

Sixty-ninth  
Legislative Assembly  
of North Dakota

**FIRST ENGROSSMENT**  
**with Conference Committee Amendments**  
**ENGROSSED 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 three new sections to chapter 38-12 of the North Dakota  
2 Century Code, relating to critical minerals and rare earth minerals and royalties; to amend and  
3 reenact sections 38-12-01 and 47-10-24 of the North Dakota Century Code, relating to the  
4 definitions of critical minerals and rare earth minerals and descriptions and definitions of  
5 minerals in leases and conveyances; to provide for retroactive application; and to declare an  
6 emergency.

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

8 **SECTION 1. AMENDMENT.** Section 38-12-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **38-12-01. Definitions.**

11 As used in this chapter, unless the context otherwise requires:

- 12 1. "Commission" means the industrial commission of the state of North Dakota.
- 13 2. "Critical mineral" means a nonfuel mineral or material essential to the economic or  
14 national security of the United States and which has a supply chain vulnerable to  
15 disruption. The term includes aluminum, antimony, arsenic, astatine, barite, bauxite,  
16 beryllium, bismuth, cerium, cesium, chromium, cobalt, erbium, fluorspar, gallium,  
17 germanium, graphite, hafnium, helium, indium, lithium, magnesium, manganese,  
18 neodymium, niobium, platinum group metals, potash, the rare earth elements group,  
19 rhodium, rubidium, samarium, scandium, strontium, tantalum, tellurium, thulium, tin,  
20 titanium, tungsten, uranium, vanadium, and zirconium which are chemically bound,  
21 embedded, commingled, included, or contained within a coal seam or coal deposit.

- 1     ~~2.3.~~   "Extraction facility" means any well or mine or other extractive process operated for  
2           the purpose of recovering subsurface minerals.
- 3     ~~3.4.~~   "Operator" means any person who, duly authorized, is in charge of the development of  
4           a lease or the operation of a producing property.
- 5     ~~4.5.~~   "Owner" means the person who has the right to explore for, develop, and produce  
6           subsurface minerals and to appropriate the subsurface minerals the owner produces  
7           either for the owner or for the owner and others.
- 8     ~~5.6.~~   "Person" means and includes any natural person, corporation, limited liability  
9           company, association, partnership, receiver, trustee, executor, administrator, guardian,  
10          fiduciary, or other representative of any kind, and includes any department, agency, or  
11          instrumentality of the state or of any governmental subdivision thereof; the masculine  
12          gender, in referring to a person, includes the feminine and the neuter genders.
- 13    ~~6.7.~~   "Producer" means the owner of an extraction facility which is or has been capable of  
14          producing subsurface minerals.
- 15       8.   "Rare earth minerals" means any of a series of metallic elements of which the oxides  
16          are classed as rare earths and which include the elements of the lanthanide series,  
17          yttrium, and scandium which are chemically bound, embedded, commingled, included,  
18          or contained within a coal seam or coal deposit.
- 19    ~~7.9.~~   "Subsurface minerals" means all critical minerals and rare earth minerals not  
20          chemically bound, embedded, commingled, included, or contained within a coal seam  
21          or coal deposit, and all other naturally occurring elements and their compounds,  
22          volcanic ash, precious metals, carbonates, and natural mineral salts of boron,  
23          bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium,  
24          sodium, thorium, uranium, and sulfur, and their compounds, but does not include clay,  
25          scoria, or sand and gravel and rocks crushed for sand and gravel.

26       **SECTION 2.** A new section to chapter 38-12 of the North Dakota Century Code is created  
27   and enacted as follows:

28       **Declaration of policy for critical minerals and rare earth minerals.**

- 29       1.   It is in the public interest to encourage, accelerate, and promote the development,  
30          production, and utilization of critical minerals and rare earth minerals in a manner that  
31          prevents waste, allows a greater ultimate recovery of these natural resources, and

1 protects the rights of owners so the greatest possible economic recovery of these  
2 resources may be obtained in this state and landowners, producers, and the general  
3 public may enjoy the greatest possible good from these resources.

4 2. As reflected in federal policy, the legislative assembly recognizes critical minerals and  
5 rare earth minerals are fundamental to the economy, competitiveness, and security of  
6 the United States. The United States relies on foreign nations to supply these critical  
7 minerals and rare earth minerals to develop and manufacture medical devices,  
8 information technology, and equipment and technology for national defense, energy  
9 infrastructure, and other critical items. Domestic development and production of critical  
10 minerals and rare earth minerals is inadequate to meet the nation's needs. The United  
11 States must have a reliable, diversified, and affordable supply to drive medical  
12 manufacturing, transportation, agriculture, and defense industries and to sustain  
13 military preparedness, national security, and economic security.

14 3. The legislative assembly acknowledges the public interest to foster, encourage, and  
15 promote the development, production, and utilization of all natural resources of coal,  
16 and the public interest is served by the preservation of existing coal conversion  
17 facilities, which significantly contribute to the state economy and general public.

18 4. Development of critical minerals and rare earth minerals also may lead to significant  
19 economic benefits for owners, new jobs in mining, processing, and related industries,  
20 and contributions to the state economy. Many critical minerals and rare earth minerals  
21 are broadly and irregularly disseminated and chemically bound, embedded,  
22 commingled, included, or contained within coal. Certain owners are unable to develop  
23 critical minerals and rare earth minerals because the minerals are contained within the  
24 coal seam or coal deposit, are covered by an existing mining permit, and are subject  
25 to the prior legal rights of the coal producer.

26 5. This chapter provides potential for coal owners and critical mineral and rare earth  
27 mineral owners to obtain added value from the development of critical minerals and  
28 rare earth minerals extracted from coal. These critical minerals and rare earth minerals  
29 are chemically bound, embedded, commingled, included, or contained within a coal  
30 seam or coal deposit and cannot otherwise be produced on their own without

1 infringing on the working interests of the coal estate without first mining the host  
2 mineral coal or in an economic manner.

3 6. To the maximum extent practicable, the critical mineral and rare earth mineral needs of  
4 the United States should be satisfied by the vital natural resources responsibly  
5 produced in the United States. The legislative assembly finds it necessary to declare  
6 that the mining of coal in this state, and a lease of coal in this state whenever granted,  
7 must include the right to all critical minerals and rare earth minerals chemically bound,  
8 embedded, commingled, included, or contained within the coal unless specifically  
9 excluded by the lease.

10 7. A party is not obligated to mine, remove, or sell critical minerals or rare earth minerals  
11 from coal. The legislative assembly finds that because critical minerals and rare earth  
12 minerals are chemically bound, embedded, commingled, included, or contained within  
13 a coal seam or coal deposit, and are not uniformly disseminated, production must be  
14 commingled and a royalty rate must be applied only if the minerals are extracted and  
15 sold. It is necessary to fulfill the public policy of this state by clarifying law related to  
16 this policy and the development of critical minerals and rare earth minerals.

17 **SECTION 3.** A new section to chapter 38-12 of the North Dakota Century Code is created  
18 and enacted as follows:

19 **Title to critical minerals and rare earth minerals.**

20 1. Critical minerals and rare earth minerals occurring within or associated with coal-  
21 bearing formations, coal seams, or coal combustion residuals are part of the coal  
22 estate for purposes of ownership, leasing, taxation, and development unless expressly  
23 severed by recorded conveyance.

24 2. Coal ash and any coal gasification product, including all minerals, substances,  
25 compounds, byproducts, or elements contained therein which result from the  
26 combustion or gasification of coal in a coal conversion facility are the property of the  
27 owner or operator of the coal conversion facility. The owner or operator of a coal  
28 conversion facility may not be held liable for waste, conversion, destruction, or  
29 damages to any extent arising from the purchase, combustion, gasification or sale of  
30 any minerals, substances, compounds, byproducts, or elements contained within the  
31 coal, coal ash, or products of coal.

3. For purposes of this section, "coal ash" includes fly ash, bottom ash, and boiler slag.

**SECTION 4.** A new section to chapter 38-12 of the North Dakota Century Code is created and enacted as follows:

**Royalties.**

1. An operator shall pay any applicable mineral owner, according to each mineral owner's respective undivided ownership of coal mined within the applicable permit area during a calendar year, a royalty of no less than two and one-half percent of the gross proceeds from all critical minerals and rare earth minerals mined, removed, and sold during the extraction process.

2. The royalty must be paid at least annually by March thirty-first of the following year.

3. For purposes of this section, "gross proceeds" means the gross receipts received by an operator from any sale of critical minerals or rare earth minerals that constitutes an arms-length transaction.

**SECTION 5. 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, 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, the use of

1           the words "all other minerals" or similar words of an all-inclusive nature in any lease  
2           ~~shall~~may not be construed as leasing any minerals except those minerals specifically  
3           named in the lease and their compounds and byproducts.

4        3. As provided under section 2 of this Act, a lease of coal in this state whenever granted  
5        is deemed to include all critical minerals and rare earth minerals chemically bound,  
6        embedded, commingled, included, or contained within a coal seam or coal deposit  
7        unless specifically excluded from the lease of coal.

8        **SECTION 6. RETROACTIVE APPLICATION.** This Act is retroactive in application.

9        **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.