Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1459

Introduced by

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

Senators Hogue, Marcellais, Patten

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

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:

Definitions.

As used in this chapter:

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

4. "Owner" means the person who owns the critical minerals or rare earth elements.

5. "Rare earth elements" means any of a series of metallic elements of which the oxides are classed as rare earths and which include the elements of the lanthanide series, yttrium and scandium, which are embedded, commingled, included, contained within, or in any way associated with any coal seam or deposit.

Jurisdiction of commission.

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

1. Require an operator to:

   a. Furnish a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the commission governing the exploration, development, and production of critical minerals or rare earth elements on state and private lands within the state. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission. If a permit is issued for the extraction of critical minerals or rare earth elements, in conjunction with a surface coal mining permit issued under chapter 38-14.1, the bond for the surface coal mining permit may be used to satisfy the bond required under this chapter.

   b. File production reports in the manner prescribed by the commission.

   c. Conduct all exploration, development, and production operations in a manner as to prevent pollution of freshwater supplies, to provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource.

   d. Reclaim all land distributed by operations required by this chapter to a condition consistent with prior land use and productive capacity.

2. Regulate the the drilling and abandonment of exploration test holes and producing wells and all other exploration, development, production, and reclamation operations.

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

Permit required.

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

Procedure.

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

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

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

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

Penalty - Revocation - Provisions applicable.

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

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

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

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

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

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

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