

MINING AND GAS AND OIL PRODUCTION

CHAPTER 346

SENATE BILL NO. 2335

(Senators Magrum, Dwyer, Paulson)

AN ACT to create and enact a new section to chapter 38-11.1 of the North Dakota Century Code, relating to pretrial appraisals; and to amend and reenact section 38-11.1-09 of the North Dakota Century Code, relating to the recovery of attorney's fees in an action relating to oil and gas production.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 38-11.1 of the North Dakota Century Code is created and enacted as follows:

Pretrial appraisal required before commencement of action to recover compensation.

1. As used in this section, "certified appraiser" has the same meaning as in section 43-23.3-01.
2. Before commencing a legal action to recover compensation, a person entitled to compensation shall obtain a written appraisal valuing all parcels affected or foreseeably affected by drilling operations under this chapter. A certified appraiser, an individual possessing a temporary permit under section 43-23.3-11, or an individual possessing a permit under section 43-23.3-04.1 shall conduct the required appraisal.
3. Before a court may take jurisdiction over an action commenced under this chapter, a person seeking compensation under this chapter must have provided to a mineral developer a copy of an appraisal issued under subsection 2. The mineral developer may make a new offer for settlement to the surface owner within thirty days of receiving the appraisal. If a new offer is made under this subsection, the amount of the new offer serves as the offer contemplated under section 38-11.1-09.
4. The mineral developer shall reimburse the reasonable actual costs of the required appraisal incurred by the surface owner for obtaining a required appraisal under this section or, at the election of the surface owner, the mineral developer shall pay the reasonable actual costs directly to the appraiser.
5. The required appraisal or opinion of value expressed in the required appraisal is inadmissible at a proceeding commenced under this chapter, unless the information is offered by the surface owner. Whether an appraisal is issued under this section does not require or prohibit the introduction of specific evidence offered at a proceeding commenced under this chapter.

SECTION 2. AMENDMENT. Section 38-11.1-09 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-09. Rejection - Legal action - Fees and costs.

If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. If the amount of compensation awarded by the court is greater than ~~that which had been the~~ amount offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees, any costs ~~assessed by the court and disbursements under chapter 28-26,~~ and interest on the amount of the final compensation awarded by the court from the day drilling is commenced. The rate of interest awarded must be the prime rate charged by the Bank of North Dakota on the date of the judgment.

Approved April 7, 2025

Filed April 8, 2025

CHAPTER 347

HOUSE BILL NO. 1459

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

AN ACT to create and enact a new section to chapter 38-12 of the North Dakota Century Code, relating to critical minerals and rare earth minerals and royalties; to amend and reenact sections 38-12-01 and 47-10-24 of the North Dakota Century Code, relating to the definitions of critical minerals and rare earth minerals and descriptions and definitions of minerals in leases and conveyances; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

38-12-01. Definitions.

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

1. "Commission" means the industrial commission of the state of North Dakota.
2. "Critical mineral" means a nonfuel mineral or 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, astatine, barite, bauxite, beryllium, bismuth, cerium, cesium, chromium, cobalt, erbium, fluorspar, friezium, gallium, germanium, graphite, hafnium, helium, indium, lithium, magnesium, manganese, neodymium, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, samarium, scandium, stralium, strontium, tantalum, tellurium, thulium, tin, titanium, tungsten, uranium, vanadium, and zirconium which are chemically bound, embedded, commingled, included, or contained within a coal seam or coal deposit.
3. "Extraction facility" means any well or mine or other extractive process operated for the purpose of recovering subsurface minerals.
- ~~3-4.~~ "Operator" means any person who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
- ~~4-5.~~ "Owner" means the person who has the right to explore for, develop, and produce subsurface minerals and to appropriate the subsurface minerals the owner produces either for the owner or for the owner and others.
- ~~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.

- 6-7. "Producer" means the owner of an extraction facility which is or has been capable of producing subsurface minerals.
- 7-8. "Rare earth minerals" 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 chemically bound, embedded, commingled, included, or contained within a coal seam or coal deposit.
9. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of boron, bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds, but does not include sand and gravel and rocks crushed for sand and gravel.

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

Declaration of policy for critical minerals and rare earth minerals.

1. It is in the public interest of the state of North Dakota, its citizens, and the United States to encourage, accelerate, and promote the development, production, and utilization of critical minerals and rare earth minerals in a manner that prevents waste, allows a greater ultimate recovery of these natural resources, and protects the rights of owners so the greatest possible economic recovery of these resources may be obtained in this state and landowners, producers, and the general public may enjoy the greatest possible good from these resources.
2. The legislative assembly acknowledges the public interest to foster, encourage, and promote the development, production, and utilization of all natural resources of coal, and the public interest is served by the preservation of existing coal conversion facilities, which significantly contribute to the state economy and general public.
3. Development of critical minerals and rare earth minerals also may lead to significant economic benefits for owners, new jobs in mining, processing, and related industries, and contributions to the state economy. Many critical minerals and rare earth minerals are broadly and irregularly disseminated and chemically bound, embedded, commingled, included, or contained within coal. Certain owners are unable to develop critical minerals and rare earth minerals because the minerals are contained within the coal seam or coal deposit, are covered by an existing mining permit, and are subject to the prior legal rights of the coal producer.
4. As reflected in federal policy, the legislative assembly recognizes critical minerals and rare earth minerals are fundamental to the economy, competitiveness, and security of the United States. The United States relies on foreign nations to supply these critical minerals and rare earth minerals to develop and manufacture medical devices, information technology, and equipment and technology for national defense, energy infrastructure, and other critical items. Domestic development and production of critical minerals and rare earth minerals is inadequate to meet the nation's needs. The United States must have a reliable, diversified, and affordable supply to drive medical manufacturing, transportation, agriculture, and defense industries and to sustain military preparedness, national security, and economic security.

5. This chapter provides potential for coal owners and critical mineral and rare earth mineral owners to obtain added value from the development of critical minerals and rare earth minerals extracted from coal. These critical minerals and rare earth minerals are chemically bound, embedded, commingled, included, or contained within a coal seam or coal deposit and cannot otherwise be produced on their own without infringing on the working interests of the coal estate, without first mining the host mineral coal, or in an economic manner.
6. To the maximum extent practicable, the critical mineral and rare earth mineral 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 all critical minerals and rare earth minerals chemically bound, embedded, commingled, included, or contained within the coal unless specifically excluded by the lease. A party is not obligated to mine, remove, or sell critical minerals or rare earth minerals from coal. The legislative assembly finds that because critical minerals and rare earth minerals are chemically bound, embedded, commingled, included, or contained within a coal seam or coal deposit, and are not uniformly disseminated, production must be commingled and a royalty rate must be applied only if the minerals are extracted and sold. It is necessary to fulfill the public policy of this state by clarifying law related to this policy and the development of critical minerals and rare earth minerals.
7. Critical minerals and rare earth minerals occurring within or associated with coal-bearing formations, coal seams, or coal combustion residuals are part of the coal estate for purposes of ownership, leasing, taxation, and development unless expressly severed by recorded conveyance. To help facilitate the extraction and processing of critical minerals and rare earth minerals, the parties may amend an existing lease or agree to new terms for any lease if agreed to by both parties.
8. Coal ash and any coal gasification product, including all minerals, substances, compounds, byproducts, or elements contained therein which result from the combustion or gasification of coal in a coal conversion facility are the property of the owner or operator of the coal conversion facility. The owner or operator of a coal conversion facility may not be held liable for waste, conversion, destruction, or damages to any extent arising from the purchase, combustion, gasification, or sale of any minerals, substances, compounds, byproducts, or elements contained within the coal, coal ash, or products of coal.
9. For purposes of this section, "coal ash" includes fly ash, bottom ash, and boiler slag.
10. 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. The royalty must be paid at least annually by March thirty-first of the following year. 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 which constitutes an arms-length transaction.

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

SECTION 4. RETROACTIVE APPLICATION. This Act is retroactive in application.

Approved May 5, 2025

Filed May 6, 2025

CHAPTER 348

SENATE BILL NO. 2117

(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 1 of section 38-14.2-02, and sections 38-14.2-04, 38-14.2-06, and 38-14.2-07 of the North Dakota Century Code, relating to abandoned surface mine reclamation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 38-14.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Abandoned mine reclamation plan" means a plan for the reclamation of lands and water adversely affected by past coal mining and noncoal mining practices. The plan must generally identify all areas to be reclaimed in the state of North Dakota, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, ~~and the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work as required by the Surface Mining Control and Reclamation Act of 1977~~ [Pub. L. 95-87; 30 U.S.C. 1235].

SECTION 2. AMENDMENT. Section 38-14.2-04 of the North Dakota Century Code is amended and reenacted as follows:

38-14.2-04. State abandoned mine reclamation fund.

There is hereby created the state abandoned mine reclamation fund.

1. Revenue to the fund must include:
 - a. Moneys applied for and received by the commission pursuant to title IV of Public Law 95-87 [91 Stat. 456; 30 U.S.C. 1231 et seq.], for the purposes of this chapter.
 - b. Moneys donated to the commission by persons, corporations, limited liability companies, associations, and foundations for the purposes of this chapter.
 - c. Moneys collected by the commission from charges for uses of lands acquired or reclaimed with moneys from the fund, after expenditures for maintenance have been deducted.
 - d. Moneys recovered by the commission through satisfaction of liens filed against privately owned lands reclaimed with moneys from the fund.
 - e. Moneys recovered by the commission from the sale of lands acquired with moneys from the fund.

- f. Such other moneys as may be deposited in the fund for use in carrying out the purposes of the abandoned mine reclamation program.
2. Moneys in the fund may be used for the following purposes:
 - a. Reclamation and restoration of land and water resources as defined by section 38-14.2-06 and adversely affected by past mining, including but not limited to:
 - (1) Reclamation and restoration of abandoned surface mined areas, abandoned coal processing areas, and abandoned coal refuse disposal areas.
 - (2) Reclamation of lands affected by underground mine subsidence.
 - (3) Planting of land adversely affected by past coal mining or noncoal mining to prevent erosion and sedimentation.
 - (4) Prevention, abatement, treatment, and control of water pollution created by coal mine or noncoal mine drainage including restoration of streambeds, and construction and operation of water treatment plants.
 - (5) Prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ.
 - (6) Prevention, abatement, and control of coal mine subsidence.
 - b. Acquisition or lease of land as provided for in this chapter.
 - c. ~~Studies by the commission by contract with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this chapter.~~
 - d. All other necessary expenses to accomplish the purposes of this chapter, including administrative expenses and costs incurred in the development of the abandoned mine reclamation plan and the abandoned mine reclamation program.
3. There is created a special fund in the state treasury called the state abandoned mine reclamation fund set-aside trust account. Revenue to the set-aside trust account must be ten percent of the amount granted by the secretary of the interior under title IV of Public Law 95-87 ~~as provided by Public Law 100-34~~ for amounts awarded before December 20, 2006. This account must be interest bearing and all interest must be credited to the set-aside trust account. No funds from this account may be expended prior to September 30, 2004. After September 30, 2004, the funds may be expended as provided in this subsection but no funds may be used to reclaim noncoal projects. The legislative assembly shall authorize expenditure by appropriation from the account as necessary to defray the administrative expenses of the program. The remaining funds in the account may only be used in accordance with subdivisions a, b, and c, of subsection 1 of section 38-14.2-07 but no funds may be used on noncoal projects. The liability of the state to fulfill the requirements of this subsection is limited to the amount of funds available in the account established in this subsection. The state has no obligations under

this subsection except to the extent of federal funds deposited in the ~~coal mine mitigation~~ state abandoned mine reclamation fund set-aside trust account and the interest thereon to operate the program.

4. There is created a special fund in the state treasury called the state abandoned mine reclamation safeguarding treatment for the restoration of ecosystems from abandoned mines fund set-aside trust account. Revenue to the set-aside trust account must be no more than thirty percent of the annual amount granted by the secretary of interior under title IV of Public Law No. 95-87 as provided by Public Law No. 117-58 and Public Law No. 117-328. This account must be interest bearing and all interest must be credited to the safeguarding treatment for the restoration of ecosystems from abandoned mines fund set-aside trust account. The funds from this account may be expended for:
 - a. The abatement of the causes and treatment of the effects of acid mine drainage resulting from coal mining practices, including costs of building, operating, maintaining, and rehabilitating acid mine drainage treatment systems;
 - b. The prevention, abatement, and control of subsidence; or
 - c. The prevention abatement, and control of coal mine fires.
5. The legislative assembly shall authorize expenditure by appropriation from the account under subsection 4 as necessary to defray the administrative expenses of the program.

SECTION 3. AMENDMENT. Section 38-14.2-06 of the North Dakota Century Code is amended and reenacted as follows:

38-14.2-06. Eligible lands and water.

Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under other state laws. Lands and water which were mined or affected by mining for minerals and materials other than coal are also eligible for reclamation under this chapter if ~~such~~ the reclamation is necessary to protect the public health, safety, general welfare, and property ~~and such, the~~ noncoal abandoned mine lands were left in an inadequate reclamation status prior to August 3, 1977, ~~and for which~~ there is no continuing reclamation responsibility under other state or federal laws, and the state has received certification from the United States secretary of the interior under 30 U.S.C. 1239 or 30 U.S.C. 1240(a). Lands and water designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7901 et seq.] or listed for remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.] are not eligible for reclamation or drainage abatement expenditures under this chapter.

SECTION 4. AMENDMENT. Section 38-14.2-07 of the North Dakota Century Code is amended and reenacted as follows:

38-14.2-07. Commission authorized to administer abandoned mine reclamation program - Objectives - Priorities.

1. The commission is hereby authorized to develop, administer, and enforce an abandoned mine reclamation program. Expenditure of funds for the projects under this program must reflect priorities in the order stated:
1. ~~a. Administrative expenses and costs incurred in the development of the abandoned mine reclamation plan and the abandoned mine reclamation program.~~
2. The protection of public health, safety, ~~general welfare~~, and property from extreme danger resulting from the adverse effects of past coal mining practices, including the restoration of eligible land and water resources and the environment:
 - (1) Previously degraded by the adverse effects of coal mining practices;
and
 - (2) Located adjacent to a site that has been or will be remediated to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.
3. ~~b. The protection of public health, and safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger, including the restoration of eligible land and water resources and the environment:~~
 - (1) Previously degraded by the adverse effects of coal mining practices;
and
 - (2) Located adjacent to a site that has been or will be remediated to protect the public health and safety from adverse effects of coal mining practices.
4. ~~c. The restoration of eligible land and water resources and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.~~
5. ~~Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.~~
6. ~~d. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past water supply facilities, including water distribution facilities and treatment plants adversely affected by coal mining practices.~~
7. ~~The development of publicly owned land adversely affected by past coal mining practices, including land acquired as provided in this chapter, for recreation, historic, conservation, and reclamation purposes and open space benefits.~~

8.

2. The protection of the public from hazards endangering life and property resulting from the adverse effects of past noncoal mining practices upon certification from the United States secretary of interior as provided in 30 U.S.C. 1240(a). However, upon request by the governor of the state of North Dakota and approval by the secretary of the interior, such work may be undertaken before the priorities related to past coal mining have been fulfilled. Expenditure of funds from the project under this subsection must reflect the priorities in the order stated:
9. ~~a.~~ a. The protection of ~~the public from hazards to~~ health and safety, ~~general welfare, and property~~ from the adverse effects of ~~past~~ noncoal mining practices.
10. ~~b.~~ b. ~~The restoration of the environment degraded by the~~protection of public health, safety, and general welfare ~~from~~ adverse effects of ~~past~~ noncoal mining ~~practices~~.
11. ~~c.~~ c. ~~The construction of public facilities in accordance with section 38-14.2-05~~restoration of land and water resources and the environment previously degraded by the adverse effects of noncoal mining practices.
3. Funds granted by the secretary of interior under title IV of Public Law No. 95-87 as provided by Public Law No. 117-58 may be used only for the activities described in subsection 1.

Approved April 17, 2025

Filed April 17, 2025