

**HOUSE BILL NO. 1221**

Introduced by

Representatives Keiser, Sukut

1 A BILL for an Act to amend and reenact section 59-04.2-19 of the North Dakota Century Code,  
2 relating to a trustee's allocation of receipts from interests in minerals and other natural  
3 resources.

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

5 **SECTION 1. AMENDMENT.** Section 59-04.2-19 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **59-04.2-19. (411) Minerals, water, and other natural resources.**

- 8 1. To the extent that a trustee accounts for receipts from an interest in minerals or other  
9 natural resources pursuant to this section, the trustee shall allocate them as follows:
- 10 a. If received as nominal delay rental or nominal annual rent on a lease, a receipt  
11 must be allocated to income.
- 12 b. If received from a production payment, a receipt must be allocated to income if  
13 and to the extent that the agreement creating the production payment provides a  
14 factor for interest or its equivalent. The balance must be allocated to principal.
- 15 c. If an amount received as a royalty, shut-in-well payment, take-or-pay payment,  
16 bonus, or delay rental is more than nominal, ~~ninety~~ninety-five percent must be  
17 allocated to principal and the balance to income.
- 18 d. If an amount is received from a working interest or any other interest not provided  
19 for in subdivision a, b, or c, ~~ninety~~ninety-five percent of the net amount received must  
20 be allocated to principal and the balance to income.
- 21 2. An amount received on account of an interest in water that is renewable must be  
22 allocated to income. If the water is not renewable, ninety percent of the amount must  
23 be allocated to principal and the balance to income.

- 1        3. This chapter applies whether or not a decedent or donor was extracting minerals,  
2        water, or other natural resources before the interest became subject to the trust.
- 3        4. If a trust ~~owns~~ has not received receipts from an interest in minerals, water, or other  
4        natural resources ~~on August 1, 1999, before August 1, 2015,~~ the trustee ~~may~~shall  
5        allocate receipts from ~~the interest~~interests in minerals, water, or other natural  
6        resources as provided in this chapter ~~or in the manner used by the trustee before~~  
7        ~~August 1, 1999.~~ If the trust acquires an interest in minerals, water, or other natural  
8        resources after August 1, 1999, the trustee shall allocate receipts from the interest as  
9        provided in this chaptersection.
- 10       5. If a trust has received receipts from an interest in minerals, water, or other natural  
11       resources before August 1, 2015, the trustee shall allocate receipts from interests in  
12       minerals, water, or other natural resources as follows:
- 13       a. If the trust acquired an interest in minerals, water, or other natural resources  
14       before August 1, 1999, the trustee may allocate receipts in the manner used by  
15       the trustee before August 1, 1999, or as required by law in effect on August 1,  
16       1999.
- 17       b. If the trust acquired an interest in minerals, water, or other natural resources after  
18       August 1, 1999, and before August 1, 2015, the trustee shall allocate receipts in  
19       the manner required by law in effect on August 1, 1999.
- 20       6. The trustee may petition the court to permanently modify the manner used to allocate  
21       receipts under this section. In deciding whether and to what extent to modify the  
22       manner used to allocate receipts, the court may consider any factors relevant to the  
23       trust and its beneficiaries; including the following factors to the extent they are  
24       relevant:
- 25       a. The nature, purpose, and expected duration of the trust;
- 26       b. The intent of the settlor;
- 27       c. The identity and circumstances of the beneficiaries;
- 28       d. The need for liquidity, regularity of income, and preservation and appreciation of  
29       capital;
- 30       e. The assets held in the trust; the extent to which they consist of financial assets,  
31       interests in closely held enterprises, tangible and intangible personal property, or

- 1                   real property; the extent to which an asset is used by a beneficiary; and whether  
2                   an asset was purchased by the trustee or received from the settlor;  
3            f.   The net amount allocated to income under the other sections of this chapter and  
4                   the increase or decrease in the value of the principal assets;  
5            g.   Whether and to what extent the terms of the trust give the trustee the power to  
6                   invade principal or accumulate income or prohibit the trustee from invading  
7                   principal or accumulating income, and the extent to which the trustee has  
8                   exercised a power from time to time to invade principal or accumulate income;  
9            h.   The actual and anticipated effect of economic conditions on principal and income  
10                   and effects of inflation and deflation; and  
11            i.   The anticipated tax consequences of a modification.