

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representatives Onstad, S. Meyer

1 A BILL for an Act to amend and reenact section 38-11.1-04 and 38-11.1-09 of the North Dakota
2 Century Code, relating to compensation for damages caused by oil and gas production.

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

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

6 **38-11.1-04. Damage and disruption payments.** The mineral developer shall pay the
7 surface owner a sum of money equal to the amount of damages sustained by the surface
8 owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost
9 land value, lost use of and access to the surface owner's land, and lost value of improvements
10 caused by drilling operations. The amount of damages may be determined by any formula
11 mutually agreeable between the surface owner and the mineral developer. When determining
12 damages, consideration must be given to the period of time during which the loss occurs and
13 ~~the surface owner may elect to be paid damages in annual installments over a period of time;~~
14 ~~except that the surface owner must be compensated for harm caused by exploration only by a~~
15 ~~single sum payment~~ must be paid annually. The payments contemplated by this section only
16 cover land directly affected by drilling operations. Payments under this section are intended to
17 compensate the surface owner for damage and disruption; any reservation or assignment of
18 such compensation apart from the surface estate except to a tenant of the surface estate is
19 prohibited. In the absence of an agreement between the surface owner and a tenant as to the
20 division of compensation payable under this section, the tenant is entitled to recover from the
21 surface owner that portion of the compensation attributable to the tenant's share of the
22 damages sustained.

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

1 **38-11.1-09. Rejection - Mediation - Legal action - Fees and costs.** If the person
2 seeking compensation rejects the offer of the mineral developer, that person may seek
3 mediation of the amount of surface damages. If the person seeking compensation requests
4 mediation, the board of county commissioners of the county in which the property is located
5 shall appoint one mediator, the North Dakota petroleum council shall appoint one mediator, and
6 the two mediators shall jointly select a third mediator. The mediators shall determine
7 reasonable surface damages, if the person seeking compensation rejects the determination of
8 the mediation panel, that person might bring an action for compensation in the court of proper
9 jurisdiction. If the amount of compensation awarded by the court is greater than that which had
10 been ~~offered~~ determined by the ~~mineral developer~~ mediation panel, the court shall award the
11 person seeking compensation reasonable attorney's fees, any costs assessed by the court, and
12 interest on the amount of the final compensation awarded by the court from the day drilling is
13 commenced. The rate of interest awarded must be the prime rate charged by the Bank of North
14 Dakota on the date of the judgment.