

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1510

Page 1, after line 7, insert:

"1."

Page 1, line 10, after the period, insert:

"2."

Page 1, line 11, after "owner" insert "before the start of the litigation"

Page 1, line 12, replace "deem" with "award"

Page 1, line 12, remove "the prevailing party that is entitled to"

Page 1, line 13, after the underscored period insert:

"3."

Page 1, line 14, after "developer" insert "to the surface owner before the start of the litigation"

Page 1, line 15, remove "as the prevailing party"

Page 1, line 15, remove "In addition to determining and awarding"

Page 1, line 16, remove "compensation"

Page 1, line 16, overstrike ", the court shall award the"

Page 1, line 16, remove "surface owner"

Page 1, line 17, overstrike "reasonable attorney's fees,"

Page 1, line 17, remove "and"

Page 1, line 17, overstrike "costs assessed by the court,"

Page 1, line 17, remove "not to exceed the total"

Page 1, line 18, replace "amount of compensation awarded by the court to the surface owner."
with:

- "4. If the surface owner rejects an offer of settlement made by the mineral developer after the start of the litigation and the amount of compensation awarded by the court to the surface owner is greater than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs assessed by the court.

5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner is less than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs incurred by the surface owner before the date of

the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner.

6."

Page 1, line 19, remove "over and above the amount offered by the"

Page 1, line 20, remove "mineral developer and"

Page 1, line 22, remove "If the mineral developer issues an offer of settlement under rule 68 of the North"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 5

Renumber accordingly

Introduced by

Representatives Klemin, Cory, Karls, J. Olson

Senator Sickler

1 A BILL for an Act to amend and reenact section 38-11.1-09 of the North Dakota Century Code,
2 relating to legal fees and costs a surface owner or mineral developer may be awarded in cases
3 relating to the development of minerals.

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

5 **SECTION 1. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **38-11.1-09. Rejection - Legal action - Fees and costs.**

- 8 1. If the ~~person~~ surface owner seeking compensation rejects the offer of the mineral
9 developer, ~~that person~~ the surface owner may bring an action for compensation in the
10 court of proper jurisdiction.
- 11 2. If the amount of compensation awarded by the court to the surface owner is greater
12 than that which had been offered by the mineral developer to the surface owner before
13 the start of the litigation, the court shall ~~deem~~ award the surface owner ~~the prevailing~~
14 party that is entitled to reasonable attorney's fees and costs.
- 15 3. If the amount of compensation awarded by the court to the surface owner is less than
16 that which had been offered by the mineral developer to the surface owner before the
17 start of the litigation, the surface owner is not entitled to attorney's fees and costs ~~as~~
18 the prevailing party. ~~In addition to determining and awarding compensation, the court~~
19 shall award the person seeking compensation ~~surface owner~~ reasonable attorney's
20 fees, ~~any~~ and costs assessed by the court, and ~~not to exceed the total amount of~~
21 compensation awarded by the court to the surface owner.
- 22 4. If the surface owner rejects an offer of settlement made by the mineral developer after
23 the start of the litigation and the amount of compensation awarded by the court to the

1 surface owner is greater than the offer of settlement, the surface owner is entitled to
2 an award of reasonable attorney's fees and costs assessed by the court.

3 5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the
4 surface owner rejects an offer of settlement made by the mineral developer after the
5 start of litigation, and the amount of compensation awarded by the court to the surface
6 owner is less than the offer of settlement, the surface owner is entitled to an award of
7 reasonable attorney's fees and costs incurred by the surface owner before the date of
8 the offer of settlement, but is not entitled to any award of reasonable attorney's fees
9 and costs after the date the offer of settlement was made to the surface owner.

10 6. The court shall award interest on the amount of the final compensation ~~over and~~
11 ~~above the amount offered by the mineral developer and~~ awarded by the court from the
12 day drilling is commenced. The rate of interest awarded must be the prime rate
13 charged by the Bank of North Dakota on the date of the judgment. ~~If the mineral~~
14 ~~developer issues an offer of settlement under rule 68 of the North Dakota Rules of~~
15 ~~Civil Procedure, the offer must be the offer for purposes of determining who is the~~
16 ~~prevailing party for the period after the settlement offer. The prevailing party for the~~
17 ~~earlier period is entitled only to reasonable attorney's fees and costs incurred by the~~
18 ~~prevailing party on and after the date the settlement offer was made and the prevailing~~
19 ~~party for any earlier period is entitled only to reasonable attorney's fees and costs~~
20 ~~incurred by the prevailing party before the settlement offer was made with the net~~
21 ~~award of attorney's fees and costs not to exceed the limits in this section.~~