

**HOUSE BILL NO. 1218**

Introduced by

Representatives Skarphol, Grande, Rennerfeldt, Wald

Senators Lyson, Wardner

1 A BILL for an Act to amend and reenact subsection 3 of section 38-08-08 and subsection 3 of  
2 section 38-08-09.4 of the North Dakota Century Code, relating to carrying or otherwise  
3 financing nonparticipating owners in the development of oil and gas interests in spacing units  
4 and plans of unitization.

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

6 **SECTION 1. AMENDMENT.** Subsection 3 of section 38-08-08 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 3. In addition to any costs and charges recoverable under subsections 1 and 2, if a  
9 ~~lessee owning~~ the owner of an interest in a spacing unit elects not to participate in  
10 the risk and cost of drilling a well thereon, the owner paying for the nonparticipating  
11 ~~lessee's~~ owner's share of the drilling and operation of a well may recover from the  
12 nonparticipating ~~lessee~~ owner a risk penalty for the risk involved in drilling the well.  
13 The recovery of a risk penalty is as follows:

14 a. If the nonparticipating owner's interest in the spacing unit is derived from a  
15 lease or other contract for development, the risk penalty is ~~one~~ two hundred  
16 percent of the nonparticipating ~~lessee's~~ owner's share of the reasonable  
17 actual costs of drilling and completing the well and may be recovered out of,  
18 and only out of, production from the pooled spacing unit, as provided by  
19 section 38-08-10, exclusive of any royalty or overriding royalty. ~~No risk~~  
20 penalty may be assessed against an unleased mineral interest.

21 b. If the nonparticipating owner's interest in the spacing unit is not subject to a  
22 lease or other contract for development, the risk penalty is one hundred  
23 percent of the nonparticipating owner's share of the reasonable actual costs  
24 of drilling and completing the well and may be recovered out of, and only out

1                   of, production from the pooled spacing unit, as provided by section 38-08-10,  
2                   exclusive of any royalty provided for in subsection 1.

3                   c. The owner paying for the nonparticipating owner's share of the drilling and  
4                   operation of a well may recover from the nonparticipating owner a risk penalty  
5                   for the risk involved in drilling and completing the well only if the paying owner  
6                   has made an unsuccessful, good-faith attempt to have the unleased  
7                   nonparticipating owner execute a lease or to have the leased nonparticipating  
8                   owner join in and participate in the risk and cost of drilling the well.

9                   **SECTION 2. AMENDMENT.** Subsection 3 of section 38-08-09.4 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11                   3. The manner in which the unit and the further development and operation of the unit  
12                   area shall or may be financed and the basis, terms, and conditions on which the  
13                   cost and expense thereof shall be apportioned among and assessed against the  
14                   tracts and interests made chargeable therewith, including a detailed accounting  
15                   procedure governing all charges and credits incident to such operations. Upon and  
16                   subject to such terms and conditions as to time and legal rate of interest as may be  
17                   fair to all concerned, reasonable provision must be made in the plan of unitization  
18                   for carrying or otherwise financing ~~lessees~~ owners who are unable to promptly  
19                   meet their financial obligations in connection with the unit and, in addition to the  
20                   unit expense assessed against each tract and chargeable to each owner, the  
21                   recovery of a risk penalty from each owner electing not to participate in the unit  
22                   expense. The recovery of the risk penalty is as follows:

23                   a. If the nonparticipating owner's interest in the unit is derived from a lease or  
24                   other contract for development, the risk penalty is two hundred percent of the  
25                   nonparticipating owner's share of the unit expense and may be recovered out  
26                   of, and only out of, production from the unit, exclusive of any royalty or  
27                   overriding royalty.

28                   b. If the nonparticipating owner's interest in the unit is not subject to a lease or  
29                   other contract for development, the penalty is one hundred percent of the  
30                   nonparticipating owner's share of the unit expense and may be recovered out

1                   of, and only out of, production from the unit, exclusive of any royalty provided  
2                   for in section 38-08-09.13.  
3                   c. The owner paying for the nonparticipating owner's share of the unit expense  
4                   may recover from the nonparticipating owner a risk penalty for the risk  
5                   involved in the unit expense only if the paying owner has made an  
6                   unsuccessful, good-faith attempt to have the unleased nonparticipating owner  
7                   execute a lease or to have the leased nonparticipating owner join in and  
8                   participate in the risk of the unit expense.