

MINING AND GAS AND OIL PRODUCTION

CHAPTER 318

HOUSE BILL NO. 1090

(Judiciary Committee)

(At the request of the Industrial Commission)

INDUSTRIAL COMMISSION OIL AND GAS APPEALS

AN ACT to amend and reenact sections 38-08-13 and 38-08-14 of the North Dakota Century Code, relating to the right to ask for reconsideration of and to appeal from industrial commission decisions dealing with oil and gas resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-13 of the North Dakota Century Code is amended and reenacted as follows:

38-08-13. ~~Person~~ Party adversely affected may apply for reconsideration. Any ~~person~~ party adversely affected by any order of the commission may file ~~in writing~~ a written petition for reconsideration in accordance with the procedures of section 28-32-40. The commission shall grant or deny any such petition in whole or in part in accordance with the provisions of section 28-32-40 ~~or~~ and rules adopted pursuant to it.

SECTION 2. AMENDMENT. Section 38-08-14 of the North Dakota Century Code is amended and reenacted as follows:

38-08-14. ~~Person~~ Party adversely affected may appeal to district court.

1. Any ~~person~~ party adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.
2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the

order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-48.

3. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 319

SENATE BILL NO. 2040

(Legislative Council)
(Natural Resources Committee)

COAL MINING BOND RELEASE NOTICE

AN ACT to amend and reenact subdivisions a and b of subsection 1 of section 38-14.1-17 of the North Dakota Century Code, relating to notice of release of surface coal mining performance bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivisions a and b of subsection 1 of section 38-14.1-17 of the North Dakota Century Code are amended and reenacted as follows:

- a. Within thirty days after filing of the request, a copy of an advertisement placed at least once a week for four successive weeks in the official newspaper of each county ~~wherein in which the surface coal mining operation is located and in other daily newspapers of general circulation in the locality of the surface coal mining operation.~~ Such. The advertisement must contain notification of all of the following:
 - (1) The precise location and the number of acres [hectares] of the land affected.
 - (2) The permit and the date approved.
 - (3) The amount of the bond filed and the portion sought to be released.
 - (4) The type and approximate dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan.
 - (5) The right to file written objections and to request a public hearing or an informal conference as specified in subsection 2.
- b. Copies of letters which the permittee has sent to all owners of surface rights within the permit area proposed for bond release, ~~all owners of subsurface rights within the permit area proposed for bond release,~~ adjoining property owners, state agencies specified in subsection 2 of section 38-14.1-21, heads of local governmental bodies, including the county commissioners and mayors of municipalities, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operations took place, notifying them of the permittee's intention to seek release from the bond. Such The letters must also contain notice of the right to file

written objections and request an informal conference or a public hearing as specified in subsection 2.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 320

HOUSE BILL NO. 1344

(Representatives S. Meyer, Drovdal, Kempenich, Rennerfeldt)
(Senators Bowman, Wardner)

TERMINATION OF MINERAL INTERESTS

AN ACT to amend and reenact section 38-18.1-03 of the North Dakota Century Code, relating to termination of mineral interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-03. When mineral interest deemed to be used.

1. A mineral interest is deemed to be used when:
 - a. There are any minerals produced under that interest.
 - b. Operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances.
 - c. In the case of solid minerals, there is production from a common vein or seam by the owners of such mineral interest.
 - d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.
 - e. The mineral interest on any tract is subject to an order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located.
 - f. Taxes are paid on the mineral interest by the owner or the owner's agent.
 - g. A proper statement of claim is recorded as provided by section 38-18.1-04.
 - h. The owner or lessee utilizes the mineral interest in a manner pursuant to, or authorized by, the instrument creating the mineral interest.

2. The payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of this section and the mineral interest is not deemed to be used for purposes of this section. Interest on such account must be credited to the account and may not be used for any other purpose. A named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as abandoned property under chapter 47-30.1. A lease given by a trustee remains valid.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 321

HOUSE BILL NO. 1166

(Natural Resources Committee)

(At the request of the Public Service Commission)

INTERSTATE MINING COMPACT

AN ACT to create and enact a new chapter to title 38 of the North Dakota Century Code, relating to the interstate mining compact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 38 of the North Dakota Century Code is created and enacted as follows:

Interstate mining compact. The interstate mining compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I - Findings and Purposes

1. The party states find that:
 - a. Mining and the contributions thereof to the economy and well-being of every state are of basic significance.
 - b. The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.
 - c. Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concerns.
 - d. Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on lands, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.
 - e. The states are in a position and have the responsibility to assure that mining is conducted in accordance with sound conservation principles and with due regard for local conditions.
2. The purposes of this compact are to:

- a. Advance the protection and restoration of land, water, and other resources affected by mining.
- b. Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining.
- c. Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.
- d. Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.
- e. Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II - Definitions

As used in this compact, the term:

1. "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use, but does not include those aspects of deep mining not having significant effect on the surface and does not include excavation of grading when conducted solely in aid of onsite farming or construction.
2. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

Article III - State Programs

Each party state agrees that it has or will establish effective programs to accomplish the purposes of this compact.

Article IV - Powers

In addition to any other powers conferred upon the interstate mining commission, established by article V of this compact, such commission shall have power to:

1. Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes

and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

2. Study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining.
3. Make recommendations concerning any aspects of law or practice and governmental administration dealing with matters within the purview of this compact.
4. Gather and disseminate information relating to any of the matters within the purview of this compact.
5. Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.
6. Consult, upon the request of a party state and within available resources, with the officials of such state in respect to any problem within the purview of this compact.
7. Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.
8. Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V - The Commission

1. There is hereby created an agency of the party states to be known as the "interstate mining commission", hereinafter called "the commission". The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of the party state, each governor may have the assistance of an advisory body, including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate, in considering problems relating to mining and in discharging the responsibilities as a commissioner on the commission. If a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, an alternate must be designated to represent and act on behalf of the governor. The alternate designated by the governor must be employed by the state agency with responsibilities for protecting and restoring lands affected by mining. The designation of an alternate must be communicated by the governor to the commission in such manner as its bylaws may provide.
2. The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to subsections 3, 7, and 8 of article IV or requesting, accepting, or disposing of funds, services, or other property pursuant to

this subsection, subsections 7 and 8 of this article, or article VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action must be by a majority of those present and voting provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, who are present. The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

3. The commission shall have a seal.
4. The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director and fix the duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amounts of such bonds must be determined by the commission.
5. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions and shall fix the duties and compensation of such personnel.
6. The commission may establish and maintain independently, or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old-age and survivor insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.
7. The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.
8. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this subsection or services borrowed pursuant to subsection 7 must be reported in the annual report of the commission. Such report must include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.
9. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a

copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

10. The commission annually shall make to the governor, legislative assembly, and any advisory body established under subsection 1 of each party state a report covering the activities of the commission for the preceding year and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

Article VI - Advisory, Technical, and Regional Committees

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which must include private persons and public officials, and shall cooperate with the use and services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

Article VII - Finance

1. The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.
2. Each of the commission's budgets of estimated expenditures must contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget must be apportioned among the party states one half in equal shares and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations must indicate the sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.
3. The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection 8 of article V, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except when the commission makes use of funds available to it under subsection 8 of article V hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission must be audited yearly by a qualified public accountant

and the report of the audit must be included in and become part of the annual report of the commission.

5. The accounts of the commission must be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
6. Nothing contained herein must be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII - Entry Into Force and Withdrawal

1. The compact enters into force when enacted into law by any four or more states. Thereafter, this compact becomes effective as to any other state upon its enactment thereof.
2. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal takes effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal affects any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX - Effect on Other Laws

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

Article X - Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Filing bylaws and amendments. In accordance with subsection 9 of article V of the compact, the interstate mining compact commission shall file copies of its bylaws and any amendments thereto with the governor and public service commission.

Approved March 8, 2005
Filed March 8, 2005