

**FIRST ENGROSSMENT  
with Conference Committee Amendments****ENGROSSED 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 fifty percent of the  
23 nonparticipating owner's share of the reasonable actual costs of drilling and  
24 completing the well and may be recovered out of production from the pooled

1           spacing unit, as provided by section 38-08-10, exclusive of any royalty  
2           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 unleashed  
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. Before a  
9           risk penalty may be imposed, the paying owner must notify the  
10           nonparticipating owner with proof of service that the paying owner intends to  
11           impose a risk penalty and that the nonparticipating owner may object to the  
12           risk penalty by either responding in opposition to the petition for a risk penalty  
13           or if no such petition has been filed, by filing an application or request for  
14           hearing with the industrial commission.

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

17           3. The manner in which the unit and the further development and operation of the unit  
18           area shall or may be financed and the basis, terms, and conditions on which the  
19           cost and expense thereof shall be apportioned among and assessed against the  
20           tracts and interests made chargeable therewith, including a detailed accounting  
21           procedure governing all charges and credits incident to such operations. Upon  
22           and subject to such terms and conditions as to time and legal rate of interest as  
23           may be fair to all concerned, reasonable provision must be made in the plan of  
24           unitization for carrying or otherwise financing ~~lessees~~ owners who are unable to  
25           promptly meet their financial obligations in connection with the unit and, in addition  
26           to the unit expense assessed against each tract and chargeable to each owner,  
27           the recovery of a risk penalty from each owner electing not to participate in the unit  
28           expense. The recovery of the risk penalty is as follows:  
29           a. If the nonparticipating owner's interest in the unit is derived from a lease or  
30           other contract for development, the risk penalty is two hundred percent of the  
31           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 or  
2                   overriding royalty.
- 3            b. If the nonparticipating owner's interest in the unit is not subject to a lease or  
4                   other contract for development, the penalty is fifty percent of the  
5                   nonparticipating owner's share of the unit expense and may be recovered out  
6                   of production from the unit exclusive of any royalty provided for in section  
7                   38-08-09.13.
- 8            c. The owner paying for the nonparticipating owner's share of the unit expense  
9                   may recover from the nonparticipating owner a risk penalty for the risk  
10                  involved in the unit expense only if the paying owner has made an  
11                  unsuccessful, good-faith attempt to have the unleased nonparticipating owner  
12                  execute a lease or to have the leased nonparticipating owner join in and  
13                  participate in the risk of the unit expense. Before a risk penalty may be  
14                  imposed, the paying owner must notify the nonparticipating owner with proof  
15                  of service that the paying owner intends to impose a risk penalty and that the  
16                  nonparticipating owner may object to the risk penalty by either responding in  
17                  opposition to the petition for a risk penalty or if no such petition has been filed,  
18                  by filing an application or request for hearing with the industrial commission.