Prepared by the Legislative Council
staff for Representative D. Anderson
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Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED HOUSE BILL NO. 1459

Introduced by

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

Senators Hogue, Marcellais, Patten

In place of amendment (25.1038.02001) adopted by the Senate, Engrossed House Bill No. 1459 is amended by amendment (25.1038.02006) as follows:

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 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; to provide a penalty; and to declare an emergency.~~for 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; to provide for retroactive application; 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 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 process" means 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 the owner of 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.

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

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 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.~~

~~2. 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.~~

~~3. Inspect all processing facilities. The commission must have access to all processing facilities for purposes of inspection and may require the operator's aid if necessary and requested.~~

~~4. At the request of an operator, approve the commingling of production for any 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 operation 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. 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 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.~~

~~**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 38-08 governing the procedure in the administration of the Oil and Gas Conservation Act.~~

~~2. 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 38-08-16 and 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, shallmust 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 shallmay 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 shallmay 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 paragraphsection, the naming of either a specific metalliferous element, or nonmetalliferous element, and if so stated in lease, shall beis 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 shallmust be deemed to be included in the mineral named. TheExcept 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 shallmay 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 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.

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 critical minerals and rare earth minerals not chemically bound, embedded, commingled, included, or contained within a coal seam or coal deposit, and all other 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 clay, scoria, or 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.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.