09. Rejection - Mediation - Legal action - Fees and costs.** If the person  
2 seeking compensation rejects the offer of the mineral developer, that person may seek  
3 mediation of the amount of surface damages. If the person seeking compensation requests  
4 mediation, the board of county commissioners of the county in which the property is located  
5 shall appoint one mediator, the North Dakota petroleum council shall appoint one mediator, and  
6 the two mediators shall jointly select a third mediator. The mediators shall determine  
7 reasonable surface damages, if the person seeking compensation rejects the determination of  
8 the mediation panel, that person might bring an action for compensation in the court of proper  
9 jurisdiction. If the amount of compensation awarded by the court is greater than that which had  
10 been ~~offered~~ determined by the ~~mineral developer~~ mediation panel, the court shall award the  
11 person seeking compensation reasonable attorney's fees, any costs assessed by the court, and  
12 interest on the amount of the final compensation awarded by the court from the day drilling is  
13 commenced. The rate of interest awarded must be the prime rate charged by the Bank of North  
14 Dakota on the date of the judgment.