

Introduced by

Senators Rust, Wardner, Warner

Representatives Hunskor, Kempenich

1 A BILL for an Act to amend and reenact section 38-11.1-08.1 of the North Dakota Century Code,
2 relating to loss of production payments for surface owners.

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

4 **SECTION 1. AMENDMENT.** Section 38-11.1-08.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **38-11.1-08.1. Loss of production payments.**

7 1. The mineral developer shall pay the surface owner a sum of money equal to the
8 amount of damages sustained by the surface owner and the surface owner's tenant, if
9 any, for loss of agricultural production and income caused by oil and gas production
10 and completion operations. These payments must be yearly payments.

11 2. The amount of damages may be determined by any formula mutually agreeable
12 between the surface owner and the mineral developer. ~~When determining damages for~~
13 ~~loss of production, consideration must be given to the period of time during which the~~
14 ~~loss occurs and the damages for loss of production must be paid annually unless the~~
15 ~~surface owner elects to receive a single lump sum payment. Payments under this~~
16 ~~section are intended to compensate the surface owner for loss of production. However,~~
17 the formula must include the following factors:

18 a. The loss of use of the land to produce revenue.

19 b. The increased cost to the surface owner for maintenance and to engage in
20 agricultural production.

21 c. Additional nuisance and inconvenience, including air and noise pollution and
22 weeds.

23 d. The limitations on the use of land and adjoining land.

24 e. The decrease in value of the land and adjoining property.

- 1 f. An adjustment in the payments based on the cost-of-living index every one to
2 three years, the time of which is as agreed to by the mineral developer and the
3 surface owner.
- 4 3. The surface owner and the mineral developer may request mediation.
- 5 4. Any reservation or assignment of such compensation apart from the surface estate,
6 except to a tenant of the surface estate, is prohibited.
- 7 5. In the absence of an agreement between the surface owner and a tenant as to the
8 division of compensation payable under this section, the tenant is entitled to recover
9 from the surface owner that portion of the compensation attributable to the tenant's
10 share of the damages sustained.