

Introduced by

Senators Warner, O'Connell

Representatives S. Meyer, Onstad

1 A BILL for an Act to establish a surface rights board to mediate disputes involving damages
2 caused by oil and gas exploration and production; and to amend and reenact section 38-11.1-09
3 of the North Dakota Century Code, relating to determination of oil and gas surface damages.

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

5 **SECTION 1.**

6 **Definitions.**

7 As used in sections 1 through 14 of this Act:

- 8 1. "Agreement" means an agreement between an operator and an owner or occupant
9 relating to a lease or to surface rights, but does not include a lease.
- 10 2. "Battery site" means that portion of the surface of land, other than a well site or
11 roadway, required for access to and to accommodate separators; treaters;
12 dehydrators; storage tanks; surface reservoirs; pumps; and other equipment, including
13 aboveground pressure maintenance facilities, that are necessary to measure,
14 separate, or store prior to shipping to market or disposal, or necessary to produce, the
15 fluids, minerals, and water, or any of them, from wells.
- 16 3. "Board" means the surface rights board.
- 17 4. "Mineral" means oil and natural gas, or either of them.
- 18 5. "Natural gas" means a mixture containing methane, other paraffinic hydrocarbons,
19 nitrogen, carbon dioxide, hydrogen sulfide, and minor impurities, or some of them,
20 which is recovered or recoverable at a well from an underground reservoir and which
21 is gaseous at the conditions under which its volume is measured or estimated, and
22 includes all fluid hydrocarbons that are not oil.
- 23 6. "Occupant" means a person, other than the owner, that is in actual and lawful
24 possession of land.

- 1 7. "Oil" means crude oil and all other hydrocarbons, regardless of gravity, that are or can
2 be recovered in liquid form through a well by ordinary production methods from a
3 natural underground reservoir containing an accumulation of oil or oil and natural gas.
- 4 8. "Operator" means a person that has the right to conduct any operation for the purpose
5 of exploring for a mineral or for drilling a well for the production of a mineral and
6 includes any person who has the control and management of a well.
- 7 9. "Order" except where the context otherwise requires, means an order of the board.
- 8 10. "Owner" means:
- 9 a. The person, other than a mineral owner unless the mineral owner is also the
10 owner of the surface of the land;
- 11 b. In the case of state land, the board of university and school lands administrating
12 the land; or
- 13 c. The successor in interest or assignee under a bona fide agreement for sale or
14 otherwise from an owner.
- 15 11. "Roadway" means that portion of the surface of land required for access to a well site.
- 16 12. "Service line" means a pipe or conduit of pipes or ancillary equipment, including a flow
17 line, used for the transportation, gathering, or conduct of a mineral or water or other
18 fluid in connection with the producing operations of an operator.
- 19 13. "Surface rights" means:
- 20 a. The land or any portion thereof or any interest therein, except oil and gas rights,
21 or a right of entry thereon, required by an operator for the purpose of exploring
22 for, developing, producing, or transporting a mineral;
- 23 b. The right to establish, install, or operate any machinery, equipment, or apparatus
24 for use for or in connection with the drilling, completion, or producing operations
25 of a well on a well site; or
- 26 c. The right or obligation to condition, maintain, or restore the surface of land where
27 the land has been or is being held incidental to or in connection with the exploring
28 for, developing, or producing a mineral, or the land has been held incidental to or
29 in connection with the laying, constructing, operating, maintaining, or servicing of
30 a battery site, service line, roadway, or powerline.

1 14. "Well site" means that portion of the surface of land required for the conduct of
2 exploring, developing, or producing operations of a well.

3 **SECTION 2.**

4 **Surface rights board.**

5 The surface rights board is composed of not fewer than three members to be appointed by
6 the governor. Unless a member sooner dies, resigns, or is removed from office, each member
7 shall serve for such period as is specified in the order by which the member is appointed and
8 thereafter until the member's successor is appointed. The governor shall designate one of the
9 members of the board as the presiding member of the board and another member as the
10 deputy presiding member of the board. The presiding member, deputy presiding member, and
11 each other member of the board is entitled to receive such remuneration as may be fixed by the
12 governor and in addition each member may be paid such reasonable out-of-pocket expenses
13 incurred by the member in the performance of the member's duties as member of the board as
14 may be approved by the governor. The board shall meet at the call of the presiding member or
15 at the direction of the governor. A majority of the members of the board, including the presiding
16 member or deputy presiding member, constitutes a quorum at any meeting of the board. The
17 fact that there are vacancies in the membership of the board does not affect the validity of any
18 act or thing done by or in the name of the board. The presiding member shall preside at all
19 meetings of the board. When the office of presiding member is vacant or in the case of illness,
20 absence from the state, or incapacity from any other cause to act, or on the request of the
21 governor or the presiding member, the deputy presiding member shall act as presiding member
22 and while so acting, the deputy presiding member has all the powers and authority and shall
23 discharge all the duties of the presiding member. Any order, direction, or other document
24 supporting to be signed by the presiding member or deputy presiding member, as the case may
25 be, must be admitted as prima facie proof of the contents thereof without any proof of the
26 signature of the presiding member or deputy presiding member, as the case may be, or of the
27 authority of the presiding member or deputy presiding member, as the case may be, to sign it.
28 The governor, when a member of the board is interested in a matter that is before the board,
29 may appoint a disinterested individual to act as a member of the board in place of the interested
30 member with respect to that matter only. The governor may appoint an individual to act as a
31 member of the board during the sickness, absence, or disability of a member. The department

1 of mineral resources shall provide staff services to the board. The board may adopt rules
2 governing the practice and procedure and the business of the board. Unless otherwise provided
3 in sections 1 through 14 of this Act, every application authorized to be made under sections 1
4 through 14 of this Act to the board must be in writing in such form and must contain such
5 information as may be prescribed by the board. The board may hold hearings from time to time
6 at such times and places in the state as it may deem expedient; enter upon and inspect or
7 authorize any member of the board or other person to enter upon and inspect any place,
8 building, works, or other property directly or indirectly involved in any matter before the board;
9 appoint or direct any person to inquire into and report upon any matter before the board; and
10 adjourn a hearing or inquiry from time to time for such length of time as the board may
11 determine. The board shall perform its duties and functions and may exercise its authority under
12 law and shall perform such other duties and functions as may be assigned to it by the governor.

13 **SECTION 3.**

14 **Powers of board.**

15 The board may administer and enforce sections 1 through 14 of this Act; carry out surveys,
16 research programs, and obtain statistics for the purposes of the board; conduct hearings and
17 investigations and determine and prescribe the scope thereof; require any person to submit
18 such returns required by the board; prohibit or require the doing of any act by any of the parties
19 to an application that is before the board; and provide mediation services upon the request of a
20 party to a dispute concerning surface damages. The board shall keep or cause to keep a record
21 of all applications and proceedings filed with or heard and determined by the board or a
22 member thereof; keep or cause to be kept and issue upon request and payment of such fees as
23 may be fixed by the board, certified copies of any order or rule made by the board; and have the
24 custody and care of all records and documents filed with the board. Members of the board and
25 persons acting under the instructions of any of them or under the authority of sections 1 through
26 14 of this Act are not personally liable for any loss or damage suffered by any person or
27 corporation by reason of anything in good faith done, caused, permitted, or authorized to be
28 done, or omitted to be done, by them, pursuant to, or in exercise of, or supposed exercise of,
29 the powers given by sections 1 through 14 of this Act. The board or the presiding member may
30 authorize a member to report to the board upon any question or matter arising in connection
31 with the business of the board; and that member, where so authorized, has all the powers of the

1 board for the purpose of taking evidence or acquiring the necessary information for the purpose
2 of any investigation and report to the board; and the board may adopt the report as that of the
3 board, or otherwise deal with it in the absolute discretion of the board. The board, before the
4 first day of July in each year, shall transmit to the governor a report for the fiscal year ending
5 March 31 of that year, showing briefly summaries of the operations of the board; the number
6 and nature of inquiries or investigations made by it; a summary of all decisions and orders
7 made by it; and such other matters as the governor may direct.

8 **SECTION 4.**

9 **Right of compensation.**

10 Every order of the board, with respect to the acquisition by the operator of surface rights is
11 deemed to grant to the operator the right to enter upon the affected land at any time for the
12 purposes of repairing, maintaining, replacing, or inspecting the works of the operator. The
13 operator shall pay compensation to the owner or occupant, if any, for all damage suffered by the
14 owner or occupant as a result of repairing, maintaining, replacing, or inspecting the works of the
15 operator. If the operator and the owner, or the operator and the occupant, are unable to agree
16 upon the compensation payable under this section, the compensation shall be determined by
17 the board. Every agreement entered after the effective date of this Act between an operator and
18 an owner or between an operator and the occupant, if any, with respect to any surface right
19 shall be in writing and a copy of the agreement must be filed by the operator with the board
20 within thirty days after the date of execution thereof. Within thirty days of an operator making an
21 assignment of a lease or agreement, written notice of the assignment shall be given by the
22 operator to the board and to the owner or occupant, if any.

23 **SECTION 5.**

24 **Compensation to be paid by operator.**

25 Every operator shall pay compensation for the rights acquired by the operator. If there is
26 disagreement as to the surface rights that are required or the compensation to be paid by the
27 operator or if there is a dispute between any of them as to the interpretation of a lease or
28 agreement or the exercise of any right or the performance of any obligation under a lease or
29 agreement or sections 1 through 14 of this Act or if there is a dispute as to the location of
30 access roads or if there is a dispute whether sections 1 through 14 of this Act authorize an
31 application on any other matter, either party may apply to the board for a determination of the

1 matter and shall serve a notice of the application upon each party that is or may be involved in,
2 or directly affected by, the application and shall file a copy of the notice with the board. The
3 notice must include a description and plan or sketch of the land showing the location of the
4 affected area and showing facilities of the operator in place or proposed; a statement as to the
5 nature of the dispute, if any; the nature of the order sought; and an address for service where
6 the applicant may be served with any notice required to be served under sections 1 through 14
7 of this Act. The filing of a notice with proof of service thereof on the operator, owner, or
8 occupant, as the case may be, is deemed to be a submission to the board by the person filing
9 to hear and determine the matters in dispute set forth in the notice. A notice to be served
10 pursuant to sections 1 through 14 of this Act may be served personally or by registered mail
11 sent to the last-known address of the person to be served. A notice sent by registered mail is
12 deemed to have been served on the day of the date of the receipt of the postmaster for the
13 envelope containing the notice. The board shall fix a date and place for the hearing of the
14 matters in dispute and shall serve the operator, owner, and occupant, if any, with written notice
15 thereof not less than fourteen days before the date so fixed. The board may view the land in
16 question prior to the holding of any hearing, and the parties must be given notice thereof and
17 may attend together with the board, and the board may view the land notwithstanding the
18 absence of any of the parties. The board shall give three days' notice of the date and time of
19 viewing to the parties.

20 **SECTION 6.**

21 **Powers of board following hearing.**

22 On the date fixed for a hearing, the parties involved may appear before the board and be
23 represented by counsel; and the board, after consideration of all the evidence adduced before it
24 at the hearing, may issue an order granting part or all of the order applied for; refusing part or all
25 of the order applied for; fixing the compensation to be paid by an operator; awarding interest at
26 a rate established by rule; if rights are granted, specifying those rights in detail, including the
27 location of the access to a site, together with a full description or a plan of the land involved in
28 the order; or prescribing the terms and conditions that go with that order. An order granting
29 surface rights may not grant any rights other than rights which the operator may reasonably
30 propose to utilize within the six-month period next following the date of the order. The board
31 may defer to a later date the determination of the compensation to be paid by the operator and

1 any other matter that the board considers advisable. The board, of its own initiative, may rehear
2 an application at any time before deciding it and review, rescind, amend, or replace an order
3 made by it where necessary to correct an oversight or error. Unless the parties to a hearing
4 otherwise agree, the board shall render a decision upon an application within thirty days of
5 completion of the hearing.

6 **SECTION 7.**

7 **Determination of compensation.**

8 In determining the compensation to be paid for surface damages by an operator, the board
9 shall consider the following matters:

- 10 1. The value of the land having regard to its present use before allowance of surface
11 rights;
- 12 2. The loss of use of the land or of an interest therein as a result of granting surface
13 rights;
- 14 3. The area of land that is or may be permanently or temporarily damaged by the
15 operations of the operator;
- 16 4. The increased costs to the owner and occupant, if any, by reason of the works and
17 operations of the operator;
- 18 5. The adverse effect caused by the right of entry to the remaining land by reason of
19 severance, if any;
- 20 6. The nuisance, inconvenience, disturbance, or noise to the owner and occupant, if any,
21 or to the remaining land, that might be caused by, arise from, or is likely to arise from
22 or in connection with the operations of the operator, and the damage, if any, to any
23 adjoining land of the owner, including damage to or loss of crop, pasture, fence, or
24 livestock and like or similar matters;
- 25 7. Where applicable in the opinion of the board, the application of interest payable in
26 addition to the amount awarded as compensation; and
- 27 8. Any other relevant matter that may be peculiar to each case, including:
 - 28 a. The cumulative effect, if any, of surface rights previously acquired by the operator
29 or by other operators under a lease, agreement, or right of entry existing at the
30 time the surface rights were acquired with respect to the subject lands; and

1 b. The terms of a comparable lease agreement that a party may submit to the board
2 for consideration.

3 **SECTION 8.**

4 **Costs of hearing.**

5 The board may award the costs of and incidental to participation in any of its proceedings,
6 including awards in advance of proceedings where appropriate, to persons who effectively
7 represent an interest which contributed to or could reasonably be expected to contribute
8 substantially to a fair disposition of the proceeding, taking into account the need for
9 representation of a fair balance of interests, who represent an economic interest which is small
10 when applied to individual persons in comparison to the costs of effective participation in the
11 proceeding, who do not have sufficient resources available to participate effectively in the
12 proceeding without undue curtailment of that person's other activities in the absence of a cost
13 award, or who are permitted to participate in the board's proceedings by law, board practice, or
14 the exercise of the board's discretion.

15 **SECTION 9.**

16 **Costs in discretion of board.**

17 Subject to subsections 1 and 2, the costs of and incidental to any proceedings of the board
18 are in the discretion of the board.

19 1. If the compensation payable to an owner or occupant, as the case may be, is
20 determined by the board and the amount of the compensation that was offered by the
21 operator before commencement of the hearing is less than ninety percent of the
22 amount determined by the board, the board shall increase the compensation
23 otherwise payable by the amount of such legal, appraisal, and other expenses that are
24 incurred by the owner or occupant, as the case may be, for the purposes of preparing
25 and presenting a claim for compensation and that the board considers just and
26 reasonable.

27 2. If the compensation payable to an owner or occupant, as the case may be, is
28 determined by the board and the amount of the compensation that was offered by the
29 operator before commencement of the hearing is greater than the amount determined
30 by the board, the board may not award costs of any kind to the owner or occupant, as
31 the case may be. If the board finds that the owner and also an occupant are entitled to

1 compensation, the board shall determine the compensation to be paid to both the
2 owner and the occupant but not so as to require the operator to pay duplicate
3 compensation with respect to any element of compensation to be determined by it.

4 **SECTION 10.**

5 **Abandonment or surrender of rights.**

6 If an operator proposes to abandon or surrender all or any part of a surface right whether
7 such right has been obtained by way of agreement with the owner or occupant, if any, or by an
8 order of the board, the operator shall make application for issuance of a certificate of
9 abandonment. An operator proposing to abandon or surrender a surface right shall restore the
10 surface of the land as nearly as possible to its original condition and shall complete the
11 abandonment and restoration in accordance with sections 1 through 14 of this Act. Where an
12 operator and the owner or occupant, if any, are unable to agree with respect to an
13 abandonment or with respect to the restoration of the land, either party may apply to the board
14 to have the matter reviewed. Upon receipt of an application, the board may inspect the land or
15 cause the land to be inspected, and may, after service of notice on the operator and the owner
16 and occupant, if any, hear and determine the application. The board after completion of a
17 hearing may order the operator to restore the surface of the land in a manner set forth in the
18 order; authorize the owner and occupant, if any, to restore the surface of the land in a manner
19 set forth in the order and where the board so orders, the operator shall pay to the owner and
20 occupant, if any, the cost of the restoration; or order the operator to pay a sum of money to the
21 owner and occupant, if any, in lieu of restoration. If an abandonment occurs at a time when, as
22 a result thereof, the owner or occupant, if any, is deprived of making use of the land for the
23 current crop year, the board may order the operator to pay the owner or occupant, if any,
24 additional compensation or may order that compensation payments continue for an additional
25 year. If after inspecting the land or after hearing an application the board is satisfied that the
26 operator has restored the land as nearly as possible to its original state and the operator
27 satisfies the board that it has complied with all applicable orders of the board with respect to the
28 surface rights of the land, the board may order that the operator has discharged the operator's
29 obligation with respect to restoration of the land and the surface rights are abandoned or
30 surrendered.

31 **SECTION 11.**

1 **Appeal.**

2 An order of the board may be appealed to the district court of the county in which the
3 property is located.

4 **SECTION 12.**

5 **Operator's responsibility to cut down weeds.**

6 Unless the operator and the owner and occupant, if any, otherwise agree, every operator
7 shall cut down or otherwise control all weeds growing on the land on which the operations of the
8 operator are being carried out and the operator shall cut down or root out and destroy the
9 weeds each year before they have matured to seed. If an operator fails or neglects to control
10 weeds, the owner or occupant may upon seven days' notice to the operator, carry out the
11 requirements of this section and for that purpose may enter upon the land on which the
12 operations of the operator are being carried out, or the owner or occupant may apply to the
13 board for an order requiring the operator to control weeds. The board may by order direct the
14 operator to cut down or root out and destroy the weeds with a time fixed by the order, or, if the
15 owner or occupant has done so, the board may award the owner or occupant compensation
16 therefor and the operator shall pay such compensation forthwith. No application may be heard if
17 it is made after the expiration of three months after the owner or occupant first became entitled
18 in the opinion of the board to make the application. Where an application is made and it
19 appears to the board that more than one operator may be liable, the board may adjourn the
20 hearing and direct notice thereof to be served on all operators that may be liable and may by
21 order determine and apportion the compensation to be paid by each of the operators.

22 **SECTION 13.**

23 **Topsoil.**

24 The operator shall remove, preserve, and replace all topsoil affected by its operations in the
25 manner prescribed by rule.

26 **SECTION 14.**

27 **Rules.**

28 The board may adopt rules to implement sections 1 through 14 of this Act. Every rule
29 adopted by the board has the force of law. The rules may include provisions prescribing forms
30 for the purposes of this Act; prescribing elements of compensation to be considered by the
31 board in addition to those mentioned in this Act, including formula and criteria; prescribing the

1 intervals of and manner of payment of compensation; prescribing the amount of and the terms
2 and conditions attaching to cash deposits, security deposits, and other deposits of money
3 required to be made with the board; prescribing the form and content of reports and returns
4 which must be made to the board by operators; requiring operators to advise the board of all
5 chemicals utilized in their operations; prescribing such elements of costs that may be allowed;
6 defining any word or term not defined for the purpose of the administration of sections 1 through
7 14 of this Act; respecting the granting of the extension of time or the reduction of time for the
8 doing of anything or the filing of any notice required under sections 1 through 14 of this Act;
9 respecting the rules for the calculation of time either in specified cases or generally; respecting
10 the receipt, the holding, and the disbursement of moneys by the board pursuant to sections 1
11 through 14 of this Act; and respecting such other matter as may be necessary for the purpose of
12 carrying out sections 1 through 14 of this Act.

13 **SECTION 15. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **38-11.1-09. Rejection - ~~Legal action~~ - Fees and costs Mediation.**

16 If the person seeking compensation rejects the offer of the mineral developer, that person
17 may bring an action for compensation in the court of proper jurisdiction. If the amount of
18 compensation awarded by the court is greater than that which had been offered by the mineral
19 developer, the court shall award the person seeking compensation reasonable attorney's fees,
20 any costs assessed by the court, and interest on the amount of the final compensation awarded
21 by the court from the day drilling is commenced. The rate of interest awarded must be the prime
22 rate charged by the Bank of North Dakota on the date of the judgment seek compensation under
23 sections 1 through 14 of this Act.