

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2117

Introduced by

Energy and Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to amend and reenact subsection 1 of section 38-14.2-02, and sections
2 38-14.2-04, 38-14.2-06, and 38-14.2-07 of the North Dakota Century Code, relating to
3 abandoned surface mine reclamation.

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

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

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

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

17 **38-14.2-04. State abandoned mine reclamation fund.**

18 There is hereby created the state abandoned mine reclamation fund.

19 1. Revenue to the fund must include:

- 1 a. Moneys applied for and received by the commission pursuant to title IV of Public
2 Law 95-87 [91 Stat. 456; 30 U.S.C. 1231 et seq.], for the purposes of this
3 chapter.
- 4 b. Moneys donated to the commission by persons, corporations, limited liability
5 companies, associations, and foundations for the purposes of this chapter.
- 6 c. Moneys collected by the commission from charges for uses of lands acquired or
7 reclaimed with moneys from the fund, after expenditures for maintenance have
8 been deducted.
- 9 d. Moneys recovered by the commission through satisfaction of liens filed against
10 privately owned lands reclaimed with moneys from the fund.
- 11 e. Moneys recovered by the commission from the sale of lands acquired with
12 moneys from the fund.
- 13 f. Such other moneys as may be deposited in the fund for use in carrying out the
14 purposes of the abandoned mine reclamation program.
- 15 2. Moneys in the fund may be used for the following purposes:
 - 16 a. Reclamation and restoration of land and water resources as defined by section
17 38-14.2-06 and adversely affected by past mining, including but not limited to:
 - 18 (1) Reclamation and restoration of abandoned surface mined areas,
19 abandoned coal processing areas, and abandoned coal refuse disposal
20 areas.
 - 21 (2) Reclamation of lands affected by underground mine subsidence.
 - 22 (3) Planting of land adversely affected by past coal mining or noncoal mining to
23 prevent erosion and sedimentation.
 - 24 (4) Prevention, abatement, treatment, and control of water pollution created by
25 coal mine or noncoal mine drainage including restoration of streambeds,
26 and construction and operation of water treatment plants.
 - 27 (5) Prevention, abatement, and control of burning coal refuse disposal areas
28 and burning coal in situ.
 - 29 (6) Prevention, abatement, and control of coal mine subsidence.
 - 30 b. Acquisition or lease of land as provided for in this chapter.

1 c. ~~Studies by the commission by contract with public and private organizations to~~
2 ~~provide information, advice, and technical assistance, including research and~~
3 ~~demonstration projects, conducted for the purposes of this chapter.~~

4 d. All other necessary expenses to accomplish the purposes of this chapter,
5 including administrative expenses and costs incurred in the development of the
6 abandoned mine reclamation plan and the abandoned mine reclamation
7 program.

8 3. There is created a special fund in the state treasury called the state abandoned mine
9 reclamation fund set-aside trust account. Revenue to the set-aside trust account must
10 be ten percent of the amount granted by the secretary of the interior under title IV of
11 Public Law 95-87 ~~as provided by Public Law 100-34~~ for amounts awarded before
12 December 20, 2006. This account must be interest bearing and all interest must be
13 credited to the set-aside trust account. No funds from this account may be expended
14 prior to September 30, 2004. After September 30, 2004, the funds may be expended
15 as provided in this subsection but no funds may be used to reclaim noncoal projects.
16 The legislative assembly shall authorize expenditure by appropriation from the account
17 as necessary to defray the administrative expenses of the program. The remaining
18 funds in the account may only be used in accordance with subdivisions a, b, and c. of
19 subsection 1 of section 38-14.2-07 but no funds may be used on noncoal projects. The
20 liability of the state to fulfill the requirements of this subsection is limited to the amount
21 of funds available in the account established in this subsection. The state has no
22 obligations under this subsection except to the extent of federal funds deposited in the
23 ~~coal mine mitigation~~state abandoned mine reclamation fund set-aside trust account
24 and the interest thereon to operate the program.

25 4. There is created a special fund in the state treasury called the state abandoned mine
26 reclamation safeguarding treatment for the restoration of ecosystems from abandoned
27 mines fund set-aside trust account. Revenue to the set-aside trust account must be no
28 more than thirty percent of the annual amount granted by the secretary of interior
29 under title IV of Public Law No. 95-87 as provided by Public Law No. 117-58 and
30 Public Law No. 117-328. This account must be interest bearing and all interest must
31 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; and/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. b.~~ 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. c.~~ 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. ~~d.~~ The restoration of eligible land and water resources and the environment geographically contiguous to an area provided in subdivisions b or c 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. e. Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques~~ The restoration of eligible land and water resources and the

~~environment, which is not geographically contiguous to the area provided in subdivisions b and c, 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.~~

6. ~~f.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. ~~g.~~

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. ~~h.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. ~~i.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. ~~j.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.

~~2. The abandoned mine reclamation priority under subdivision e of subsection 1 must be funded exclusively by moneys provided by the Infrastructure Investment and Jobs Act [Pub. L. 117-58] unless subdivisions b through d of subsection 1 have been completed~~

- 1 ~~and the abandoned mine reclamation program has certified the conditions to the~~
- 2 ~~United States secretary of interior.~~
- 3 3. Funds granted by the secretary of interior under title IV of Public Law No. 95-87 as
- 4 provided by Public Law No. 117-58 may be used only for the activities described in
- 5 subsection 1.