

**Sixty-sixth Legislative Assembly of North Dakota  
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2123  
(Senator Patten)  
(Representative Longmuir)

AN ACT to amend and reenact sections 38-08-04.4, 38-08-04.5, 38-08-04.8, and 38-08-04.9 of the North Dakota Century Code, relating to the authorization to enter contracts, abandoned oil and gas well plugging and site reclamation fund, and confiscation of equipment and recovery for costs of plugging and reclamation of sites with bonds held by the North Dakota industrial commission.

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

**SECTION 1. AMENDMENT.** Section 38-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.4. Commission authorized to enter into contracts.**

The commission may enter public and private contractual agreements for the plugging or replugging of oil and gas or injection wells, the removal or repair of related equipment, the reclamation of abandoned oil and gas or injection well sites, the reclamation of saltwater handling facility sites, the reclamation of treating plant sites, and the reclamation of oil and gas-related pipelines and associated facilities, including reclamation as a result of leaks or spills from a pipeline or associated facility, if any of the following apply:

1. The person or company drilling or operating the well or equipment cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, cannot be legally required to plug or replug the well or to reclaim the well site, pipeline, or associated pipeline facility, or damage is the result of an illegal dumping incident.
2. There is no bond covering the well to be plugged or the site to be reclaimed or there is a bond but the cost of plugging or replugging the well or reclaiming the site, pipeline, or associated pipeline facility exceeds the amount of the bond or damage is the result of an illegal dumping incident.
3. The well, equipment, pipeline, or associated pipeline facility is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Sealed bids for any well plugging or reclamation work under this section must be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids must be addressed to the commission and must be opened publicly at the time and place designated in the notice. The contract must be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to mitigate the problem.

The contracts for the plugging or replugging of wells or the reclamation of well sites must be on terms and conditions as prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

**SECTION 2. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.**

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
  - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
  - b. Moneys received from the forfeiture of drilling and reclamation bonds.
  - c. Moneys received from any federal agency for the purpose of this section.
  - d. Moneys donated to the commission for the purposes of this section.
  - e. Moneys received from the state's oil and gas impact fund.
  - f. Moneys recovered under the provisions of section 38-08-04.8.
  - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
  - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
  - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
  - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:
  - a. Contracting for the plugging of abandoned wells.
  - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
  - c. To pay mineral owners their royalty share in confiscated oil.
  - d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater handling facilities, treating plants, and oil and gas-related pipelines and associated facilities.
  - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to five million dollars per biennium from the fund in the following priority:
    - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
    - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.

- (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
  - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
- f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the state department of health for the purposes provided under chapter 23-31, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the state department of health shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
  4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

**(Contingent effective date - See note) Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.**

There is created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
  - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
  - b. Moneys received from the forfeiture of drilling and reclamation bonds.
  - c. Moneys received from any federal agency for the purpose of this section.
  - d. Moneys donated to the commission for the purposes of this section.
  - e. Moneys received from the state's oil and gas impact fund.
  - f. Moneys recovered under the provisions of section 38-08-04.8.
  - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
  - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
  - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
  - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:
  - a. Contracting for the plugging of abandoned wells.
  - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.

- c. To pay mineral owners their royalty share in confiscated oil.
  - d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater handling facilities, treating plants, and oil and gas-related pipelines and associated facilities.
  - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to five million dollars per biennium from the fund in the following priority:
    - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
    - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
    - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
    - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
  - f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the department of environmental quality for the purposes provided under chapter 23.1-10, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the department of environmental quality shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
- 3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
  - 4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

**SECTION 3. AMENDMENT.** Section 38-08-04.8 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.8. Recovery for costs of plugging and reclamation.**

If the commission, its agents, employees, or contractors, plugs or replugs a well or reclaims a well site, pipeline facility, production facility, saltwater handling facility, or treating plant under the provisions of sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9, and 38-08-04.10, the state has a cause of action for all reasonable expenses incurred in the plugging, replugging, or reclamation against the operator ~~of the well~~ at the time the well is required to be plugged and the well or facility is required to be abandoned or any or all persons who own a working interest in the well, pipeline facility, production facility, saltwater handling facility, or treating plant at the time the well is required to be plugged and the well, pipeline facility, production facility, saltwater handling facility, or treating plant abandoned as a result of the ownership of a lease or mineral interest in the property on which the well, pipeline facility, production facility, saltwater handling facility, or treating plant is located. The term

"working interest owner" does not mean a royalty owner or an overriding royalty interest owner. The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well or reclaiming any well site, pipeline facility, production facility, saltwater handling facility, or treating plant through an action instituted by the attorney general. The liability of any working interest owner under this section shall be limited to that proportion of the reasonable expenses incurred by the commission that the interest of any such working interest owner bears to the entire working interest in the well. Any money collected in a suit under this section must be deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit brought by the commission for reimbursement under this section may be brought in the district court for Burleigh County, the county in which the plugged well or reclaimed well site, pipeline facility, production facility, saltwater handling facility, or treating plant is located, or the county in which any defendant resides.

**SECTION 4. AMENDMENT.** Section 38-08-04.9 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.9. Confiscation of equipment and salable oil to cover plugging and reclamation costs.**

When the commission intends to exercise or has exercised its right to plug a well or reclaim a well site, pipeline facility, production facility, saltwater handling facility, or treating plant, the commission, as compensation for its costs, may confiscate any ~~production-related~~ equipment and salable oil at the well site, pipeline facility, production facility, saltwater handling facility, or treating plant. The equipment subject to confiscation is limited to that owned by the well's operator, former operator, or working interest owner. If the commission exercises its authority under this section and there is salable oil at the well site, that oil must be confiscated. The commission shall pay the mineral owners the royalty interest in the oil confiscated at the well site. In determining the mineral owners and their royalty interests, the commission may rely upon the most recent division order it is able to obtain. If one is unavailable or the commission finds the order unreliable, the commission may rely upon any other source of information the commission deems reasonable to determine and pay mineral owners. A confiscation must be by an order of the commission after notice and hearing. A confiscation order transfers title to the commission.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2123.

Senate Vote:    Yeas 47            Nays 0            Absent 0

House Vote:    Yeas 86            Nays 0            Absent 8

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2019,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State