

**HOUSE BILL NO. 1459**

Introduced by

Representatives D. Anderson, Berg, Bosch, Mitskog, Novak, O'Brien, J. Olson, Porter, Lefor  
Senators Hogue, Marcellais, Patten

1 A BILL for an Act to create and enact a new chapter to title 38 of the North Dakota Century  
2 Code, relating to regulations, development, and production of critical minerals and rare earth  
3 elements; to amend and reenact section 47-10-24 of the North Dakota Century Code, relating to  
4 descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

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

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

8 **Definitions.**

9 As used in this chapter:

- 10 1. "Commission" means the public service commission.  
11 2. "Critical minerals" means a nonfuel mineral or mineral material essential to the  
12 economic or national security of the United States and which has a supply chain  
13 vulnerable to disruption. The term includes aluminum, antimony, arsenic, barite,  
14 bauxite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium,  
15 graphite, hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum  
16 group metals, potash, the rare earth elements group, rhenium, rubidium, scandium,  
17 strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and  
18 zirconium, which are embedded, commingled, included, contained within, or in any  
19 way associated with any coal seam or deposit.  
20 3. "Extraction facility" means any well or mine or other extractive process operated with  
21 the purpose or intent of recovering critical minerals or rare earth elements.  
22 4. "Operator" means any person that is in charge of the development of a lease or the  
23 operation of a producing property, or is the owner of an extraction facility that is or has  
24 been capable of producing critical minerals or rare earth elements.

- 1       4. "Owner" means the person who owns the critical minerals or rare earth elements.  
2       5. "Rare earth elements" means any of a series of metallic elements of which the oxides  
3       are classed as rare earths and which include the elements of the lanthanide series,  
4       yttrium and scandium, which are embedded, commingled, included, contained within,  
5       or in any way associated with any coal seam or deposit.

6       **Jurisdiction of commission.**

7       The commission has jurisdiction and authority necessary to enforce this chapter. The  
8       commission may conduct investigations to determine whether facts exist which justify action by  
9       the commission. The commission may:

- 10       1. Require an operator to:  
11           a. Furnish a reasonable bond with good and sufficient surety, conditioned upon the  
12           full compliance with this chapter, and the rules and orders of the commission  
13           governing the exploration, development, and production of critical minerals or  
14           rare earth elements on state and private lands within the state. The person  
15           required to furnish the bond may elect to deposit a collateral bond, self-bond,  
16           cash, or any alternative form of security approved by the commission, by which a  
17           permittee assures faithful performance of all requirements of this chapter and the  
18           rules and orders of the industrial commission. If a permit is issued for the  
19           extraction of critical minerals or rare earth elements, in conjunction with a surface  
20           coal mining permit issued under chapter 38-14.1, the bond for the surface coal  
21           mining permit may be used to satisfy the bond required under this chapter.  
22           b. File production reports in the manner prescribed by the commission.  
23           c. Conduct all exploration, development, and production operations in a manner as  
24           to prevent pollution of freshwater supplies, to provide for the protection of the  
25           environment and public safety, and to ensure the optimum recovery of the  
26           mineral resource.  
27           d. Reclaim all land distributed by operations required by this chapter to a condition  
28           consistent with prior land use and productive capacity.  
29       2. Regulate the the drilling and abandonment of exploration test holes and producing  
30       wells and all other exploration, development, production, and reclamation operations.

- 1       3. Adopt and enforce rules and orders to effectuate this chapter, including rules requiring  
2       an operator under permit with the commission to provide to the state geologist  
3       reasonable amounts of data collected during the extraction process for critical  
4       minerals or rare earth elements, and data necessary to evaluate the ongoing attributes  
5       of critical mineral or rare earth extraction in the state.
- 6       4. Inspect all exploration, development, and production sites. The commission must have  
7       access to all exploration, development, or production installations for purposes of  
8       inspection and may require the operator's aid if necessary.
- 9       5. At the request of an operator, approve the commingling of production for any  
10       extraction facility on land with diverse ownership. The commission shall establish a  
11       method to measure production from each parcel of land with diverse ownership.

12       **Permit required.**

- 13       1. A person may not commence an operation for the exploration, development, or  
14       production of critical minerals or rare earth elements without first obtaining a permit  
15       from the commission and paying the permit fee set by the commission.
- 16       2. An operator may obtain a permit in conjunction with a permit issued under chapter  
17       38-14.1.
- 18       3. An operator shall pay any applicable owners, according to each owner's respective  
19       undivided ownership within the applicable permit area, a royalty of two and one-half  
20       percent of the net profits from all critical minerals and rare earth elements mined,  
21       removed, and sold during a coal mining operation. For purposes of this section, "net  
22       profits" means the gross receipts received by an operator from any sale of critical  
23       minerals or rare earth elements less costs incurred or expenditures attributed,  
24       including any expenditures related to the extraction, processing, milling, smelting,  
25       refining, and transportation of the critical minerals or rare earth elements.
- 26       4. This section does not apply to any net profits, costs incurred, or expenditures relating  
27       the extraction, processing, milling, smelting, refining, and transportation of coal.

28       **Procedure.**

- 29       1. The adoption of rules or or the issuance of orders by the commission under this  
30       chapter must be in accordance with the provisions of chapter 49-22 governing the  
31       procedure in the siting of energy conversion and transmission facilities.

1       2. An operator may elect to use the administrative procedures under chapter 38-14.1 for  
2       the purpose of obtaining a permit under this chapter in conjunction with a surface coal  
3       mining permit.

4       3. If an emergency is found to exist by the commission which in the judgment of the  
5       commission requires the making, revoking, changing, amending, modifying, altering,  
6       enlarging, renewal, or extension of a rule or order without first having a hearing, an  
7       emergency rule or order has the same validity as if a hearing had been held after due  
8       notice.

9       4. An emergency rule or order permitted by this section may remain in force no longer  
10      than fifteen days from its effective date, or when the rule or order made after due  
11      notice and hearing with respect to the subject matter of the emergency rule or order  
12      becomes effective, whichever occurs first.

13      **Penalty - Revocation - Provisions applicable.**

14      Sections 49-22-20 and 49-22-21 are applicable to the provisions of this chapter and to the  
15      rules and orders of the commission adopted under this chapter.

16      **SECTION 2. AMENDMENT.** Section 47-10-24 of the North Dakota Century Code is  
17      amended and reenacted as follows:

18      **47-10-24. Description and definition of minerals in leases and conveyances.**

19      1. All conveyances of mineral rights or royalties in real property in this state, excluding  
20      leases, ~~shall~~must be construed to grant or convey to the grantee thereof all minerals of  
21      any nature ~~whatsoever~~ except those minerals specifically excluded by name in the  
22      deed, grant, or conveyance, and their compounds and byproducts, but ~~shall~~may not  
23      be construed to grant or convey to the grantee any interest in any gravel, clay, or  
24      scoria unless specifically included by name in the deed, grant, or conveyance.

25      ~~No~~2. Except as provided in subsection 3 regarding a lease for coal, a lease of mineral rights  
26      in this state shall~~may~~not be construed as passing any interest to any minerals except  
27      those minerals specifically included and set forth by name in the lease. For the  
28      purposes of this ~~paragraph~~section, the naming of either a specific metalliferous  
29      element, or nonmetalliferous element, and if so stated in lease, ~~shall be~~is deemed to  
30      include all of its compounds and byproducts, and in the case of oil and gas, all  
31      associated hydrocarbons produced in a liquid or gaseous form so named ~~shall~~must be

1           deemed to be included in the mineral named. ~~The~~Except as provided in subsection 3  
2           regarding a lease for coal, the use of the words "all other minerals" or similar words of  
3           an all-inclusive nature in any lease ~~shall~~may not be construed as leasing any minerals  
4           except those minerals specifically named in the lease and their compounds and  
5           byproducts.

6           3. As provided under section 1 of this Act, a lease of coal in this state when granted is  
7           deemed to include all critical minerals and rare earth elements embedded,  
8           commingled, included, contained within, or in any way associated with any coal seam  
9           or deposit, unless specifically excluded from the lease of coal.