

Sixty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2123

Introduced by

Senator Patten

Representative Longmuir

1 A BILL for an Act to amend and reenact sections 38-08-04.4, 38-08-04.5, 38-08-04.8, and  
2 38-08-04.9 of the North Dakota Century Code, relating to the authorization to enter contracts,  
3 abandoned oil and gas well plugging and site reclamation fund, and confiscation of equipment  
4 and recovery for costs of plugging and reclamation of sites with bonds held by the North Dakota  
5 industrial commission.

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

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

9 **38-08-04.4. Commission authorized to enter into contracts.**

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

- 16 1. The person or company drilling or operating the well or equipment cannot be found,  
17 has no assets with which to properly plug or replug the well or reclaim the well site,  
18 cannot be legally required to plug or replug the well or to reclaim the well site, pipeline,  
19 or associated pipeline facility, or damage is the result of an illegal dumping incident.
- 20 2. There is no bond covering the well to be plugged or the site to be reclaimed or there is  
21 a bond but the cost of plugging or replugging the well or reclaiming the site, pipeline,  
22 or associated pipeline facility exceeds the amount of the bond or damage is the result  
23 of an illegal dumping incident.

1           3.    The well, equipment, pipeline, or associated pipeline facility is leaking or likely to leak  
2                   oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the  
3                   public health or safety.

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

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

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

19           **38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund -**  
20 **Continuing appropriation - Budget section report.**

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

- 22           1.    Revenue to the fund must include:
- 23               a.    Fees collected by the oil and gas division of the industrial commission for permits  
24                   or other services.
  - 25               b.    Moneys received from the forfeiture of drilling and reclamation bonds.
  - 26               c.    Moneys received from any federal agency for the purpose of this section.
  - 27               d.    Moneys donated to the commission for the purposes of this section.
  - 28               e.    Moneys received from the state's oil and gas impact fund.
  - 29               f.    Moneys recovered under the provisions of section 38-08-04.8.
  - 30               g.    Moneys recovered from the sale of equipment and oil confiscated under section  
31                   38-08-04.9.

- 1           h. Moneys transferred from the cash bond fund under section 38-08-04.11.
- 2           i. Such other moneys as may be deposited in the fund for use in carrying out the
- 3           purposes of plugging or replugging of wells or the restoration of well sites.
- 4           j. Civil penalties assessed under section 38-08-16.
- 5        2. Moneys in the fund may be used for the following purposes:
- 6           a. Contracting for the plugging of abandoned wells.
- 7           b. Contracting for the reclamation of abandoned drilling and production sites,
- 8           saltwater disposal pits, drilling fluid pits, and access roads.
- 9           c. To pay mineral owners their royalty share in confiscated oil.
- 10          d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater
- 11          handling facilities, treating plants, and oil and gas-related pipelines and
- 12          associated facilities.
- 13          e. Reclamation and restoration of land and water resources impacted by oil and gas
- 14          development, including related pipelines and facilities that were abandoned or
- 15          were left in an inadequate reclamation status before August 1, 1983, and for
- 16          which there is not any continuing reclamation responsibility under state law. Land
- 17          and water degraded by any willful act of the current or any former surface owner
- 18          are not eligible for reclamation or restoration. The commission may expend up to
- 19          five million dollars per biennium from the fund in the following priority:
- 20           (1) For the restoration of eligible land and water that are degraded by the
- 21           adverse effects of oil and gas development including related pipelines and
- 22           facilities.
- 23           (2) For the development of publicly owned land adversely affected by oil and
- 24           gas development including related pipelines and facilities.
- 25           (3) For administrative expenses and cost in developing an abandoned site
- 26           reclamation plan and the program.
- 27           (4) Demonstration projects for the development of reclamation and water
- 28           quality control program methods and techniques for oil and gas
- 29           development, including related pipelines and facilities.
- 30          f. For transfer by the office of management and budget, upon request of the
- 31          industrial commission, to the environmental quality restoration fund for use by the

1 state department of health for the purposes provided under chapter 23-31, if to  
2 address environmental emergencies relating to oil and natural gas development,  
3 including the disposal of oilfield waste and oil or natural gas production and  
4 transportation by rail, road, or pipeline. If a transfer requested by the industrial  
5 commission has been made under this subdivision, the state department of  
6 health shall request the office of management and budget to transfer from  
7 subsequent deposits in the environmental quality restoration fund an amount  
8 sufficient to restore the amount transferred from the abandoned oil and gas well  
9 plugging and site reclamation fund.

10 3. This fund must be maintained as a special fund and all moneys transferred into the  
11 fund are appropriated and must be used and disbursed solely for the purposes in this  
12 section.

13 4. The commission shall report to the budget section of the legislative management on  
14 the balance of the fund and expenditures from the fund each biennium.

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

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

- 18 1. Revenue to the fund must include:
- 19 a. Fees collected by the oil and gas division of the industrial commission for permits  
20 or other services.
  - 21 b. Moneys received from the forfeiture of drilling and reclamation bonds.
  - 22 c. Moneys received from any federal agency for the purpose of this section.
  - 23 d. Moneys donated to the commission for the purposes of this section.
  - 24 e. Moneys received from the state's oil and gas impact fund.
  - 25 f. Moneys recovered under the provisions of section 38-08-04.8.
  - 26 g. Moneys recovered from the sale of equipment and oil confiscated under section  
27 38-08-04.9.
  - 28 h. Moneys transferred from the cash bond fund under section 38-08-04.11.
  - 29 i. Such other moneys as may be deposited in the fund for use in carrying out the  
30 purposes of plugging or replugging of wells or the restoration of well sites.
  - 31 j. Civil penalties assessed under section 38-08-16.

- 1           2. Moneys in the fund may be used for the following purposes:
- 2           a. Contracting for the plugging of abandoned wells.
- 3           b. Contracting for the reclamation of abandoned drilling and production sites,  
4           saltwater disposal pits, drilling fluid pits, and access roads.
- 5           c. To pay mineral owners their royalty share in confiscated oil.
- 6           d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater  
7           handling facilities, treating plants, and oil and gas-related pipelines and  
8           associated facilities.
- 9           e. Reclamation and restoration of land and water resources impacted by oil and gas  
10          development, including related pipelines and facilities that were abandoned or  
11          were left in an inadequate reclamation status before August 1, 1983, and for  
12          which there is not any continuing reclamation responsibility under state law. Land  
13          and water degraded by any willful act of the current or any former surface owner  
14          are not eligible for reclamation or restoration. The commission may expend up to  
15          five million dollars per biennium from the fund in the following priority:
- 16          (1) For the restoration of eligible land and water that are degraded by the  
17          adverse effects of oil and gas development including related pipelines and  
18          facilities.
- 19          (2) For the development of publicly owned land adversely affected by oil and  
20          gas development including related pipelines and facilities.
- 21          (3) For administrative expenses and cost in developing an abandoned site  
22          reclamation plan and the program.
- 23          (4) Demonstration projects for the development of reclamation and water  
24          quality control program methods and techniques for oil and gas  
25          development, including related pipelines and facilities.
- 26          f. For transfer by the office of management and budget, upon request of the  
27          industrial commission, to the environmental quality restoration fund for use by the  
28          department of environmental quality for the purposes provided under chapter  
29          23.1-10, if to address environmental emergencies relating to oil and natural gas  
30          development, including the disposal of oilfield waste and oil or natural gas  
31          production and transportation by rail, road, or pipeline. If a transfer requested by

1           the industrial commission has been made under this subdivision, the department  
2           of environmental quality shall request the office of management and budget to  
3           transfer from subsequent deposits in the environmental quality restoration fund  
4           an amount sufficient to restore the amount transferred from the abandoned oil  
5           and gas well plugging and site reclamation fund.

6           3. This fund must be maintained as a special fund and all moneys transferred into the  
7           fund are appropriated and must be used and disbursed solely for the purposes in this  
8           section.

9           4. The commission shall report to the budget section of the legislative management on  
10          the balance of the fund and expenditures from the fund each biennium.

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

13          **38-08-04.8. Recovery for costs of plugging and reclamation.**

14          If the commission, its agents, employees, or contractors, plugs or replugs a well or reclaims  
15          a well site, pipeline facility, production facility, saltwater handling facility, or treating plant under  
16          the provisions of sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9, and  
17          38-08-04.10, the state has a cause of action for all reasonable expenses incurred in the  
18          plugging, replugging, or reclamation against the operator ~~of the well~~ at the time the well is  
19          required to be plugged and the well or facility is required to be abandoned or any or all persons  
20          who own a working interest in the well, pipeline facility, production facility, saltwater handling  
21          facility, or treating plant at the time the well is required to be plugged and the well, pipeline  
22          facility, production facility, saltwater handling facility, or treating plant abandoned as a result of  
23          the ownership of a lease or mineral interest in the property on which the well, pipeline facility,  
24          production facility, saltwater handling facility, or treating plant is located. The term "working  
25          interest owner" does not mean a royalty owner or an overriding royalty interest owner. The  
26          commission shall seek reimbursement for all reasonable expenses incurred in plugging any well  
27          or reclaiming any well site, pipeline facility, production facility, saltwater handling facility, or  
28          treating plant through an action instituted by the attorney general. The liability of any working  
29          interest owner under this section shall be limited to that proportion of the reasonable expenses  
30          incurred by the commission that the interest of any such working interest owner bears to the  
31          entire working interest in the well. Any money collected in a suit under this section must be

1 deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit  
2 brought by the commission for reimbursement under this section may be brought in the district  
3 court for Burleigh County, the county in which the plugged well or reclaimed well site, pipeline  
4 facility, production facility, saltwater handling facility, or treating plant is located, or the county in  
5 which any defendant resides.

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

8 **38-08-04.9. Confiscation of equipment and salable oil to cover plugging and**  
9 **reclamation costs.**

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