Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1387

Introduced by

Representatives Damschen, Anderson, Froseth, Onstad

Senators Andrist, Warner

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

38-11.1-04. Damage and disruption payments.

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

under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

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

Loss of production payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages for loss of production, consideration must be given to the period of time during which the loss occurs and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment. Payments under this section are intended to compensate the surface owner for loss of production. Any reservation or assignment of such compensation apart from the surface estate, except to a tenant of the surface estate, is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.