

**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 a new section 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, friezium,  
17 gallium, germanium, graphite, hafnium, helium, indium, lithium, magnesium,  
18 manganese, neodymium, niobium, platinum group metals, potash, the rare earth  
19 elements group, rhenium, rubidium, samarium, scandium, stralium, strontium,  
20 tantalum, tellurium, thulium, tin, titanium, tungsten, uranium, vanadium, and zirconium  
21 which are chemically bound, embedded, commingled, included, or contained within a  
22 coal seam or coal deposit.

- 1        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       ~~7.8.~~ "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       9. "Subsurface minerals" means all naturally occurring elements and their compounds,  
20       volcanic ash, precious metals, carbonates, and natural mineral salts of boron,  
21       bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium,  
22       sodium, thorium, uranium, and sulfur, and their compounds, but does not include sand  
23       and gravel and rocks crushed for sand and gravel.

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

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

- 27        1. It is in the public interest of the state of North Dakota, its citizens, and the United  
28        States to encourage, accelerate, and promote the development, production, and  
29        utilization of critical minerals and rare earth minerals in a manner that prevents waste,  
30        allows a greater ultimate recovery of these natural resources, and protects the rights  
31        of owners so the greatest possible economic recovery of these resources may be

1           obtained in this state and landowners, producers, and the general public may enjoy  
2           the greatest possible good from these resources.

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

7           3. Development of critical minerals and rare earth minerals also may lead to significant  
8           economic benefits for owners, new jobs in mining, processing, and related industries,  
9           and contributions to the state economy. Many critical minerals and rare earth minerals  
10          are broadly and irregularly disseminated and chemically bound, embedded,  
11          commingled, included, or contained within coal. Certain owners are unable to develop  
12          critical minerals and rare earth minerals because the minerals are contained within the  
13          coal seam or coal deposit, are covered by an existing mining permit, and are subject  
14          to the prior legal rights of the coal producer.

15          4. As reflected in federal policy, the legislative assembly recognizes critical minerals and  
16          rare earth minerals are fundamental to the economy, competitiveness, and security of  
17          the United States. The United States relies on foreign nations to supply these critical  
18          minerals and rare earth minerals to develop and manufacture medical devices,  
19          information technology, and equipment and technology for national defense, energy  
20          infrastructure, and other critical items. Domestic development and production of critical  
21          minerals and rare earth minerals is inadequate to meet the nation's needs. The United  
22          States must have a reliable, diversified, and affordable supply to drive medical  
23          manufacturing, transportation, agriculture, and defense industries and to sustain  
24          military preparedness, national security, and economic security.

25          5. This chapter provides potential for coal owners and critical mineral and rare earth  
26          mineral owners to obtain added value from the development of critical minerals and  
27          rare earth minerals extracted from coal. These critical minerals and rare earth minerals  
28          are chemically bound, embedded, commingled, included, or contained within a coal  
29          seam or coal deposit and cannot otherwise be produced on their own without  
30          infringing on the working interests of the coal estate, without first mining the host  
31          mineral coal, or in an economic manner.

- 1       6. To the maximum extent practicable, the critical mineral and rare earth mineral needs of  
2       the United States should be satisfied by the vital natural resources responsibly  
3       produced in the United States. The legislative assembly finds it necessary to declare  
4       that the mining of coal in this state and a lease of coal in this state, whenever granted,  
5       must include the right to all critical minerals and rare earth minerals chemically bound,  
6       embedded, commingled, included, or contained within the coal unless specifically  
7       excluded by the lease. A party is not obligated to mine, remove, or sell critical minerals  
8       or rare earth minerals from coal. The legislative assembly finds that because critical  
9       minerals and rare earth minerals are chemically bound, embedded, commingled,  
10       included, or contained within a coal seam or coal deposit, and are not uniformly  
11       disseminated, production must be commingled and a royalty rate must be applied only  
12       if the minerals are extracted and sold. It is necessary to fulfill the public policy of this  
13       state by clarifying law related to this policy and the development of critical minerals  
14       and rare earth minerals.
- 15       7. Critical minerals and rare earth minerals occurring within or associated with coal-  
16       bearing formations, coal seams, or coal combustion residuals are part of the coal  
17       estate for purposes of ownership, leasing, taxation, and development unless expressly  
18       severed by recorded conveyance. To help facilitate the extraction and processing of  
19       critical minerals and rare earth minerals, the parties may amend an existing lease or  
20       agree to new terms for any lease if agreed to by both parties.
- 21       8. Coal ash and any coal gasification product, including all minerals, substances,  
22       compounds, byproducts, or elements contained therein which result from the  
23       combustion or gasification of coal in a coal conversion facility are the property of the  
24       owner or operator of the coal conversion facility. The owner or operator of a coal  
25       conversion facility may not be held liable for waste, conversion, destruction, or  
26       damages to any extent arising from the purchase, combustion, gasification, or sale of  
27       any minerals, substances, compounds, byproducts, or elements contained within the  
28       coal, coal ash, or products of coal.
- 29       9. For purposes of this section, "coal ash" includes fly ash, bottom ash, and boiler slag.
- 30       10. An operator shall pay any applicable mineral owner, according to each mineral  
31       owner's respective undivided ownership of coal mined within the applicable permit

1 area during a calendar year, a royalty of no less than two and one-half percent of the  
2 gross proceeds from all critical minerals and rare earth minerals mined, removed, and  
3 sold during the extraction process. The royalty must be paid at least annually by  
4 March thirty-first of the following year. For purposes of this section, "gross proceeds"  
5 means the gross receipts received by an operator from any sale of critical minerals or  
6 rare earth minerals which constitutes an arms-length transaction.

7 **SECTION 3. AMENDMENT.** Section 47-10-24 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **47-10-24. Description and definition of minerals in leases and conveyances.**

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

16 ~~No~~

17 2. Except as provided in subsection 3, a lease of mineral rights in this state shall~~may~~ not  
18 be construed as passing any interest to any minerals except those minerals  
19 specifically included and set forth by name in the lease. For the purposes of this  
20 paragraph~~section~~, the naming of either a specific metalliferous element, or  
21 nonmetalliferous element, and if so stated in lease, shall~~be~~ is deemed to include all of  
22 its compounds and byproducts, and in the case of oil and gas, all associated  
23 hydrocarbons produced in a liquid or gaseous form so named shall~~must~~ be deemed to  
24 be included in the mineral named. The~~Except as provided in subsection 3, the use of~~  
25 the words "all other minerals" or similar words of an all-inclusive nature in any lease  
26 shall~~may~~ not be construed as leasing any minerals except those minerals specifically  
27 named in the lease and their compounds and byproducts.

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

- 1        **SECTION 4. RETROACTIVE APPLICATION.** This Act is retroactive in application.
- 2        **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.