

**PROPOSED AMENDMENT TO
HOUSE BILL 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 chapter to title 38 of the North Dakota Century
2 Code, relating to regulations, development, and production of critical minerals and rare earth
3 elements; to amend and reenact sections 38-12-02 and 47-10-24 of the North Dakota Century
4 Code, relating to the authority of the industrial commission and descriptions and definitions of
5 minerals in leases and conveyances; to provide a penalty; and to declare an emergency.

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

7 **SECTION 1.** A new chapter to title 38 of the North Dakota Century Code is created and
8 enacted as follows:

9 **Definitions.**

10 As used in this chapter:

- 11 1. "Commission" means the industrial commission.
- 12 2. "Critical minerals" means a nonfuel mineral or mineral material essential to the
13 economic or national security of the United States and which has a supply chain
14 vulnerable to disruption. The term includes aluminum, antimony, arsenic, barite,
15 bauxite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium,
16 graphite, hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum
17 group metals, potash, the rare earth elements group, rhenium, rubidium, scandium,
18 strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and
19 zirconium, which are embedded, commingled, included, ~~or contained within, or in any~~
20 ~~way associated with any~~ a coal seam or coal deposit.
- 21 3. "Extraction process" means the process in which critical minerals or rare earth
22 elements are extracted from coal produced in conjunction with coal mining operations
23 which cannot otherwise be extracted without mining a coal seam or coal deposit.

- 1 4. "Operator" means any person that is the owner of a processing facility that is or has
2 been capable of producing critical minerals or rare earth elements embedded,
3 commingled, included, or contained within, ~~or in any way associated with~~ a coal seam
4 or coal deposit.
- 5 5. "Owner" means the person who owns the critical minerals or rare earth elements.
- 6 6. "Person" means and includes any natural person, corporation, limited liability
7 company, association, partnership, receiver, trustee, executor, administrator, guardian,
8 fiduciary, or other representative of any kind, and includes any department, agency, or
9 instrumentality of the state or of any governmental subdivision thereof; the masculine
10 gender, in referring to a person, includes the feminine and the neuter genders.
- 11 7. "Processing facility" means any equipment, processing plant, or other facility operated
12 with the purpose or intent of extracting critical mineral or rare earth elements
13 embedded, comingled, included, or contained within, ~~or in any way associated with a~~
14 coal seam or coal deposit.
- 15 8. "Rare earth elements" 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 embedded, comingled, included, or contained
18 within, ~~or in any way associated with any~~ a coal seam or coal deposit.

19 **Public policy.**

20 It is hereby declared to be in the public interest to foster, encourage, and promote the
21 development, production, and utilization of critical minerals and rare earth elements in a manner
22 that will prevent waste and allow a greater ultimate recovery of these natural resources, and to
23 protect the rights of all owners so that the greatest possible economic recovery of these
24 resources be obtained in the state, to the end that landowners, producers, and the general
25 public realize and enjoy the greatest possible good from these vital natural resources. Critical
26 minerals and rare earth elements are fundamental to the economy, competitiveness, and
27 security of the United States. Many critical minerals and rare earth elements are broadly
28 disseminated and can only be recovered when produced as part of another extractive activity of
29

1 a host mineral which for purposes of this chapter is coal. To the maximum extent practicable,
2 the critical minerals and rare earth elements needs of the United States should be satisfied by
3 the vital natural resources responsibly produced in the United States. The legislative assembly
4 finds it necessary to declare that the mining of coal in this state, and a lease of coal in this state
5 whenever granted must include the right to mine all critical minerals and rare earth elements,
6 unless specifically excluded by the lease.

7 **Jurisdiction of commission.**

8 The commission has jurisdiction and authority necessary to enforce this chapter. This
9 section does not apply to a mine under the jurisdiction and authority of the public service
10 commission under chapter 38-14.1. The commission may conduct investigations to determine
11 whether facts exist which justify action by the commission. The commission may:

12 1. Require an operator to:

- 13 a. Furnish a reasonable bond with good and sufficient surety, conditioned upon the
14 full compliance with this chapter, and the rules and orders of the commission
15 governing the exploration, development, and production of critical minerals or
16 rare earth elements on state and private lands within the state. The person
17 required to furnish the bond may elect to deposit a collateral bond, self-bond,
18 cash, or any alternative form of security approved by the commission, by which a
19 permittee assures faithful performance of all requirements of this chapter and the
20 rules and orders of the ~~industrial~~ commission. If a permit is issued for the
21 extraction of critical minerals or rare earth elements, in conjunction with a surface
22 coal mining permit issued under chapter 38-14.1, the bond for the surface coal
23 mining permit may be used to satisfy the bond required under this chapter.
24 b. File production reports in the manner prescribed by the commission.
25 c. Conduct an extraction process in a manner as to prevent pollution of freshwater
26 supplies and to provide for the protection of the environment and public safety.

- 27 2. Adopt and enforce rules and orders to effectuate this chapter, including rules requiring
28 an operator under permit with the commission to provide to the state geologist
29 reasonable amounts of data collected during the extraction process for critical
30 minerals or rare earth elements, and data necessary to evaluate the ongoing attributes
31 of critical mineral or rare earth extraction in the state.

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

4 4. At the request of an operator, approve the commingling of production for any
5 processing facility on land with diverse ownership. ~~The commission shall establish a~~
6 ~~method to measure production from each parcel of land with diverse ownership.~~

7 **Permit required.**

8 1. A person may not commence operation of a processing facility or the exploration,
9 development, or production of critical minerals or rare earth elements without first
10 obtaining a permit from the commission and paying the permit fee set by the
11 commission.

12 2. This section does not apply to a mine under the jurisdiction and authority of the public
13 service commission under chapter 38-14.1.

14 ~~3.~~ **Royalties.**

15 An operator shall pay any applicable owners, according to each owner's respective undivided
16 ownership of coal mined within the applicable permit area during a calendar year, a royalty of
17 two and one-half percent of the ~~net profits~~ gross proceeds from all critical minerals and rare
18 earth elements mined, removed, and sold during the extraction process. The royalty must be
19 paid at least annually by March 31 of the following year. For purposes of this section, "net
20 profits" "gross proceeds" means the gross receipts received by an operator from any sale of
21 critical minerals or rare earth elements ~~less costs incurred or expenditures attributed, only~~
22 ~~including any expenditures related to the extraction, processing, milling, smelting, refining, and~~
23 ~~transportation of the critical minerals or rare earth elements~~ that constitutes an arms-length
24 transaction. Notwithstanding any other provision of law, this section shall remain in effect until
25 July 31, 2030, after which this section shall be deemed repealed unless reauthorized by the
26 legislative assembly.

27 **Procedure.**

28 1. The adoption of rules or ~~or~~ the issuance of orders by the commission under this
29 chapter must be in accordance with the provisions of chapter 38-08 governing the
30 procedure in the administration of the Oil and Gas Conservation Act.

31 2. A surface coal mine permit must be issued under chapter 38-14.1.

1 3. If an emergency is found to exist by the commission which in the judgment of the
2 commission requires the making, revoking, changing, amending, modifying, altering,
3 enlarging, renewal, or extension of a rule or order without first having a hearing, an
4 emergency rule or order has the same validity as if a hearing had been held after due
5 notice.

6 4. An emergency rule or order permitted by this section may remain in force no longer
7 than fifteen days from its effective date, or when the rule or order made after due
8 notice and hearing with respect to the subject matter of the emergency rule or order
9 becomes effective, whichever occurs first.

10 **Penalty - Revocation - Provisions applicable.**

11 Sections 38-08-16 and 38-08-17 are applicable to the provisions of this chapter and to the
12 rules and orders of the commission adopted under this chapter.

13 **SECTION 2. AMENDMENT.** Section 38-12-02 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **38-12-02. Jurisdiction of commission.**

16 The commission has jurisdiction and authority over all persons and property, public and
17 private, necessary to enforce effectively the provisions of this chapter. Subject to the provisions
18 of section 38-08-21, the director of mineral resources shall act as a supervisor charged with the
19 duty of enforcing the regulations and orders of the commission applicable to the subsurface
20 mineral resources of this state and the provisions of this chapter. The commission has authority
21 to make such investigations as it deems proper to determine whether facts exist which justify
22 action by the commission. The commission acting through the director of mineral resources has
23 the authority:

24 1. To require:

- 25 a. The furnishing of a reasonable bond with good and sufficient surety, conditioned
26 upon the full compliance with the provisions of this chapter, and the rules and
27 orders of the commission prescribed to govern the exploration, development, and
28 production of subsurface minerals on state and private lands within the state of
29 North Dakota. The person required to furnish the bond may elect to deposit a
30 collateral bond, self-bond, cash, or any alternative form of security approved by
31 the commission, or combination thereof, by which a permittee assures faithful

1 performance of all requirements of this chapter and the rules and orders of the
2 industrial commission.

3 b. The delivery, free of charge, to the state geologist of the basic exploration data
4 collected by the operator, within thirty days of field collection of such data. This
5 data must include:

6 (1) Sample cuts, core chips, or whole cores.

7 (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or
8 mechanical logs.

9 (3) Elevation and location information on the data collection points.

10 (4) Other pertinent information as may be requested by the state geologist.

11 The data so submitted is confidential for a period of one year when so requested
12 by the operator and such period may be further extended upon approval by the
13 commission.

14 c. The filing of monthly production reports in the manner prescribed by the
15 commission and any other reports deemed necessary by the commission.

16 d. The conducting of all exploration, development, and production operations in
17 such a manner as to prevent pollution of freshwater supplies, to provide for the
18 protection of the environment and public safety, and to ensure the optimum
19 recovery of the mineral resource.

20 e. The reclamation of all land disturbed by operations regulated by this chapter to a
21 condition consistent with prior land use and productive capacity.

22 2. To regulate the drilling and abandonment of exploration test holes and producing wells
23 and all other exploration, development, production, and reclamation operations.

24 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes
25 and the intent of this chapter.

26 4. To inspect all exploration, development, and production sites. For the purposes of this
27 subsection, the director of mineral resources or the director's representative shall have
28 access to all exploration, development, or production installations for purposes of
29 inspection and shall have the authority to require the operator's aid if it is necessary and
30 is requested.

31 5. To regulate the exploration of critical minerals embedded, commingled, included, or
32 contained within, ~~or in any way associated with~~ a coal seam or coal deposit located

1 outside of any surface coal mine permit boundary approved by the public service
2 commission.

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

5 **47-10-24. Description and definition of minerals in leases and conveyances.**

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

12 ~~No~~2. Except as provided in subsection 3 regarding a lease for coal, a lease of mineral rights
13 in this state shall~~may~~ not be construed as passing any interest to any minerals except
14 those minerals specifically included and set forth by name in the lease. For the
15 purposes of this ~~paragraph~~section, the naming of either a specific metalliferous
16 element, or nonmetalliferous element, and if so stated in lease, ~~shall be~~is deemed to
17 include all of its compounds and byproducts, and in the case of oil and gas, all
18 associated hydrocarbons produced in a liquid or gaseous form so named ~~shall~~must be
19 deemed to be included in the mineral named. ~~The~~Except as provided in subsection 3
20 regarding a lease for coal, the use of the words "all other minerals" or similar words of
21 an all-inclusive nature in any lease ~~shall~~may not be construed as leasing any minerals
22 except those minerals specifically named in the lease and their compounds and
23 byproducts.

24 3. As provided under section 1 of this Act, a lease of coal in this state whenever granted
25 is deemed to include all critical minerals and rare earth elements embedded,
26 commingled, included, or contained within, ~~or in any way associated with any a coal~~
27 seam or coal deposit, unless specifically excluded from the lease of coal.

28 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.