

**FIRST ENGROSSMENT
with House Amendments**

ENGROSSED SENATE BILL NO. 2335

Introduced by

Senators Magrum, Dwyer, Paulson

1 A BILL for an Act to create and enact a new section to chapter 38-11.1 of the North Dakota
2 Century Code, relating to pretrial appraisals; and to amend and reenact section 38-11.1-09 of
3 the North Dakota Century Code, relating to the recovery of attorney's fees in an action relating
4 to oil and gas production.

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

6 **SECTION 1.** A new section to chapter 38-11.1 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Pretrial appraisal required before commencement of action to recover compensation.**

- 9 1. As used in this section, "certified appraiser" has the same meaning as in section
10 43-23.3-01.
- 11 2. Before commencing a legal action to recover compensation, a person entitled to
12 compensation shall obtain a written appraisal valuing all parcels affected or
13 foreseeably affected by drilling operations under this chapter. A certified appraiser, an
14 individual possessing a temporary permit under section 43-23.3-11, or an individual
15 possessing a permit under section 43-23.3-04.1 shall conduct the required appraisal.
- 16 3. Before a court may take jurisdiction over an action commenced under this chapter, a
17 person seeking compensation under this chapter must have provided to a mineral
18 developer a copy of an appraisal issued under subsection 2. The mineral developer
19 may make a new offer for settlement to the surface owner within thirty days of
20 receiving the appraisal. If a new offer is made under this subsection, the amount of the
21 new offer serves as the offer contemplated under section 38-11.1-09.

- 1 4. The mineral developer shall reimburse the reasonable actual costs of the required
2 appraisal incurred by the surface owner for obtaining a required appraisal under this
3 section or, at the election of the surface owner, the mineral developer shall pay the
4 reasonable actual costs directly to the appraiser.
- 5 5. The required appraisal or opinion of value expressed in the required appraisal is
6 inadmissible at a proceeding commenced under this chapter, unless the information is
7 offered by the surface owner. Whether an appraisal is issued under this section does
8 not require or prohibit the introduction of specific evidence offered at a proceeding
9 commenced under this chapter.

10 **SECTION 2. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **38-11.1-09. Rejection - Legal action - Fees and costs.**

13 If the person seeking compensation rejects the offer of the mineral developer, that person
14 may bring an action for compensation in the court of proper jurisdiction. If the amount of
15 compensation awarded by the court is greater than ~~that which had been~~the amount offered by
16 the mineral developer, the court shall award the person seeking compensation reasonable
17 attorney's fees, any costs ~~assessed by the court~~and disbursements under chapter 28-26, and
18 interest on the amount of the final compensation awarded by the court from the day drilling is
19 commenced. The rate of interest awarded must be the prime rate charged by the Bank of North
20 Dakota on the date of the judgment.