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Adopted by the Energy and Natural Resources Committee
February 6, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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~~sections 38-12-02 and 47-10-24 of the North Dakota Century Code, relating to the authority of the industrial commission and descriptions and definitions of minerals in leases and conveyances; ~~and~~ to provide a penalty; and to declare an emergency.

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~~industrial 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 coal deposit.

3. "Extraction ~~facility~~process" means ~~any well or mine or other extractive process operated with the purpose or intent of recovering critical minerals or rare earth elements~~the process in which critical minerals or rare earth elements are extracted from coal produced in conjunction with coal mining operations which cannot otherwise be extracted without mining a coal seam or coal deposit.

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~~a processing facility that is or has been capable of producing critical minerals or rare earth elements embedded, commingled, included, contained within, or in any way associated with a coal seam or coal deposit.

~~4.~~5. "Owner" means the person who owns the critical minerals or rare earth elements.

~~5.~~6. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

7. "Processing facility" means any equipment, processing plant, or other facility operated with the purpose or intent of extracting critical minerals or rare earth elements embedded, commingled, included, contained within, or in any way associated with a coal seam or coal deposit.

8. "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 coal deposit.

Public policy.

It is hereby declared to be in the public interest to foster, encourage, and promote the development, production and utilization of critical minerals and rare earth elements in a manner that will prevent waste and allow a greater ultimate recovery of these natural resources, and to protect the rights of all owners so that the greatest possible economic recovery of these

resources be obtained in the state, to the end that landowners, producers, and the general public realize and enjoy the greatest possible good from these vital natural resources. Critical minerals and rare earth elements are fundamental to the economy, competitiveness, and security of the United States. Many critical minerals and rare earth elements are broadly disseminated and can only be recovered when produced as part of another extractive activity of a host mineral which for purposes of this chapter is coal. To the maximum extent practicable, the critical minerals and rare earth elements needs of the United States should be satisfied by the vital natural resources responsibly produced in the United States. The legislative assembly finds it necessary to declare that the mining of coal in this state, and a lease of coal in this state whenever granted must include the right to mine all critical minerals and rare earth elements, unless specifically excluded by the lease.

Jurisdiction of commission.

The commission has jurisdiction and authority necessary to enforce this chapter. This section does not apply to a mine under the jurisdiction and authority of the public service commission under chapter 38-14.1. 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~~an extraction process in a manner as to prevent pollution of freshwater supplies~~,~~ and 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.~~3. Inspect all ~~exploration, development, and production sites~~processing facilities. The commission must have access to all ~~exploration, development, or production installations~~processing facilities for purposes of inspection and may require the operator's aid if necessary and requested.

~~5.~~4. At the request of an operator, approve the commingling of production for any ~~extraction facility~~processing 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~~of a processing facility or 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~~This section does not apply to a mine under the jurisdiction and authority of the public service commission 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~~the extraction process. 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, only 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~~38-08 governing the procedure in the ~~siting of energy conversion and transmission facilities~~administration of the Oil and Gas Conservation Act.
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~~A surface coal mine permit must be issued under chapter 38-14.1.
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~~38-08-16 and ~~49-22-21~~38-08-17 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 38-12-02 of the North Dakota Century Code is amended and reenacted as follows:

38-12-02. Jurisdiction of commission.

The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. Subject to the provisions of section 38-08-21, the director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the director of mineral resources has the authority:

1. To require:
   a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration, development, and production of subsurface minerals on state and private lands within the state of North Dakota. 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, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
   b. The delivery, free of charge, to the state geologist of the basic exploration data collected by the operator, within thirty days of field collection of such data. This data must include:
      (1) Sample cuts, core chips, or whole cores.
      (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
      (3) Elevation and location information on the data collection points.
      (4) Other pertinent information as may be requested by the state geologist.

      The data so submitted is confidential for a period of one year when so requested by the operator and such period may be further extended upon approval by the commission.

c. The filing of monthly production reports in the manner prescribed by the commission and any other reports deemed necessary by the commission.

d. The conducting of all exploration, development, and production operations in such 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.

e. The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity.

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

3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.

4. To inspect all exploration, development, and production sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all exploration, development, or production installations for purposes of inspection and shall have the authority to require the operator's aid if it is necessary and is requested.

5. To regulate the exploration of critical minerals embedded, commingled, included, contained within, or in any way associated with a coal seam or coal deposit located outside of any surface coal mine permit boundary approved by the public service commission.

SECTION 3. 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~~whenever 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 coal deposit, unless specifically excluded from the lease of coal.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.