

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1342
(Representatives Wald, Brown, Drovdal, Wardner)
(Senators Christmann, Urlacher)

AN ACT to create and enact a new subsection to section 38-08.1-01, a new subsection to section 38-08.1-04.1, and a new section to chapter 38-08.1 of the North Dakota Century Code, relating to definitions for purposes of geophysical exploration, notification requirements for geophysical exploration permitholders, and authority of the industrial commission to adopt rules governing geophysical exploration; to amend and reenact sections 38-08.1-02, 38-08.1-03.1, 38-08.1-04, subsections 1, 3, and 5 of section 38-08.1-04.1, sections 38-08.1-04.2, 38-08.1-05, subsections 2, 3, and 5 of section 38-08.1-06, sections 38-08.1-06.1, and 57-62-03.1 of the North Dakota Century Code, relating to geophysical exploration requirements and enforcement funding; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 38-08.1-01 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

"Commission" means the industrial commission.

SECTION 2. AMENDMENT. Section 38-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-02. Enforcement by commission - Persons required to comply with chapter. Notwithstanding any other provision of this chapter, the commission is the primary enforcement agency governing geophysical exploration in this state. Any person in this state engaged in geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration shall comply with ~~the following provisions of this chapter; provided, however, that compliance with the provisions of~~ this chapter by a crew or its employer constitutes compliance herewith by that person who has engaged the service of ~~such the~~ crew, or its employer, as an independent contractor.

SECTION 3. AMENDMENT. Section 38-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-03.1. Surety bond - Certificate - Release.

1. A ~~person~~ geophysical exploration contractor desiring to engage in geophysical exploration in this state shall ~~also~~ file with the ~~industrial~~ commission a good and sufficient surety bond in the amount of ~~fifteen thousand dollars for a single geophysical crew or a blanket surety bond in the amount of thirty~~ fifty thousand dollars for all geophysical crews operating within the state for such person if the contractor intends to conduct shot hole operations or in the amount of twenty-five thousand dollars if the contractor intends to use any other method of geophysical exploration. Each subcontractor engaged by the geophysical exploration contractor for the drilling or plugging of seismic shot holes must file with the commission a good and sufficient surety bond in the amount of ten thousand dollars. The bond must be in a form prescribed by the ~~industrial~~ commission and must indemnify all owners of property within the state, including the state and its political subdivisions, against physical damages to property which may result from geophysical exploration and the plugging of drill holes. The bond must cover all geophysical exploration and plugging operations conducted within one year of the date the bond is issued and must be automatically renewed unless the ~~industrial~~ commission and the person covered ~~thereby~~ by the bond receive notice sixty days ~~prior to~~ before any anniversary date of the surety's intent not to

~~renew the bond. In the event~~ If the surety does not renew the geophysical exploration contractor's bond, the surety's liability under the bond ceases six years from the date that geophysical exploration or reclamation covered by the bond was last conducted in the state. If the surety does not renew the drilling or plugging bond, the surety's liability under the bond ceases two years from the date the drilling and plugging covered by the bond was last conducted in this state. A person required to post a bond under this subsection may post cash or a certificate of deposit in lieu of the bond under rules adopted by the commission.

- ~~2. The bond must remain on file with the industrial commission so long as the exploration covered by the bond is carried on or engaged in within the state, plus an additional six years thereafter; provided, however, that the aggregate liability of the surety on the bond may in no event exceed the amount of the bond.~~
- ~~3. A bond filed pursuant to this section is the sole bond required of persons engaging in geophysical exploration within the state of North Dakota and supersedes any bonds which may be required by the individual counties. Upon compliance with the provisions of sections 38-08.1-01 through 38-08.1-05, any bond which may previously have been filed in any county shall be released; provided, however, that the surety of any such bond remains liable under its contract for all actions of its principal prior to the date of compliance with this section.~~
- ~~4. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued pursuant to chapter 10-22, a certificate of incorporation issued pursuant to chapter 10-19.1, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the industrial commission shall issue to the person desiring to engage in geophysical exploration or plugging operations or any subcontractor of that person a certificate showing that the bond has been filed and showing the name and address of the surety company and the name of the person designated resident agent for service of process.~~
4. The proceeds of a surety bond become the property of the commission or the cash or certificate of deposit posted in lieu of a surety bond may not be returned to that person if the principal or person posting the bond, cash, or certificate of deposit fails to comply with this chapter and rules adopted by the commission under this chapter. This must be determined by the commission after notice and hearing in accordance with rules adopted by the commission. Notice of the hearing must be given to the principal and surety on the bond or to the person posting the cash or certificate of deposit by mailing a copy of the notice of hearing and a copy of a complaint, stating the grounds for forfeiture to them, filed by the commission. This must be done by certified mail, return receipt requested, and addressed to their last known address listed with the commission. If the principal or surety or person posting the cash or certificate of deposit has a defense to, or otherwise wishes to contest the complaint of the commission, that person must file a written statement or answer setting forth the defense with the commission at least three business days before the commission hearing. Any defense or reason for contesting the complaint is waived if that person fails to do so. The commission may treat the failure to file a defense or reason to contest the complaint or the failure to appear at the hearing as default by the party. If the commission determines the principal on the bond or the person posting the cash or certificate of deposit as security has complied with this chapter and rules adopted by the commission under this chapter, including the proper plugging of wells and seismic holes and reclamation of the surrounding affected area, with respect to all operations secured by the bond, the commission shall release the obligation of the bond or return the cash or certificate of deposit upon its next anniversary date.

SECTION 4. AMENDMENT. Section 38-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-04. Application for permit to engage in geophysical exploration. Any person desiring to engage in geophysical exploration ~~within this state shall prior to~~ before actually engaging in such the exploration, shall file an application for a permit to engage in geophysical exploration with the ~~board of county commissioners in each county in which exploration is to be carried on~~ commission. The application for a permit for geophysical exploration must include the following information:

1. The name, address, and telephone number of the person intending to engage in geophysical exploration or plugging operations and the name and telephone number of any local representative who may be contacted by the ~~board of county commissioners~~ commission concerning geophysical exploration activities.
2. The name, address, and telephone number of any subcontractors, including drilling and plugging subcontractors, to be employed by the person intending to conduct geophysical exploration or plugging operations.
3. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
4. The date upon which geophysical exploration is to begin.
5. The approximate number and depth of any drill holes and the specific location of any drill holes or a description of the property on which the geophysical exploration is to be conducted described by township, range, section, and quarter section.
6. ~~A certificate from the industrial commission indicating that the person intending to engage in geophysical exploration and any subcontractors to be employed by that person have each filed with the industrial commission a good and sufficient surety bond.~~
7. ~~A fee to be determined by the board of county commissioners based on the anticipated actual expenses of administering and enforcing this chapter of up to one hundred dollars.~~

~~Applications filed with the board of county commissioners under this section must be maintained in a manner separate and apart from any other records or indices concerning the land described in the application. The person making application for a geophysical exploration permit shall file an amended application whenever there is any new information or a change in the information contained in the application on file with the board of county commissioners~~ commission.

SECTION 5. AMENDMENT. Subsections 1, 3, and 5 of section 38-08.1-04.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Upon filing a complete application for permit to explore pursuant to section 38-08.1-04, the ~~board of county commissioners or its designee~~ commission may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit" ~~subject to such other conditions or restrictions as may be provided by county ordinances established pursuant to chapter 11-33.~~ A person may not engage in geophysical exploration activities in ~~any county~~ this state without having first obtained a geophysical exploration permit from the ~~board of county commissioners~~ commission.
3. The permit must be signed by the ~~chairman~~ director of the ~~board of county commissioners~~ commission's oil and gas division or ~~that person's~~ the director's designee and ~~must bear the official county seal.~~ The permit is valid and effective for all geophysical crews of the ~~permittee for a one-year period in which it is issued~~ one year.
5. The permit or a photostatic copy thereof must be carried at all times by a member of the crew during the period of geophysical exploration and must be exhibited upon demand of the landowner or tenant operator or county or state official ~~or respective surface owner~~.

SECTION 6. A new subsection to section 38-08.1-04.1 of the North Dakota Century Code is created and enacted as follows:

The permitholder shall notify the county auditor or the auditor's designee at least twenty-four hours, excluding Saturdays and holidays, before the permitholder commences geophysical exploration in the county. Notice must include the approximate time schedule and location of the planned activity.

SECTION 7. AMENDMENT. Section 38-08.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-04.2. ~~County commission to notify industrial commission~~ Notification of issuance of permit - Revocation - Suspension. ~~The county commission of any county in which a permit is issued shall immediately forward notice of the issuance of a permit to the industrial commission board of county commissioners of the county in which the lands are located. The county commission may revoke the permit of any person engaging in geophysical exploration upon a showing that that person has violated county ordinances or any other applicable requirement pertaining to geophysical exploration. The county commission shall notify that person, by the most effective written means, of the permit revocation. Upon notification, the person engaging in geophysical exploration may, within fifteen days, request a hearing before the board of county commissioners, at its next regular or special meeting, commission on the matter. The board of county commissioners commission shall either affirm, modify, or deny the permit revocation. The board of county commissioners commission may also suspend the permit temporarily in those cases where climate and physical conditions are such as to cause harm or damage, or undue stress to roads, bridges, pastures, crops, or similar factors that could cause undue stress to the normal physical well being within the county. However, the permit suspension time period may not be included in the one year permit period other physical features. For these same reasons, a board of county commissioners, upon notice to the permitholder and the commission, also may suspend, for not longer than forty-eight hours, a permit for operations within the county.~~

SECTION 8. AMENDMENT. Section 38-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-05. Duty to file record showing where work performed ~~-Request to file location of worksite~~ Complaint of property owner. Within thirty days following any calendar month in which geophysical exploration is begun by any person within this state, such person shall file with the ~~county commission in each county in which work is begun,~~ and shall send to the owner or occupier of any land upon which work is begun, a record showing the township, range, section, and quarter section in the county in which such work was performed and the date upon which such work was commenced. ~~Upon written request by the owner or occupier of the land upon which the work has occurred, any person who has performed work within the state shall send to such landowner or occupier a record showing the date and a legal description of the worksite sufficiently exact to permit location and identification of the site. This~~ The notice also must include the actual shot point location and the amount of explosive charge, if any, in each drill hole. ~~The request must be based upon a written complaint of the property owner or occupier that physical damage to such property has occurred or is reasonably believed to have occurred by reason of the work. The written complaint must designate the name and address of the complaining person and shall state the approximate date of the alleged damage. The required record of operations in response to the written demand therefor must be supplied within ten days from the date on which such written demand is received.~~

SECTION 9. AMENDMENT. Subsections 2, 3, and 5 of section 38-08.1-06 of the North Dakota Century Code are amended and reenacted as follows:

2. The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the ~~board of county commissioners~~ commission in writing that it intends to plug and abandon the drill hole. The required notice must be received by the ~~board~~ commission at least twenty-four hours ~~prior to~~ before the time plugging activities are scheduled to begin. The notice must include the date and time the activities are expected to commence, the location by section, township, and range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of the notice must be sent to the landowner or lessee at the same time it is sent to the ~~board of county commissioners~~ commission. The seismic company shall notify the

~~board of county commissioners commission~~ in writing upon completion of the plugging operation. ~~Any person violating this subsection is guilty of an infraction.~~

3. All seismic shot holes must be plugged as soon after being used as reasonably is practicable; however, they may not remain unplugged for a period of more than thirty days unless, upon application, the ~~board of county commissioners~~ commission grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped during the period between drilling and final plugging.
5. The surface around each seismic shot hole must be restored to its original condition insofar as restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area must be removed from the drill site and ~~deposited in a sanitary landfill~~ lawfully disposed of.

SECTION 10. AMENDMENT. Section 38-08.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-06.1. Plugging requirements - Rules - Liability for damage.

4. ~~Except as provided in this section, all~~ All seismic holes must be: plugged in accordance with rules adopted by the commission. The commission shall review and revise its rules governing plugging requirements as technology in the field evolves.
 - a. ~~Filled with a bentonite water slurry by hose injection and displacement upwards from the bottom up. The slurry mixture must have a marsh funnel viscosity of sixty seconds or greater per quart [0.95 liter] (subject to field verification on site), and must contain a minimum of twenty eight pounds [12.70 kilograms] of commercial plugging bentonite per forty two gallons [158.99 liters] of water. The remainder of the hole must be filled with nonmetallic perma plug, imprinted or tagged with the name and permit number of the person conducting the geophysical exploration, must be set four feet [1.22 meters] below the surface and, above the perma plug, native surface material must be used to fill the seismic hole to the surface; or~~
 - b. ~~Preplugged using coarse ground, sodium bentonite chunks of sizes not less than three eighths of an inch [9.53 millimeters] nor greater than seven eighths of an inch [22.23 millimeters] in diameter, which have not been chemically treated. Sodium bentonite chunks in packages that have moisture contents lower than fifteen percent or higher than nineteen percent, or with greater than fifteen percent inert solids may not be used. Under this subdivision, a seismic hole must be preplugged with a minimum of one hundred pounds [45.36 kilograms] of sodium bentonite for each fifty feet [15.24 meters] of hole depth, placed above the explosive charge, with the remainder of the hole plugged with drill cuttings to within four feet [1.22 meters] of the surface. Backfill shot holes must be filled with sodium bentonite to four feet [1.22 meters] below the surface and with a filling of native material to the surface.~~
2. ~~Seismic holes that penetrate artesian water deposits must be stabilized with a cement slurry from the maximum depth attainable up to approximately four feet [1.22 meters] below the ground surface or with sodium bentonite chunks pursuant to subdivision b of subsection 1 of this section, and stabilization must occur within a reasonable length of time. The cement slurry or sodium bentonite chunks must be of sufficient density to contain water to their native strata. The remainder of the hole must be filled with native surface material.~~
3. ~~Seismic holes that penetrate artesian water deposits and encounter alkaline or saline waters must be plugged immediately as set forth in subsection 1 except that a heavier slurry mixture must be used with the addition of inorganic drying or stabilizing chemicals such as calcium chloride, sodium bicarbonate, or soda ash to assist in the effective plugging and stability of the bentonite column in the hole.~~

4. The seismic company is liable for all damages resulting from failure to comply with rules adopted by the commission pursuant to this section.

SECTION 11. A new section to chapter 38-08.1 of the North Dakota Century Code is created and enacted as follows:

Commission to adopt rules. The commission may adopt and enforce rules to implement this chapter.

SECTION 12. AMENDMENT. Section 57-62-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03.1. Oil and gas impact grant fund - Continuing appropriation. The moneys accumulated in the oil and gas impact grant fund must be allocated as provided by law and as appropriated by the legislative assembly for distribution through grants by the energy development impact office to oil and gas development impacted cities, counties, school districts, and other taxing districts or for industrial commission enforcement of laws and rules relating to geophysical exploration in this state. The amounts deposited in the oil and gas impact grant fund under subsection 1 of section 57-51-15 are hereby appropriated as a standing and continuing appropriation to the energy development impact office for grants as provided in this section.

SECTION 13. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund, not otherwise appropriated, the sum of \$125,000, or so much of the sum as may be necessary, and from the oil and gas impact grant fund, not otherwise appropriated, the sum of \$125,480, or so much of the sum as may be necessary, to the oil and gas division of the industrial commission, for the purpose of enforcement of laws and rules relating to geophysical exploration in the state, for the biennium beginning July 1, 1997, and ending June 30, 1999.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1342.

House Vote: Yeas 95 Nays 0 Absent 2

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State