

Sixty-second  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2274**

Introduced by

Senators Warner, O'Connell

Representatives S. Meyer, Onstad

1 A BILL for an Act to establish a surface rights board to mediate disputes involving damages  
2 caused by oil and gas exploration and production; and to amend and reenact section 38-11.1-09  
3 of the North Dakota Century Code, relating to determination of oil and gas surface damages.

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

5 **SECTION 1.**

6 **Definitions.**

7 As used in sections 1 through 14 of this Act:

- 8 1. "Agreement" means an agreement between an operator and an owner or occupant  
9 relating to a lease or to surface rights, but does not include a lease.
- 10 2. "Battery site" means that portion of the surface of land, other than a well site or  
11 roadway, required for access to and to accommodate separators; treaters;  
12 dehydrators; storage tanks; surface reservoirs; pumps; and other equipment, including  
13 aboveground pressure maintenance facilities, that are necessary to measure,  
14 separate, or store prior to shipping to market or disposal, or necessary to produce, the  
15 fluids, minerals, and water, or any of them, from wells.
- 16 3. "Board" means the surface rights board.
- 17 4. "Mineral" means oil and natural gas, or either of them.
- 18 5. "Natural gas" means a mixture containing methane, other paraffinic hydrocarbons,  
19 nitrogen, carbon dioxide, hydrogen sulfide, and minor impurities, or some of them,  
20 which is recovered or recoverable at a well from an underground reservoir and which  
21 is gaseous at the conditions under which its volume is measured or estimated, and  
22 includes all fluid hydrocarbons that are not oil.
- 23 6. "Occupant" means a person, other than the owner, that is in actual and lawful  
24 possession of land.

- 1       7. "Oil" means crude oil and all other hydrocarbons, regardless of gravity, that are or can  
2       be recovered in liquid form through a well by ordinary production methods from a  
3       natural underground reservoir containing an accumulation of oil or oil and natural gas.
- 4       8. "Operator" means a person that has the right to conduct any operation for the purpose  
5       of exploring for a mineral or for drilling a well for the production of a mineral and  
6       includes any person who has the control and management of a well.
- 7       9. "Order" except where the context otherwise requires, means an order of the board.
- 8       10. "Owner" means:
- 9       a. The person, other than a mineral owner unless the mineral owner is also the  
10      owner of the surface of the land;
- 11      b. In the case of state land, the board of university and school lands administering  
12      the land; or
- 13      c. The successor in interest or assignee under a bona fide agreement for sale or  
14      otherwise from an owner.
- 15      11. "Roadway" means that portion of the surface of land required for access to a well site.
- 16      12. "Service line" means a pipe or conduit of pipes or ancillary equipment, including a flow  
17      line, used for the transportation, gathering, or conduct of a mineral or water or other  
18      fluid in connection with the producing operations of an operator.
- 19      13. "Surface rights" means:
- 20      a. The land or any portion thereof or any interest therein, except oil and gas rights,  
21      or a right of entry thereon, required by an operator for the purpose of exploring  
22      for, developing, producing, or transporting a mineral;
- 23      b. The right to establish, install, or operate any machinery, equipment, or apparatus  
24      for use for or in connection with the drilling, completion, or producing operations  
25      of a well on a well site; or
- 26      c. The right or obligation to condition, maintain, or restore the surface of land where  
27      the land has been or is being held incidental to or in connection with the exploring  
28      for, developing, or producing a mineral, or the land has been held incidental to or  
29      in connection with the laying, constructing, operating, maintaining, or servicing of  
30      a battery site, service line, roadway, or powerline.

1       14.   "Well site" means that portion of the surface of land required for the conduct of  
2           exploring, developing, or producing operations of a well.

3       **SECTION 2.**

4       **Surface rights board.**

5       The surface rights board is composed of not fewer than three members to be appointed by  
6       the governor. Unless a member sooner dies, resigns, or is removed from office, each member  
7       shall serve for such period as is specified in the order by which the member is appointed and  
8       thereafter until the member's successor is appointed. The governor shall designate one of the  
9       members of the board as the presiding member of the board and another member as the  
10       deputy presiding member of the board. The presiding member, deputy presiding member, and  
11       each other member of the board is entitled to receive such remuneration as may be fixed by the  
12       governor and in addition each member may be paid such reasonable out-of-pocket expenses  
13       incurred by the member in the performance of the member's duties as member of the board as  
14       may be approved by the governor. The board shall meet at the call of the presiding member or  
15       at the direction of the governor. A majority of the members of the board, including the presiding  
16       member or deputy presiding member, constitutes a quorum at any meeting of the board. The  
17       fact that there are vacancies in the membership of the board does not affect the validity of any  
18       act or thing done by or in the name of the board. The presiding member shall preside at all  
19       meetings of the board. When the office of presiding member is vacant or in the case of illness,  
20       absence from the state, or incapacity from any other cause to act, or on the request of the  
21       governor or the presiding member, the deputy presiding member shall act as presiding member  
22       and while so acting, the deputy presiding member has all the powers and authority and shall  
23       discharge all the duties of the presiding member. Any order, direction, or other document  
24       supporting to be signed by the presiding member or deputy presiding member, as the case may  
25       be, must be admitted as prima facie proof of the contents thereof without any proof of the  
26       signature of the presiding member or deputy presiding member, as the case may be, or of the  
27       authority of the presiding member or deputy presiding member, as the case may be, to sign it.  
28       The governor, when a member of the board is interested in a matter that is before the board,  
29       may appoint a disinterested individual to act as a member of the board in place of the interested  
30       member with respect to that matter only. The governor may appoint an individual to act as a  
31       member of the board during the sickness, absence, or disability of a member. The department

1 of mineral resources shall provide staff services to the board. The board may adopt rules  
2 governing the practice and procedure and the business of the board. Unless otherwise provided  
3 in sections 1 through 14 of this Act, every application authorized to be made under sections 1  
4 through 14 of this Act to the board must be in writing in such form and must contain such  
5 information as may be prescribed by the board. The board may hold hearings from time to time  
6 at such times and places in the state as it may deem expedient; enter upon and inspect or  
7 authorize any member of the board or other person to enter upon and inspect any place,  
8 building, works, or other property directly or indirectly involved in any matter before the board;  
9 appoint or direct any person to inquire into and report upon any matter before the board; and  
10 adjourn a hearing or inquiry from time to time for such length of time as the board may  
11 determine. The board shall perform its duties and functions and may exercise its authority under  
12 law and shall perform such other duties and functions as may be assigned to it by the governor.

13 **SECTION 3.**

14 **Powers of board.**

15 The board may administer and enforce sections 1 through 14 of this Act; carry out surveys,  
16 research programs, and obtain statistics for the purposes of the board; conduct hearings and  
17 investigations and determine and prescribe the scope thereof; require any person to submit  
18 such returns required by the board; prohibit or require the doing of any act by any of the parties  
19 to an application that is before the board; and provide mediation services upon the request of a  
20 party to a dispute concerning surface damages. The board shall keep or cause to keep a record  
21 of all applications and proceedings filed with or heard and determined by the board or a  
22 member thereof; keep or cause to be kept and issue upon request and payment of such fees as  
23 may be fixed by the board, certified copies of any order or rule made by the board; and have the  
24 custody and care of all records and documents filed with the board. Members of the board and  
25 persons acting under the instructions of any of them or under the authority of sections 1 through  
26 14 of this Act are not personally liable for any loss or damage suffered by any person or  
27 corporation by reason of anything in good faith done, caused, permitted, or authorized to be  
28 done, or omitted to be done, by them, pursuant to, or in exercise of, or supposed exercise of,  
29 the powers given by sections 1 through 14 of this Act. The board or the presiding member may  
30 authorize a member to report to the board upon any question or matter arising in connection  
31 with the business of the board; and that member, where so authorized, has all the powers of the

1 board for the purpose of taking evidence or acquiring the necessary information for the purpose  
2 of any investigation and report to the board; and the board may adopt the report as that of the  
3 board, or otherwise deal with it in the absolute discretion of the board. The board, before the  
4 first day of July in each year, shall transmit to the governor a report for the fiscal year ending  
5 March 31 of that year, showing briefly summaries of the operations of the board; the number  
6 and nature of inquiries or investigations made by it; a summary of all decisions and orders  
7 made by it; and such other matters as the governor may direct.

8 **SECTION 4.**

9 **Right of compensation.**

10 Every order of the board, with respect to the acquisition by the operator of surface rights is  
11 deemed to grant to the operator the right to enter upon the affected land at any time for the  
12 purposes of repairing, maintaining, replacing, or inspecting the works of the operator. The  
13 operator shall pay compensation to the owner or occupant, if any, for all damage suffered by the  
14 owner or occupant as a result of repairing, maintaining, replacing, or inspecting the works of the  
15 operator. If the operator and the owner, or the operator and the occupant, are unable to agree  
16 upon the compensation payable under this section, the compensation shall be determined by  
17 the board. Every agreement entered after the effective date of this Act between an operator and  
18 an owner or between an operator and the occupant, if any, with respect to any surface right  
19 shall be in writing and a copy of the agreement must be filed by the operator with the board  
20 within thirty days after the date of execution thereof. Within thirty days of an operator making an  
21 assignment of a lease or agreement, written notice of the assignment shall be given by the  
22 operator to the board and to the owner or occupant, if any.

23 **SECTION 5.**

24 **Compensation to be paid by operator.**

25 Every operator shall pay compensation for the rights acquired by the operator. If there is  
26 disagreement as to the surface rights that are required or the compensation to be paid by the  
27 operator or if there is a dispute between any of them as to the interpretation of a lease or  
28 agreement or the exercise of any right or the performance of any obligation under a lease or  
29 agreement or sections 1 through 14 of this Act or if there is a dispute as to the location of  
30 access roads or if there is a dispute whether sections 1 through 14 of this Act authorize an  
31 application on any other matter, either party may apply to the board for a determination of the

1 matter and shall serve a notice of the application upon each party that is or may be involved in,  
2 or directly affected by, the application and shall file a copy of the notice with the board. The  
3 notice must include a description and plan or sketch of the land showing the location of the  
4 affected area and showing facilities of the operator in place or proposed; a statement as to the  
5 nature of the dispute, if any; the nature of the order sought; and an address for service where  
6 the applicant may be served with any notice required to be served under sections 1 through 14  
7 of this Act. The filing of a notice with proof of service thereof on the operator, owner, or  
8 occupant, as the case may be, is deemed to be a submission to the board by the person filing  
9 to hear and determine the matters in dispute set forth in the notice. A notice to be served  
10 pursuant to sections 1 through 14 of this Act may be served personally or by registered mail  
11 sent to the last-known address of the person to be served. A notice sent by registered mail is  
12 deemed to have been served on the day of the date of the receipt of the postmaster for the  
13 envelope containing the notice. The board shall fix a date and place for the hearing of the  
14 matters in dispute and shall serve the operator, owner, and occupant, if any, with written notice  
15 thereof not less than fourteen days before the date so fixed. The board may view the land in  
16 question prior to the holding of any hearing, and the parties must be given notice thereof and  
17 may attend together with the board, and the board may view the land notwithstanding the  
18 absence of any of the parties. The board shall give three days' notice of the date and time of  
19 viewing to the parties.

20 **SECTION 6.**

21 **Powers of board following hearing.**

22 On the date fixed for a hearing, the parties involved may appear before the board and be  
23 represented by counsel; and the board, after consideration of all the evidence adduced before it  
24 at the hearing, may issue an order granting part or all of the order applied for; refusing part or all  
25 of the order applied for; fixing the compensation to be paid by an operator; awarding interest at  
26 a rate established by rule; if rights are granted, specifying those rights in detail, including the  
27 location of the access to a site, together with a full description or a plan of the land involved in  
28 the order; or prescribing the terms and conditions that go with that order. An order granting  
29 surface rights may not grant any rights other than rights which the operator may reasonably  
30 propose to utilize within the six-month period next following the date of the order. The board  
31 may defer to a later date the determination of the compensation to be paid by the operator and

1 any other matter that the board considers advisable. The board, of its own initiative, may rehear  
2 an application at any time before deciding it and review, rescind, amend, or replace an order  
3 made by it where necessary to correct an oversight or error. Unless the parties to a hearing  
4 otherwise agree, the board shall render a decision upon an application within thirty days of  
5 completion of the hearing.

6 **SECTION 7.**

7 **Determination of compensation.**

8 In determining the compensation to be paid for surface damages by an operator, the board  
9 shall consider the following matters:

- 10 1. The value of the land having regard to its present use before allowance of surface  
11 rights;
- 12 2. The loss of use of the land or of an interest therein as a result of granting surface  
13 rights;
- 14 3. The area of land that is or may be permanently or temporarily damaged by the  
15 operations of the operator;
- 16 4. The increased costs to the owner and occupant, if any, by reason of the works and  
17 operations of the operator;
- 18 5. The adverse effect caused by the right of entry to the remaining land by reason of  
19 severance, if any;
- 20 6. The nuisance, inconvenience, disturbance, or noise to the owner and occupant, if any,  
21 or to the remaining land, that might be caused by, arise from, or is likely to arise from  
22 or in connection with the operations of the operator, and the damage, if any, to any  
23 adjoining land of the owner, including damage to or loss of crop, pasture, fence, or  
24 livestock and like or similar matters;
- 25 7. Where applicable in the opinion of the board, the application of interest payable in  
26 addition to the amount awarded as compensation; and
- 27 8. Any other relevant matter that may be peculiar to each case, including:
  - 28 a. The cumulative effect, if any, of surface rights previously acquired by the operator  
29 or by other operators under a lease, agreement, or right of entry existing at the  
30 time the surface rights were acquired with respect to the subject lands; and

- b. The terms of a comparable lease agreement that a party may submit to the board for consideration.

**SECTION 8.**

**Costs of hearing.**

The board may award the costs of and incidental to participation in any of its proceedings, including awards in advance of proceedings where appropriate, to persons who effectively represent an interest which contributed to or could reasonably be expected to contribute substantially to a fair disposition of the proceeding, taking into account the need for representation of a fair balance of interests, who represent an economic interest which is small when applied to individual persons in comparison to the costs of effective participation in the proceeding, who do not have sufficient resources available to participate effectively in the proceeding without undue curtailment of that person's other activities in the absence of a cost award, or who are permitted to participate in the board's proceedings by law, board practice, or the exercise of the board's discretion.

**SECTION 9.**

**Costs in discretion of board.**

Subject to subsections 1 and 2, the costs of and incidental to any proceedings of the board are in the discretion of the board.

1. If the compensation payable to an owner or occupant, as the case may be, is determined by the board and the amount of the compensation that was offered by the operator before commencement of the hearing is less than ninety percent of the amount determined by the board, the board shall increase the compensation otherwise payable by the amount of such legal, appraisal, and other expenses that are incurred by the owner or occupant, as the case may be, for the purposes of preparing and presenting a claim for compensation and that the board considers just and reasonable.
2. If the compensation payable to an owner or occupant, as the case may be, is determined by the board and the amount of the compensation that was offered by the operator before commencement of the hearing is greater than the amount determined by the board, the board may not award costs of any kind to the owner or occupant, as the case may be. If the board finds that the owner and also an occupant are entitled to



1           compensation, the board shall determine the compensation to be paid to both the  
2           owner and the occupant but not so as to require the operator to pay duplicate  
3           compensation with respect to any element of compensation to be determined by it.

4           **SECTION 10.**

5           **Abandonment or surrender of rights.**

6           If an operator proposes to abandon or surrender all or any part of a surface right whether  
7           such right has been obtained by way of agreement with the owner or occupant, if any, or by an  
8           order of the board, the operator shall make application for issuance of a certificate of  
9           abandonment. An operator proposing to abandon or surrender a surface right shall restore the  
10          surface of the land as nearly as possible to its original condition and shall complete the  
11          abandonment and restoration in accordance with sections 1 through 14 of this Act. Where an  
12          operator and the owner or occupant, if any, are unable to agree with respect to an  
13          abandonment or with respect to the restoration of the land, either party may apply to the board  
14          to have the matter reviewed. Upon receipt of an application, the board may inspect the land or  
15          cause the land to be inspected, and may, after service of notice on the operator and the owner  
16          and occupant, if any, hear and determine the application. The board after completion of a  
17          hearing may order the operator to restore the surface of the land in a manner set forth in the  
18          order; authorize the owner and occupant, if any, to restore the surface of the land in a manner  
19          set forth in the order and where the board so orders, the operator shall pay to the owner and  
20          occupant, if any, the cost of the restoration; or order the operator to pay a sum of money to the  
21          owner and occupant, if any, in lieu of restoration. If an abandonment occurs at a time when, as  
22          a result thereof, the owner or occupant, if any, is deprived of making use of the land for the  
23          current crop year, the board may order the operator to pay the owner or occupant, if any,  
24          additional compensation or may order that compensation payments continue for an additional  
25          year. If after inspecting the land or after hearing an application the board is satisfied that the  
26          operator has restored the land as nearly as possible to its original state and the operator  
27          satisfies the board that it has complied with all applicable orders of the board with respect to the  
28          surface rights of the land, the board may order that the operator has discharged the operator's  
29          obligation with respect to restoration of the land and the surface rights are abandoned or  
30          surrendered.

31          **SECTION 11.**

1       **Appeal.**

2       An order of the board may be appealed to the district court of the county in which the  
3 property is located.

4       **SECTION 12.**

5       **Operator's responsibility to cut down weeds.**

6       Unless the operator and the owner and occupant, if any, otherwise agree, every operator  
7 shall cut down or otherwise control all weeds growing on the land on which the operations of the  
8 operator are being carried out and the operator shall cut down or root out and destroy the  
9 weeds each year before they have matured to seed. If an operator fails or neglects to control  
10 weeds, the owner or occupant may upon seven days' notice to the operator, carry out the  
11 requirements of this section and for that purpose may enter upon the land on which the  
12 operations of the operator are being carried out, or the owner or occupant may apply to the  
13 board for an order requiring the operator to control weeds. The board may by order direct the  
14 operator to cut down or root out and destroy the weeds with a time fixed by the order, or, if the  
15 owner or occupant has done so, the board may award the owner or occupant compensation  
16 therefor and the operator shall pay such compensation forthwith. No application may be heard if  
17 it is made after the expiration of three months after the owner or occupant first became entitled  
18 in the opinion of the board to make the application. Where an application is made and it  
19 appears to the board that more than one operator may be liable, the board may adjourn the  
20 hearing and direct notice thereof to be served on all operators that may be liable and may by  
21 order determine and apportion the compensation to be paid by each of the operators.

22       **SECTION 13.**

23       **Topsoil.**

24       The operator shall remove, preserve, and replace all topsoil affected by its operations in the  
25 manner prescribed by rule.

26       **SECTION 14.**

27       **Rules.**

28       The board may adopt rules to implement sections 1 through 14 of this Act. Every rule  
29 adopted by the board has the force of law. The rules may include provisions prescribing forms  
30 for the purposes of this Act; prescribing elements of compensation to be considered by the  
31 board in addition to those mentioned in this Act, including formula and criteria; prescribing the

1 intervals of and manner of payment of compensation; prescribing the amount of and the terms  
2 and conditions attaching to cash deposits, security deposits, and other deposits of money  
3 required to be made with the board; prescribing the form and content of reports and returns  
4 which must be made to the board by operators; requiring operators to advise the board of all  
5 chemicals utilized in their operations; prescribing such elements of costs that may be allowed;  
6 defining any word or term not defined for the purpose of the administration of sections 1 through  
7 14 of this Act; respecting the granting of the extension of time or the reduction of time for the  
8 doing of anything or the filing of any notice required under sections 1 through 14 of this Act;  
9 respecting the rules for the calculation of time either in specified cases or generally; respecting  
10 the receipt, the holding, and the disbursement of moneys by the board pursuant to sections 1  
11 through 14 of this Act; and respecting such other matter as may be necessary for the purpose of  
12 carrying out sections 1 through 14 of this Act.

13 **SECTION 15. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **38-11.1-09. Rejection - ~~Legal action~~ - ~~Fees and costs~~ Mediation.**

16 If the person seeking compensation rejects the offer of the mineral developer, that person  
17 ~~may bring an action for compensation in the court of proper jurisdiction. If the amount of~~  
18 ~~compensation awarded by the court is greater than that which had been offered by the mineral~~  
19 ~~developer, the court shall award the person seeking compensation reasonable attorney's fees,~~  
20 ~~any costs assessed by the court, and interest on the amount of the final compensation awarded~~  
21 ~~by the court from the day drilling is commenced. The rate of interest awarded must be the prime~~  
22 ~~rate charged by the Bank of North Dakota on the date of the judgment~~seek compensation under  
23 sections 1 through 14 of this Act.