

2025 HOUSE ENERGY AND NATURAL RESOURCES

HB 1459

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

2/6/2025

Relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

9:49 a.m. Chairman Porter called the hearing to order.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby,
Conmy, Foss

Discussion Topics:

- Rare Earth Elements
- Mineral Mines
- Vulnerability of Supply Chains

9:49 a.m. Vice Chairman D. Anderson introduced the bill and submitted testimony. #35877

9:53 a.m. Dave Straley, Government and Public Affairs at the North American Coal Corporation, testified in favor.

10:03 a.m. Brian Bjella, Attorney at Crowley Fleck, testified in favor and submitted testimony. #35609

10:28 a.m. Chris Suelzle, Minerals Director, ND Department of Trust Lands, testified in favor and submitted testimony. #35518

10:34 a.m. Nathan Anderson, Director of the Department of Mineral Resources, testified in favor and submitted testimony. #35848

10:42 a.m. Jonathan Fortner, VP of Government Relations for Lignite Energy Council, testified in favor and submitted testimony. #35603

10:51 a.m. Dr. Dan Laudal, Executive Director, research institute at UND, College of Engineering and Mines, testified in favor and submitted testimony. #35683

10:59 a.m. Chairman Porter closed the hearing.

Addison Randazzo for Leah Kuball, Committee Clerk



**TESTIMONY OF CHRIS SUELZLE
MINERALS DIRECTOR
North Dakota Department of Trust Lands**

HOUSE Bill 1459

House Energy and Natural Resources Committee
February 6, 2025

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Chris Suelzle, and I serve as the Minerals Director for the North Dakota Department of Trust Lands (Department). I am here to provide testimony on House Bill 1459.

The Board of University and School Lands (Board), as established by the North Dakota Constitution, is charged with overseeing the management of state trust lands and investing the revenue generated therefrom to grow as a source of long-term funding for the support of trust beneficiaries. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department is the administrative arm of the Board, serving under the direction and authority of the Board.

The Department manages over 2.5 million mineral acres, with approximately 8,700 oil & gas and coal leases, and over 700,000 surface acres, with approximately 4,400 agricultural leases. Revenues generated from these leases, along with payments received from other sources such as oil & gas lease bonus payments and easements granted for pipelines, roads, and well pads, are deposited into 13 permanent trust funds and invested to provide long-term revenue for trust beneficiaries. Beneficiaries of these trust funds include public K-12 education, various colleges and universities, and other state institutions throughout North Dakota.

House Bill 1459 provides an opportunity to begin the extraction of critical minerals and rare earth elements embedded within coal. The Department currently manages approximately 67 active coal leases, covering approximately 10,000 acres. Royalties for most of these coal leases range from \$0.15 to \$0.30 per ton of coal mined.

The Department recognizes the importance of launching this industry and appreciates the work that has gone into crafting this bill. However, we believe further discussion will be beneficial regarding specific provisions of the bill.

One point of concern is the provision that royalties be paid at 2.5 percent of "net profits". Net profits are defined as "gross receipts" received by the operator from the "sale of critical minerals or rare earth elements less costs incurred or expenditures" attributed to those

minerals, including expenditures related to the extraction, processing, milling, smelting, refining, and transportation of the critical minerals or rare earth elements. (Emphasis added). However, the exact costs involved in mining critical minerals and rare earth elements are currently unknown. Additionally, costs and expenditures can be subjective, and as this industry is still in its infancy, there is no established industry standard to guide the calculation of royalties. The Department has been involved in substantial litigation over such deductions as they pertain to oil and gas operations. Therefore, the Department recommends that the bill establish a royalty based on gross proceeds, without deductions, which we have found to be a clear and transparent means of determining compensation. Using gross proceeds would align with the current practice of the Board's oil and gas leases.

The one example we found of critical mineral and rare earth element mining royalty practices in the United States is the Mountain Pass Rare Earth Mine in California. Secure Natural Resources negotiated a royalty of 2.5 percent of the gross proceeds from the sale of critical minerals and rare earth elements extracted from ores in this mine. Basing royalty payments on gross proceeds avoids complications that have arisen in the oil and gas industry.

To allow the industry time to develop and actual costs to become clearer, the Department also proposes including a five-year sunset provision for the royalty percentage. After this period, the profitability of mining critical minerals and rare earth elements embedded within coal and the royalty rates can be reassessed to determine a fair and market-driven royalty rate.

Finally, the Department recommends that royalties of critical minerals and rare earth elements be more precisely attributed to mineral interest owners based on the actual mining activities conducted during a specific calendar year, rather than being distributed to all interest owners within the permitted mining area. This approach aligns with the current method for coal royalty distribution and ensures that only landowners whose minerals are actively being mined receive royalties. This would more accurately reflect the value of the minerals extracted from each individual owner. Without this provision, there is a risk of unjustly benefiting landowners who are far removed from the mining activity and diluting payments to those whose minerals are being actively mined.

Thank you for your time and consideration, I am happy to answer any questions you may have.



February 6, 2025

Chairman Porter and Members of the House Energy and Natural Resources Committee,

Thank you for the opportunity to testify in support of House Bill 1459, which is essential to advancing the production of rare earth elements and critical minerals from North Dakota's lignite coal seams. These resources present a major opportunity to strengthen and diversify the state's lignite industry while unlocking the potential of one of North Dakota's most valuable natural assets.

Critical and rare earth minerals are essential to modern technology and national security, yet China dominates their production and processing. Recent export bans on key minerals like antimony, gallium, and germanium have disrupted global supply chains, highlighting the urgent need for a domestic source. North Dakota, with its 800-year supply of lignite coal rich in these minerals, is uniquely positioned to help. The Lignite Research Council and EERC are advancing research to extract critical minerals from lignite, laying the groundwork for a transformative industry that strengthens U.S. supply chain security.

House Bill 1459 is a crucial step in unlocking North Dakota's potential for critical mineral production. It establishes a clear regulatory framework for extracting critical minerals from existing coal mining operations, ensuring environmental protections and streamlined permitting processes. The bill also clarifies that critical minerals are included in coal leases and guarantees landowners receive fair royalties, with a 2.5% share of net profits from extracted and sold minerals. By supporting responsible resource development, this legislation strengthens the lignite industry's competitiveness while maximizing economic benefits for landowners and the state.

By supporting House Bill 1459 with a "Do Pass" recommendation, North Dakota can bolster its economy, secure its energy independence, and establish itself as a leader in the critical minerals supply chain—reducing economic risks associated with foreign reliance. I respectfully ask the committee for its support in advancing this important legislation.

Jonathan Fortner
Vice President of Government Relations
Lignite Energy Council

HOUSE BILL 1459
TESTIMONY OF BRIAN BJELLA

I. Introduction

- Law Firm of Crowley Fleck
- Graduated from UND Law School in 1979
- Served as an Assistant Attorney General for 1½ years, primarily with the Department of Trust Lands
- Entered private practice in 1980
- Focused exclusively on development of natural resources, including coal and oil and gas
- Prepared many title opinions, often very complex, for oil and gas wells and coal mines
- Represented companies before the Public Service Commission for coal mines, oil and gas pipelines and windfarms
- Represented companies in litigation before state and federal courts in North Dakota regarding property rights and challenges to permits approving energy projects

II. Purpose of HB 1459

- To provide a mechanism for critical minerals and rare earth elements which are found in the mining of coal to be regulated and to provide a method of secure permits to allow for mining of these minerals
- Typically critical minerals and rare earth elements are found in very small deposits that could not be economically mined on their own and are found within the coal seam
- Mines for other minerals are facing the same issues, for example a cobalt or silver mine where traces of rare earth elements and critical minerals are found, mining companies are exploring how to deal with them economically and from a regulatory standpoint

III. Coal Leases

For this to work in North Dakota and economically mine critical minerals and rare earth elements, it is necessary for the legislature to exercise its police powers to state that such minerals that are found in the coal seam are subject to the coal leases that the mining companies have previously obtained.

- Only in this way can such minerals found in the coal seam be economically mined
- To accomplish this the legislature utilizes its police powers to this effect, due to public importance that the legislature gives to mining of these minerals

IV. Public Policy in 1459 and Existing State Laws

A. The draft of 1459 as submitted to the Legislative Council included an extensive public policy section.

- It states in part that critical minerals and rare earth elements are fundamental to the economy, competitiveness, and security of the United States
- That such minerals are wildly disseminated and can only be recovered when produced as part of another extractive activity and found with a host mineral which for the purposes of this chapter is coal
- It states that the legislative assembly finds it is necessary to exercise the police power of the state to declare the mining of coal in this state and a lease of coal in this state shall be deemed to include the right to mine all critical minerals and rare earth elements embedded within the coal seam.

V. In 2021 Congress passed its Critical Minerals Supply Chains and Reliability Act, codified at 30 USCA §1607.

- This federal law contains a public policy section entitled “Sense of Congress” and provides in part that critical minerals are fundamental to the economy, competitiveness, and security of the United States, that such minerals are only economically recoverable when combined with the production of a host mineral, and that to the maximum extent practical the critical mineral needs of the United States should be satisfied by minerals responsibly produced and recycled in the United States.
- The law goes on to provide for revisions to the federal permitting process to allow for the mining of critical minerals produced during the production of a host mineral.

VI. North Dakota Statutes Providing Setting Public Policy and the exercise of Police Powers.

- For the development of leonardite public policy statements in §38-15-01 and §38-12.1-01 and §38-12.1-02, direct that it is a benefit to the society to allow for exploration and development of commercial leonardite.
- §38-17-02 in the Coal Leasing Practices Act provides it is the intent of the legislative assembly of the State of North Dakota to exercise the legitimate police power of the state to protect the economic welfare of its citizens, and in the public interest that certain of the terms and conditions of the leases of coal be regulated.
- §38-11.1-01 under the Oil and Gas Production Damage Compensation Act, provides it is incumbent upon the state to protect the public welfare of the state while at the same time facilitating exploration of oil and gas and further directs that the owners of the surface estate should be justly compensated.
- Section 38-18-02 as part of the Surface Owner Protection Act where the legislature finds it necessary to exercise its police power to protect the welfare of North Dakota,

but further finds that there is an abundance of minerals which can be used for the production of energy and encourages development hereof.

- Section 38-22-01 Carbon Dioxide Underground Storage Act provides that it is in the public interest to promote the geologic storage of carbon dioxide and to provide a regulatory mechanism to do so, including a procedure if some owners do not consent.

As demonstrated by these statutes, the legislature has on numerous occasions by virtue of a public policy importance to the state and to the nation utilized its police powers to provide for a regulatory mechanism for the development of natural resources. All these statutes contain public policy statements which justify the use of the legislative police power.

VII. Compensation to Owners Under HB 1459

Under Section 4 of the Bill it provides that the operator of an extraction facility used to recover critical minerals and rare earth elements shall pay to the owners a royalty equal to 2.5% of net profits from all such critical minerals and rare earth elements mined and sold.

It is not unusual for the legislature to dictate compensation by statute.

- The Carbon Dioxide Underground Storage Act codified at Chapter 38-22 directs that the Industrial Commission shall find that all non-consenting pore space owners are or will be equitably compensated.
- The Underground Storage of Oil and Gas Act, codified at Chapter 38-25 provides in part that the Industrial Commission shall find that all non-consenting owners are or will be equitably compensated.
- For oil and gas wells, §38-08-08 provides for a mechanism known as force pooling whereby the North Dakota Industrial Commission combines “pools” all interests in a

spacing unit for a well, including those companies or mineral owners who have not consented to the well.

- This force pooling statute provides in part that an unleased mineral owner is entitled to a cost-free royalty of the acreage weighted average royalty of the leased tracts within the well, or at the operator's election 16%.
- Thus, in the three aforementioned statutes, the legislature has executed its police powers to direct that the North Dakota Industrial Commission find that the unleased owners have been or will be equitably compensated, or in the case of §38-08-08 provide for a percentage royalty.
- Thus, when HB 1459 provides for a 2½% net profits royalty it is similar to other laws previously enacted by this legislature.

VIII. Constitutionality of the Legislature Exercising Its Police Powers.

In *Continental Resources, Inc. vs. Farrar Oil Company*, in 1997, the North Dakota Supreme Court considered a constitutional challenge to the force pooling statute NDCC 38-08-08.

- Farrar Oil Company owned leases but did not want to participate in the well proposed by Continental Resources, and objected to a force pooling order issued by the North Dakota Industrial Commission, stating it was in violation of its property rights as the drilling of such a well would constitute an illegal subsurface trespass on the property rights it held under an oil and gas lease.
- The Court stated that the North Dakota legislature in 1953 when enacting Chapter 38-08 recognized that traditional property law principles contributed to inefficiency and waste in oil and gas development, and so enacted the chapter stating it is in the public

interest to encourage and promote the development and production of natural resources of oil and gas.

- The Supreme Court stated that Chapter 38-08 equipped the Industrial Commission with comprehensive powers to regulate oil and gas development.
- Included within these powers is the right to force pool under §38-08-08.
- With respect to the challenge to the property rights the court did state that property is subject to the police power of the state to impose restrictions on private rights as are necessary for the general welfare of all.
- The exercise of these police powers is not confined strictly to public health, morals and peace but other instances where the public interest demands it, as in the case of oil and gas where large discretion is vested in the legislature to determine not only what the interests of the public requires, but what measures are necessary for the protection of such interests.
- The court stated police powers of the state are properly exercised when the Industrial Commission issues a force pooling order.
- The court further stated that the property law of trespass does not affect those operations authorized under Chapter 38-08, and to that extent, the property of law is necessarily superseded.
- To hold otherwise would be to frustrate the intent of the legislature under Chapter 38-08 where one owner could stop the drilling of a well.
- The court stated that the police powers exercised by the NDIC in this case effectively superseded Farrar's right to use its oil and gas properties as it pleases.

- Its property right had to partially yield to the public's good expressed by the legislative in its public policy statements which justified the exercise of its police powers.

VIX. Conclusion.

If critical minerals and rare earth elements are to be mined when the host mineral coal is being mined, and put to productive use for the United States, it is necessary for this legislature to enact House Bill 1459 first indicating its public policy of the need to develop critical minerals and rare earth elements, and second, to exercise its police powers to allow this to happen.

I respectfully support passage of House Bill 1459. Thank you.

Testimony on House Bill 1459

Mr. Chairman and members of the committee, my name is Dan Laudal and I am a researcher at the University of North Dakota (UND) College of Engineering & Mines (CEM) in Grand Forks. Since late 2015, I have been leading a team of scientists and engineers working to determine the technical and commercial feasibility of producing rare earth elements (REE) from North Dakota lignite coal. My doctoral research involved some of our team's earliest work to understand the chemical association of REE in lignite coals. We have developed a patented and patent pending technology to extract and concentrate REE from lignite coals. Today, my team has constructed and is operating a 500 kg/hour of lignite feed pilot plant in Grand Forks and is completing a front-end engineering & design (FEED) and business planning study. We are optimistic about the commercial potential of this new industry in North Dakota.

First, I want to define my nomenclature: With the term 'rare earth elements (REE)' I mean only the lanthanide series of elements, which are lanthanum through lutetium on the periodic table, and the element yttrium. While our patented technology recovers some other critical minerals as byproducts, our work's primary focus is the REE.

My testimony today aims to provide some brief context on our work at UND CEM as it relates to understanding the practical realities of mining and processing REE associated with lignite coals. From my perspective as someone who has been deeply involved in this work for nearly ten years, it seems unlikely that the REE associated with lignites can be surface mined independently of the lignite coal. This is my opinion, based on key findings from my team's work:

1. The REE have usually been found to be most concentrated in thin layers, typically 3-12 inches, in the top and/or bottom of the lignite coal seams.
2. A majority fraction of the REE are bound in an organic association, as ions chemically bound to the carbon-hydrogen-oxygen structure of the lignite coal. There is no way that we have discovered or that is disclosed in the open literature to separate these organically bound REE from the carbon-hydrogen-oxygen structure of the lignite coal other than through chemical or thermochemical methods. Our technology is tailored to take advantage of the relatively weak binding strength of this organic form of REE.
3. A minority fraction of the REE are bound in an array of discrete mineral forms, such as carbonates and phosphates, that are finely embedded within lignite coal particles or intimately commingled with the lignite coal particles, but not chemically bound to the carbon-hydrogen-oxygen structure of the lignite coal. However, these forms are not targeted by our patented extraction technology as these REE are more expensive to extract.

Given this context, if we are to realize the exciting commercial potential of this new industry in North Dakota, it is essential, in my view, to have legal clarity around the interplay of coal leases and the ownership of REE associated with lignite coals. Having this clarity will provide project developers and investors the certainty needed to build commercial projects, maximizing the potential benefits that North Dakota's natural resources can provide. I thank the sponsors of House Bill 1459 for taking on this task and the committee members for considering it.

I appreciate the opportunity to provide these comments.

Sincerely,

Dan Laudal
Executive Director, College of Engineering & Mines Research Institute
Director, Center for Process Engineering Research
University of North Dakota



HB 1459

February 6, 2025

House Energy & Natural Resources Committee

Testimony of Nathan Anderson

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

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 section 47-10-24 of the North Dakota Century Code, relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

In 2010, the Chinese government reportedly stopped all shipments of rare earth elements to Japan in retaliation over a territorial fishing dispute between the two countries. Although the ban was brief, it served notice to countries around the world that the Chinese, the largest producers of rare earth elements in the World both then and now, had no qualms about punishing countries by withholding those vital elements. In July 2023, China announced export controls on gallium and germanium. Then in December 2024, China banned exports to the U.S. of the critical minerals gallium, germanium, and antimony because of their potential military application in response to a U.S. crackdown on China's semiconductor industry. Just in the last few days, in response to recent US tariffs on China, China has threatened increased control on critical mineral exports to the US.

On January 20, 2025 an Executive Order was issued

DECLARING A NATIONAL ENERGY EMERGENCY

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 et seq.) ("NEA"), and section 301 of title 3, United States Code, it is hereby ordered:

Section 1. Purpose. The energy and critical minerals ("energy") identification, leasing, development, production, transportation, refining, and generation capacity of the United States are all far too inadequate to meet our Nation's needs. We need a reliable, diversified, and affordable supply of energy to drive our Nation's manufacturing, transportation, agriculture, and defense industries, and to sustain the basics of modern life and military preparedness.....

An affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation.....

The integrity and expansion of our Nation's energy infrastructure — from coast to coast — is an immediate and pressing priority for the protection of the United States' national and economic security. It is imperative that the Federal government puts the physical and economic wellbeing of the American people first.....

Mark F. Bohrer
ASSISTANT DIRECTOR
OIL AND GAS DIVISION

Nathan D. Anderson
DIRECTOR
DEPT. OF MINERAL RESOURCES

Edward C. Murphy
STATE GEOLOGIST
GEOLOGICAL SURVEY

Sec. 2. Emergency Approvals. (a) The heads of executive departments and agencies (“agencies”) shall identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they may possess, to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including, but not limited to, on Federal lands.....

Sec. 8. Definitions. For purposes of this order, the following definitions shall apply:

(a) The term “energy” or “energy resources” means crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3).

(b) The term “production” means the extraction or creation of energy.....

The above examples of potentially disrupted supply chains are why the U.S. Dept of Interior created a critical minerals list in 2018, with rare earth elements as a subset. Critical minerals are essential to the US economy and national security and have a supply chain that is vulnerable to disruption. In 2022, the list of critical minerals was amended.

Over the last 10 years the Department of Mineral Resources has collected more than 2,000 rock samples (primarily lignite) in western North Dakota and had them analyzed for their critical mineral concentrations. The primary goal of this DMR project has been to identify stratigraphic horizons enriched in critical minerals and to develop an exploration model that can be utilized by the mineral industry. The ultimate goal for the DMR has been to place North Dakota at the forefront of critical mineral development and to provide these important elements to the U.S. The Geological Survey has worked hard on this project with three separate funding requests granted by the legislature. Because of this, we have a much greater understanding of North Dakota’s critical mineral resources.

The Industrial Commission and the Department of Mineral Resources are uniquely situated to regulate critical minerals processing facilities with our background in critical mineral studies, 57 years administering the subsurface mineral program, 49 years administering the coal exploration program, and 84 years regulating the oil and gas industry. Regulatory authority over the latter has given DMR experience on the topics of rulemaking, hearings, orders, pooling, co-mingling and all other oil and gas related topics, many of which have similarities with critical mineral topics.

The Department of Mineral Resources is supportive of HB 1459 and its effort to move forward with a process to enable critical minerals to be produced from coal in North Dakota. This is new ground and North Dakota is well positioned to lead. This bill is a reasonable first step.

25.1038.01001
Title.

Prepared by the Legislative Council
staff for Representative D. Anderson
February 5, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 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 ~~section~~sections 38-12-02 and 47-10-24 of the North Dakota
4 Century Code, relating to the authority of the industrial commission and descriptions and
5 definitions of minerals in leases and conveyances; and to provide a penalty.

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 ~~public-service~~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, contained within, or in any
20 way associated with any coal seam or coal deposit.

1 3. ~~"Extraction facility process" means any well or mine or other extractive process~~
2 ~~operated with the purpose or intent of recovering critical minerals or rare earth~~
3 ~~elements~~ the process in which critical minerals or rare earth elements are extracted
4 from coal produced in conjunction with coal mining operations which cannot otherwise
5 be extracted without mining a coal seam or coal deposit.

6 4. ~~"Operator" means any person that is in charge of the development of a lease or the~~
7 ~~operation of a producing property, or is the owner of an extraction~~ a processing facility
8 that is or has been capable of producing critical minerals or rare earth elements
9 embedded, commingled, included, contained within, or in any way associated with a
10 coal seam or coal deposit.

11 4.5. "Owner" means the person who owns the critical minerals or rare earth elements.

12 5.6. "Person" means and includes any natural person, corporation, limited liability
13 company, association, partnership, receiver, trustee, executor, administrator, guardian,
14 fiduciary, or other representative of any kind, and includes any department, agency, or
15 instrumentality of the state or of any governmental subdivision thereof; the masculine
16 gender, in referring to a person, includes the feminine and the neuter genders.

17 7. "Processing facility" means any equipment, processing plant, or other facility operated
18 with the purpose or intent of extracting critical minerals or rare earth elements
19 embedded, commingled, included, contained within, or in any way associated with a
20 coal seam or coal deposit.

21 8. "Rare earth elements" means any of a series of metallic elements of which the oxides
22 are classed as rare earths and which include the elements of the lanthanide series,
23 yttrium and scandium, which are embedded, commingled, included, contained within,
24 or in any way associated with any coal seam or deposit.

25 **Public policy.**

26 It is hereby declared to be in the public interest to foster, encourage, and promote the
27 development, production and utilization of critical minerals and rare earth elements in a manner
28 that will prevent waste and allow a greater ultimate recovery of these natural resources, and to
29 protect the rights of all owners so that the greatest possible economic recovery of these
30 resources be obtained in the state, to the end that landowners, producers, and the general
31 public realize and enjoy the greatest possible good from these vital natural resources. Critical

1 minerals and rare earth elements are fundamental to the economy, competitiveness, and
2 security of the United States. Many critical minerals and rare earth elements are broadly
3 disseminated and can only be recovered when produced as part of another extractive activity of
4 a host mineral which for purposes of this chapter is coal. To the maximum extent practicable,
5 the critical minerals and rare earth elements needs of the United States should be satisfied by
6 the vital natural resources responsibly produced in the United States. The legislative assembly
7 finds it necessary to declare that the mining of coal in this state, and a lease of coal in this state
8 whenever granted must include the right to mine all critical minerals and rare earth elements,
9 unless specifically excluded by the lease.

10 **Jurisdiction of commission.**

11 The commission has jurisdiction and authority necessary to enforce this chapter. This
12 section does not apply to a surface coal mining operation providing coal to a processing facility
13 under the jurisdiction and authority of the public service commission under chapter 38-14.1. The
14 commission may conduct investigations to determine whether facts exist which justify action by
15 the commission. The commission may:

16 1. Require an operator to:

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

- 1 for the protection of the environment and public safety, ~~and to ensure the~~
2 ~~optimum recovery of the mineral resource.~~
- 3 ~~d. Reclaim all land distributed by operations required by this chapter to a condition~~
4 ~~consistent with prior land use and productive capacity.~~
- 5 2. ~~Regulate the the drilling and abandonment of exploration test holes and producing~~
6 ~~wells and all other exploration, development, production, and reclamation operations.~~
- 7 ~~3.~~ Adopt and enforce rules and orders to effectuate this chapter, including rules requiring
8 an operator under permit with the commission to provide to the state geologist
9 reasonable amounts of data collected during the extraction process for critical
10 minerals or rare earth elements, and data necessary to evaluate the ongoing attributes
11 of critical mineral or rare earth extraction in the state.
- 12 4.3. Inspect all ~~exploration, development, and production sites~~ processing facilities. The
13 commission must have access to all ~~exploration, development, or production~~
14 ~~installations~~ processing facilities for purposes of inspection and may require the
15 operator's aid if necessary and requested.
- 16 5. At the request of an operator, approve the commingling of production for any
17 ~~extraction facility~~ processing facility on land with diverse ownership. The commission
18 shall establish a method to measure production from each parcel of land with diverse
19 ownership.
- 20 **Permit required.**
- 21 1. A person may not commence an operation for the exploration, development, or
22 production of critical minerals or rare earth elements without first obtaining a permit
23 from the commission and paying the permit fee set by the commission.
- 24 2. ~~An operator may obtain a permit in conjunction with a~~ A surface coal mining permit
25 issued under chapter 38-14.1 is sufficient to meet the permit requirements under this
26 section.
- 27 3. An operator shall pay any applicable owners, according to each owner's respective
28 undivided ownership within the applicable permit area, a royalty of two and one-half
29 percent of the net profits from all critical minerals and rare earth elements mined,
30 removed, and sold during ~~a coal mining operation~~ the extraction process. For purposes
31 of this section, "net profits" means the gross receipts received by an operator from any

1 sale of critical minerals or rare earth elements less costs incurred or expenditures
2 attributed, including any expenditures related to the extraction, processing, milling,
3 smelting, refining, and transportation of the critical minerals or rare earth elements.

4 ~~4. This section does not apply to any net profits, costs incurred, or expenditures relating~~
5 ~~the extraction, processing, milling, smelting, refining, and transportation of coal.~~

6 **Procedure.**

7 1. The adoption of rules or or the issuance of orders by the commission under this
8 chapter must be in accordance with the provisions of chapter 49-2238-08 governing
9 the procedure in the ~~siting of energy conversion and transmission~~
10 facilities administration of the Oil and Gas Conservation Act.

11 2. ~~An operator may elect to use the administrative procedures under chapter 38-14.1 for~~
12 ~~the purpose of obtaining a permit under this chapter in conjunction with a surface coal~~
13 ~~mining permit~~ A surface coal mine permit must be issued under chapter 38-14.1.

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

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

23 **Penalty - Revocation - Provisions applicable.**

24 Sections 49-22-2038-08-16 and 49-22-2138-08-17 are applicable to the provisions of this
25 chapter and to the rules and orders of the commission adopted under this chapter.

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

28 **38-12-02. Jurisdiction of commission.**

29 The commission has jurisdiction and authority over all persons and property, public and
30 private, necessary to enforce effectively the provisions of this chapter. Subject to the provisions
31 of section 38-08-21, the director of mineral resources shall act as a supervisor charged with the

1 duty of enforcing the regulations and orders of the commission applicable to the subsurface
2 mineral resources of this state and the provisions of this chapter. The commission has authority
3 to make such investigations as it deems proper to determine whether facts exist which justify
4 action by the commission. The commission acting through the director of mineral resources has
5 the authority:

6 1. To require:

- 7 a. The furnishing of a reasonable bond with good and sufficient surety, conditioned
8 upon the full compliance with the provisions of this chapter, and the rules and
9 orders of the commission prescribed to govern the exploration, development, and
10 production of subsurface minerals on state and private lands within the state of
11 North Dakota. The person required to furnish the bond may elect to deposit a
12 collateral bond, self-bond, cash, or any alternative form of security approved by
13 the commission, or combination thereof, by which a permittee assures faithful
14 performance of all requirements of this chapter and the rules and orders of the
15 industrial commission.
- 16 b. The delivery, free of charge, to the state geologist of the basic exploration data
17 collected by the operator, within thirty days of field collection of such data. This
18 data must include:
- 19 (1) Sample cuts, core chips, or whole cores.
- 20 (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or
21 mechanical logs.
- 22 (3) Elevation and location information on the data collection points.
- 23 (4) Other pertinent information as may be requested by the state geologist.
- 24 The data so submitted is confidential for a period of one year when so requested
25 by the operator and such period may be further extended upon approval by the
26 commission.
- 27 c. The filing of monthly production reports in the manner prescribed by the
28 commission and any other reports deemed necessary by the commission.
- 29 d. The conducting of all exploration, development, and production operations in
30 such a manner as to prevent pollution of freshwater supplies, to provide for the

- 1 protection of the environment and public safety, and to ensure the optimum
- 2 recovery of the mineral resource.
- 3 e. The reclamation of all land disturbed by operations regulated by this chapter to a
- 4 condition consistent with prior land use and productive capacity.
- 5 2. To regulate the drilling and abandonment of exploration test holes and producing wells
- 6 and all other exploration, development, production, and reclamation operations.
- 7 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes
- 8 and the intent of this chapter.
- 9 4. To inspect all exploration, development, and production sites. For the purposes of this
- 10 subsection, the director of mineral resources or the director's representative shall have
- 11 access to all exploration, development, or production installations for purposes of
- 12 inspection and shall have the authority to require the operator's aid if it is necessary
- 13 and is requested.
- 14 5. To regulate the exploration of critical minerals embedded, commingled, included,
- 15 contained within, or in any way associated with a coal seam or coal deposit located
- 16 outside of any surface coal mine permit boundary approved by the public service
- 17 commission.

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

20 **47-10-24. Description and definition of minerals in leases and conveyances.**

- 21 1. All conveyances of mineral rights or royalties in real property in this state, excluding
- 22 leases, ~~shall~~must be construed to grant or convey to the grantee ~~thereof~~ all minerals of
- 23 any nature ~~whatsoever~~ except those minerals specifically excluded by name in the
- 24 deed, grant, or conveyance, and their compounds and byproducts, but ~~shall~~may not
- 25 be construed to grant or convey to the grantee any interest in any gravel, clay, or
- 26 scoria unless specifically included by name in the deed, grant, or conveyance.
- 27 ~~No~~2. Except as provided in subsection 3 regarding a lease for coal, a lease of mineral rights
- 28 in this state shall~~may not~~ be construed as passing any interest to any minerals except
- 29 those minerals specifically included and set forth by name in the lease. For the
- 30 purposes of this ~~paragraph~~section, the naming of either a specific metalliferous
- 31 element, or nonmetalliferous element, and if so stated in lease, ~~shall be~~is deemed to

1 include all of its compounds and byproducts, and in the case of oil and gas, all
2 associated hydrocarbons produced in a liquid or gaseous form so named ~~shall~~must be
3 deemed to be included in the mineral named. ~~The~~Except as provided in subsection 3
4 regarding a lease for coal, the use of the words "all other minerals" or similar words of
5 an all-inclusive nature in any lease ~~shall~~may not be construed as leasing any minerals
6 except those minerals specifically named in the lease and their compounds and
7 byproducts.

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

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

2/6/2025

Relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

3:55 p.m. Chairman Porter opened the hearing.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby,
Conmy, Foss

Discussion Topics:

- Committee action

3:56 p.m. David Straily, North American Coal, went over amendment 25.1038.01001, and answered questions for the committee.

4:05 p.m. Representative J. Olson moved to adopt Amendment LC#25.1038.01001 previous testimony #35877 with small language changes.

4:05 p.m. Representative Novak seconded the motion.

4:06 p.m. Voice Vote on Amendment LC#25.1038.01001: Motion Carried.

4:06 p.m. Representative J. Olson moved Do Pass as Amended.

4:06 p.m. Representative Novak seconded the motion.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Anna Novak	Y
Representative Liz Conmy	Y
Representative Jason Dockter	A
Representative Austin Foss	Y
Representative Jared c. Hagert	Y
Representative Craig Headland	Y
Representative Pat D. Heinert	Y
Representative Jorin Johnson	A
Representative Andrew Marschall	Y
Representative Jeremy L. Olson	Y
Representative Matthew Ruby	Y

Motion Carried: 11-0-2

4:08 p.m. Representative Novak will carry the bill.

4:08 p.m. Chairman Porter closed the hearing.

Addison Randazzo for Leah Kuball, Committee Clerk

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 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 ~~section~~ sections 38-12-02 and 47-10-24 of the North Dakota
4 Century Code, relating to the authority of the industrial commission and descriptions and
5 definitions of minerals in leases and conveyances; ~~and~~ to provide a penalty; and to declare an
6 emergency.

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

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

10 **Definitions.**

11 As used in this chapter:

- 12 1. "Commission" means the ~~public service~~ industrial commission.
13 2. "Critical minerals" means a nonfuel mineral or mineral material essential to the
14 economic or national security of the United States and which has a supply chain
15 vulnerable to disruption. The term includes aluminum, antimony, arsenic, barite,
16 bauxite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium,
17 graphite, hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum
18 group metals, potash, the rare earth elements group, rhenium, rubidium, scandium,
19 strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and

83 2018

zirconium, which are embedded, commingled, included, contained within, or in any way associated with any coal seam or coal deposit.

3. ~~"Extraction facility process" means any well or mine or other extractive process operated with the purpose or intent of recovering critical minerals or rare earth elements~~ 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 in charge of the development of a lease or the operation of a producing property, or is the owner of an extraction~~ 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.

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

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.

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 ~~all exploration, development, and production operations~~ an extraction process in a manner as to prevent pollution of freshwater supplies, and to provide

July 4, 2018

- 1 for the protection of the environment and public safety, ~~and to ensure the~~
2 ~~optimum recovery of the mineral resource.~~
- 3 ~~d. Reclaim all land distributed by operations required by this chapter to a condition~~
4 ~~consistent with prior land use and productive capacity.~~
- 5 2. ~~Regulate the the drilling and abandonment of exploration test holes and producing~~
6 ~~wells and all other exploration, development, production, and reclamation operations.~~
- 7 ~~3.~~ Adopt and enforce rules and orders to effectuate this chapter, including rules requiring
8 an operator under permit with the commission to provide to the state geologist
9 reasonable amounts of data collected during the extraction process for critical
10 minerals or rare earth elements, and data necessary to evaluate the ongoing attributes
11 of critical mineral or rare earth extraction in the state.
- 12 4.3. Inspect all ~~exploration, development, and production sites~~ processing facilities. The
13 commission must have access to all ~~exploration, development, or production~~
14 ~~installations~~ processing facilities for purposes of inspection and may require the
15 operator's aid if necessary and requested.
- 16 5.4. At the request of an operator, approve the commingling of production for any
17 ~~extraction facility~~ processing facility on land with diverse ownership. The commission
18 shall establish a method to measure production from each parcel of land with diverse
19 ownership.
- 20 **Permit required.**
- 21 1. A person may not commence ~~an operation for~~ of a processing facility or the
22 exploration, development, or production of critical minerals or rare earth elements
23 without first obtaining a permit from the commission and paying the permit fee set by
24 the commission.
- 25 2. ~~An operator may obtain a permit in conjunction with a permit issued~~ This section does
26 not apply to a mine under the jurisdiction and authority of the public service
27 commission under chapter 38-14.1.
- 28 3. An operator shall pay any applicable owners, according to each owner's respective
29 undivided ownership within the applicable permit area, a royalty of two and one-half
30 percent of the net profits from all critical minerals and rare earth elements mined,
31 removed, and sold during ~~a coal mining operation~~ the extraction process. For purposes

Page 5 of 8

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.

~~4. This section does not apply to any net profits, costs incurred, or expenditures relating the extraction, processing, milling, smelting, refining, and transportation of coal.~~

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 ~~49-22~~38-08 governing the procedure in the ~~siting of energy conversion and transmission facilities~~administration of the Oil and Gas Conservation Act.
2. ~~An operator may elect to use the administrative procedures under chapter 38-14.1 for the purpose of obtaining a permit under this chapter in conjunction with a surface coal mining permit~~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 ~~49-22-20~~38-08-16 and ~~49-22-21~~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.

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- 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, ~~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.

Am 4089

- 1 ~~No~~2. Except as provided in subsection 3 regarding a lease for coal, a lease of mineral rights
2 in this state ~~shall~~may not be construed as passing any interest to any minerals except
3 those minerals specifically included and set forth by name in the lease. For the
4 purposes of this ~~paragraph~~section, the naming of either a specific metalliferous
5 element, or nonmetalliferous element, and if so stated in lease, ~~shall be~~is deemed to
6 include all of its compounds and byproducts, and in the case of oil and gas, all
7 associated hydrocarbons produced in a liquid or gaseous form so named ~~shall~~must be
8 deemed to be included in the mineral named. ~~The~~Except as provided in subsection 3
9 regarding a lease for coal, the use of the words "all other minerals" or similar words of
10 an all-inclusive nature in any lease ~~shall~~may not be construed as leasing any minerals
11 except those minerals specifically named in the lease and their compounds and
12 byproducts.
- 13 3. As provided under section 1 of this Act, a lease of coal in this state ~~when~~whenever
14 granted is deemed to include all critical minerals and rare earth elements embedded,
15 commingled, included, contained within, or in any way associated with any coal seam
16 or coal deposit, unless specifically excluded from the lease of coal.

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

**REPORT OF STANDING COMMITTEE
HB 1459**

Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS** ([25.1038.01002](#)) and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT OR EXCUSED AND NOT VOTING). HB 1459 was placed on the Sixth order on the calendar.

2025 SENATE ENERGY AND NATURAL RESOURCES

HB 1459

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Peace Garden Room, State Capitol

HB 1459

3/27/2025

Relating to regulations, development, and production of critical minerals and rare earth elements and 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.

10:00 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Mineral ownership rights
- Rare earth element extraction
- Regulatory frameworks
- Compensation structures
- Industry competitiveness

10:00 a.m. Representative Anderson introduced the bill and submitted testimony in favor #43765.

10:06 a.m. Representative Novak testified in favor and submitted testimony #44304.

10:10 a.m. David Straley, Attorney, testified in favor.

10:38 a.m. Brian Bjella, Attorney, Crowley-Fleck, testified in favor and submitted testimony #44216 and #44217.

11:12 a.m. Chris Suelzle, Minerals Director, North Dakota Department of Trust Lands, testified as neutral and submitted testimony #44225.

11:23 a.m. Kurt M. Swenson, testified in opposition and submitted testimony #44273.

11:47 a.m. Troy Coons, Chairman, Northwest Landowners Association, testified in opposition and submitted testimony #44318.

11:52 a.m. Derrick Braaten, Attorney, Braaten Law Firm, testified in opposition.

Additional written testimony:

Tyler Hamman, EERC, submitted testimony in favor #44270.

Wade Elder, submitted testimony in opposition #44159.

Julie A. Voigt, Owner, Voigt Ranch, submitted testimony in opposition #44275.

Edward C. Murphy, ND Dept of Mineral Resources, submitted testimony as neutral #44281.

12:27 p.m. Chairman Patten adjourned the meeting.

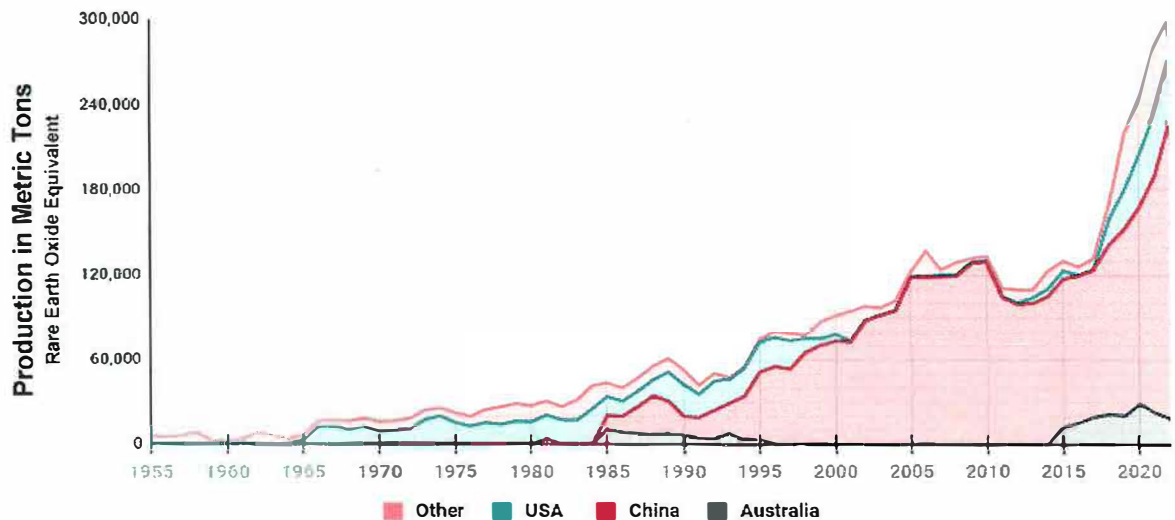
Kendra McCann, Committee Clerk



REE - Rare Earth Elements and their Uses

The demand for rare earth elements has grown rapidly, but their occurrence in minable deposits is limited.

Article by: [Hobart M. King, PhD, RPG](#)



Rare Earth Element Production: This chart shows a history of rare earth element production, in metric tons of rare earth oxide equivalent, between 1950 and 2022. It clearly shows the United States' entry into the market in the mid-1960s when color television exploded demand. When China began selling rare earths at very low prices in the late 1980s and early 1990s, mines in the United States were forced to close because they could no longer make a profit. [1] When China cut exports in 2010, rare earth prices skyrocketed. That motivated new production in the United States, Australia, Russia, Thailand, Malaysia, and other countries. In 2018 production data in Burma / Myanmar became available and boosted the "others" category. Prior to 2018, some production from Burma / Myanmar may have been unreported. Graph by Geology.com using data from United States Geological Survey Mineral Commodity Summaries and other publications.

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Rare Earth Elements																	
H																	He
Li	Be											B	C	N	O	F	Ne
Na	Mg											Al	Si	P	S	Cl	Ar
K	Ca	Sc	Ti	V	Cr	Mn	Fe	Co	Ni	Cu	Zn	Ga	Ge	As	Se	Br	Kr
Rb	Sr	Y	Zr	Nb	Mo	Tc	Ru	Rh	Pd	Ag	Cd	In	Sn	Sb	Te	I	Xe
Cs	Ba	La	Hf	Ta	W	Re	Os	Ir	Pt	Au	Hg	Tl	Pb	Bi	Po	At	Rn
Fr	Ra	Ac	Rf	Db	Sg	Bh	Hs	Mt									
Lanthanides																	
La Ce Pr Nd Pm Sm Eu Gd Tb Dy Ho Er Tm Yb Lu																	
Actinides																	
Ac Th Pa U Np Pu Am Cm Bk Cf Es Fm Md No Lr																	

REE Periodic Table: The Rare Earth Elements are the 15 lanthanide series elements, plus yttrium. Scandium is found in most rare earth element deposits and is

What Are Rare Earth Elements (REEs)?

Rare earth elements are a group of seventeen chemical elements that occur together in the periodic table (see image). The group consists of yttrium and the 15 lanthanide elements (lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, and lutetium). Scandium is found in most rare earth element deposits and is sometimes classified as a rare earth element. The International Union of Pure and Applied Chemistry includes scandium in their rare earth element definition.

The rare earth elements are all [metals](#), and the group is often referred to as the "rare earth metals." These metals have many similar properties, and that often causes them to be found together in [geologic deposits](#). They are also referred to as "rare earth oxides" because many of them are typically sold as oxide compounds.

Uses of Rare Earth Elements

Rare earth metals and alloys that contain them are used in many devices that people use every day such as computer memory, DVDs, rechargeable batteries, cell phones, catalytic converters, magnets, fluorescent lighting and much more.

During the past twenty years, there has been an explosion in demand for many items that require rare earth metals. Twenty years ago very few people owned a mobile phone, but today over 5 billion people own a mobile device. [3] The use of rare earth elements in computers has grown almost as fast as cell phones.

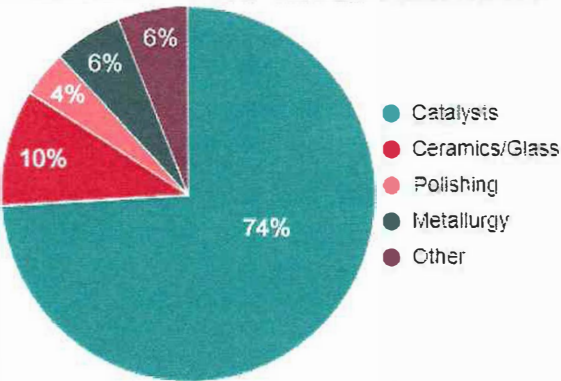
Many rechargeable batteries are made with rare earth compounds. Demand for the batteries is being driven by demand for portable electronic devices such as cell phones, readers, portable computers, and cameras.

Several pounds of rare earth compounds are in batteries that power every electric vehicle and hybrid-electric vehicle. As concerns for energy

sometimes classified as a rare earth element. Image by Geology.com.

ADVERTISEMENT

Uses of Rare Earth Elements



Uses in the United States as reported by the United States Geological Survey Mineral Commodity Summary, 2021

Uses of rare earth elements: This chart shows the use of rare earth elements in the United States during 2021. Many vehicles use rare earth catalysts in their exhaust systems for air pollution control. A large number of alloys are made more durable by the addition of rare earth metals. Glass, [granite](#), [marble](#), and [gemstones](#) are often polished with cerium oxide powder. Many motors and generators contain magnets made with rare earth elements. Phosphors used in digital displays, monitors, and televisions are created with rare earth oxides. Most computer, cell phone, and electric vehicle batteries are made with rare earth metals.

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Polishing	4%	independence,
Metallurgy & Alloys	6%	climate change, and
Other	6%	other issues drive the
(2021 data from USGS)		sale of electric and
		hybrid vehicles, the

demand for batteries made with rare earth compounds will climb even faster.

Rare earths are used as catalysts, phosphors, and polishing compounds. These are used for air pollution control, illuminated screens on electronic devices, and the polishing of optical-quality glass. All of these products are expected to experience rising demand.

Other substances can be substituted for rare earth elements in their most important uses; however, these substitutes are usually less effective and costly.

From the 1950s until the early 2000s, cerium oxide was a very popular lapidary polish. It was inexpensive and very effective. The recent price increases have almost eliminated the use of [cerium oxide](#) in [rock tumbling](#) and the lapidary arts. Other types of polish, such as [aluminum oxide](#) and [titanium oxide](#), are now used in its place.

Critical Defense Uses

Rare earth elements play an essential role in our national defense. The military uses night-vision goggles, precision-guided weapons, communications equipment, GPS equipment, batteries, and other defense electronics. These give the [United States](#) military an enormous advantage. Rare earth metals are key ingredients for making the very hard alloys used in armored vehicles and projectiles that shatter upon impact.

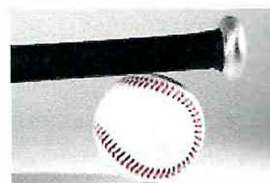
Substitutes can be used for rare earth elements in some defense applications; however, those substitutes are usually not as effective and that diminishes military superiority. Several uses of rare earth elements are summarized in the accompanying table [6].

Defense Uses of Rare Earth Elements

Lanthanum	night-vision goggles
Neodymium	laser range-finders, guidance systems, communications
Europium	fluorescents and phosphors in lamps and monitors
Erbium	amplifiers in fiber-optic data transmission
Samarium	permanent magnets that are stable at high temperatures
Samarium	precision-guided weapons
Samarium	"white noise" production in stealth technology

Are These Elements Really "Rare"?

Rare earth elements are not as "rare" as their name implies. Thulium and lutetium are the two least abundant rare earth elements - but they each have an average crustal abundance that is nearly 200 times greater than the crustal abundance of [gold](#) [1]. However, these metals are very difficult to mine because it is unusual to



Did You Know? Most of the scandium used in the United States goes into aluminum-alloy baseball bats and other sports equipment [4]. Scandium is also used in semiconductors and specialty lighting. Image copyright iStockphoto / Dori OConnell.

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find them in concentrations high enough for economical extraction.

The most abundant rare earth elements are cerium, yttrium, lanthanum and neodymium [2]. They have average crustal abundances that are similar to commonly used industrial metals such as [chromium](#), [nickel](#), [zinc](#), molybdenum, tin, tungsten, and [lead](#) [1]. Again, they are rarely found in extractable concentrations.

History of Rare Earth Production and Trade

Pre-1965

Before 1965 there was relatively little demand for rare earth elements. At that time, most of the world's supply was being produced from placer deposits in [India](#) and [Brazil](#). In the 1950s, [South Africa](#) became the leading producer from rare earth bearing [monazite](#) deposits. At that time, the Mountain Pass Mine in California was producing minor amounts of rare earth oxides from a Precambrian carbonatite.

Color Television Ignites Demand

The demand for rare earth elements saw its first explosion in the mid-1960s, as the first color television sets were entering the market. Europium was the essential material for producing the color images. The Mountain Pass Mine began producing europium from bastnasite, which contained about 0.1% europium. This effort made the Mountain Pass Mine the largest rare earth producer in the world and placed the United States as the leading producer.

China Enters the Market

China began producing notable amounts of rare earth oxides in the early 1980s and became the world's leading producer in the early 1990s. Through the 1990s and early 2000s, China steadily strengthened its hold on the world's rare earth oxide market. They were selling rare earths at such low prices that the Mountain



Did You Know? Rare earth magnets are used in wind turbines. Some large turbines require two TONS of rare earth magnets. These magnets are very strong and make the turbines highly efficient. Rare earth magnets are used in turbines and generators in many alternative energy applications.



Did You Know? Prices and demand for rare earth materials have risen dramatically over the past decade. China produces the majority of the supply. Deposits in Australia and the United States are going back into operation, and [exploration](#) in many new areas is progressing.

HEAVY Rare Earth Elements																					
LIGHT Rare Earth Elements																					
H																	He				
Li	Be															B	C	N	O	F	Ne
Na	Mg															Al	Si	P	S	Cl	Ar
K	Ca	Sc	Ti	V	Cr	Mn	Fe	Co	Ni	Cu	Zn	Ga	Ge	As	Se	Br	Kr				
Rb	Sr	Y	Zr	Nb	Mo	Tc	Ru	Rh	Pd	Ag	Cd	In	Sn	Sb	Te	I	Xe				
Cs	Ba	La	Ce	Pr	Nd	Pm	Sm	Eu	Gd	Tb	Dy	Ho	Er	Tm	Yb	Lu					
Fr	Ra	Ac	Th	Pa	U	Np	Pu	Am	Cm	Bk	Cf	Es	Fm	Md	No	Lr					

Heavy and light rare earth elements: The rare earth elements are often subdivided into "Heavy Rare Earths" and "Light Rare Earths." Lanthanum, cerium, praseodymium, neodymium, promethium, and samarium are the "light rare earths." Yttrium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, and lutetium are the "heavy rare earths." Although yttrium is lighter than the light rare earth elements, it is included in the heavy rare earth group because of its chemical and physical associations with heavy rare earths in natural deposits.

Pass Mine and many others throughout the world were unable to compete and stopped operation.

Defense and Consumer Electronics Demand

At the same time, world demand was skyrocketing as rare earth metals were designed into a wide variety of defense, aviation, industrial, and consumer electronics products. China capitalized on its dominant position and began restricting exports and allowing rare earth oxide prices to rise to historic levels.



Did You Know? Every hybrid-electric and electric vehicle has a large battery. Each battery is made using several pounds of rare earth compounds. The use of electric vehicles is expected to increase rapidly, driven by energy independence, climate change and other concerns. This will increase the demand for rare earth materials. Image copyright iStockphoto / Mark Stay.



Did You Know? Tiny amounts of rare earth metals are used in most small electronic devices. These devices have a short lifespan, and REE recycling is infrequently done. Billions are thrown away each year. Image copyright iStockphoto / Bakaleev Aleksey.

China as the Largest Rare Earth Consumer

In addition to being the world's largest producer of rare earth materials, China is also the dominant consumer. They use rare earths mainly in manufacturing electronics products for domestic and export markets. [Japan](#) and the United States are the second and third largest consumers of rare earth materials. It is possible that China's reluctance to sell rare earths is a defense of their value-added manufacturing sector.

China's Apex of Production Dominance?

The Chinese dominance may have peaked in 2010 when they controlled about 95% of the world's rare earth production, and prices for many rare earth oxides had risen over 500% in just a few years. That was an awakening for rare earth consumers and miners throughout the world. Mining companies in the United States, [Australia](#), [Canada](#), and other countries began to reevaluate old rare earth prospects and explore for new ones.

High prices also caused manufacturers to do three things: 1) seek ways to reduce the amount of rare earth elements needed to produce each of their products; 2) seek alternative materials to use in place of rare earth elements; and, 3) develop alternative products that do not require rare earth elements.

This effort has resulted in a decline in the amounts of rare earth materials used in some types of magnets and a shift from rare earth lighting products to light-emitting diode technology. In the United States, the average consumption of rare earths per unit of manufactured product has decreased, but the demand for more products manufactured with rare earth elements has increased. The result has been higher consumption.

China Buying Resources Outside of China

Chinese companies have been purchasing rare earth resources in other countries. In 2009 China Non-Ferrous Metal Mining Company bought a majority stake in Lynas Corporation, an Australian company that has one of the highest outputs of rare earth elements outside of China. They also purchased the Baluba Mine in [Zambia](#).

Mines in Australia began producing rare earth oxides in 2011. In 2012 and 2013 they were supplying about 2% to 3% of world production. In 2012 the Mountain Pass Mine came back into production, and the United States produced about 4% of the world's rare earth elements in 2013. Production in Brazil, [Malaysia](#), [Russia](#), [Thailand](#) and [Vietnam](#) continued or increased.

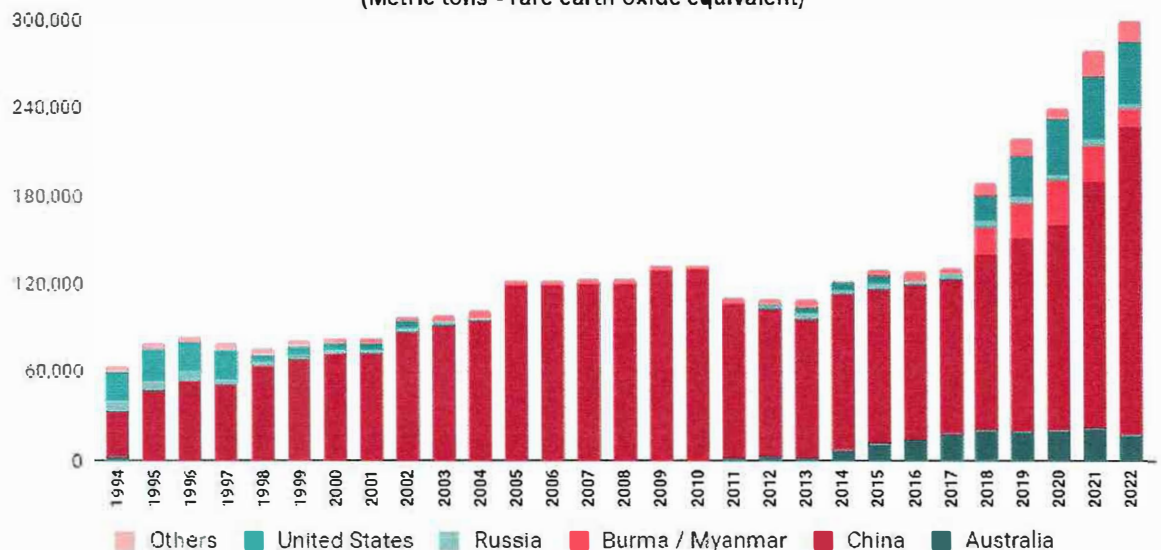
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Country	Production (Metric Tons)	Reserves (Metric Tons)
United States	43,000	2,300,000
Australia	18,000	4,200,000
Brazil	80	21,000,000
Burma	12,000	not available
Canada	--	830,000
China	210,000	44,000,000
Greenland	--	1,500,000
India	2,900	6,900,000
Madagascar	960	not available
Russia	2,600	21,000,000
South Africa	--	790,000
Tanzania	--	890,000
Thailand	7,100	not available
Vietnam	4,300	22,000,000
Other Countries	80	280,000
World total (rounded)	300,000	130,000,000

New mineral resource assessments conducted by the United States Geological Survey identified significant resources outside of China. Although China is the world leader in rare earth production, they only control about 36% of the world's reserves. This provides an opportunity for other countries to become important producers now that China is not selling rare earth materials below the cost of production.

Rare Earth Element Production

(Metric tons - rare earth oxide equivalent)



REE Production Chart: This chart shows China's dominance in the production of rare earth elements between 1994 and 2022. The United States was a significant producer through the 1990s, but low-priced materials sold by China forced mines in the United States and other countries out of operation. As China limited exports, and prices increased rapidly in 2009 and 2010, mines in Australia and the United States became active again. In 2018, data

from Burma / Myanmar became available, causing an increase in production that may have been present but unreported prior to 2018. Graph by Geology.com using data from the United States Geological Survey.

Dangers of a Dominant World Producer

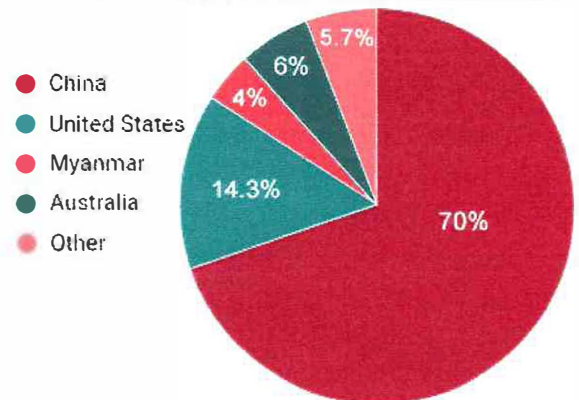
Supply and demand normally determine the market price of a commodity. As supplies shrink, prices go up. As prices go higher, those who control the supply are tempted to sell. Mining companies see high prices as an opportunity and attempt to develop new sources of supply.

With rare earth elements, the time between a mining company's decision to acquire a property and the start of production can be several years or longer. There is no fast way to open a new mining property.

If a single country controls almost all of the production and makes a firm decision not to export, then the entire supply of a commodity can be quickly cut off. That is a dangerous situation when new sources of supply take so long to develop.

In 2010 China significantly restricted their rare earth exports. That was done to ensure a supply of rare earths for domestic manufacturing and for environmental reasons. This shift by China triggered panic buying, and some rare earth prices shot up exponentially. In addition, Japan, the United States, and the European Union complained to the World Trade Organization about China's restrictive rare earth trade policies.

Producers of Rare Earth Elements



Producers of Rare Earth Elements: This pie chart shows the world's major producers of rare earth elements. Countries which fall into the "other" category include India, Madagascar, Vietnam, Russia, and Brazil. Image by Geology.com using data from the United States Geological Survey.

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World Rare Earth Mineral Resources

"Rare earths are relatively abundant in the Earth's crust, but discovered minable concentrations are less common than for most other ores. U.S. and world resources are contained primarily in bastnäsite and [monazite](#). Bastnäsite deposits in China and the United States constitute the largest percentage of the world's rare-earth economic resources, while monazite deposits in Australia, Brazil, China, India, Malaysia, South Africa, [Sri Lanka](#), Thailand, and the United States constitute the second-largest segment.



Rare earth oxides: These rare earth oxides are used as tracers to determine which parts of a watershed are eroding [5]. Clockwise from top center: praseodymium, cerium, lanthanum, neodymium, samarium, and gadolinium. Image by Peggy Greb, USDA image gallery.

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Scientists Find \$8.4 Billion Rare Earth Element Reserves in the U.S.

Scientists Find \$8.4 Billion Rare Earth Element Reserves in the U.S.

Written by Kat de Naoum on 3/19/2025.

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America's efforts to reduce reliance on foreign rare earth elements may have just received an unexpected boost. Scientists have uncovered massive reserves hidden in coal ash deposits across the country.

Study Unveils Rare Earth Elements

Reserves

Scientists from The University of Texas at Austin, led by Bridget Scanlon and Davin Bagdonas, have found that America's coal ash deposits contain an estimated \$8.4 billion worth of rare earth elements.

Their study, published in the *International Journal of Coal Science & Technology*, analyzed data from coal ash deposits across multiple U.S. regions—the first comprehensive national assessment of coal ash as a potential resource.

Rare Earth Elements Embedded in Coal Ash

The research identified up to 11 million tons of rare earth elements embedded in coal ash, in locations including the Appalachian, Powder River, and Illinois basins.

The study found that coal ash from the Appalachian Basin contains the highest concentration of rare earths (431 mg/kg), while Powder River Basin

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coal ash has a lower concentration (264 mg/kg) but a higher extractability rate of 70%.

Uses for Rare Earth Elements

Rare earth elements, including neodymium, dysprosium, and yttrium, are critical for high-tech industries, powering batteries, wind turbines, and even military equipment.

Around 75% of the U.S. supply of these elements comes from China, which is why domestic production has been a top priority for a while now.

Potential for the U.S.

The U.S. Department of Energy is using the study's methodology for its own national assessment of these reserves. Companies like Element USA are investing in mineral separation technologies to bring this concept to market.

Coal ash extraction is more efficient than traditional mining as the minerals are already separated from their original ore. This means that, if processed correctly, the benefits for the U.S.

could be massive—transforming waste into a valuable resource would reduce America's dependence on imports.

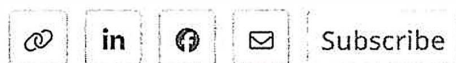
Challenges of Extracting Rare Earth Elements

Despite its potential, the process of extracting rare earth elements from coal ash is still in the very early stages. There are still technical and economic barriers to get over, such as improving extraction efficiency and making operations cost-effective.

The chief strategy officer at Element USA, Chris Young, noted that the idea of extracting these elements out of mining by-products is common sense. "The challenge is to convert that common-sense approach to an economic approach," he added.

Image Credit:

Shutterstock/VladaKg03



Next Up in Business & Industry

Senate Energy and Natural Resources Committee

Testimony on HB 1459 (IN OPPOSITION)

Wade Elder, Bismarck, ND District 47

Chairman Patten, Vice Chairman Kessel and members of the Senate Energy and Natural Resources Committee, my name is Wade Elder from Bismarck.

HB 1459 is simply disrespectful to mineral interest owners who have leases signed with coal companies. These leases may have been signed decades ago and to try and write legislation to modify the meaning of those leases is unconstitutional.

Why Net Profits? It should be based on Gross Profits. You don't let the fox control the hen house by determining what the net income is and then paying based on that amount. This also naturally leads to an adjustment for time and inflation as prices increase as opposed to the rates the coal companies are still paying based on the 1960's when some of the leases were signed.

Why doesn't North American Coal just get new leases like they did for the coal to start with or modify their existing ones rather than passing legislation? North American Coal is the natural party to get the leases in place. Passing this kind of legislation is at best sneaky. If North American Coal was such a good lessee, they should have no problems getting leases from the mineral rights holders.

I suggest amending the bill to also include consideration for other potential by product use and sale that may not occur or be contemplated today, and negotiating these with mineral interest holders and modifying their leases.

I respectfully ask you to vote DO NOT PASS vote on HB 1459 as currently presented.

Sincerely,

Wade Elder

HOUSE BILL 1459
TESTIMONY OF BRIAN BJELLA

I. Introduction

- Law Firm of Crowley Fleck
- Graduated from UND Law School in 1979
- Served as an Assistant Attorney General for 1½ years, primarily with the Department of Trust Lands
- Entered private practice in 1980
- Focused exclusively on development of natural resources, including coal and oil and gas
- Represented companies before the Public Service Commission for coal mines, oil and gas pipelines and windfarms
- Represented companies in litigation before state and federal courts in North Dakota regarding property rights and challenges to permits approving energy projects
- Served on the Lignite Energy Council Board of Directors for 24 years

II. Purpose of HB 1459

- To provide a mechanism for critical minerals and rare earth elements which are found in the mining of coal to be regulated and to provide a method to secure permits to allow for mining of these minerals
- Typically critical minerals and rare earth elements are found in very small deposits that could not be economically mined on their own and are found within the coal seam actually embedded within and as part of the coal
- Mines for other minerals are facing the same issues, for example a cobalt or silver mine where traces of rare earth elements and critical minerals are found, mining companies are exploring how to deal with them economically and from a regulatory standpoint

III. Coal Leases

For this to work in North Dakota and economically mine critical minerals and rare earth elements, it is necessary for the legislature to exercise its police powers to state that such minerals that are found in the coal seam and are embedded within and part of the coal are subject to the coal leases that the mining companies have previously obtained.

- These minerals are already being mined with the coal by the authority granted by existing coal leases
- Only in this way can such minerals found in the coal seam be economically mined
- To accomplish this the legislature utilizes its police powers to this effect, due to public importance that the legislature gives to mining of these minerals

IV. Public Policy in 1459

A. The bill includes an extensive public policy section.

- It states in part that critical minerals and rare earth elements are fundamental to the economy, competitiveness, and security of the United States
- That such minerals are widely disseminated and can only be recovered when produced as part of another extractive activity and found with a host mineral which for the purposes of this chapter is coal
- It states that the legislative assembly finds it is necessary to exercise the police power of the state to declare the mining of coal in this state and a lease of coal in this state shall be deemed to include the right to mine all critical minerals and rare earth elements embedded within the coal seam.
- Very important that the public policy statement remains in the bill

V. Congressional and Presidential Action

In 2021 Congress passed its Critical Minerals Supply Chains and Reliability Act, codified at 30 USCA §1607.

- This federal law contains a public policy statement entitled “Sense of Congress” and provides in part that critical minerals are fundamental to the economy, competitiveness, and security of the United States, that such minerals are only economically recoverable when combined with the production of a host mineral, and that to the maximum extent practical the critical mineral needs of the United States should be satisfied by minerals responsibly produced and recycled in the United States.
- The law goes on to provide for revisions to the federal permitting process to allow for the mining of critical minerals produced during the production of a host mineral.
- On January 20, 2025, President Trump signed Executive Order No. 14,156 declaring a National Energy Emergency and calling on federal agencies to use emergency powers to promote development of critical minerals and to expedite approval of federal permits by using their emergency authority.
- HB 1459 is North Dakota’s declaration of an energy emergency.

VI. North Dakota Statutes Setting Public Policy and the exercise of Police Powers

- For the development of leonardite public policy statements in §38-15-01 and §38-12.1-01 and §38-12.1-02, direct that it is a benefit to the society to allow for exploration and development of commercial leonardite.
- §38-17-02 in the Coal Leasing Practices Act provides it is the intent of the legislative assembly of the State of North Dakota to exercise the legitimate police power of the

state to protect the economic welfare of its citizens, and in the public interest that certain of the terms and conditions of the leases of coal be regulated.

- §38-11.1-01 under the Oil and Gas Production Damage Compensation Act, provides it is incumbent upon the state to protect the public welfare of the state while at the same time facilitating exploration of oil and gas and further directs that the owners of the surface estate should be justly compensated.
- Section 38-18-02 as part of the Surface Owner Protection Act for coal where the legislature finds it necessary to exercise its police power to protect the welfare of North Dakota, but further finds that there is an abundance of coal and leonardite which can be used for the production of energy and encourages development thereof.
- Section 38-22-01 Carbon Dioxide Underground Storage Act provides that it is in the public interest to promote the geologic storage of carbon dioxide and to provide a regulatory mechanism to do so, including a commingling procedure if some owners do not consent.
- HB 1459 has a similar commingling procedure.

As demonstrated by these statutes, the legislature has on numerous occasions by virtue of a public policy importance to the state and to the nation utilized its police powers to provide for a regulatory mechanism for the development of natural resources. All these statutes contain public policy statements which justify the use of the legislative police power.

VII. Compensation to Owners Under HB 1459

Under Section 4 of the Bill it provides that the operator of an extraction facility to recover critical minerals and rare earth elements shall pay to the owners a royalty equal to 2.5% of net profits from all such critical minerals and rare earth elements extracted and sold.

It is not unusual for the legislature to dictate compensation by statute.

- The Carbon Dioxide Underground Storage Act codified at Chapter 38-22 directs that the Industrial Commission shall find that all non-consenting pore space owners are or will be equitably compensated.
- The Underground Storage of Oil and Gas Act, codified at Chapter 38-25 provides in part that the Industrial Commission shall find that all non-consenting owners are or will be equitably compensated.
- For oil and gas wells, §38-08-08 provides for a mechanism known as force pooling whereby the North Dakota Industrial Commission combines “pools” all interests in a spacing unit for a well, including those companies or mineral owners who have not consented to the well.
- This force pooling statute provides in part that an unleased mineral owner is entitled to a cost-free royalty of the acreage weighted average royalty of the leased tracts within the well, or at the operator’s election a 16% royalty.
- Thus, in the three aforementioned statutes, the legislature has executed its police powers to direct that the North Dakota Industrial Commission find that unleased owners have been or will be equitably compensated, or in the case of §38-08-08 provide for a percentage royalty.
- Thus, when HB 1459 provides for a 2½% net profits royalty it is similar to other laws previously enacted by this legislature.

VIII. Constitutionality of the Legislature Exercising Its Police Powers.

In *Continental Resources, Inc. vs. Farrar Oil Company*, in 1997, the North Dakota Supreme Court considered a constitutional challenge to the force pooling statute NDCC 38-08-08.

- Farrar Oil Company owned leases but did not want to participate in the well proposed by Continental Resources, and objected to a force pooling order issued by the North Dakota Industrial Commission, stating it was in violation of its property rights as the drilling of such a well would constitute an illegal subsurface trespass on the property rights it held under an oil and gas lease.
- The Court stated that the North Dakota legislature in 1953 when enacting Chapter 38-08 recognized that traditional property law principles contributed to inefficiency and waste in oil and gas development, and so enacted the chapter stating it is in the public interest to encourage and promote the development and production of natural resources of oil and gas.
- The Supreme Court stated that Chapter 38-08 equipped the Industrial Commission with comprehensive powers to regulate oil and gas development.
- Included within these powers is the right to force pool under §38-08-08.
- With respect to the challenge to the property rights the court did state that property is subject to the police power of the state to impose restrictions on private rights as are necessary for the general welfare of all.
- The exercise of these police powers is not confined strictly to public health, morals and peace but other instances where the public interest demands it, as in the case of oil and gas where large discretion is vested in the legislature to determine not only what interests are important, but what measures are necessary for the protection of these interests – that being oil and gas production.
- The court stated police powers of the state are properly exercised when the Industrial Commission issues a force pooling order.

- The court further stated that the law of trespass does not restrict operations authorized under Chapter 38-08, and to that extent, law of trespass is superseded.
- To hold otherwise would be to frustrate the intent of the legislature under Chapter 38-08 where one owner could stop the drilling of a well.
- The court stated that the police powers exercised by the NDIC effectively superseded Farrar's right to use its oil and gas properties as it pleases.
- Its property right had to partially yield to the public good expressed by the legislative in its public policy statements, which then justified the exercise of its police powers.
- HB 1459 was structured to provide constitutional protections.
- No trespass as the minerals are already being produced when the coal is mined under existing coal leases.
- No taking of any property right.
- Provides for fair compensation to the mineral owner.

VIX. Conclusion.

If critical minerals and rare earth elements are to be extracted when the host mineral coal is being mined, and put to productive use for the United States, it is necessary for this legislature to declare North Dakota's own energy emergency, and enact House Bill 1459 stating its public policy of the need to develop critical minerals and rare earth elements, and second, to exercise its police powers to allow this to happen.

I respectfully support passage of House Bill 1459. Thank you.



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-330854

July 16, 2019

The Honorable Tom Udall
Ranking Member
Subcommittee on the Interior, Environment, and Related Agencies
Committee on Appropriations
United States Senate

Subject: *Hardrock Mining: Updated Information on State Royalties and Taxes*

Dear Senator Udall:

This responds to your request for us to update certain information in a 2008 GAO report on the types of royalties that 12 western states assess on hardrock mining operations.¹ These states charge royalties for hardrock minerals extracted from state-owned lands.² By contrast, the federal government, under the General Mining Act of 1872,³ does not charge royalties for hardrock minerals extracted from public domain lands.⁴

To respond to your request, we reviewed our prior report and to update that information, we employed a methodology similar to what we used in 2008. We examined the relevant statutes

¹ GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008). Our recent work on issues related to hardrock mining includes GAO, *Hardrock Mining: Trends in U.S. Reliance on Imports for Selected Minerals*, GAO-19-434R (Washington, D.C.: May 30, 2019) and GAO, *Hardrock Mining: Availability of Selected Data Related to Mining on Federal Lands*, GAO-19-435R (Washington, D.C.: May 16, 2019). The 12 states addressed in our 2008 report and this letter are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

² In addition, most of these states impose taxes, such as severance taxes, mine license taxes, or resource excise taxes, on hardrock mining that occurs on any land. A severance tax is generally a tax or fee imposed on the extraction of natural resources; a mine license tax is generally a tax assessed in conjunction with a mine license for the privilege of mining; and a resources excise tax is generally a tax imposed on the extracting or processing of natural resources.

³ General Mining Act of 1872, ch. 152, 17 Stat. 91 (May 10, 1872) (codified as amended in scattered sections of title 30, United States Code). Under U.S. law, minerals are classified as leasable, saleable, or locatable. Leasable minerals include, oil, gas, coal, phosphate, sodium, potassium, sulphur, and gilsonite. Mineral Leasing Act of 1920, ch. 85, 41 Stat. 437 (Feb. 25, 1920) (codified at 30 U.S.C. § 181). Saleable minerals include common sand, stone, and gravel. Multiple Use Mining Act of 1955, ch. 375, 69 Stat. 367 (July 23, 1955) (codified at 30 U.S.C. § 601). Locatable minerals are those that are not leasable or saleable, such as copper, lead, zinc, nickel, magnesium, gold, silver, gems, mica, fluorspar, perlite, tungsten, uranium, and certain limestones and gypsum. In this letter, we refer to "locatable minerals" as "hardrock minerals."

⁴ The Bureau of Land Management is authorized to lease hardrock minerals on acquired lands, which are lands or interests in lands, including mineral estates, which the United States obtained through purchase, gift, or condemnation. Mining operators must pay small fees on some claims. For instance, for unpatented mining claims (*i.e.*, those that have not been conveyed by the federal government to the operator), fees include a one-time location fee of \$37 and an annual maintenance fee of \$155. In fiscal year 2017, the Bureau of Land Management collected \$65 million in such fees.

and regulations on hardrock mining cited therein to determine if they had changed. We also researched any new provisions and reviewed case law for any significant changes in the interpretation of the statutes and regulations. When we needed clarification about specific state issues, we contacted state officials responsible for managing state lands. To develop a broader perspective, we also interviewed individuals knowledgeable about state royalties and taxes, and we consulted academic and industry sources to aid us in understanding whether there had been other important changes in this area of law since 2008. We spoke with individuals in government, academia, private law practice, and a trade association. Finally, we reviewed publications by academics, the Congressional Research Service, the World Bank, and the Council of State Governments. We conducted the work supporting this letter in accordance with applicable legal professional standards and all relevant requirements of GAO's quality assurance framework, which assure that our work is objective, accurate, reliable, and independent.

This letter, like our 2008 report, presents information on both royalties and taxes. Although there are important distinctions between the two, both royalties and taxes permit the government to share in the value of mine production.⁵ And although states may use similar names for royalties and taxes, there can be wide variations in their forms and rates. As we did in 2008, here we place royalties and taxes into one of four categories:⁶

- *Unit-based* royalties and taxes are typically assessed as a dollar rate per quantity or weight of mineral produced or extracted, and do not allow for deductions of mining costs.
- *Gross revenue* royalties and taxes are typically assessed as a percentage of the value of the mineral extracted and do not allow for deductions of mining costs. To determine mineral value, states often use the actual sales price. In other instances, a state may calculate the mineral value on the basis of a reference price, such as the price of the mineral traded in a commodities exchange like the New York Mercantile Exchange. We refer to these royalties as "gross revenue with reference price."
- *Net smelter returns* royalties and taxes are assessed as a percentage of the value of the mineral, but with deductions allowed for the costs of transporting and processing the mineral (mill, smelter, or treatment costs). However, extraction costs are not deductible. For these royalties and taxes, value may also be determined on the basis of a reference price. A common variation of the net smelter returns royalty or tax includes a standard deduction rate (such as a percentage of the value of the mineral) intended to represent the mining costs and any other allowed deductible costs.
- *Net proceeds* royalties and taxes are assessed as a percentage of the net proceeds (or profit) of the sale of the mineral with deductions for various mining costs. The particular

⁵ For this reason, we referred to taxes as "functional royalties" in our 2008 report. Royalties are a share of the product or profit derived from real property, reserved by the property owner in exchange for the right to extract a resource. Taxes are charges imposed by a government on persons, entities, transactions, or property. *Black's Law Dictionary* 1528, 1685 (10th ed. 2014).

⁶ In some cases, a royalty or tax generally fits into one of these four categories, but with some differences. In 2008 and here, we identify these royalties or taxes as "modified."

deductions allowed vary widely from state to state, but may include costs of extraction, processing, transportation, capital, marketing, and insurance. A common variation of the net proceeds royalty or tax includes a standard deduction rate (such as a percentage of the value of the mineral) intended to represent the mining costs and any other allowed deductible costs.

As detailed in Enclosures I and II, we determined that since our 2008 report, there have been only minor changes to royalties and taxes assessed by the 12 western states in our review. Enclosure I shows the types of royalties and taxes that the 12 states assess. Enclosure II contains 12 tables, one table for each state, showing the types of royalties and taxes, as well as rates, deductions, and limitations, imposed by each individual state. The changes are as follows:

- Alaska and Arizona adjusted the lists of minerals to which two of their state taxes apply.
- Utah previously credited rent paid by mining operators against the royalty it collected for certain hardrock minerals mined from state lands. It no longer does so.
- Wyoming lifted a suspension of its mining severance tax on certain uranium production and thus now imposes this tax on uranium production.

If you have any questions regarding these matters, please contact me at (202) 512-6417 or SawtelleS@gao.gov. Assistant General Counsel Gregory Marchand, Deputy Assistant General Counsel Richard Johnson, Senior Attorney Antoinette Capaccio, Staff Attorney Juan Garay, and Senior Analyst Ulana Bihun also made key contributions to this letter.

Sincerely yours,



Susan D. Sawtelle
Managing Associate General Counsel

Enclosures - 2

Enclosure I: Royalty and Tax Types on Hardrock Mining in Twelve Western States, 2019

Twelve western states—Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming—charge royalties on hardrock mining on state lands, and most also impose taxes on hardrock mining activity generally. This Enclosure shows the types of royalties and taxes that the 12 states assess.

ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING IN WESTERN STATES, 2019

State	Land or Activity Type	Unit-based	Gross revenue	Net smelter returns	Net proceeds
ALASKA	State lands				•
	Mining activity generally				•
ARIZONA	State lands		•		
	Mining activity generally		•		•
CALIFORNIA	State lands ^a			•	•
	Mining activity generally	•			
COLORADO	State lands ^b				
	Mining activity generally	•	•		
IDAHO	State lands		•	•	
	Mining activity generally				•
MONTANA	State lands ^c			•	
	Mining activity generally	•	•	•	
NEVADA	State lands ^d				
	Mining activity generally				
NEW MEXICO	State lands			•	
	Mining activity generally		•	•	•
OREGON	State lands	•	•		
	Mining activity generally				
UTAH	State lands ^e		•		
	Mining activity generally				•
WASHINGTON	State lands			•	
	Mining activity generally		•		
WYOMING	State lands	•	•		
	Mining activity generally			•	

Source: GAO analysis of prior report (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews of selected experts. Sales, use, and property taxes are excluded. Royalties and taxes often apply only to specific minerals.

^a California also has lease-specific royalties for minerals extracted from state lands.

^b Colorado has lease-specific royalties for minerals extracted from state lands.

^c Montana also has lease-specific royalties for nonmetallic minerals extracted from state lands.

^d Nevada has lease-specific royalties for minerals extracted from state lands.

^e Utah's royalty on beryllium did not fit into one of our four categories and so is not shown on this chart. Specifically, Utah's royalty on beryllium is based on mining costs rather than product quantity, weight, value, or proceeds.

Enclosure II: Royalty and Tax Details, Hardrock Mining in Twelve Western States, 2019

Twelve western states—Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming—charge royalties on hardrock mining on state lands, and most also impose taxes on hardrock mining activity generally. This Enclosure shows the types of royalties and taxes, as well as rates, deductions, and limitations.

Table 1: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN ALASKA, 2019

Alaska	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Production royalty ^a	Minerals locatable under federal law as of January 3, 1959	Modified net proceeds <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 3% of taxpayer's net income from mine	<i>Deductions:</i> Overhead and operating expenses, development expenses incurred after mine reaches production stage, depreciation, some taxes, and certain losses and direct mining expenses, among other things <i>Limitations:</i> Subject to exploration incentive credit; rents credited toward royalties
Mining activity generally				
Mining license tax ^b	Includes valuable metals, ores, minerals, and gypsum (but not oil, gas, <u>marketable earth, quarry rock, or sand and gravel</u>)	Modified net proceeds <i>Rate determination:</i> Statutory, progressive ^c	<i>Current rate and base:</i> 3% to 7% of taxpayer's net income over \$40,000 from all mines in state, less depletion, ^d plus royalty received in connection with mining property in the state	<i>Deductions:</i> Overhead and operating expenses, development expenses incurred after mine reaches production stage, depreciation, some taxes, and certain losses and direct mining expenses, among other things <i>Limitations:</i> Exemption for mine's first 3.5 years; subject to exploration incentive credit

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Alaska Stat. §§ 27.30.050, 38.05.185, .212, 43.65.060 (West 2019); Alaska Admin. Code tit. 11, § 86.760 (West 2019); Alaska Admin. Code tit. 15, §§ 65.120, .125 (West 2019).

^b Alaska Stat. §§ 43.65.010, .060, 27.30.050 (West 2019); Alaska Admin. Code tit. 15, §§ 65.120, .125 (West 2019).

^c A progressive tax is a tax structured so that the effective tax rate increases more than proportionately as the tax base increases. *Black's Law Dictionary* 1687 (10th ed. 2014).

^d Depletion is a percentage that varies by mineral. Alaska Stat. § 43.65.010(e) (West 2019).

Table 2: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN ARIZONA, 2019

Arizona	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty—minerals ^a	All metallic ore minerals and industrial minerals other than common variety minerals (e.g., stone, gravel, clay, sand)	Gross revenue with reference price <i>Rate determination:</i> Statutory minimum, lease-specific	<i>Current rate and base:</i> Market royalty rate; at least 2% of gross value of all minerals produced and sold determined by published price quotation (or, where unavailable, appraisal of fair market price); where processing is performed after mineral is extracted, it shall be deemed produced and sold when concentrate or cathode results from that processing	<i>Deductions:</i> None identified <i>Limitations:</i> None identified
Mining activity generally				
Severance tax—metallic minerals ^b	Metalliferous minerals (copper, gold, silver, molybdenum or other metal or any ore or substance containing such metals, including turquoise)	Net proceeds <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 2.5% of net severance base, which is 50% of the difference between gross value of production and production costs; gross value of production is sale price (or price from last reporting period, if no sale) multiplied by the number of recoverable units of the mineral	<i>Deductions:</i> Production costs, generally those incurred in mining and processing until point of sale; includes depreciation and property taxes; does not include severance tax and depletion, or corporate expenses and income tax <i>Limitations:</i> None identified
Transaction privilege tax—mining classification ^c	Includes limestone and any nonmetalliferous mineral product, <u>compound, or combination of nonmetalliferous mineral products</u>	Modified gross revenue <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 3.125% of the tax base, which is the gross proceeds of sales or gross income derived from the business, and includes the value of the entire product mined, quarried, or produced for sale, profit, or commercial use in the state ^d	<i>Deductions:</i> Certain taxes including municipal and Indian sales or transaction privilege taxes <i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Ariz. Rev. Stat. §§ 27-231, -234, -271 (2019).

^b Ariz. Rev. Stat. §§ 42-5201–5202, -5204 (2019); gross proceeds or income from retail sales are not subject to the severance tax, but are taxed under the transaction privilege tax.

^c Ariz. Rev. Stat. §§ 42-5002, -5010, -5072 (2019); sales that are taxed under the retail classification (5 percent) are not subject to the mining classification tax.

^d“Gross income” means the gross receipts of a taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property or services, or both, and without any deduction on account of losses. “Gross proceeds of sales” means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sales are not included as gross income. Retail tax does not apply to sale of precious metal bullion or monetized bullion. Ariz. Rev. Stat. §§ 42-5001, -5159 (2019).

Table 3: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN CALIFORNIA, 2019

California	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Production royalty ^a	Minerals except oil, gas, and geothermal resources	Net smelter returns, net proceeds, or lease-specific <i>Rate determination:</i> Statutory minimum, lease-specific	<i>Current rate and base:</i> (1) <i>Preferential lease:</i> either (a) a royalty, in money or in kind, of not less than 10% of the gross value of all mineral production less charges including transportation and processing costs; or (b) a percentage of net profits; (2) <i>negotiated or competitive lease:</i> either (a) a royalty in money or in kind or (b) a percentage of net profits ^b	<i>Deductions:</i> For gross value, approved charges associated with transporting or processing the state's share <i>Limitations:</i> None identified
Mining activity generally				
Fee on gold and silver ^c	Gold and silver	Unit-based <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> \$5 per ounce of gold, \$0.10 per ounce of silver, with a minimum of \$100 and a maximum of \$10,000	<i>Deductions:</i> Not applicable <i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Cal. Pub. Res. Code §§ 6895, 6897 (West 2019).

^b Prior to applying for a lease, an operator with a prospecting permit must pay a royalty of 20 percent on gross value of minerals sold. Cal. Pub. Res. Code § 6896 (West 2019).

^c Cal. Pub. Res. Code § 2207 (West 2019).

Table 4: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN COLORADO, 2019

Colorado	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty ^a	Minerals generally	Lease-specific <i>Rate determination:</i> Lease-specific	<i>Current rate and base:</i> Lease-specific	<i>Deductions:</i> Lease-specific <i>Limitations:</i> Lease-specific
Mining activity generally				
Severance tax— metallic minerals ^b	Metallic minerals; all other minerals except molybdenum, oil, gas, coal, oil shale, rock, sand, gravel, stone products, earths, limestone, carbon dioxide, and dolomite	Modified gross revenue <i>Rate determination:</i> Statutory, uniform above income exclusion	<i>Current rate and base:</i> 2.25% of gross income above \$19 million a year, where gross income is the value of ore right after removal from mine and does not include value added by treatment or marketing, or income from extraction or processing of ores or minerals from waste or residue of previously processed ores	<i>Deductions:</i> Any value added after mining (e.g., crushing, transporting, etc.) <i>Limitations:</i> None identified
Severance tax— molybdenum ^c	Molybdenum ore	Unit-based <i>Rate determination:</i> Statutory, uniform above exclusion	<i>Current rate and base:</i> \$0.05 per ton above 625,000 tons per calendar quarter	<i>Deductions:</i> Not applicable <i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Colo. Rev. Stat. § 36-1-113 (West 2019), Email from Minerals Field Technician, Colorado State Board of Land Commissioners, to Senior Attorney, GAO, June 11, 2019.

^b Colo. Rev. Stat. §§ 39-29-102, -103 (West 2019).

^c Colo. Rev. Stat. §§ 39-29-102, -104 (West 2019).

Table 5: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN IDAHO, 2019

Idaho	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty—general ^a	Includes gold, silver, lead, zinc, antimony, and copper	Net smelter returns (most minerals) <i>Rate determination:</i> Statutory minimum; uniform rate (base varies)	<i>Current rate and base:</i> 5% of value of mineral produced and saved; market value or actual price, whichever is higher; gross receipts earned or received at point of sale of first marketable minerals	<i>Deductions:</i> None identified <i>Limitations:</i> Rents are credited toward royalties
Royalty—riverbed mineral leases ^b	Gold extracted from submerged state lands	Gross revenue <i>Rate determination:</i> Statutory minimum; uniform rate (base varies)	<i>Current rate and base:</i> 5% of value of mineral produced and saved; market value or actual price, whichever is higher	<i>Deductions:</i> None identified <i>Limitations:</i> Rents are credited toward royalties
Mining activity generally				
Mining license tax ^c	Includes gold, silver, lead, zinc, and copper	Net proceeds <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 1% of net value of royalties paid or ore mined or extracted; taxpayer may select either of two methods of computation	<i>Deductions:</i> (1) U.S. Internal Revenue Service method: deductions include costs of mining, processing, and depletion; ^d (2) U.S. Dept. of the Interior method: deductions include costs of mining, transport, and depletion <i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Idaho Code § 47-701, -704 (2019); Email from Bureau Chief—Endowment Leasing, Idaho Department of Lands, to Senior Analyst, GAO, May 13, 2019.

^b Idaho Code § 47-704 (2019); Email from Bureau Chief—Endowment Leasing, Idaho Department of Lands, to Senior Analyst, GAO, May 13, 2019.

^c Idaho Code §§ 47-1201, -1202 (2019); Email from Bureau Chief—Endowment Leasing, Idaho Department of Lands, to Senior Analyst, GAO, May 13, 2019.

^d Depletion is an accounting method used to reflect the actual physical reduction of natural resources in asset value. See e-mail from Bureau Chief, Endowment Leasing, Idaho Department of Lands, to Senior Analyst, GAO, May 13, 2019.

Table 6: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN MONTANA, 2019

Montana	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty— Metalliferous Mines ^a	Metalliferous minerals (including gold, silver, lead, zinc, copper, platinum, and iron) or gems (precious or semiprecious)	Net smelter returns <i>Rate determination:</i> Statutory minimum, regulatory range, lease-specific	<i>Current rate and base:</i> 5% to 8% of returns, but no less than 5% of the fair market value; ^b returns are the net amount received by the shipper after deducting reasonable transportation costs to closest feasible point of sale, smelting charges and deductions, and other treatment costs	<i>Deductions:</i> Reasonable transportation costs to closest feasible point of sale, smelting charges and deductions, and other treatment costs; costs of producing or treating at mine not deductible <i>Limitations:</i> None identified
Royalty—nonmetallic minerals ^c	Nonmetallic minerals (including limestone and mica, but not including coal, oil, or gas)	Lease-specific <i>Rate determination:</i> Statutory standards, lease-specific	<i>Current rate and base:</i> Lease-specific, based on gross value by either weight or cubic measurement	<i>Deductions:</i> None identified <i>Limitations:</i> None identified
Mining activity generally				
Mining license tax— metal mine ^d	Gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones of any kind	Net smelter returns <i>Rate determination:</i> Statutory, uniform within each category	<i>Current rate and base:</i> Percentage of gross value, less first \$250,000, as follows: gold, silver, or any platinum-group metal processed concentrates shipped to a refinery—1.6%; mineral concentrates shipped to smelter, mill, or reduction works—1.81%; gross value is receipts received from sale of concentrates or metals extracted or produced from mines or recovered from smelting, milling, reduction, or treatment of such ores; ^e “receipts received” is defined as the payment received, less allowable deductions	<i>Deductions:</i> Treatment and refinery charges; costs of transportation from mine or mill to smelter or other processor; quantity, price, impurity, and penalty charges; and interest <i>Limitations:</i> None identified

Mining license tax— micaceous mines ^f	Vermiculite, perlite, kerrite, maconite, or any other micaceous minerals	Unit-based <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> \$0.05 per ton of concentrate mined, extracted or produced	<i>Deductions:</i> Not applicable <i>Limitations:</i> None identified
Resource indemnity and groundwater assessment tax ^g	Includes any precious stones or gems, gold, silver, copper, lead, uranium, vermiculite, limestone, or other nonrenewable, merchantable products	Metals—net smelter returns; Selected minerals— gross revenue with reference price <i>Rate determination:</i> Statutory, uniform within each category	<i>Current rate and base:</i> Default rate: \$25 plus 0.5% – 1% of gross value > \$5,000; garnets: \$25 plus 1% of gross value > \$2,500; limestone: \$25 plus 10% of gross value > \$250; vermiculite: \$25 plus 2% of gross value > \$1,250; gross value generally defined as market value of merchantable minerals extracted; for some minerals, gross value is fixed by statute, with reference to a price index; for metals and gems, gross value is receipts received (see license tax)	<i>Deductions:</i> Generally, none; metals and gems as outlined above under license tax <i>Limitations:</i> Exemption for those who have paid the license tax for metal mines

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Mont. Code Ann. §§ 77-3-101, 77-3-116 (2019); Mont. Admin. R. 36.25.607 (2019).

^b Fair market value is defined as the value of the minerals or gems in raw crude form as recovered at the mine site. Mont. Admin. R. 36.25.607(2) (2019).

^c Mont. Code Ann. § 77-3-204 (2019).

^d Mont. Code Ann. §§ 15-37-101 – 15-37-103 (2019); Mont. Code Ann. § 15-23-801 (2019).

^e If a person has sold or otherwise disposed of any of a mine's products at a price substantially below the true market price of the product at the time and place of sale or disposal, then the Montana Department of Revenue shall generally compute the gross value of such product based upon the quotations of the price of the mine's product in New York City. Mont. Code Ann. § 15-37-105 (2019).

^f Mont. Code Ann. § 15-37-201 (2019).

^g Mont. Code Ann. §§ 15-23-516 – 15-23-518 (2019); 15-37-102; 15-38-103 – 15-38-104, 15-38-113, 15-38-127 – 15-38-129 (2019).

Table 7: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN NEVADA, 2019

Nevada	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty ^a	Minerals generally	Lease-specific	<i>Current rate and base:</i> Lease-specific	<i>Deductions:</i> None identified
		<i>Rate determination:</i> Lease-specific		<i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Nev. Rev. Stat. §§ 322.050, .060 (2019).

Table 8: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN NEW MEXICO, 2019

New Mexico	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty on special minerals ^a	Includes precious or semiprecious stones, uranium, thorium, plutonium, and any other material determined by the Atomic Energy Commission ^b to be peculiarly essential to the production of fissionable materials	Net smelter returns <i>Rate determination:</i> Statutory minimum, lease-specific	<i>Current rate and base:</i> No less than 5% of gross returns, which shall be based on the arm's-length sales price of the produced minerals less the actual and reasonable transportation and smelting or reduction costs up to 50% of gross returns and shall include all premiums, bonuses, and other consideration of any kind received by the lessee	<i>Deductions:</i> Actual and reasonable transportation and smelting or reduction costs, up to 50% of gross returns <i>Limitations:</i> None identified
Royalty (other) ^c	Minerals other than special minerals	Net smelter returns <i>Rate determination:</i> Statutory minimum, lease-specific	<i>Current rate and base:</i> Not less than 2% of gross returns, which shall be based on the arm's length sales price of the produced minerals, less the actual and reasonable transportation and smelting or reduction costs up to 50% of gross returns, and shall include all premiums, bonuses, and other consideration of any kind received by the lessee	<i>Deductions:</i> Actual and reasonable transportation and smelting or reduction costs, up to 50% of gross returns <i>Limitations:</i> None identified
Mining activity generally				
Severance tax—copper, lead, zinc, gold, silver ^d	Copper, lead, zinc, gold, and silver	Net proceeds/standard deduction <i>Rate determination:</i> Statutory, uniform within each category	<i>Current rate and base:</i> Copper 0.5%; gold and silver 0.2%; lead and zinc 0.125% of taxable value, which is defined as gross value less rental or royalty payments to state or federal governments; gross value: copper, lead, and zinc = 66.67% of sales value from published price data; gold = sales value from published price data; silver = 80% of sales value from published price data	<i>Deductions:</i> Deductions for calculation of gross value: standard deduction of 50% of sales value for hoisting, crushing, loading, processing, and beneficiation <i>Limitations:</i> None identified

Severance tax— Molybdenum ^e	Molybdenum	Net proceeds/ standard deduction <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 0.125% of taxable value, which is gross value less rental or royalty payments to state or federal governments; gross value is value of molybdenum in concentrates shipped from mine, but in no event less than the value that <i>bona fide</i> sales which reflect current market conditions would yield for same quantity contained in concentrates at mine site	<i>Deductions:</i> Deductions for calculation of gross value: standard deduction of 50% of the value for hoisting, crushing, loading, processing, and beneficiation <i>Limitations:</i> None identified
Severance tax— uranium ^f	Uranium	Net proceeds <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 3.50% of taxable value; taxable value is 50% of sales price of content of U ₃ O ₈	<i>Deductions:</i> None identified <i>Limitations:</i> None identified
Severance tax— general provisions ^g	Other metalliferous and nonmetalliferous minerals	Default—Gross revenue When posted market price is available or mineral requires processing before sale —Net smelter returns <i>Rate determination:</i> Statutory, uniform within each category	<i>Current rate and base:</i> 0.125% of taxable value, which is defined as the gross value less rental and royalty payments to state or federal governments; gross value is sales value at first marketable point; however, where a posted field or market price is available, it shall be used, and for those products that must be processed or beneficiated before sale, gross value is sales value after deducting freight charges from point of severance to point of first sale and cost of processing or beneficiation	<i>Deductions for calculation of gross value:</i> (1) Default is no deductions; (2) where posted field or market price is used, costs of hoisting, crushing, and loading necessary to place the product in marketable form and place are deductible, up to 50%; (3) for products that must be processed or beneficiated before sale, freight charges from point of severance to point of first sale and cost of processing or beneficiation may be deducted <i>Limitations:</i> None identified
Resources excise tax (severers and processors) ^h	Metalliferous and nonmetalliferous mineral products other than oil, natural gas, liquid hydrocarbon, carbon dioxide, helium, or nonhydrocarbon gas	Modified gross revenue <i>Rate determination:</i> Statutory, uniform within each category	<i>Current rate and base:</i> Molybdenum 0.125% of taxable value; all other natural resources excepting potash 0.75% of taxable value; taxable value is value after severing or processing	<i>Deductions:</i> Royalties paid; proceeds from sales to state, federal government, or nonprofit organizations <i>Limitations:</i> Only one tax (severers or processors) is imposed on a given mineral product

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a N.M. Stat. Ann. § 19-8-22 (2019); N.M. Code R. § 19.2.2 (2019).

^b The Atomic Energy Commission was a predecessor agency to the U.S. Department of Energy.

^c N.M. Stat. Ann. §§ 19-8-22 (2019); N.M. Code R. § 19.2.2 (2019).

^d N.M. Stat. Ann. §§ 7-26-4 – 26-5 (2019).

^e N.M. Stat. Ann. §§ 7-26-4 – 26-5 (2019).

^f N.M. Stat. Ann. §§ 7-26-4, 26-7 (2019).

^g N.M. Stat. Ann. §§ 7-26-2, 26-4 – 26-5 (2019).

^h N.M. Stat. Ann. §§ 7-25-3 – 25-5, 25-7 (2019); there is also a service tax, which essentially imposes the severer's tax on a nonowner severer where the product is not otherwise taxed by the resource excise tax. N.M. Stat. Ann. § 7-25-6 (2019).

Table 9: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN OREGON, 2019

Oregon	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty—metallics and uranium ^a	Metallic minerals removed in quantities greater than 10 yards per year ^b	Gross revenue <i>Rate determination:</i> Regulatory; uniform	<i>Current rate:</i> 5% of gross value of minerals at the mine mouth	<i>Deductions:</i> None identified <i>Limitations:</i> Rent (\$1 per acre per year) is credited against annual royalties
Royalty—Nonmetallics ^c	Nonmetallic minerals removed in quantities greater than 10 yards per year	Unit-based <i>Rate determination:</i> lease-specific	<i>Current rate and base:</i> A rate per ton to be determined by the Director of the Division of State Lands to be fair and reasonable under the particular lease	<i>Deductions:</i> Not applicable <i>Limitations:</i> Rent (\$1 per acre per year) is credited against annual royalties

Source: GAO analysis of prior report (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Or. Rev. Stat. § 273.780 (2019); Or. Admin. R. §§ 141-071-0400, -0600, -0610, -0620 (2019).

^b Certain exceptions are listed at Or. Rev. Stat. § 273.785 (2019).

^c Or. Rev. Stat. § 273.780 (2019); Or. Admin. R. §§ 141-071-0400, -0600, -0610 (2019).

Table 10: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN UTAH, 2019

Utah	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty ^a	Classified minerals, including metalliferous, gemstone, and gypsum	Gross revenue <i>Rate determination:</i> Regulatory, uniform within each category	<i>Current rate and base:</i> Percentages of actual compensation received including all payments, bonuses, and allowances, plus the value of all services, payments-in-kind, and all other monetary or nonmonetary compensation as follows: metalliferous, fissionable—8%; metalliferous, non-fissionable—4%; gypsum—5%; gemstone—10% (subject to annual minimum of \$5 per acre)	<i>Deductions:</i> None <i>Limitations:</i> None identified ^b
Mining activity generally				
Severance tax on metals and metalliferous minerals ^c	Ore, metal, or other substance containing 57 listed minerals, including gold, iron, mercury, nickel, and uranium extracted from all lands; does not include gem stones, potash, sand and gravel, oil, gas, and coal, among others	Net proceeds/standard deduction <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 2.6% of taxable value, which is the gross proceeds of sale (sale of yellowcake in the case of a sale of uranium concentrates), less \$50,000 per year per mine and standard deduction	<i>Deductions:</i> Metal, 70% deduction is applied; ore (raw materials with metals content less than 15%) shipped or sold out of state, 20% deduction is applied <i>Limitations:</i> None identified
Severance tax—beryllium ^d	Beryllium	Other (cost-based) <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 2.6% of taxable value; taxable value is 125% of direct mining costs.	<i>Deductions:</i> None identified <i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Utah Admin. Code r. 652-20-200, -1000 (2019); Email from Assistant Director of Mining, State of Utah School and Institutional Trust Lands Administration, to Senior Analyst, GAO, May 21, 2019. Royalties may be readjusted in leases with readjustment clause. Utah Admin. Code r. 652-20-4000 (2019).

^b Our 2008 report noted that rent paid was credited against royalties. That information has been deleted from this table based on an amendment to Utah Admin. Code r. 652-20-1000 (2019).

^c Utah Code Ann. §§ 59-5-201 – 203 (West 2019).

^d Utah Code §§ 59-5-202 – 203 (West 2019).

Table 11: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN WASHINGTON, 2019

Washington	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty ^a	Valuable minerals and specified materials (except rock, gravel, sand, silt, coal, or hydrocarbons)	Net smelter returns <i>Rate determination:</i> Regulatory, uniform	<i>Current rate and base:</i> 5% of gross receipts, which are receipts paid, earned, or received at the point of sale of first marketable valuable mineral(s) produced, subject to deduction	<i>Deductions:</i> Limited to transportation costs which are part of the development plan approved by the state Department of Natural Resources <i>Limitations:</i> None identified
Mining activity generally				
Business tax ^b	Mineral products	Gross revenue <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 0.48% of value of products and byproducts extracted for use or sale	<i>Deductions:</i> None identified <i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a Wash. Rev. Code § 79.14.300 (2019); Wash. Admin. Code §§ 332-16-035, -155; the royalty may be revised upon renewal of a mining contract, by reference to then existing law. Wash. Rev. Code § 79.14.42 (2019).

^b Wash. Rev. Code §§ 82.04.100, .230 (2019).

Table 12: ROYALTIES AND TAXES ASSESSED ON HARDROCK MINING OPERATIONS IN WYOMING, 2019

Wyoming	Type of mines/minerals assessed	Type of royalty or tax	Royalty or tax rate	Royalty or tax deductions and limitations
State lands				
Royalty—uranium ^a	Uranium	Gross revenue <i>Rate determination:</i> Regulatory (default rates) and lease-specific, progressive ^b	<i>Current rate and base:</i> 2.5% to 3% of total sales value, depending on average price of yellowcake and gross yearly sales realization (default)	<i>Deductions:</i> None identified <i>Limitations:</i> None identified
Royalty—zeolite ^c	Zeolite	Unit-based <i>Rate determination:</i> Regulatory (default rates) and lease-specific, progressive ^d	<i>Current rate and base:</i> \$0.55 to \$0.60 plus per ton, depending on average sale price for bulk zeolite products (default)	<i>Deductions:</i> Not applicable <i>Limitations:</i> None identified
Royalty—metallic and nonmetallic rocks and minerals generally ^e	Metallic and nonmetallic rocks and minerals other than oil and gas, coal, trona/sodium, uranium, bentonite, and zeolite	Gross revenue (default) and unit-based royalty (minimum) <i>Rate determination:</i> Regulatory (default and minimum rates) and lease-specific, progressive ^f	<i>Current rate and base:</i> Default rates are 5% to 10%, based on sales value per ton; minimum is \$0.50/ton	<i>Deductions:</i> None identified <i>Limitations:</i> None identified
Mining activity generally				
Mining severance tax—uranium ^g	Uranium	Modified net smelter returns/standard deduction <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 4% ^h of value of gross product, which is fair market value of minerals at mouth of mine, not including processing; fair market value is calculated by multiplying sales of yellowcake less royalties, <i>ad valorem</i> production taxes, and severance taxes; the result is multiplied by the industry factor	<i>Deductions:</i> Industry factor provides a standard deduction and is an average of all uranium producers' ratios of total mining costs to total mining and processing costs incurred to produce yellow cake <i>Limitations:</i> None identified
Mining severance tax—other ⁱ	Valuable deposits other than coal, oil and gas, trona, bentonite, uranium, and sand and gravel	Modified net smelter returns <i>Rate determination:</i> Statutory, uniform	<i>Current rate and base:</i> 2% of the value of the gross product, which is fair market value of minerals at mouth of mine, not including any processing	<i>Deductions:</i> None identified <i>Limitations:</i> None identified

Source: GAO analysis of prior report, (GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008)), state statutes, regulations, expert literature, and interviews with selected experts. Amendments requiring additions to tables since our 2008 report are underscored and amendments requiring deletions from tables since our 2008 report are footnoted.

^a 060.0002.21 Wyo. Code R. § 7 (West 2019).

^b A progressive tax is a tax structured so that the effective tax rate increases more than proportionately as the tax base increases. *Black's Law Dictionary* 1687 (10th ed. 2014). Royalties in Wyoming are based on lease terms but default rates apply unless specifically authorized by the state Board of Land Commissioners.

^c 060.0002.23 Wyo. Code R. § 7 (West 2019).

^d See note b above.

^e Wyo. Stat. Ann. § 36-6-101 (West 2019); 060.0002.24 Wyo. Code R. § 7 (West 2019); under certain circumstances, the state Board of Land Commissioners can reduce a royalty after the mine is operating.

^f See note b above.

^g Wyo. Stat. Ann. §§ 39-14-503, -504 (West 2019).

^h Our 2008 report noted a suspension of this tax for certain uranium production between January 1, 1995, and March 31, 2009, but that information has been deleted from this table based on an amendment to Wyo. Stat. Ann. § 39-14-505 (West 2019).

ⁱ Wyo. Stat. Ann. § 39-14-703 (West 2019).

Sixty-ninth
Legislative Assembly
of North Dakota

**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.



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Chairman Patten, members of the committee, on behalf of the Energy & Environmental Research Center (EERC), thank you for this opportunity to provide comment on House Bill 1459. As a leading developer of technologies to advance optimization of our energy resources and address environmental challenges, the EERC has been engaged in identifying our state and regional Rare Earth Element (REE) and Critical Mineral (CM) resources and opportunity for production of these important materials.

The EERC is currently involved in several efforts to advance domestic REE and CM development. The EERC recently completed its work under Phase I of the U.S. Department of Energy's (DOE) Carbon Ore, Rare Earth, and Critical Minerals (CORE-CM) Initiative. The EERC led this phase to identify and characterize REE/CM availability in coal throughout the Williston Basin. Those findings identified several deposits, including embedded within and part of coal, throughout North Dakota for potential REE/CM availability that meets or exceeds the DOE's threshold of 300 parts per million for economic recovery of REE and CM.

The EERC is excited to continue this work under Phase II of the CORE-CM Initiative that was awarded this past fall. Phase II will continue to build on Phase I's findings to enhance and transform the use of coal and coal-based resources within the Williston Basin and throughout a broader region of the western and central United States, in partnership with the University of Wyoming and North Dakota coal producers. Work completed under this phase will include a regional resource assessment, collect additional field data and expand beyond coal-related sources, address infrastructure and permitting on a regional-scale, and assist with the development of a potential technology innovation center(s) in the region. The technology innovation center is a proposed space where technology developers can join with entrepreneurs, startups, and established businesses to formulate ideas and receive assistance to accelerate the development of a REE/CM supply chain.

Concurrent with the work being done under the CORE-CM Initiative, the EERC through the State Energy Research Center, and in partnership with the North Dakota Geological Survey (NDGS), is working to complete a legislatively-directed study to sample and further characterize in-state deposits of REE and CM. To-date, the EERC and NDGS have collected over 100 samples of alternative sources of REE/CM, including produced water, clays, fly ash, and coal from the MHA Nation. This study will also include a business case analysis for the production and processing of North Dakota REE/CM resources.

These collective efforts, along with the work being performed by the University of North Dakota College of Engineering & Mines to develop extraction and processing technology, is positioning North Dakota as a leader for domestic production and processing of REE and CM. Given the ever-increasing importance of REE/CM in nearly every sector of our economy, and critical technology for national defense, the development of this value chain is essential for economic and national security. Our findings so far indicate that REE/CM production can enhance North Dakota coal production, enable new extractive industry and commercial ventures, and create associated economic benefits for all North Dakotans. In addition, these efforts can help fulfill the directives of recent Presidential Executive Orders, including Declaring a National Energy Emergency (signed January 20, 2025), Unleashing American Energy (signed January 20, 2025), and Immediate Measures to Increase American Mineral Production (signed March 20, 2025).

While research and development continues to prove out the feasibility of REE/CM production, as with any economic sector, advancement of this emerging opportunity will depend on policy certainty and a consistent regulatory environment. We appreciate the legislature's efforts to advance REE/CM development in North Dakota and implement the statutory framework needed to enable its success. Thank you again for this opportunity to provide comments on this important issue.

Senate Energy and Natural Resources Committee

Testimony on HB 1459 (IN OPPOSITION)

Kurt Swenson, Beulah, ND District 33

Chairman Patten, Vice Chairman Kessel and members of the Senate Energy and Natural Resources Committee, my name is Kurt Swenson from Beulah.

I became aware of this bill when it was in the house. To be clear, I am supportive of developing these resources within a regulatory framework for permitting and oversight. As currently written, I am appalled at the bill's blatant disrespect for contract law, our constitution and mineral interest owners.

As you ponder your position on this bill and before voting, I encourage you to ask legislative counsel if this bill is constitutional with respect to the Contracts and Takings clauses in our constitutions. Your oath to uphold our constitution trumps any economic development opportunities we may have as a state.

If passed as written, the state is risking untold numbers of quiet title action lawsuits along with constitutional challenges.

Please send a message that it's best to work with mineral interest owners, endeavor in good faith negotiations with them and not just FORCE legislation onto them that strips them of their rights guaranteed by our constitution.

I respectfully ask you to vote DO NOT PASS vote on HB 1459.

Sincerely,

Kurt Swenson

Testimony of Julie Voigt in opposition to HB 1459

Chairman Patten and Committee members:

I am Julie Voigt, a land and mineral owner from Mercer County. I currently have an active coal mine on my land. I support coal mining and the energy industry in our great state of North Dakota. I also support the intent to develop regulatory measures of rare earth minerals. However, I do NOT support HB 1459.

I am opposed to HB 1459 for various reasons:

HB 1459 is trying to supersede and change the intent of private coal leases.

I currently have a "SURFACE AND COAL LEASE AGREEMENT" to mine coal on my land. HB 1459 is trying to make the inclusion of minerals the same in a coal lease as in a general conveyance of mineral rights by deeming that minerals will now automatically be included in all coal leases. This is nothing short of an attempt to steal valuable minerals from the rightful mineral owner.

North Dakota Century Code ND CC 47-10-24 states, "No lease of mineral rights in this state shall be construed as passing any interest to any minerals except those minerals specifically included and set forth by name in the lease". HB 1459 takes a huge stab at our ND Century Code by simply changing "shall" to "may not" and adding its own section 3 in order to include minerals and elements in all coal leases. This goes so far as to try to change the intent of private leases between mineral owners and corporate developers.

HB 1459 is attempting to take away the rights of mineral owners by encroaching on the binding agreement of the lease terms between the mineral owner and the corporate developer. It also attempts to illegally fix a blanket price for all the minerals of all mineral owners. In doing so it removes the mineral owner's right to negotiate a fair market price for their product.

HB 1459 states that it "is declared to be an emergency measure", in order to add a sense of urgency to its act, and it uses the blanket terminology "critical minerals" and "rare earth elements", along with the verbiage "embedded, commingled, included, contained within, or in any way associated with a coal seam or coal deposit", to simply allow corporate developers the opportunity to encase not only all minerals, but even single-atom elements from mineral owners in one blanket sweep.

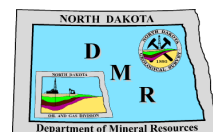
HB 1459 places very little emphasis on reclamation.

I was taken back by the obvious intent of HB 1459 in its attempt to transfer valuable mineral rights from mineral owners like myself to corporate developers in the coal industry. Upon reading HB 1459 in its entirety, I have to say that I am ashamed of my State Representatives responsible for this bill, and their lack of public representation.

Rather than helping orchestrate a means for corporate coal companies to fulfill their intent to deprive mineral owners of their valuable minerals, perhaps State Representatives can create actual regulatory measures to regulate the development and production of minerals in our state.

Thank you for your time.

~Julie Voigt



House Bill 1459

Senate Energy and Natural Resources Committee

March 27, 2025

Testimony of Ed Murphy, State Geologist, DMR – Geological Survey

In his testimony on HB 1459 before the House Energy and Natural Resources Committee, Nathan Anderson (Director of the Department of Mineral Resources) noted that President Trump's Executive Order of January 20, 2025, declared a national emergency related to energy and critical minerals, further emphasizing the need for critical minerals to be produced here in the U.S.

Recently, the DMR requested that NDCC 38-12 (Subsurface Minerals), the regulatory program that governed critical minerals exploration in coal in the first engrossed bill, be replaced with NDCC 38-12.1 (Coal Exploration). That change was made in the bill draft before you. We requested it because for the last 17 years we have issued exploration permits between those two regulatory programs based upon the target lithology. For example:

In 2008, we issued a subsurface minerals (NDCC 38-12) permit to explore for molybdenum, uranium, and germanium (the latter two would later be considered critical minerals) when the targeted lithology was both coal and sandstone.

In 2021, we issued a coal exploration (NDCC 38-12.1) permit for a company to explore for critical minerals in coal.

In 2024, we issued 11 coal exploration (NDCC 38-12.1) permits. One of the permits was for a company to explore for critical minerals in coal, the other ten were issued to the DMR for a drilling program focused on critical minerals in coal over a ten-county area.

This bill addresses the urgent need to establish a regulatory framework for the exploration, mining, and processing of critical minerals in coal. As such, it is an important first step.

Mark F. Bohrer
ASSISTANT DIRECTOR
OIL AND GAS DIVISION

Nathan D. Anderson
DIRECTOR
DEPT. OF MINERAL RESOURCES

Edward C. Murphy
STATE GEOLOGIST
GEOLOGICAL SURVEY



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Anna Novak

District 33
1139 Elbowoods Drive
Hazen, ND 58545-4923
anovak@ndlegis.gov

COMMITTEES:

Education
Energy and Natural Resources (Vice Chair)

March 27, 2025

Thank You, Mr. Chairman. Mr. Chairman and members of the committee-

For the record, my name is Anna Novak, Representative for district 33, which is otherwise known as "Coal Country".

I am here today to offer support for hb1459. This revolutionary piece of legislation is very important to my district. I represent 3400 coal miners, 7300 coal plant workers and 1100 employees that focus on the transmission and distribution of electricity. This bill offers a value-add for coal.

Since Covid, we have realized how supply chain disruptions can have long-lasting impacts and affect nearly everything in our technological driven world. Over 70% of critical metals and rare earth elements we use in America are mined and processed in China. And as you likely know, China doesn't adhere to the child and slave labor laws enforced in other countries. They also have shown that they don't care much about environment. America can do it better. And North Dakota is the perfect place to begin this up and coming industry. We have an incredibly business-friendly tax structure, already permitted coal mines, primacy and the hardest working workforce in the country.

Since President Trump took office a little over two months ago, he has made it very clear that he desires to secure a domestic source of critical metals and rare earth elements. It's a matter of national security at this point.

With our legislature meeting only every other year, it is incredibly important that we pass this piece of legislation. No other state currently has the regulatory framework in place for this developing industry...but they are working on it. North Dakota waiting another two years will most certainly mean that we will have lost our opportunity to be first in line, which is where we are right now. I recognize there are likely going to be aspects of this legislation that need to be fine-tuned once the industry gets going because this is new...and we don't know what we're dealing with until we get the industry going. But the time to act is now.

Please support hb1459 to give a lifeline to the coal industry and offer our landowners the opportunity to take part in this exciting opportunity, which provides them the financial opportunities within their existing coal leases as well as additional revenue from the profits of the critical minerals and rare earth industry.

This concludes my testimony, Mr. Chairman and members of the committee. With that, I'll stand for any questions. Thank you.

3-27-2025

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in opposition to
HOUSE BILL NO. 1459
Senate Energy and Natural Resources Committee
March 20, 2025

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents hundreds of farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We oppose HB 1459 because several provisions of this bill are unconstitutional. Our general legal counsel from the Braaten Law Firm reviewed the legislation and relevant law, and concluded that if HB 1459 "is enacted, it will be a massive unconstitutional taking of property and rights from North Dakota mineral owners and will subject the State to liability not only for passing an unconstitutional statute, but potentially a significant financial liability. Takings claims will likely be brought against the state for the lost revenues from mineral owners." I have attached to my testimony a legal memo explaining the constitutional problems with this bill.

We have always supported development and we do that through private contracts negotiated freely between the parties. This bill takes away our freedom to contract and imposes a contract on us we will not accept. The law is unconstitutional, and unAmerican. We oppose HB 1459 as an unconstitutional law and ask you for a do not pass recommendation.

Thank you,

Troy Coons
Northwest Landowners Association

NWLA Legal Memo re: Unconstitutionality of HB 1459

This memorandum contains the opinions of NWLA and its legal counsel regarding the unconstitutionality of House Bill 1459.

Legislatures cannot enact laws that impair contracts. The right to contract and the sanctity of existing contracts is protected by both the United States and North Dakota constitutions. “No State shall . . . pass any . . . Law impairing the Obligation of Contracts.” U.S. Const. Art. I, § 10. “No law impairing the obligations of contracts shall ever be passed.” N.D. Const. Art. I, § 10.

In at least three places, House Bill 1459 will impair coal leases issued by North Dakota landowners:

- Declaring that coal mining and coal leases include—whether or not the parties to the mining or lease had any such intent—“all critical minerals and rare earth minerals, unless specifically excluded by the lease.”¹
- Declaring that the coal owner’s royalty on critical and rare earth minerals is two and one-half percent of the “net profits” mined and sold—even if the lease has no royalty provision for these minerals and even if the royalty rate in the lease is higher than two and one-half percent.²
- Declaring that a coal lease includes—even if the landowner issuing the lease had no such intent—critical and rare earth minerals found within a coal seam or deposit, unless such minerals were specifically excluded from the lease.³

In the applying the federal Contract Clause, the U.S. Supreme Court considers whether “the change in state law has operated as a substantial impairment of a contractual relationship.”⁴ Because the bill would define with finality what substances a lease covers without regard to what the parties to the lease intended and what royalty is to be paid without regard to, among other things, the lease’s actual royalty rate, the bill strikes at the two fundamental features of any mineral lease, what it covers and what royalty the mineral owner is to receive. The substantial impairment is plain.

In addition to the contract clauses, the bill implicates the due process clauses in the federal and state constitutions, which prohibit the loss of rights without due process, U.S. Const. amend. XIV;

¹ Page 3, lines 3-6 of HB 1459 (25.1038.02000).

² Page 4, 14-21 of HB 1459 (25.1038.02000).

³ Page 7, lines 21-24 of HB 1459 (25.1038.02000).

⁴ *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992) (internal quotes and citations omitted).

N.D. Const. Art. I, § 12, as well as the state constitution's prohibitions on giving "special privileges" and requiring "uniform operation" of general laws. N.D. Const. Art. I §§ 21, 22.⁵

The bill is not an abstract exercise. Coal leases are prevalent in North Dakota. It will affect hundreds of ongoing contractual relationships.

Whether these coal leases contain provisions granting "other minerals" or are limited to lignite coal, the scope of what the lease covers is an important interpretive question that must be answered based on the language of each lease, and done so by courts, not legislative fiat.

The North Dakota Supreme Court, in interpreting contracts, generally does not allow extrinsic evidence absent an ambiguity in the contract, whether that "evidence" is in a statute or otherwise.⁶ The Court's contract interpretation standards, as well as the legislature's own standards set out in Chapter 9-07 of Century Code, make no room for statutes to masquerade as interpretive aids, as House Bill 1459 pretends to do.

The bill, if enacted, would *rewrite* all existing coal leases to include additional minerals and set a royalty rate, even if there was no mention of any of this by the parties to the lease; and, furthermore, set a specific royalty rate in all future leases; even if the parties wanted a higher or lower one! These are astounding impairments of the right to contract. They purport to rewrite the contracts as a matter of law, regardless of whether the lease language or the parties' intent supports doing so. This would, in addition, prevent all mineral owners under those leases from signing new leases for developing critical and rare earth minerals, which is the real purpose of the legislation – to transfer mineral rights from mineral owners to developers, and do so retroactively.

If the bill is enacted, it will be a massive unconstitutional taking of property and rights from North Dakota mineral owners and will subject the State to liability not only for passing an unconstitutional statute, but potentially a significant financial liability. Takings claims will likely be brought against the state for the lost revenues from mineral owners.

The fate of House Bill 1459 will likely be the same—found unconstitutional—as that of a bill enacted by the 2019 legislature that sought to deprive landowners of their rights to underground pore space.⁷

⁵ See, e.g. *Christman v. Emineth*, 212 N.W.2d 543, 556 (N.D. 1973).

⁶ *Hallin v. Inland Oil & Gas Corp.*, 2017 ND 254, ¶ 15, 903 N.W.2d 61, 66 ("...it is unnecessary to go beyond the leases to discern the parties' intent. [The parties] have provided extrinsic evidence in the form of payment drafts purporting to show the parties' intent relating to the number of acres leased; however, because the leases are clear and unambiguous, that evidence is inadmissible to explain the leases."). See also *id.* ("When a contract's language is plain and unambiguous and the parties' intentions can be ascertained from the writing alone, extrinsic evidence is not admissible to alter, vary, explain, or change the contract. . . . If a contract is ambiguous, extrinsic evidence may be considered to determine the parties' intent, and the contract terms and parties' intent become questions of fact.").

⁷ *Northwest Landowners Ass'n v. State*, 2022 ND 150, 978 N.W.2d 150.

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Peace Garden Room, State Capitol

HB 1459

4/3/2025

Relating to regulations, development, and production of critical minerals and rare earth elements and 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.

10:48 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Private contract negotiations
- Rare earth mineral extraction
- Regulatory framework

10:49 a.m. Troy Coons, Chairman, Northwest Landowners Association, testified in opposition and submitted testimony #44625.

11:14 a.m. Derrick Braaten, Attorney, Braaten Law Firm, testified in opposition.

11:40 a.m. Edward C. Murphy, Geologist, ND Dept of Mineral Resources, testified as neutral.

11:46 a.m. Dan Laudal, Executive Director of CEM Research Institute, UND College of Engineering & Mines, testified in favor.

11:54 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in opposition to
HOUSE BILL NO. 1459
Senate Energy and Natural Resources Committee
April 3, 2025

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association.

Northwest Landowners Association represents hundreds of farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We remain opposed to HB 1459. This bill sheds light on an existing dispute between lessors and lessees of coal leases. There is a question in many leases as to whether when the lignite was leased, it included any of the things this bill describes as "critical minerals." This is an issue for the mineral owner and the lessee to resolve through discussions, negotiations, and litigation. Maybe for some, there is no dispute. For some, it may require litigation. But this bill will just pit the State of North Dakota against the landowners once again and use our tax dollars to fight us to take rights away from us.

The question is not "what is the right number for the royalty?" The question how much is just compensation? You cannot rewrite private contracts, and if you are setting a price it is because something is being taken.

If the goal is to create certainty and remove risk, we want to help, and will work cooperatively to find a constitutional path. But we are not being asked to help make this constitutional. We are being asked to help set up litigation. This bill only creates uncertainty and it does not help get this industry off the ground. Finding a path forward within the bounds of the constitution is the way to create certainty and we remain ready to do that.

We have always supported development and we do that through private contracts negotiated freely between the parties. This bill takes away our freedom to contract and imposes a contract on us we will not accept. We oppose HB 1459 and ask you for a do not pass recommendation.

Thank you,

Troy Coons
Northwest Landowners Association

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Peace Garden Room, State Capitol

HB 1459

4/3/2025

Relating to regulations, development, and production of critical minerals and rare earth elements and 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.

2:38 p.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Economic feasibility of lignite resources
- Compensation structures for mineral owners
- Regulatory challenges in mineral extraction

2:38 p.m. Dan Laudal, Executive Director of CEM Research Institute, UND College of Engineering & Mines, testified in favor.

2:46 p.m. David Straley, Attorney, North American Coal, testified as neutral.

3:07 p.m. Edward C. Murphy, Geologist, ND Dept of Mineral Resources, testified as neutral and answered committee questions.

3:11 p.m. Senator Boehm emphasized the urgency and national focus on developing critical minerals in North Dakota.

3:12 p.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Peace Garden Room, State Capitol

HB 1459

4/10/2025

Relating to regulations, development, and production of critical minerals and rare earth elements and 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.

10:00 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Pre-combustion mineral ownership
- Fly ash utilization
- Legislative language clarification

10:00 p.m. Chairman Patten updated the committee on the progress of the bill, outlined challenges with advancing rare earth mineral development and discussed a four-part proposal covering study language, public policy, ownership clarity, and post-combustion rights.

10:07 a.m. Representative Anderson, District 6, urged timely action on fly ash and highlighted missed opportunity risks.

10:11 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1459
4/17/2025

Relating to regulations, development, and production of critical minerals and rare earth elements and 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.

9:00 a.m. Chairman Patten opened the meeting.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Economic viability of processing plants
- Rare earth mineral extraction
- Infrastructure and permitting challenges

9:01 a.m. Tyler Hamman, EERC, answered committee questions and submitted testimony #45058.

9:09 a.m. Dan Laudal, Executive Director, College of Engineering Mines at UND, answered committee questions.

9:19 a.m. Dan Laudal answered committee questions discussing pre- and post-combustion extraction costs, by-product value, and refining requirements.

9:29 a.m. Dan Laudal answered committee questions regarding DOE grant setback and considered scaling, stockpiling, and coal weathering challenges.

9:34 a.m. Chairman Patten introduced proposed amendment and submitted testimony #45051.

9:39 a.m. Committee discussed amendment strategy, study scope, mineral ownership language, and legislative deadlines.

9:47 a.m. Senator Kessel moved amendment LC# 25.1038.02001, testimony #45051.

9:47 a.m. Senator Boehm seconded.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	Y

Motion Passed 7-0-0.

9:48 a.m. Senator Boehm moved a Do Pass as amended.

9:48 a.m. Senator Gerhardt seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	Y

Motion Passed 7-0-0.

9:48 a.m. Senator Boehm will carry the bill.

9:49 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 4/17/25
1 of 10

ENGROSSED HOUSE BILL NO. 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.~~for an
6 Act to create and enact two new sections to chapter 38-12 of the North Dakota Century Code,
7 relating to critical minerals and rare earth minerals; to amend and reenact section 38-12-01 of
8 the North Dakota Century Code, relating to the definitions of critical minerals and rare earth
9 minerals; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

13 ~~—~~ **Definitions.**

14 ~~—~~ As used in this chapter:

15 ~~—~~ 1. "Commission" means the industrial commission.

16 ~~—~~ 2. "Critical minerals" means a nonfuel mineral or mineral material essential to the
17 economic or national security of the United States and which has a supply chain
18 vulnerable to disruption. The term includes aluminum, antimony, arsenic, barite,
19 bauxite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium,
20 graphite, hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum

- 1 group metals, potash, the rare earth elements group, rhenium, rubidium, scandium,
2 strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and
3 zirconium, which are embedded, commingled, included, contained within, or in any
4 way associated with any coal seam or coal deposit.
- 5 — 3. "Extraction process" means the process in which critical minerals or rare earth
6 elements are extracted from coal produced in conjunction with coal mining operations
7 which cannot otherwise be extracted without mining a coal seam or coal deposit.
- 8 — 4. "Operator" means any person that is the owner of a processing facility that is or has
9 been capable of producing critical minerals or rare earth elements embedded,
10 commingled, included, contained within, or in any way associated with a coal seam or
11 coal deposit.
- 12 — 5. "Owner" means the person who owns the critical minerals or rare earth elements.
- 13 — 6. "Person" means and includes any natural person, corporation, limited liability
14 company, association, partnership, receiver, trustee, executor, administrator, guardian,
15 fiduciary, or other representative of any kind, and includes any department, agency, or
16 instrumentality of the state or of any governmental subdivision thereof; the masculine
17 gender, in referring to a person, includes the feminine and the neuter genders.
- 18 — 7. "Processing facility" means any equipment, processing plant, or other facility operated
19 with the purpose or intent of extracting critical minerals or rare earth elements
20 embedded, commingled, included, contained within, or in any way associated with a
21 coal seam or coal deposit.
- 22 — 8. "Rare earth elements" means any of a series of metallic elements of which the oxides
23 are classed as rare earths and which include the elements of the lanthanide series,
24 yttrium and scandium, which are embedded, commingled, included, contained within,
25 or in any way associated with any coal seam or coal deposit.
- 26 — **Public policy.**
- 27 — It is hereby declared to be in the public interest to foster, encourage, and promote the
28 development, production and utilization of critical minerals and rare earth elements in a manner
29 that will prevent waste and allow a greater ultimate recovery of these natural resources, and to
30 protect the rights of all owners so that the greatest possible economic recovery of these
31 resources be obtained in the state, to the end that landowners, producers, and the general

1 public realize and enjoy the greatest possible good from these vital natural resources. Critical
2 minerals and rare earth elements are fundamental to the economy, competitiveness, and
3 security of the United States. Many critical minerals and rare earth elements are broadly
4 disseminated and can only be recovered when produced as part of another extractive activity of
5 a host mineral which for purposes of this chapter is coal. To the maximum extent practicable,
6 the critical minerals and rare earth elements needs of the United States should be satisfied by
7 the vital natural resources responsibly produced in the United States. The legislative assembly
8 finds it necessary to declare that the mining of coal in this state, and a lease of coal in this state
9 whenever granted must include the right to mine all critical minerals and rare earth elements,
10 unless specifically excluded by the lease.

11 — **Jurisdiction of commission.**

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

16 — 1. Require an operator to:

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

- 1 — ~~2. Adopt and enforce rules and orders to effectuate this chapter, including rules requiring~~
2 ~~an operator under permit with the commission to provide to the state geologist~~
3 ~~reasonable amounts of data collected during the extraction process for critical~~
4 ~~minerals or rare earth elements, and data necessary to evaluate the ongoing attributes~~
5 ~~of critical mineral or rare earth extraction in the state.~~
- 6 — ~~3. Inspect all processing facilities. The commission must have access to all processing~~
7 ~~facilities for purposes of inspection and may require the operator's aid if necessary~~
8 ~~and requested.~~
- 9 — ~~4. At the request of an operator, approve the commingling of production for any~~
10 ~~processing facility on land with diverse ownership. The commission shall establish a~~
11 ~~method to measure production from each parcel of land with diverse ownership.~~
- 12 — ~~**Permit required.**~~
- 13 — ~~1. A person may not commence operation of a processing facility or the exploration,~~
14 ~~development, or production of critical minerals or rare earth elements without first~~
15 ~~obtaining a permit from the commission and paying the permit fee set by the~~
16 ~~commission.~~
- 17 — ~~2. This section does not apply to a mine under the jurisdiction and authority of the public~~
18 ~~service commission under chapter 38-14.1.~~
- 19 — ~~3. An operator shall pay any applicable owners, according to each owner's respective~~
20 ~~undivided ownership within the applicable permit area, a royalty of two and one half~~
21 ~~percent of the net profits from all critical minerals and rare earth elements mined,~~
22 ~~removed, and sold during the extraction process. For purposes of this section, "net~~
23 ~~profits" means the gross receipts received by an operator from any sale of critical~~
24 ~~minerals or rare earth elements less costs incurred or expenditures attributed, only~~
25 ~~including any expenditures related to the extraction, processing, milling, smelting,~~
26 ~~refining, and transportation of the critical minerals or rare earth elements.~~
- 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~~
- 30 ~~and is requested.~~

1 ~~5. To regulate the exploration of critical minerals embedded, commingled, included,~~
2 ~~contained within, or in any way associated with a coal seam or coal deposit located~~
3 ~~outside of any surface coal mine permit boundary approved by the public service~~
4 ~~commission.~~

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

7 ~~47-10-24. Description and definition of minerals in leases and conveyances.~~

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

14 ~~No~~

15 ~~2. Except as provided in subsection 3 regarding a lease for coal, a lease of mineral rights~~
16 ~~in this state shall may not be construed as passing any interest to any minerals except~~
17 ~~those minerals specifically included and set forth by name in the lease. For the~~
18 ~~purposes of this paragraph section, the naming of either a specific metalliferous~~
19 ~~element, or nonmetalliferous element, and if so stated in lease, shall be is deemed to~~
20 ~~include all of its compounds and byproducts, and in the case of oil and gas, all~~
21 ~~associated hydrocarbons produced in a liquid or gaseous form so named shall must be~~
22 ~~deemed to be included in the mineral named. The Except as provided in subsection 3~~
23 ~~regarding a lease for coal, the use of the words "all other minerals" or similar words of~~
24 ~~an all-inclusive nature in any lease shall may not be construed as leasing any minerals~~
25 ~~except those minerals specifically named in the lease and their compounds and~~
26 ~~byproducts.~~

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

31 ~~SECTION 4. EMERGENCY.~~ This Act is declared to be an emergency measure.

1 **SECTION 1.** Two new sections to chapter 38-12 of the North Dakota Century Code are
2 created and enacted as follows:

3 **Declaration of policy for critical minerals and rare earth minerals.**

4 1. It is in the public interest to encourage, accelerate, and promote the development,
5 production, and utilization of critical minerals and rare earth minerals in a manner that
6 prevents waste, allows a greater ultimate recovery of these natural resources, and
7 protects the rights of owners so the greatest possible economic recovery of these
8 resources may be obtained in the state, and landowners, producers, and the general
9 public may enjoy the greatest possible good from these resources.

10 2. As reflected in federal policy, the legislative assembly recognizes critical minerals and
11 rare earth minerals are fundamental to the economy, competitiveness, and security of
12 the United States. The United States relies on foreign nations to supply these critical
13 minerals and rare earth minerals to develop and manufacture medical devices,
14 information technology, and equipment and technology for national defense, energy
15 infrastructure, and other critical items. Domestic development and production of critical
16 minerals and rare earth minerals is inadequate to meet the nation's needs. The United
17 States must have a reliable, diversified, and affordable supply to drive the medical
18 manufacturing, transportation, agriculture, and defense industries and to sustain
19 military preparedness, national security, and economic security.

20 3. Development of critical minerals and rare earth minerals also may lead to significant
21 economic benefits for owners; new jobs in mining, processing, and related industries;
22 and contributions to the state economy. Many critical minerals and rare earth minerals
23 are broadly and irregularly disseminated and chemically bound, embedded,
24 commingled, included, or contained within coal. It is necessary to fulfill the public
25 policy of the state by clarifying law related to this policy and for the development of
26 critical minerals and rare earth minerals.

27 **Title to critical minerals and rare earth minerals.**

28 Title to critical and rare earth minerals is vested in the owner of the mineral estate.

29 **SECTION 2. AMENDMENT.** Section 38-12-01 of the North Dakota Century Code is
30 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 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, fluor spar, 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.

~~2-3.~~ "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.

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.

~~7-9.~~ "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 3. LEGISLATIVE MANAGEMENT STUDY - LEGAL AND TECHNICAL ISSUES
RELATED TO UNITIZING AND POOLING CRITICAL MINERALS AND RARE EARTH
MINERALS.**

1. During the 2025-26 interim, the legislative management shall study the feasibility and desirability of the unitization and pooling of critical minerals and rare earth minerals. The study must include consideration of:
 - a. Any technical and legal barriers to the extraction and development of critical minerals and rare earth minerals;
 - b. Current state laws on ownership and development of critical minerals and rare earth minerals;
 - c. Appropriate royalty payments if critical minerals and rare earth minerals are unitized and pooled, taking into consideration the value chain of the minerals;
 - d. The relative rights and risks of landowners, owners of mineral rights, extraction companies, and processors; and
 - e. The appropriate regulatory framework for unitized and pooled critical minerals and rare earth minerals.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1459**

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **AMENDMENTS** ([25.1038.02001](#)) and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1459 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Sixty-ninth
Legislative Assembly

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

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 two new sections to chapter 38-12 of the North Dakota Century Code, relating to critical minerals and rare earth elements; to amend and reenact section 38-12-01 of the North Dakota Century Code, relating to the definitions of critical minerals and rare earth elements; to provide for a study; and to provide for a legislative management report.

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

1 ~~profits from all critical minerals and rare earth elements mined, removed, and sold during the extraction~~
2 ~~process. For purposes of this section, "net profits" means the gross receipts received by an operator from~~
3 ~~any sale of critical minerals or rare earth elements less costs incurred or expenditures attributed, only~~
4 ~~including any expenditures related to the extraction, processing, milling, smelting, refining, and~~
5 ~~transportation of the critical minerals or rare earth elements.~~

6 **Procedure.**

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

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

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

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

18 **Penalty – Revocation – Provisions applicable.**

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

21 ~~—SECTION 2. AMENDMENT. Section 38-12-02 of the North Dakota Century Code is amended and~~
22 ~~reenacted as follows:~~

23 **38-12-02. Jurisdiction of commission.**

24 ~~The commission has jurisdiction and authority over all persons and property, public and private,~~
25 ~~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.~~

- 1 ~~_____ d. The conducting of all exploration, development, and production operations in~~
2 ~~such a manner as to prevent pollution of freshwater supplies, to provide for the~~
3 ~~protection of the environment and public safety, and to ensure the optimum~~
4 ~~recovery of the mineral resource.~~
- 5 ~~_____ e. The reclamation of all land disturbed by operations regulated by this chapter to a~~
6 ~~condition consistent with prior land use and productive capacity.~~
- 7 ~~_____ 2. To regulate the drilling and abandonment of exploration test holes and producing wells~~
8 ~~and all other exploration, development, production, and reclamation operations.~~
- 9 ~~_____ 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes~~
10 ~~and the intent of this chapter.~~
- 11 ~~_____ 4. To inspect all exploration, development, and production sites. For the purposes of this~~
12 ~~subsection, the director of mineral resources or the director's representative shall have~~
13 ~~access to all exploration, development, or production installations for purposes of~~
14 ~~inspection and shall have the authority to require the operator's aid if it is necessary~~
15 ~~and is requested.~~
- 16 ~~_____ 5. To regulate the exploration of critical minerals embedded, commingled, included,~~
17 ~~contained within, or in any way associated with a coal seam or coal deposit located~~
18 ~~outside of any surface coal mine permit boundary approved by the public service~~
19 ~~commission.~~

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

22 **47-10-24. Description and definition of minerals in leases and conveyances.**

- 23 ~~_____ 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 regarding a lease for coal, 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 regarding a lease for coal, 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 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.~~

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SECTION 1. Two new sections to chapter 38-12 of the North Dakota Century Code are created and enacted as follows:

Declaration of policy for critical minerals and rare earth elements.

It is in the public interest to encourage, accelerate, and promote the development, production, and utilization of critical minerals and rare earth elements 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 the state, and landowners, producers, and the general public may enjoy the greatest possible good from the resources. As reflected in federal policy, the legislative assembly recognizes that critical minerals and rare earth elements 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 elements to develop and manufacture medical devices, information technology, equipment and technology for national defense, energy infrastructure, and other critical items. The legislative assembly finds that domestic development and production of critical minerals and rare earth elements is far too inadequate to meet the nation's needs; the United States must have a reliable, diversified, and affordable supply to drive the medical manufacturing, transportation, agriculture, and defense industries and to sustain military preparedness, national security, and economic security. Development of critical minerals and rare earth elements 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 elements are broadly and irregularly disseminated and chemically bound, embedded, commingled, included, or contained within coal. The legislative assembly finds it is necessary to fulfill the public policy of the state by clarifying relevant, existing law related to this policy and for the development of critical minerals and rare earth elements.

Title to critical minerals and rare earth elements.

Title to critical minerals and rare earth elements is vested in the owner of the mineral estate.

SECTION 2. 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 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.
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.

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.

~~7.9.~~ "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 3. LEGISLATIVE MANAGEMENT STUDY – LEGAL AND TECHNICAL ISSUES
RELATED TO UNITIZING AND POOLING CRITICAL MINERALS AND RARE EARTH
ELEMENTS – LEGISLATIVE MANAGEMENT REPORT.**

1. During the 2025-26 interim, the legislative management shall study the feasibility and desirability of the unitization and pooling of critical minerals and rare earth elements. The study must include consideration of:
 - a. Any technical and legal barriers to the extraction and development of critical minerals and rare earth elements;
 - b. Current state laws on ownership and development of critical minerals and rare earth elements;
 - c. Appropriate royalty payments if critical minerals and rare earth elements are unitized and pooled, taking into consideration the value chain of the minerals and elements;
 - d. The relative rights and risks of landowners, owners of mineral rights, extraction companies, processors; and
 - e. The appropriate regulatory framework for unitized and pooled critical minerals and rare earth elements.

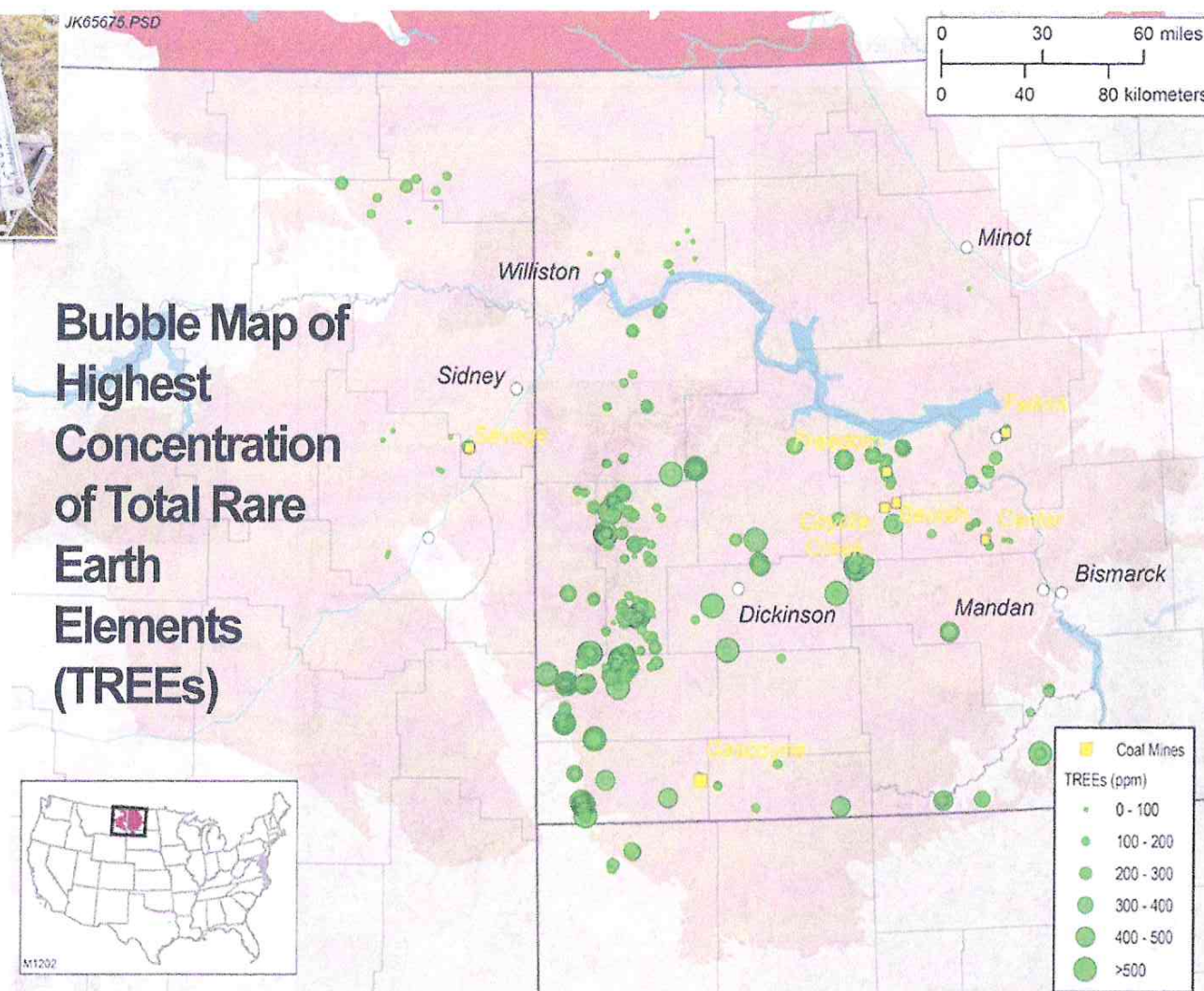
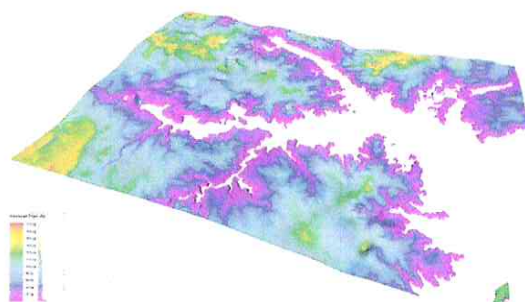
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2

2. The legislative management shall reports its findings and recommendations, together with any

3

legislation required to implement the recommendation, to the seventieth legislative assembly.



CORE-CM PHASE II



School of
Energy Resources

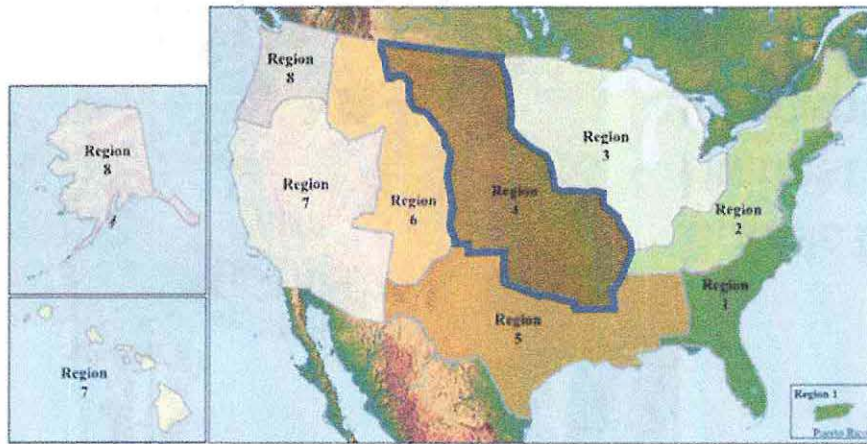
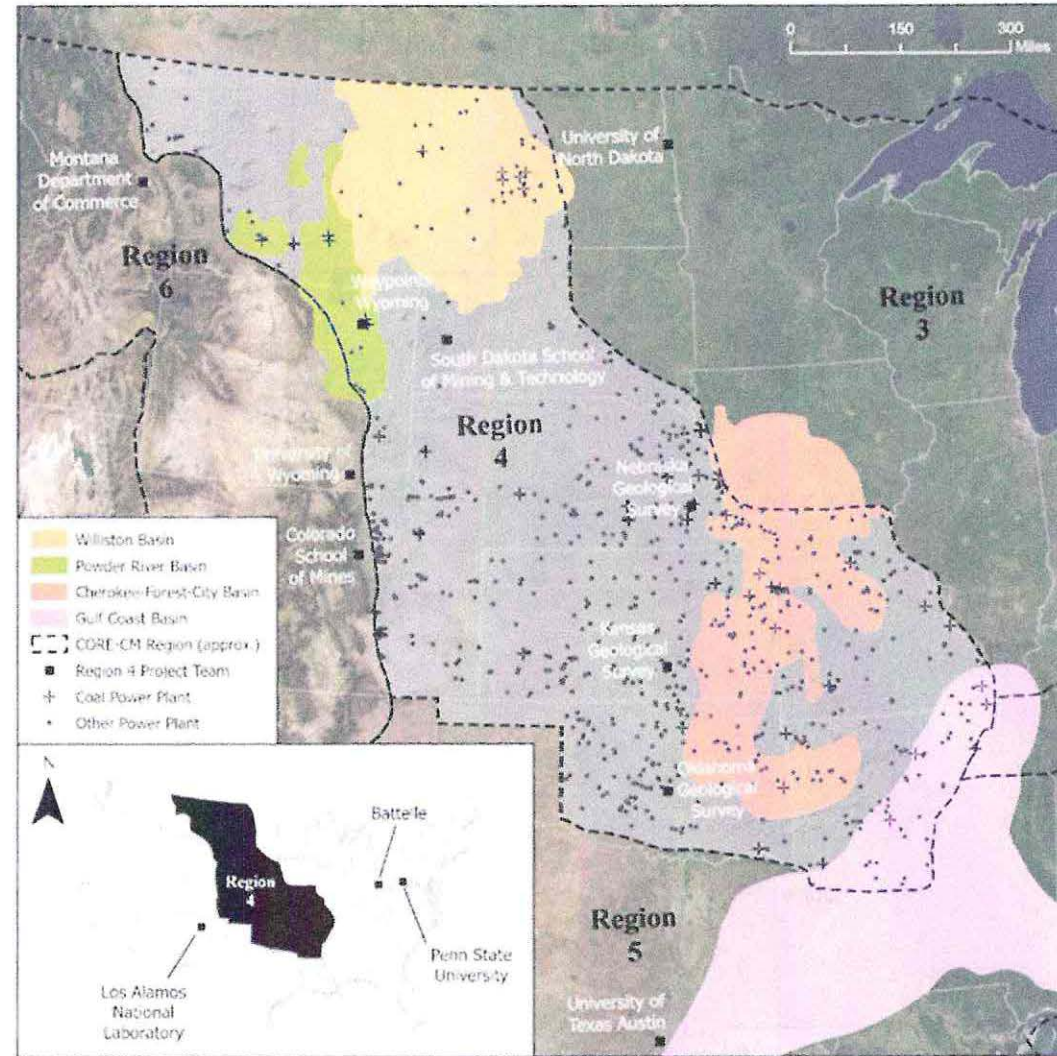


Figure 1. Nationwide map of CORE-CM Regions.



Critical Challenges. Practical Solutions.

2025 CONFERENCE COMMITTEE

HB 1459

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

4/25/2025

Conference Committee

relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

4:34 p.m. Chairman Anderson called the meeting to order.

Members Present: Chairman Anderson, Representatives: Dockter, Porter Senators: Boehm, Kessel, Patten

Discussion Topics:

- Amendment review

4:35 p.m. Chairman Anderson went over amendment, LC25.1038.02004, #45205.

4:45 p.m. Edward Murphy, ND State Geologist, ND Department of Mineral Resources, NDDMR, answered questions for the committee.

5:00 p.m. Chairman Anderson adjourned the meeting.

Leah Kuball, Committee Clerk

25.1038.02004
Title.

Prepared by the Legislative Council
staff for Representative Porter
April 23, 2025

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 (25.1038.02004) 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 three new sections 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 mineral 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.

1 — ~~2. Adopt and enforce rules and orders to effectuate this chapter, including rules requiring~~
2 ~~an operator under permit with the commission to provide to the state geologist~~
3 ~~reasonable amounts of data collected during the extraction process for critical~~
4 ~~minerals or rare earth elements, and data necessary to evaluate the ongoing attributes~~
5 ~~of critical mineral or rare earth extraction in the state.~~

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

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

12 — **Permit required.**

13 — ~~1. A person may not commence operation of a processing facility or the exploration,~~
14 ~~development, or production of critical minerals or rare earth elements without first~~
15 ~~obtaining a permit from the commission and paying the permit fee set by the~~
16 ~~commission.~~

17 — ~~2. This section does not apply to a mine under the jurisdiction and authority of the public~~
18 ~~service commission under chapter 38-14.1.~~

19 — ~~3. An operator shall pay any applicable owners, according to each owner's respective~~
20 ~~undivided ownership within the applicable permit area, a royalty of two and one-half~~
21 ~~percent of the net profits from all critical minerals and rare earth elements mined,~~
22 ~~removed, and sold during the extraction process. For purposes of this section, "net~~
23 ~~profits" means the gross receipts received by an operator from any sale of critical~~
24 ~~minerals or rare earth elements less costs incurred or expenditures attributed, only~~
25 ~~including any expenditures related to the extraction, processing, milling, smelting,~~
26 ~~refining, and transportation of the critical minerals or rare earth elements.~~

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~~

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, 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 regarding a lease for coal, 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 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 regarding a lease for coal, 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 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. Three new sections to chapter 38-12 of the North Dakota Century Code are created and enacted as follows:

Declaration of policy for critical minerals and rare earth minerals.

1. It is in the public interest 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. 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.
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. 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.

5. 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.

6. 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.

Title to critical minerals and rare earth minerals.

1. 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.

2. 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.

3. For purposes of this section, "coal ash" includes fly ash, bottom ash, and boiler slag.

Royalties.

1. An operator shall pay any applicable owner, according to each 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.

2. The royalty must be paid at least annually by March thirty-first of the following year.

3. 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 that constitutes an arms-length transaction.

SECTION 2. 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, gallium, germanium, graphite, hafnium, helium, indium, lithium, magnesium, manganese, neodymium, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, samarium, scandium, 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.

~~2.3.~~ "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.

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.

7.9. "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 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

1 its compounds and byproducts, and in the case of oil and gas, all associated
2 hydrocarbons produced in a liquid or gaseous form so named ~~shall~~must be deemed to
3 be included in the mineral named. ~~The~~Except as provided in subsection 3, the use of
4 the words "all other minerals" or similar words of an all-inclusive nature in any lease
5 ~~shall~~may not be construed as leasing any minerals except those minerals specifically
6 named in the lease and their compounds and byproducts.

7 3. As provided under section 1 of this Act, a lease of coal in this state whenever granted
8 is deemed to include all critical minerals and rare earth minerals chemically bound,
9 embedded, commingled, included, or contained within a coal seam or coal deposit
10 unless specifically excluded from the lease of coal.

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

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

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

4/28/2025

Conference Committee

Relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

2:02 p.m. Chairman Anderson called the meeting to order.

Members Present: Chairman D. Anderson, Representatives: Dockter, Porter Senators: Boehm, Kessel, Patten

Discussion Topics:

- Mineral rites
- Committee action

2:03 p.m. Austin Gunderson, ND Legislative Council, answered questions for the committee.

2:14 p.m. Representative Porter moved amendment LC#25.1038.02005 in place of LC#25.1038.02001, #45267.

2:15 p.m. Senator Kessel seconded the motion.

2:15 p.m. Roll call vote on In Place Of-Motion Passed 6-0-0.

Chairman D. Anderson and Senator Patten will carry the bill.

2:16 p.m. Chairman D. Anderson adjourned the meeting.

Leah Kuball, Committee Clerk

***Bill was brought back to the conference committee for further review.*

HB 1459 042825 1418 PM Roll Call Vote

Final Recommendation

HB 1459

Date Submitted: April 28, 2025, 2:18 p.m.

Recommendation: In Place Of

Amendment LC #: 25.1038.02005

Engrossed LC #: 25.1038.04000

Motioned By: Porter, Todd

Seconded By: Kessel, Greg

House Carrier: Anderson, Dick

Senate Carrier: Patten, Dale

Emergency Clause: None

Vote Results: 6 - 0 - 0

Description: N/A

Rep. Anderson, Dick	Yea
Rep. Dockter, Jason	Yea
Rep. Porter, Todd	Yea
Sen. Patten, Dale	Yea
Sen. Kessel, Greg	Yea
Sen. Boehm, Keith	Yea

25.1038.02005
Title.

Prepared by the Legislative Council
staff for Representative Porter
April 28, 2025

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 (25.1038.02005) 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 three new sections 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.

1 — ~~2. Adopt and enforce rules and orders to effectuate this chapter, including rules requiring~~
2 ~~an operator under permit with the commission to provide to the state geologist~~
3 ~~reasonable amounts of data collected during the extraction process for critical~~
4 ~~minerals or rare earth elements, and data necessary to evaluate the ongoing attributes~~
5 ~~of critical mineral or rare earth extraction in the state.~~

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

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

12 — **Permit required.**

13 — ~~1. A person may not commence operation of a processing facility or the exploration,~~
14 ~~development, or production of critical minerals or rare earth elements without first~~
15 ~~obtaining a permit from the commission and paying the permit fee set by the~~
16 ~~commission.~~

17 — ~~2. This section does not apply to a mine under the jurisdiction and authority of the public~~
18 ~~service commission under chapter 38-14.1.~~

19 — ~~3. An operator shall pay any applicable owners, according to each owner's respective~~
20 ~~undivided ownership within the applicable permit area, a royalty of two and one-half~~
21 ~~percent of the net profits from all critical minerals and rare earth elements mined,~~
22 ~~removed, and sold during the extraction process. For purposes of this section, "net~~
23 ~~profits" means the gross receipts received by an operator from any sale of critical~~
24 ~~minerals or rare earth elements less costs incurred or expenditures attributed, only~~
25 ~~including any expenditures related to the extraction, processing, milling, smelting,~~
26 ~~refining, and transportation of the critical minerals or rare earth elements.~~

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.~~

~~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, 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 regarding a lease for coal, 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 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 regarding a lease for coal, 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 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, gallium, germanium, graphite, hafnium, helium, indium, lithium, magnesium, manganese, neodymium, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, samarium, scandium, 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.
- ~~2.3.~~ "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.
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.

~~7.9.~~ "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 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. 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.

3. 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.

4. 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.

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.

7. 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.

SECTION 3. A new section to chapter 38-12 of the North Dakota Century Code is created and enacted as follows:

Title to critical minerals and rare earth minerals.

1. 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.
2. 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.
3. For purposes of this section, "coal ash" includes fly ash, bottom ash, and boiler slag.

SECTION 4. A new section to chapter 38-12 of the North Dakota Century Code is created and enacted as follows:

Royalties.

1. 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.
2. The royalty must be paid at least annually by March thirty-first of the following year.
3. 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 that constitutes an arms-length transaction.

SECTION 5. 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 6. RETROACTIVE APPLICATION. This Act is retroactive in application.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

25.1038.02005
Title.

Prepared by the Legislative Council
staff for Representative Porter
April 28, 2025

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 (25.1038.02005) 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 three new sections 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.

1 — ~~2. Adopt and enforce rules and orders to effectuate this chapter, including rules requiring~~
2 ~~an operator under permit with the commission to provide to the state geologist~~
3 ~~reasonable amounts of data collected during the extraction process for critical~~
4 ~~minerals or rare earth elements, and data necessary to evaluate the ongoing attributes~~
5 ~~of critical mineral or rare earth extraction in the state.~~

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

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

12 — **Permit required.**

13 — ~~1. A person may not commence operation of a processing facility or the exploration,~~
14 ~~development, or production of critical minerals or rare earth elements without first~~
15 ~~obtaining a permit from the commission and paying the permit fee set by the~~
16 ~~commission.~~

17 — ~~2. This section does not apply to a mine under the jurisdiction and authority of the public~~
18 ~~service commission under chapter 38-14.1.~~

19 — ~~3. An operator shall pay any applicable owners, according to each owner's respective~~
20 ~~undivided ownership within the applicable permit area, a royalty of two and one-half~~
21 ~~percent of the net profits from all critical minerals and rare earth elements mined,~~
22 ~~removed, and sold during the extraction process. For purposes of this section, "net~~
23 ~~profits" means the gross receipts received by an operator from any sale of critical~~
24 ~~minerals or rare earth elements less costs incurred or expenditures attributed, only~~
25 ~~including any expenditures related to the extraction, processing, milling, smelting,~~
26 ~~refining, and transportation of the critical minerals or rare earth elements.~~

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~~

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, 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 regarding a lease for coal, 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 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 regarding a lease for coal, 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 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, gallium, germanium, graphite, hafnium, helium, indium, lithium, magnesium, manganese, neodymium, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, samarium, scandium, 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.
- ~~2.3.~~ "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.
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.

~~7.9.~~ "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 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. 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.

3. 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.

4. 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.

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.

7. 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.

SECTION 3. A new section to chapter 38-12 of the North Dakota Century Code is created and enacted as follows:

Title to critical minerals and rare earth minerals.

1. 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.
2. 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.
3. For purposes of this section, "coal ash" includes fly ash, bottom ash, and boiler slag.

SECTION 4. A new section to chapter 38-12 of the North Dakota Century Code is created and enacted as follows:

Royalties.

1. 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.
2. The royalty must be paid at least annually by March thirty-first of the following year.
3. 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 that constitutes an arms-length transaction.

SECTION 5. 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 6. RETROACTIVE APPLICATION. This Act is retroactive in application.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

5/1/2025

Conference Committee

Relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

3:32 p.m. Chairman Anderson called the meeting to order.

Members Present: Chairman Anderson, Representatives: Novak, Porter Senators: Boehm, Sickler, Patten

Discussion Topics:

- Amendment for the terms of the coal lease
- Leonardite mineral

3:34 p.m. Lawrence Klemin, District 47, proposed an amendment #45359.

3:48 p.m. Ed Murphy, State Geologist, Department of Mineral Resources, answered questions for the committee.

4:03 p.m. Chairman Anderson adjourned the meeting.

Leah Kuball, Committee Clerk

PROPOSED AMENDMENT TO HB 1459

To facilitate the extraction and processing of critical minerals in a coal seam, the parties to a coal lease, or their successors in interest, may agree to amend the coal lease to provide for the inclusion of such mineral ins the coal lease upon such terms as the parties may agree upon. The amended coal lease must be provided to the Industrial Commission and to the Public Service Commission as verification of the coal lease as amended.

United States Court of Appeals
For the Eighth Circuit

No. 18-1115

Association of Equipment Manufacturers; AGCO Corporation; CNH Industrial
America LLC; Deere & Company; Kubota Tractor Corporation,

Plaintiffs - Appellees,

v.

The Hon. Doug Burgum, Governor of the State of North Dakota, in his official
capacity; The Hon. Wayne Stenehjem, Attorney General of the State of North
Dakota, in his official capacity,

Defendants - Appellants,

North Dakota Implement Dealers Association,

Intervenor Defendant - Appellant.

International Franchise Association,

Amicus on Behalf of Appellee(s).

Appeal from United States District Court
for the District of North Dakota - Bismarck

Submitted: November 13, 2018

Filed: August 2, 2019

Before COLLOTON, SHEPHERD, and STRAS, Circuit Judges.

COLLOTON, Circuit Judge.

The Association of Equipment Manufacturers and four farm equipment manufacturers asked the district court¹ to enjoin North Dakota Senate Bill 2289, which regulates relationships between manufacturers and farm equipment dealers. The district court granted a preliminary injunction on the ground that the Act likely violated rights of the manufacturers under the Contract Clause of the Constitution, U.S. Const. art. I, § 10, cl. 1. The State of North Dakota and an intervenor, the North Dakota Implement Dealers Association, appeal that order. We affirm.

I.

Senate Bill 2289 is an Act “to amend and reenact sections 51-07-01.2, 51-07-02.2, and 51-26-06 of the North Dakota Century Code, relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair.” *See* 2017 N.D. Laws, ch. 354 (codified at N.D. Cent. Code §§ 51-07-01.2, 51-07-02.2, 51-26-06 (2017)). The legislation contains three sections. The first section applies “[n]otwithstanding the terms of any contract,” and prohibits manufacturers from imposing various contractual obligations on farm equipment dealers. *See id.* sec. 1 (N.D. Cent. Code § 51-07-01.2, § 1). Manufacturers, for example, cannot require dealers to maintain exclusive facilities, “unreasonably” refuse to approve the relocation of dealerships, or impose “unreasonable” performance standards on dealers. *Id.* sec. 1 (N.D. Cent. Code § 51-07-01.2, § 1.e, .i, .k).

¹The Honorable Daniel L. Hovland, Chief Judge, United States District Court for the District of North Dakota.


The second section regulates dealership transfers and permits a dealer to transfer a dealership agreement after notice to the manufacturer and approval of the manufacturer. Certain denials by manufacturers are presumed unreasonable, and the section allows a dealer to file an action challenging a manufacturer's denial. *Id.* sec. 2. A third section imposes several new requirements on manufacturers with respect to reimbursements that they must provide to dealers for warranty repairs. *Id.* sec. 3. Although the last two sections do not contain language specifying retroactive application, the State does not dispute the district court's conclusion that they apply to existing contracts, and the State generically describes SB 2289 as "retroactive." *Cf. Smith v. Baumgartner*, 665 N.W.2d 12, 14-16 (N.D. 2003).

The manufacturers sued and raised claims under several constitutional and statutory provisions, including the Contract Clause and the Federal Arbitration Act. The district court entered a preliminary injunction against enforcement of SB 2289, concluding that the manufacturers were likely to succeed on the merits of their Contract Clause claim and that the other relevant factors weighed in favor of a preliminary injunction. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109 (8th Cir. 1981) (en banc). The court reasoned that SB 2289 imposed unforeseeable new regulations on existing contracts that amounted to substantial impairments. Citing the statement of a co-sponsor in the legislature that the bill was designed to create a "level playing field" for implement dealers, the court determined that the Act was special-interest legislation unsupported by a significant and legitimate public purpose. The court also ruled that SB 2289's retroactive "No Arbitration" provision, which says that a manufacturer generally may not require a dealer to agree to arbitration, *see* 2017 N.D. Laws, ch. 354, sec. 1 (N.D. Cent. Code § 51-07-01.2, § 1.1), was preempted by the Federal Arbitration Act, 9 U.S.C. § 2.

The State appeals the district court's order, disputing the conclusion that the manufacturers are likely to succeed on the merits of their Contract Clause claim. An


order granting a preliminary injunction is reviewed for abuse of discretion. *TCF Nat'l Bank v. Bernanke*, 643 F.3d 1158, 1162 (8th Cir. 2011).

II.

 In determining whether a state law passes muster under the Contract Clause, “[t]he threshold issue is whether the state law has ‘operated as a substantial impairment of a contractual relationship.’” *Sveen v. Melin*, 138 S. Ct. 1815, 1821-22 (2018) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)). If the answer is yes, then the court asks “whether the state law is drawn in an ‘appropriate’ and ‘reasonable’ way to advance ‘a significant and legitimate public purpose.’” *Id.* at 1822 (quoting *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411-12 (1983)). “The State bears the burden of proof in showing a significant and legitimate public purpose underlying the Act.” *Equip. Mfrs. Inst. v. Janklow*, 300 F.3d 842, 859 (8th Cir. 2002); *see also Energy Reserves Grp.*, 459 U.S. at 411-12. If the State shows a significant public purpose and is not a contracting party, then “courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.” *Energy Reserves Grp.*, 459 U.S. at 412-13 (quoting *U.S. Tr. Co. of N.Y. v. New Jersey*, 431 U.S. 1, 23 (1977)).

The State contends that SB 2289, although retroactive, does not “substantially impair” the manufacturers’ contractual rights. This court, distilling the jurisprudence on substantial impairment, has concluded that the governing rule is akin to a question of reasonable foreseeability: “if the party to the contract who is complaining could have seen it coming, it cannot claim that its expectations were disappointed.” *Holiday Inns Franchising, Inc. v. Branstad*, 29 F.3d 383, 385 (8th Cir. 1994).

We conclude that the manufacturers in this case “cannot reasonably be said to have had a fair and appreciable warning of an impending intervention into their agreements.” *Id.* Several provisions regulating dealer agreements are new additions


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to the North Dakota Century Code or significantly expand existing provisions. *See* 2017 N.D. Laws, ch. 354, sec. 1 (N.D. Cent. Code § 51-07-01.2, § 1.d, .e, .h, .i, .j, .k, .l), sec. 3. Previous regulations, moreover, forbade primarily coercive and discriminatory practices; for example, a manufacturer could not “[c]oerce or attempt to coerce” a dealer into accepting delivery of equipment the dealer had not voluntarily ordered. *See* 1991 N.D. Laws, ch. 521, sec. 1. SB 2289, by contrast, includes several amended and new provisions that forbid manufacturers from “requir[ing]” dealers to take certain actions, “[n]otwithstanding the terms of any contract.” *See* 2017 N.D. Laws, ch. 354, sec. 1 (N.D. Cent. Code § 51-07-01.2, § 1.a, .c, .d, .e, .h, .l). The law thus goes a significant step beyond regulation of coercive and discriminatory practices by rendering unenforceable obligations that dealers previously accepted as part of freely negotiated contracts. *See Equip. Mfrs. Inst.*, 300 F.3d at 858-59. The new law also substantially enlarged the regulation of dealer reimbursements that had been limited to rules about reimbursement for labor. *See* 2017 N.D. Laws, ch. 354, sec. 3 (N.D. Cent. Code § 51-26-06, §§ 1, 2 (regulating reimbursement for transportation services, diagnostic work, repair service, warranty work compensation, product improvement programs, maintenance plans, extended warranties, and certified preowned warranties)).

This court previously held that a similar retroactive law governing agreements between farm equipment dealers and manufacturers in South Dakota violated the Contract Clause. *See Equip. Mfrs. Inst.*, 300 F.3d at 848-49, 859-62. Some provisions of the North Dakota law parallel the South Dakota statute by expanding prohibitions on coercion to regulate existing contracts, and the manufacturers were entitled to rely on the South Dakota precedent when considering what legislative impairments were reasonably foreseeable. *See Holiday Inns Franchising*, 29 F.3d at 385. For all of these reasons, SB 2289 substantially impairs obligations of contract.

The State’s primary argument is that even if SB 2289 substantially impairs the manufacturers’ contractual rights, the legislation reasonably advances a significant

and legitimate public purpose, so the impairment is constitutional. In *Equipment Manufacturers Institute*, South Dakota conceded that the purpose of a similar law was “to level the playing field between manufacturers and dealers,” 300 F.3d at 860, and this court concluded that the conceded purpose did not qualify as a “significant and legitimate public interest.” *Id.* at 861. North Dakota makes no such concession and asserts that this law furthers a significant public interest in serving farmers and rural communities. But the mere assertion of a conceivable public purpose is insufficient to justify a substantial impairment of contractual rights. Virtually all legislation enacted by multi-member bodies will be motivated by multiple purposes in the minds of individual legislators, but those subjective intentions are not controlling. Whether the law passes constitutional muster requires a more discerning inquiry into the Act’s structure and design.

As a matter of the text and original meaning of the Contract Clause, there seems to be little doubt that the North Dakota law would be unconstitutional. The Clause’s terms are absolute: “No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .” U.S. Const. art. I, § 10, cl. 1. The Clause’s principal target was debtor-relief legislation that many States had passed in the wake of the Revolutionary War, *see Sveen*, 138 S. Ct. at 1821, but the text is not so limited, and historical context suggests that the Clause was “aimed at all retrospective, redistributive schemes in violation of vested contractual rights.” Douglas W. Kmiec & John O. McGinnis, *The Contract Clause: A Return to the Original Understanding*, 14 Hastings Const. L.Q. 525, 533-34 (1987). The Supreme Court, through Chief Justice Marshall, understood the Framers “to have intended to establish a great principle, that contracts should be inviolable,” and concluded in an early case construing the Clause that the Court “should give these words their full and obvious meaning.” *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 205-06 (1819). Even where a state statute was designed to further a legitimate state purpose of assisting poor people who were oppressed by debts, the Contract Clause forbade legislation that discharged contractual liability without performance. *See id.* at 206; Kmiec &

McGinnis, *supra*, at 536-37. The Clause did not prevent a State from regulating health, safety, and morals, *see Stone v. Mississippi*, 101 U.S. 814, 817-19 (1880), but drew the line at efforts “to redistribute resources in violation of vested contractual rights.” Kmiec & McGinnis, *supra*, at 541; *see also* Richard A. Epstein, *Toward a Revitalization of the Contract Clause*, 51 U. Chi. L. Rev. 703, 715-16, 730-40 (1984) (arguing that while the Contract Clause encompasses a modest police power limitation, “the transfer of wealth by special-interest politics” is the “evil to which the clause is directed”).

Modern jurisprudence, however, has taken a different course. The Court in *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398 (1934), disavowed that “what the Constitution meant at the time of its adoption it means to-day,” or that “the great clauses of the Constitution must be confined to the interpretation which the framers . . . would have placed upon them.” *Id.* at 442-43. *Blaisdell* upheld Minnesota’s mortgage moratorium law, a form of debtor-relief legislation, against a challenge under the Contract Clause. *Id.* at 447-48. Yet *Blaisdell* did not rest on a mere assertion of conceivable public purpose; the Court cited legislative findings, supported by an adequate factual basis, that documented the existence of an economic emergency. *Id.* at 421 n.3, 444-45; *see also Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 486 & n.14 (1987) (upholding state statute where “the legislative purposes set forth in the statute were genuine, substantial, and legitimate”).

Since *Blaisdell*, the Court has reaffirmed that the Contract Clause prohibits special-interest redistributive laws, even if the legislation might have a conceivable or incidental public purpose. *Allied Structural* involved a Minnesota law that sought to protect pension benefits for those who worked for a specific class of employers. *See* 438 U.S. at 238. A three-judge district court had “no trouble concluding” that the statute addressed “a problem of vital public interest,” namely, “protecting the economic welfare of its senior citizens by assuring the receipt of earned pension benefits as a form of retirement income.” *Fleck v. Spannaus*, 449 F. Supp. 644, 650-

51 (D. Minn. 1977). But the Supreme Court reversed, observing that the law had “an extremely narrow focus” because it applied only to certain employers. *Allied Structural*, 438 U.S. at 248. The Court ruled that the statute could “hardly be characterized, like the law at issue in the *Blaisdell* case, as one enacted to protect a broad societal interest.” *Id.* at 248-49. As such, the Minnesota law was unconstitutional.

On the other hand, in *Energy Reserves Group*, there was “little doubt about the legitimate public purpose behind” a Kansas law that imposed price controls for natural gas. 459 U.S. at 417. Because the public utility defending the law already could pass through any price increase to its customers, the price controls promised lower prices for consumers, and the public utility would not benefit significantly. *See id.* at 405 n.3, 407 n.6, 418 n.25; *see also* Brief for Appellee at 4-5 & n.12, *Energy Reserves Grp.*, 459 U.S. 400 (No. 81-1370). Under those circumstances, the Court deemed the statute a valid exercise of the State’s “police power to protect consumers from the escalation of natural gas prices caused by deregulation.” 459 U.S. at 416-17. In short, the inherent pro-consumer nature of the Kansas law and the pre-existing pass-through mechanism made it self-evident to the Court that the law had a broad public purpose and was not special-interest legislation.

So too in *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983), where a state law prohibited oil and gas producers from passing on a severance tax increase to consumers. The Court reasoned that the statute “imposed a generally applicable rule of conduct designed to advance ‘a broad societal interest,’” namely, “protecting consumers from excessive prices.” *Id.* at 191 (quoting *Allied Structural*, 438 U.S. at 249). The effect on contracts “was incidental to its main effect of shielding consumers from the burden of the tax increase.” *Id.* at 191-92.

Exxon did contrast a statute that permissibly imposed “a generally applicable rule of conduct” with an unconstitutional enactment whose “sole effect was to alter

contractual duties”—*i.e.*, one that applied only to existing contracts. *Id.* at 192. But the Court did not say that *only* laws in the latter category can transgress the Contract Clause. *Cf. post*, at 17. If that were so, then this court’s decision in *Equipment Manufacturers Institute* would have come out the other way, because the South Dakota law at issue there imposed generally applicable rules for both pre-existing and future dealership agreements. 300 F.3d at 848-49. This court has thus rejected the view that retroactive legislation is *always* permissible under the Contract Clause “so long as the state takes the simple precaution of having its legislation apply *in futuro* as well.” *See Epstein, supra*, at 739. Even where a law does not have the *sole* effect of altering pre-existing contractual duties, “[t]he State must show that the regulation protects a ‘broad societal interest rather than a narrow class.’” *Equip. Mfrs. Inst.*, 300 F.3d at 859 (quoting *Allied Structural*, 438 U.S. at 249).

In evaluating the present North Dakota law governing contracts between manufacturers and dealers, the State “bears the burden of proof in showing a significant and legitimate public purpose underlying the Act.” *Id.* at 859. The state legislature declined to follow the examples of the legislatures in *Blaisdell* and *Keystone Bituminous*, which included well-supported findings or purposes within their duly enacted laws, so any significant and legitimate public purpose must be discerned from the design and operation of the legislation itself. Statements in the legislative history of individual legislators, lobbyists, or advocates that the law would benefit farmers and rural communities are insufficient. Special-interest groups cannot establish that legislation serves a broad societal interest simply by ensuring that the record contains testimony or floor statements about a law’s conceivable public benefits.

Unlike the statutes at issue in *Energy Reserves Group* and *Exxon*, this North Dakota legislation does not self-evidently further a significant and legitimate public purpose. “[A] state must do more than mouth the vocabulary of the public weal in order to reach safe harbor,” *McGrath v. R.I. Ret. Bd.*, 88 F.3d 12, 16 (1st Cir. 1996),

and here the State did not even utter it. The Act nowhere mentions benefits for farmers or rural communities, and it has a narrow focus: restricting the contractual rights of farm equipment manufacturers. The law primarily benefits a particular economic actor in the farm economy—farm equipment dealers. Even if the law indirectly might benefit farmers and rural communities, the Contract Clause demands more than incidental public benefits. “The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.” *Energy Reserves Grp.*, 459 U.S. at 412. The design of this North Dakota legislation fails to provide the requisite guarantee.

Accepting the State’s assertion of a sufficient public purpose without a stronger showing would come perilously close to upholding an impairment of contractual obligations based merely on a rational basis—*i.e.*, a rational relationship between the new regulation and a legitimate governmental purpose. Under current doctrine, once a State is deemed to have shown a “significant and legitimate public purpose” for retroactive legislation, the court considers whether the law is drawn in an “appropriate” and “reasonable” way to advance that purpose. *Sveen*, 138 S. Ct. at 1822. At this last step, the Supreme Court has directed courts to defer to the legislative judgment as to necessity and reasonableness, “as is customary in reviewing economic and social regulation.” *Energy Reserves Grp.*, 459 U.S. at 412-13 (internal quotation and brackets omitted). Yet the Court also has made clear that the Contract Clause provides greater protection for contractual rights than the “less searching” rational basis standard applied under the Due Process Clauses. *See Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 733 (1984). To avoid collapsing the specific prohibition of the Contract Clause into the more general Due Process Clause, a reviewing court must require the State to demonstrate more than a conceivable or incidental public purpose for impairing the obligation of contracts.²

²Citing *City of El Paso v. Simmons*, 379 U.S. 497, 508-09 (1965), and *Manigault v. Springs*, 199 U.S. 473, 480-81 (1905), the dissent asserts that it is not

For these reasons, the State has not carried its burden of showing a significant and legitimate public purpose underlying Senate Bill 2289. The district court thus did not err in concluding that the manufacturers were likely to succeed on the merits of their Contract Clause claim. The State does not challenge the scope of the preliminary injunction, so the question whether it should be limited to retroactive applications of SB 2289, or to certain provisions of the law, is not presented at this juncture. The motions to supplement the record are denied. The district court's order granting a preliminary injunction is affirmed.

SHEPHERD, Circuit Judge, dissenting.

I respectfully disagree with the Court's conclusion that North Dakota has not met its burden of showing a significant and legitimate public purpose underlying SB 2289. Because this Court has stated that a state's interest in serving its farming and rural communities is "unquestionably significant and legitimate," Equip. Mfrs. Inst. v. Janklow, 300 F.3d 842, 860 (8th Cir. 2002), and SB 2289 sufficiently evinces such a public purpose, I respectfully dissent.

Generally, "the Contract Clause does not prohibit the States from repealing or amending statutes . . . , or from enacting legislation with retroactive effects." U.S.

"difficult" for a State to carry its burden of showing a significant and legitimate public purpose, because there is "wide discretion on the part of the legislature in determining what is and what is not necessary." *Post*, at 12-13. These decisions, however, refer to discretion in choosing a means to implement a law's purpose *if* the State is properly exercising its police power—*i.e.*, if the law has a significant and legitimate public purpose. See *Energy Reserves Grp.*, 459 U.S. at 412; *Simmons*, 379 U.S. at 508-09 ("Once we are in this domain of the reserve power of a State we must respect the 'wide discretion on the part of the legislature in determining what is and what is not necessary.'" (emphasis added) (internal quotation omitted)).

Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 17 (1977). A state's exercise of its police power "to protect the lives, health, morals, comfort and general welfare of the people . . . is paramount to any rights under contracts between individuals." Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241 (1978) (internal quotation marks omitted). It is essential for a state to retain its police power to enact legislation aimed at addressing perceived economic harms "without being concerned that private contracts will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from the [legislation] by making private contractual arrangements." U.S. Trust, 431 U.S. at 22. However, state legislation's "sole effect" cannot be "to alter contractual duties." Exxon Corp. v. Eagerton, 462 U.S. 176, 192 (1983); see also City of El Paso v. Simmons, 379 U.S. 497, 509 (1965) (noting that "[i]t is the motive, the policy, the object, that must characterize the legislative act, to affect it with the imputation of violating the obligation of contracts" (alteration in original) (citation omitted)).

Although SB 2289 substantially impairs preexisting contractual obligations between farm implement dealers and farm equipment manufacturers, such an impairment is not fatal where the state shows it has "a significant and legitimate public purpose" for the impairment. Energy Reserves Grp., Inc. v. Kan. Power & Light Co., 459 U.S. 400, 411 (1983); Equip. Mfrs. Inst., 300 F.3d at 859-60. State legislation that substantially impairs preexisting contracts between private parties must be "enacted to protect a broad societal interest rather than a narrow class." Allied Structural, 438 U.S. at 249. The legislation must be "addressed to a legitimate end[.]" Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 438 (1934). This is not a difficult burden for a state to meet. A state's "economic interests . . . may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts. . . . Once we are in this domain of the reserve power of a State we must respect the wide discretion on the part of the legislature in determining what is and what is not necessary." City of El Paso, 379 U.S. at 508-09 (citation omitted) (internal quotation marks omitted). In other words, "courts

ordinarily will not interfere with” the legislature’s wide discretion in this area. Manigault v. Springs, 199 U.S. 473, 480-81 (1905).³ Requiring a significant and legitimate public purpose for substantially impairing preexisting contractual rights between private parties simply “guarantees that the State is exercising its police power, rather than providing a benefit to special interests.” Energy Reserves, 459 U.S. at 412.

The Court today employs an approach that second-guesses the North Dakota legislature’s sound judgment and unnecessarily heightens the state’s burden. The Court faults the legislature for not including “well-supported findings or purposes within” SB 2289 and finds the legislators’ statements in the official legislative record to be “insufficient.” Supra, at 9. I respectfully disagree. In enacting SB 2289, the legislature was pursuing a broad societal interest.

First, in enacting legislation, the North Dakota legislature is presumed to have acted in favor of the “[p]ublic interest . . . over any private interest.” N.D. Cent. Code § 1-02-38(5). Undoubtedly, the legislature believed SB 2289 benefitted the

³The Court states that City of El Paso and Manigault simply “refer to discretion in choosing a means to implement a law’s purpose *if* the State is properly exercising its police power—*i.e.*, if the law has a significant and legitimate public purpose.” Supra, at 10 n.2. But neither case support that interpretation. The Supreme Court has said very little about a state’s burden to show a significant and legitimate public purpose behind legislation that substantially impairs preexisting contracts between private parties. In Energy Reserves, it said a state has to *identify* such a public purpose before a court addresses the final step of the Contract Clause analysis, and found “little doubt about the legitimate public purpose behind the” Kansas legislation at issue there. 459 U.S. at 412, 417. Notably, the Supreme Court found it relevant that there was no “indication that the Kansas political process had broken down.” Id. at 417 n.25 (citing Note, A Process-Oriented Approach to the Contract Clause, 89 Yale L.J. 1623, 1645 (1980), for the proposition that, “provided ‘legislature is functioning properly, selection of a public purpose and determinations of necessity and appropriateness should be left to it’”).

public; the legislation enjoyed overwhelming support in both chambers. The North Dakota Senate passed SB 2289 with a vote margin of 46-0, S. Journal, 65th Legis. Assemb., Reg. Sess. 434 (N.D. 2017), and the North Dakota House of Representatives passed SB 2289 with a vote margin of 86-5. H. Journal, 65th Legis. Assemb., Reg. Sess. 942 (N.D. 2017).

Second, the title of SB 2289 suggests that the legislation is not solely designed to alter preexisting contracts between private parties. Compare S.B. 2289, 65th Legis. Assemb., Reg. Sess. (N.D. 2017) (“An Act to amend and reenact sections 51-07-01.2, 51-07-02.2, and 51-26-06 of the North Dakota Century Code, relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair.”), with Equip. Mfrs. Inst., 300 F.3d at 861 (concluding that there was no significant and legitimate public purpose in South Dakota legislation titled “An Act to provide certain restrictions for dealership contracts for machinery”).

Third, although the text of SB 2289 covers dealers and manufacturers and is silent over any benefits for North Dakota’s farming and rural communities, that is not fatal. Neither the North Dakota Constitution nor the North Dakota Century Code expressly require that legislation contain either a statement of legislative purpose or legislative findings. Cf. Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 528 (1959) (noting that, in the Equal Protection Clause context, “a state legislature need not explicitly declare its purpose” for enacting legislation). Nor does the absence of express text establish that the North Dakota legislature was acting in bad faith. In a Contract Clause challenge, legislative history may be used to ascertain the purpose underlying the legislation at issue. Equip. Mfrs. Inst., 300 F.3d at 860; Deere & Co. v. State, 130 A.3d 1197, 1211 (N.H. 2015). North Dakota permits the use of legislative history in the absence of legislative findings “to determine the evils and objectives at which the legislation was aimed as distinguished from the meaning of the statute.” State v. Knoefler, 279 N.W.2d 658, 663-64 (N.D. 1979) (relying on state

legislature's house and senate agriculture committees' minutes to ascertain the primary purpose of the legislation).

The legislative history underlying SB 2289 reveals that the legislation was designed to accomplish more than one purpose: not only to regulate relationships between dealers and manufacturers, but also to serve the farming and rural communities in North Dakota. North Dakota House Representative Craig Headland stated "that [the loss of farm equipment dealers] would have an impact on the town where the dealer is located." House Agriculture Committee Vice-Chairman Representative Wayne A. Trottier stated that, if farmers cannot "get service and sales, it makes it costlier and more difficult." Representative Dwight Kiefert stated that equipment is purchased "because we can get the service and the parts. Our area dealership closed and it costs more to get service because there is more mileage." Representative Kiefert further stated that "[t]here was a time when things were easy to fix. Now we are dependent to have the dealer come out." And House Agriculture Committee Chairman Representative Dennis Johnson stated that, "[a]s a custom harvester over the years[,] he had

seen from Oklahoma the dealerships that have closed in 25 years. At the end of the day we all need each other. We are still sitting with \$4 wheat. We are heading for a train wreck in trying to make this all work. We want to take care of everyone involved: farmers, dealers, and manufacturers.

SB 2289 aspires to benefit the farming and rural communities of North Dakota as well as the dealers that do business there. The legislation aims to preserve the symbiotic relationship between the groups. Farmers rely on having a local dealer for prompt service, especially during harvest. Without a local dealer, farmers must travel farther to purchase equipment and obtain repairs. Moreover, the small towns in North Dakota with dealerships reasonably depend on the employment opportunities that

come with having such dealerships. Depriving North Dakotans of these opportunities results in adverse consequences for the communities where the dealers are located.

The Court states that, “[e]ven if [SB 2289] indirectly might benefit farmers and rural communities, the Contract Clause demands more than incidental public benefits.” Supra, at 10. However, the Contract Clause makes no such demand and, if anything, the Court’s statement acknowledges that SB 2289 does not exclusively benefit dealers.

The Contract Clause requires that state legislation be “enacted to protect a broad societal interest rather than a narrow class.” Allied Structural, 438 U.S. at 249. Here, SB 2289 aspires to benefit a broad class: the farming and rural communities of North Dakota as well as the dealers that do business there. It is simply irrelevant whether the benefits to that broad class are incidental. Other than prohibiting state legislation exclusively designed to alter contractual duties, the Contract Clause places no limitations on a state’s ability to exercise its police power “to protect the lives, health, morals, comfort and general welfare of the people,” id. at 241 (internal quotation marks omitted), much less the manner in which a state chooses to implement that power. The Contract Clause requires that state legislation be “addressed to a legitimate end[.]” Home Bldg., 290 U.S. at 438. And we have already determined that a state’s interest in serving its farming and rural communities is “unquestionably significant and legitimate,” Equip. Mfrs. Inst., 300 F.3d at 860, irrespective of whether the benefits to them are incidental.

In Equipment Manufacturers Institute, this Court was very clear as to why the South Dakota legislation at issue there had no significant and legitimate public purpose: the state produced no evidence of the advancement of a broad societal interest and, indeed, conceded that the legislation’s “purpose [was] to level the playing field between manufacturers and dealers.” Id. at 860-62. Accordingly, “[i]t [was] clear that the only real beneficiaries under the [South Dakota legislation were]

the narrow class of dealers of agricultural machinery.” Id. at 861. Without its readily apparent and exclusively protectionist features, the South Dakota legislation would have fared better. See Exxon Corp., 462 U.S. at 191-92 (distinguishing a permissible law “impos[ing] a generally applicable rule of conduct designed to advance ‘a broad societal interest,’” from an impermissible law with the “sole effect” of “alter[ing] contractual duties” (quoting Allied Structural, 438 U.S. at 249)).

Ensuring that North Dakota’s agriculture industry, a large component of its economy, is stable and beneficial for all of its participants is squarely within the province of the North Dakota legislature, notwithstanding the imperatives of the Contract Clause. See Farmers Union Oil Co. v. Allied Prods. Corp., 162 B.R. 834, 841 (D.N.D. 1993) (“[I]t is undisputed that North Dakota’s economy is heavily dependent on agricultural production.”); cf. Hall GMC, Inc. v. Crane Carrier Co., 332 N.W.2d 54, 61 (N.D. 1983) (finding significant and legitimate public purpose behind North Dakota statute protecting farm equipment distributors because a farm equipment “distributor service is a substantial public need in [North Dakota’s] economic system”).

Because the “sole effect” of SB 2289 is not “to alter contractual duties[,]” Exxon Corp., 462 U.S. at 192, we should not second-guess the legislature’s sound judgment. See Mascio v. Pub. Emps. Ret. Sys. of Ohio, 160 F.3d 310, 314 (6th Cir. 1998) (refusing to “question the legitimacy of the purposes put forward” by the Ohio legislature); Kendall-Jackson Winery, Ltd. v. Branson, 82 F. Supp. 2d 844, 875 (N.D. Ill. 2000) (“Unquestionably, the state interests served by a strong local distributorship network are substantial, and a judgment by the Illinois legislature that that interest is best-served by prohibiting termination of distributorships except for good cause is beyond challenge.”); Deere, 130 A.3d at 1211-12 (stating that it would not “second-guess [the New Hampshire legislature’s] determination[,]” refusing to “require of the legislature courtroom factfinding[,]” and stating that it “will uphold

a legislative choice based on rational speculation” (internal quotation marks and citations omitted)).

The Court is unwilling to defer to the North Dakota legislature’s judgment as to *why* it enacted SB 2289 but would give “complete deference” to a legislature’s assessment that a law “is reasonable and necessary to serve an important public purpose[,]” U.S. Trust, 431 U.S. at 25-26, or, in other words, “the means chosen to implement” the purposes behind the law. Energy Reserves, 459 U.S. at 418; see also Keystone Bituminous Coal Ass’n v. DeBenedictis, 480 U.S. 470, 506 (1987) (refusing “to second-guess the [Pennsylvania legislature]’s determinations” about “the most appropriate ways of dealing with the problem”); Home Bldg., 290 U.S. at 447-48 (“Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned.”). However, by not deferring to the legislature, the Court substitutes its own judgment for that of the legislature. Underscoring the Court’s unusual approach today is the fact that the Supreme Court has very rarely—and perhaps in only a single instance—invalidated state legislation for not having a significant and legitimate public purpose. See Energy Reserves, 459 U.S. at 412 n.13 (noting that in Allied Structural, the Minnesota legislature “had not acted to meet an important general social problem” because the statute at issue “had a very narrow focus” and, indeed, “may have been directed at one particular employer planning to terminate its pension plan when its collective-bargaining agreement expired”).

Because the North Dakota legislature was pursuing a broad societal interest in enacting SB 2289, the state has met its burden of showing a significant and legitimate public purpose underlying the legislation. Accordingly, the district court abused its discretion in entering its preliminary injunction upon concluding that the appellees were likely to prevail on the merits of their Contract Clause claim and, therefore, the preliminary injunction should be vacated. I respectfully dissent.

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

5/2/2025

Conference Committee

relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

9:32 a.m. Chairman Anderson called the meeting to order.

Members Present: Chairman D. Anderson, Representatives: Novak, Porter Senators: Boehm, Sickler, Patten

Discussion Topics:

- Meeting rescheduled

9:33 a.m. Chairman D. Anderson rescheduled this meeting for later this morning.

9:33 a.m. Chairman D. Anderson adjourned the meeting.

Leah Kuball, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

5/2/2025

Conference Committee

Relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

11:08 a.m. Chairman D. Anderson called the meeting to order.

Members Present: Chairman D. Anderson, Representatives: Novak, Porter Senators: Boehm, Sickler, Patten

Discussion Topics:

- Rescheduled meeting.

11:08 a.m. Chairman D. Anderson rescheduled the meeting to this afternoon.

11:08 a.m. Chairman D. Anderson adjourned the meeting.

Leah Kuball, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1459

5/2/2025

Conference Committee

relating to descriptions and definitions of minerals in leases and conveyances; and to provide a penalty.

3:29 p.m. Chairman D. Anderson called the meeting to order.

Members Present: Chairman D. Anderson, Representatives: Novak, Porter Senators: Boehm, Sickler, Patten

Discussion Topics:

- Committee action

3:42 p.m. Representative Novak Moved to replace amendment 25.1038.02001 with amendment 25.1038.02006 #45364.

3:43 p.m. Senator Patten seconded the motion.

Roll call vote: Motion carried 6-0-0

Bill carriers: Chairman D. Anderson, Senator Patten

3:44 p.m. Chairman D. Anderson adjourned the meeting.

Leah Kuball, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

CO
5/2/25
10/12

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:*

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.~~for an
6 Act to create and enact a new section to chapter 38-12 of the North Dakota Century Code,
7 relating to critical minerals and rare earth minerals and royalties; to amend and reenact sections
8 38-12-01 and 47-10-24 of the North Dakota Century Code, relating to the definitions of critical
9 minerals and rare earth minerals and descriptions and definitions of minerals in leases and
10 conveyances; to provide for retroactive application; and to declare an emergency.

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

12 ~~— **SECTION 1.** A new chapter to title 38 of the North Dakota Century Code is created and~~
13 ~~enacted as follows:~~
14 ~~— **Definitions.**~~
15 ~~— As used in this chapter:~~
16 ~~— 1. "Commission" means the industrial commission.~~
17 ~~— 2. "Critical minerals" means a nonfuel mineral or mineral material essential to the~~
18 ~~economic or national security of the United States and which has a supply chain~~
19 ~~vulnerable to disruption. The term includes aluminum, antimony, arsenic, barite,~~
20 ~~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.~~

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~~

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, 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 regarding a lease for coal, 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 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 regarding a lease for coal, 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 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 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

1 the United States. The United States relies on foreign nations to supply these critical
2 minerals and rare earth minerals to develop and manufacture medical devices,
3 information technology, and equipment and technology for national defense, energy
4 infrastructure, and other critical items. Domestic development and production of critical
5 minerals and rare earth minerals is inadequate to meet the nation's needs. The United
6 States must have a reliable, diversified, and affordable supply to drive medical
7 manufacturing, transportation, agriculture, and defense industries and to sustain
8 military preparedness, national security, and economic security.

9 5. This chapter provides potential for coal owners and critical mineral and rare earth
10 mineral owners to obtain added value from the development of critical minerals and
11 rare earth minerals extracted from coal. These critical minerals and rare earth minerals
12 are chemically bound, embedded, commingled, included, or contained within a coal
13 seam or coal deposit and cannot otherwise be produced on their own without
14 infringing on the working interests of the coal estate, without first mining the host
15 mineral coal, or in an economic manner.

16 6. To the maximum extent practicable, the critical mineral and rare earth mineral needs of
17 the United States should be satisfied by the vital natural resources responsibly
18 produced in the United States. The legislative assembly finds it necessary to declare
19 that the mining of coal in this state and a lease of coal in this state, whenever granted,
20 must include the right to all critical minerals and rare earth minerals chemically bound,
21 embedded, commingled, included, or contained within the coal unless specifically
22 excluded by the lease. A party is not obligated to mine, remove, or sell critical minerals
23 or rare earth minerals from coal. The legislative assembly finds that because critical
24 minerals and rare earth minerals are chemically bound, embedded, commingled,
25 included, or contained within a coal seam or coal deposit, and are not uniformly
26 disseminated, production must be commingled and a royalty rate must be applied only
27 if the minerals are extracted and sold. It is necessary to fulfill the public policy of this
28 state by clarifying law related to this policy and the development of critical minerals
29 and rare earth minerals.

30 7. Critical minerals and rare earth minerals occurring within or associated with coal-
31 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~~

1 2. Except as provided in subsection 3, a lease of mineral rights in this state ~~shall~~may not
2 be construed as passing any interest to any minerals except those minerals
3 specifically included and set forth by name in the lease. For the purposes of this
4 ~~paragraph~~section, the naming of either a specific metalliferous element, or
5 nonmetalliferous element, and if so stated in lease, ~~shall be~~is deemed to include all of
6 its compounds and byproducts, and in the case of oil and gas, all associated
7 hydrocarbons produced in a liquid or gaseous form so named ~~shall~~must be deemed to
8 be included in the mineral named. ~~The~~Except as provided in subsection 3, the use of
9 the words "all other minerals" or similar words of an all-inclusive nature in any lease
10 ~~shall~~may not be construed as leasing any minerals except those minerals specifically
11 named in the lease and their compounds and byproducts.

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

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

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

HB 1459 050225 1546 PM Roll Call Vote

Final Recommendation

HB 1459

Date Submitted: May 2, 2025, 3:46 p.m.

Recommendation: In Place Of

Amendment LC #: 25.1038.02006

Engrossed LC #: 25.1038.05000

Motioned By: Novak, Anna S.

Seconded By: Patten, Dale

House Carrier: Anderson, Dick

Senate Carrier: Patten, Dale

Emergency Clause: None

Vote Results: 6 - 0 - 0

Description: N/A

Rep. Anderson, Dick	Yea
Rep. Porter, Todd	Yea
Rep. Novak, Anna S.	Yea
Sen. Patten, Dale	Yea
Sen. Sickler, Jonathan	Yea
Sen. Boehm, Keith	Yea

**REPORT OF CONFERENCE COMMITTEE
ENGROSSED HB 1459**

Your conference committee (Sens. Patten, Sickler, Boehm and Reps. D. Anderson, Porter, Novak) recommends that in place of amendment [25.1038.02001](#) adopted by the Senate, Engrossed HB 1459 is amended by amendment [25.1038.02006](#).

Engrossed HB 1459 was placed on the Seventh order of business on the calendar.

25.1038.02006
Title.

Prepared by the Legislative Council
staff for Representative D. Anderson
May 2, 2025

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.

1 — ~~2. Adopt and enforce rules and orders to effectuate this chapter, including rules requiring~~
2 ~~an operator under permit with the commission to provide to the state geologist~~
3 ~~reasonable amounts of data collected during the extraction process for critical~~
4 ~~minerals or rare earth elements, and data necessary to evaluate the ongoing attributes~~
5 ~~of critical mineral or rare earth extraction in the state.~~

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

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

12 — **Permit required.**

13 — ~~1. A person may not commence operation of a processing facility or the exploration,~~
14 ~~development, or production of critical minerals or rare earth elements without first~~
15 ~~obtaining a permit from the commission and paying the permit fee set by the~~
16 ~~commission.~~

17 — ~~2. This section does not apply to a mine under the jurisdiction and authority of the public~~
18 ~~service commission under chapter 38-14.1.~~

19 — ~~3. An operator shall pay any applicable owners, according to each owner's respective~~
20 ~~undivided ownership within the applicable permit area, a royalty of two and one-half~~
21 ~~percent of the net profits from all critical minerals and rare earth elements mined,~~
22 ~~removed, and sold during the extraction process. For purposes of this section, "net~~
23 ~~profits" means the gross receipts received by an operator from any sale of critical~~
24 ~~minerals or rare earth elements less costs incurred or expenditures attributed, only~~
25 ~~including any expenditures related to the extraction, processing, milling, smelting,~~
26 ~~refining, and transportation of the critical minerals or rare earth elements.~~

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.~~

~~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, 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 regarding a lease for coal, 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 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 regarding a lease for coal, 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 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.

1 4. As reflected in federal policy, the legislative assembly recognizes critical minerals and
2 rare earth minerals are fundamental to the economy, competitiveness, and security of
3 the United States. The United States relies on foreign nations to supply these critical
4 minerals and rare earth minerals to develop and manufacture medical devices,
5 information technology, and equipment and technology for national defense, energy
6 infrastructure, and other critical items. Domestic development and production of critical
7 minerals and rare earth minerals is inadequate to meet the nation's needs. The United
8 States must have a reliable, diversified, and affordable supply to drive medical
9 manufacturing, transportation, agriculture, and defense industries and to sustain
10 military preparedness, national security, and economic security.

11 5. This chapter provides potential for coal owners and critical mineral and rare earth
12 mineral owners to obtain added value from the development of critical minerals and
13 rare earth minerals extracted from coal. These critical minerals and rare earth minerals
14 are chemically bound, embedded, commingled, included, or contained within a coal
15 seam or coal deposit and cannot otherwise be produced on their own without
16 infringing on the working interests of the coal estate, without first mining the host
17 mineral coal, or in an economic manner.

18 6. To the maximum extent practicable, the critical mineral and rare earth mineral needs of
19 the United States should be satisfied by the vital natural resources responsibly
20 produced in the United States. The legislative assembly finds it necessary to declare
21 that the mining of coal in this state and a lease of coal in this state, whenever granted,
22 must include the right to all critical minerals and rare earth minerals chemically bound,
23 embedded, commingled, included, or contained within the coal unless specifically
24 excluded by the lease. A party is not obligated to mine, remove, or sell critical minerals
25 or rare earth minerals from coal. The legislative assembly finds that because critical
26 minerals and rare earth minerals are chemically bound, embedded, commingled,
27 included, or contained within a coal seam or coal deposit, and are not uniformly
28 disseminated, production must be commingled and a royalty rate must be applied only
29 if the minerals are extracted and sold. It is necessary to fulfill the public policy of this
30 state by clarifying law related to this policy and the development of critical minerals
31 and rare earth minerals.

1 7. Critical minerals and rare earth minerals occurring within or associated with coal-
2 bearing formations, coal seams, or coal combustion residuals are part of the coal
3 estate for purposes of ownership, leasing, taxation, and development unless expressly
4 severed by recorded conveyance. To help facilitate the extraction and processing of
5 critical minerals and rare earth minerals, the parties may amend an existing lease or
6 agree to new terms for any lease if agreed to by both parties.

7 8. Coal ash and any coal gasification product, including all minerals, substances,
8 compounds, byproducts, or elements contained therein which result from the
9 combustion or gasification of coal in a coal conversion facility are the property of the
10 owner or operator of the coal conversion facility. The owner or operator of a coal
11 conversion facility may not be held liable for waste, conversion, destruction, or
12 damages to any extent arising from the purchase, combustion, gasification, or sale of
13 any minerals, substances, compounds, byproducts, or elements contained within the
14 coal, coal ash, or products of coal.

15 9. For purposes of this section, "coal ash" includes fly ash, bottom ash, and boiler slag.

16 10. An operator shall pay any applicable mineral owner, according to each mineral
17 owner's respective undivided ownership of coal mined within the applicable permit
18 area during a calendar year, a royalty of no less than two and one-half percent of the
19 gross proceeds from all critical minerals and rare earth minerals mined, removed, and
20 sold during the extraction process. The royalty must be paid at least annually by
21 March thirty-first of the following year. For purposes of this section, "gross proceeds"
22 means the gross receipts received by an operator from any sale of critical minerals or
23 rare earth minerals which constitutes an arms-length transaction.

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

26 **47-10-24. Description and definition of minerals in leases and conveyances.**

27 1. All conveyances of mineral rights or royalties in real property in this state, excluding
28 leases, ~~shall~~must be construed to grant or convey to the grantee ~~thereof~~ all minerals of
29 any nature whatsoever except those minerals specifically excluded by name in the
30 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.