

MINING AND GAS AND OIL PRODUCTION

CHAPTER 304

HOUSE BILL NO. 1102

(Natural Resources Committee)

(At the request of the Geological Survey)

MINERAL EXPLORATION SECURITY

AN ACT to amend and reenact subdivision d of subsection 1 of section 38-08-04, subdivision a of subsection 1 of section 38-12-02, subdivision a of subsection 1 of section 38-12.1-04, and subdivision d of subsection 1 of section 38-19-03 of the North Dakota Century Code, relating to an election to deposit cash or property in lieu of a bond for coal exploration, subsurface mineral exploration and development, and geothermal production.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 1 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission ~~prescribed to govern the production of oil and gas on public and private lands within the state~~, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit ~~cash or property~~ under such terms and conditions as the industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 38-12-02 of the North Dakota Century Code is amended and reenacted as follows:

- 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 ~~regulations~~ 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.

SECTION 3. AMENDMENT. Subdivision a of subsection 1 of section 38-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- 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 ~~regulations~~ orders of the commission prescribed to govern the exploration for coal on state and private lands and roads used in coal exploration 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.

SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 38-19-03 of the North Dakota Century Code is amended and reenacted as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter and the rules and orders of the commission relating to the extraction of geothermal energy. 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.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 305

SENATE BILL NO. 2125

(Natural Resources Committee)

(At the request of the Industrial Commission)

CONFISCATION OF WELL EQUIPMENT AND OIL

AN ACT to amend and reenact subsections 1 and 2 of section 38-08-04.5 and section 38-08-04.9 of the North Dakota Century Code, relating to confiscation by the state of well-site equipment and salable oil; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 38-08-04.5 of the North Dakota Century Code are amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Section 38-08-04.9 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.9. Confiscation of equipment and salable oil to cover plugging costs. ~~If the commission, its agents, employees, or contractors plugs, replugs a well, or restores a well site pursuant to sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9 and 38-08-04.10, the commission, after notice and hearing, may order the confiscation of any production-related equipment at the abandoned well site owned by the operator or any working interest owner for the purpose of wholly or partially compensating the state for the cost of plugging or replugging or site restoration. When the commission intends to exercise or has exercised its right to plug a well or reclaim a well site, the commission, as compensation for its costs, may confiscate any production-related equipment and salable oil at the well site. The equipment subject to confiscation is limited to that owned by the well's operator, former operator, or working interest owner. If the commission exercises its authority under this section and there is salable oil at the well, that oil must be confiscated. The commission shall pay the mineral owners the royalty interest in the oil confiscated. In determining the mineral owners and their royalty interests, the commission may rely upon the most recent division order it is able to obtain. If one is unavailable or the commission finds the order unreliable, the commission may rely upon any other source of information the commission deems reasonable to determine and pay mineral owners. A confiscation must be by an order of the commission after notice and hearing. A confiscation order transfers title to the commission.~~

Approved March 12, 2003

Filed March 13, 2003

CHAPTER 306

HOUSE BILL NO. 1218

(Representatives Skarphol, Grande, Rennerfeldt, Wald)
(Senators Lyson, Wardner)

NONPARTICIPATING OWNER RISK PENALTY

AN ACT to amend and reenact subsection 3 of section 38-08-08 and subsection 3 of section 38-08-09.4 of the North Dakota Century Code, relating to carrying or otherwise financing nonparticipating owners in the development of oil and gas interests in spacing units and plans of unitization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 38-08-08 of the North Dakota Century Code is amended and reenacted as follows:

3. In addition to any costs and charges recoverable under subsections 1 and 2, if ~~a lessee owning the owner~~ of an interest in a spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating ~~lessee's owner's~~ share of the drilling and operation of a well may recover from the nonparticipating ~~lessee owner~~ a risk penalty for the risk involved in drilling the well. The recovery of a risk penalty is as follows:
 - a. If the nonparticipating owner's interest in the spacing unit is derived from a lease or other contract for development, the risk penalty is ~~one~~ two hundred percent of the nonparticipating ~~lessee's owner's~~ share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty or overriding royalty. ~~No risk penalty may be assessed against an unleased mineral interest.~~
 - b. If the nonparticipating owner's interest in the spacing unit is not subject to a lease or other contract for development, the risk penalty is fifty percent of the nonparticipating owner's share of the reasonable actual costs of drilling and completing the well and may be recovered out of production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty provided for in subsection 1.
 - c. The owner paying for the nonparticipating owner's share of the drilling and operation of a well may recover from the nonparticipating owner a risk penalty for the risk involved in drilling and completing the well only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk and cost of drilling the well. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either

responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.

SECTION 2. AMENDMENT. Subsection 3 of section 38-08-09.4 of the North Dakota Century Code is amended and reenacted as follows:

3. The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms, and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and legal rate of interest as may be fair to all concerned, reasonable provision must be made in the plan of unitization for carrying or otherwise financing ~~lessees~~ owners who are unable to promptly meet their financial obligations in connection with the unit and, in addition to the unit expense assessed against each tract and chargeable to each owner, the recovery of a risk penalty from each owner electing not to participate in the unit expense. The recovery of the risk penalty is as follows:
 - a. If the nonparticipating owner's interest in the unit is derived from a lease or other contract for development, the risk penalty is two hundred percent of the nonparticipating owner's share of the unit expense and may be recovered out of, and only out of, production from the unit, exclusive of any royalty or overriding royalty.
 - b. If the nonparticipating owner's interest in the unit is not subject to a lease or other contract for development, the penalty is fifty percent of the nonparticipating owner's share of the unit expense and may be recovered out of production from the unit exclusive of any royalty provided for in section 38-08-09.13.
 - c. The owner paying for the nonparticipating owner's share of the unit expense may recover from the nonparticipating owner a risk penalty for the risk involved in the unit expense only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk of the unit expense. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.

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