

2021 SENATE ENERGY AND NATURAL RESOURCES

SB 2065

2021 SENATE STANDING COMMITTEE MINUTES

Senate Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2065
1/8/2021

A BILL for an Act to amend and reenact subdivision b of subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.

Chairman Kreun calls the meeting to order at 8:30am.

Roll Call Senators	Vote
Senator Curt Kreun	Y
Senator Merrill Piepkorn	Y
Senator Dale Patten	Y
Senator Jessica Bell	Y
Senator Jim Roers	Y
Senator Donald Schaible	Y

All senators are present

Discussion Topics:

- Underground Storage Regulation
- Taxation of storage

Lynn Helms, Department of Mineral Resources, provided written testimony #233 in favor of SB 2065, and oral testimony in favor of SB 2056 (8:32am)

Troy Coons, NW Landowners Association, provided written testimony #285 in favor of SB 2065 and oral testimony in favor of SB 2065 (9:09am)

Brady Pelton, NDPC, provided written testimony #287 in favor of SB 2065 and oral testimony in favor of SB 2065 (9:11am)

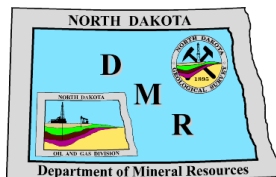
Additional written testimony:

Shane Goettle provides written testimony #290 in favor of SB 2065

Chairman Kreun adjourns the meeting at 9:18am.

Senate Judiciary Committee
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Page 2

David Owen, Committee Clerk

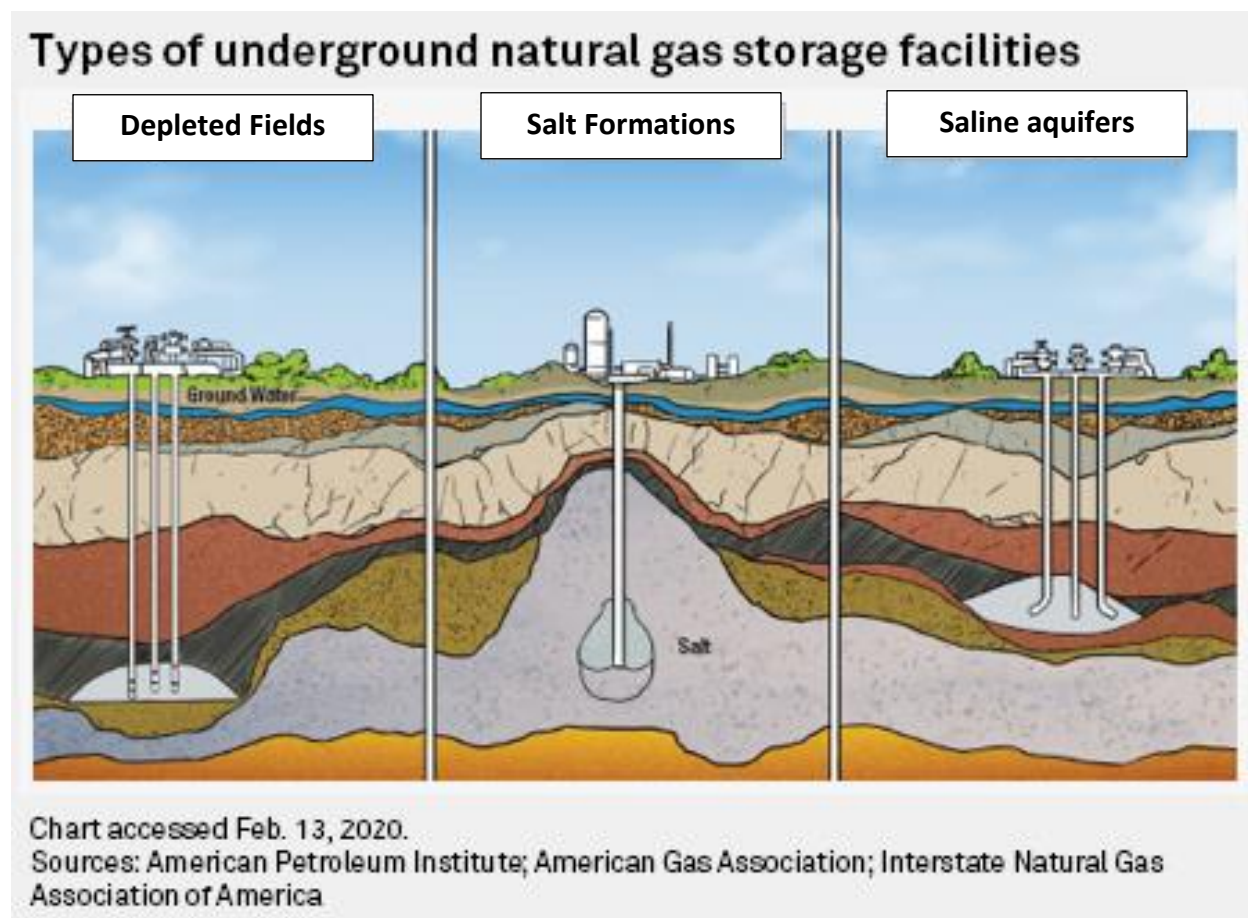


**Testimony of Lynn D. Helms
Director, North Dakota Industrial Commission Department of Mineral Resources
January 8, 2021
Senate Energy and Natural Resources Committee
SB 2065**

The North Dakota Industrial Commission (NDIC) prefiled SB 2065 and urges a do pass.

This bill removes numerous uncertainties surrounding the rights of mineral developers and pore space owners to utilize pore space for underground storage of oil, natural gas liquids, and natural gas.

I would like to offer the following regarding underground storage natural gas:



The EERC has studied the potential for produced gas storage in saline aquifers and determined that it is technically and economically feasible in North Dakota based on computer simulations:

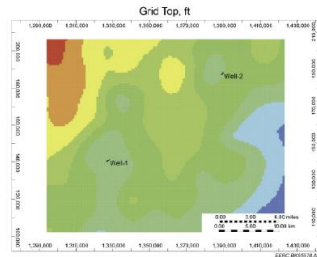


Figure 8. Map view of the simulation model showing the injection well locations and depth of the Broom Creek Formation top. North is toward the top of the image.

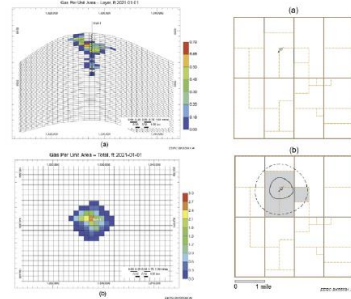


Figure 11. Cross-sectional views (a) and (b) of one simulated gas zone after 7 years of injection at 10 MMscf/day over the entire cavern's construction area and from each of the vertical lines in the reservoir model. The vertical exaggeration is approximately 75:1.

Produced gas injector surrounded by 1200-foot shell (orange area) (DPS) outlined by hand-drawn division (dashed rectangles).

Produced gas storage facility area (solid oval) represents the extent of pore space that will be occupied by the injected and produced gas over the life of the project.

Area of cavern (dashed oval) - half-mile buffer around the gas storage facility area. Gray area represents boundaries to be included in the pore space simulation process.

Figure 10. Visual representation of pore space simulation considerations with respect to boundaries within a given gas storage project area.

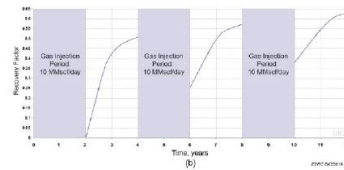
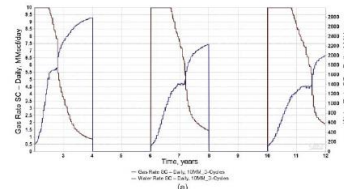
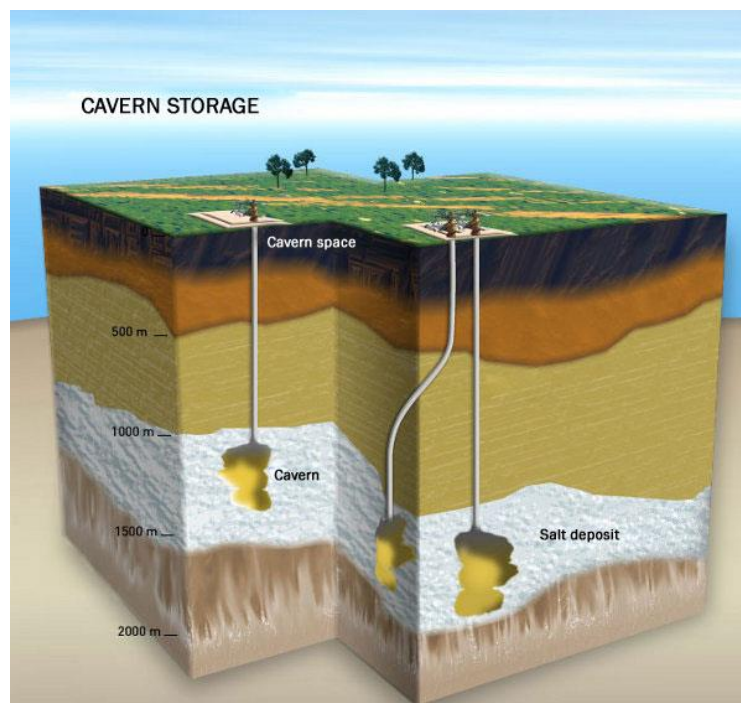


Figure 12. Gas and water production rates following 2 years of gas injection (a) and gas recovery factors (b) for a cyclic gas injection and recovery scenario.

	cycle 1	cycle 2	cycle 3
MCFD Inj	10,000	10,000	10,000
Days/Yr	365	365	365
Years	4	4	4
MCF Inj	7,300,000	7,300,000	7,300,000
RF	50%	57%	63%
MCF Prod	3,650,000	4,161,000	4,599,000
Investment	\$15,700,000		
\$/MCF	\$2.15		
Oper Cost	\$7,000,000	\$7,000,000	\$7,000,000
Total Cost	\$22,700,000	\$7,000,000	\$7,000,000
\$/MCF	\$6.22	\$1.68	\$1.52
			\$2.96

The EERC was contracted by NDIC to study the feasibility of developing salt caverns for hydrocarbon storage in western North Dakota and to identify topics needing clarification with regards to geologic storage of oil, natural gas liquids, and natural gas. EERC provided the following:

Salt cavern storage of hydrocarbons is technically feasible in North Dakota and is a necessary infrastructure to support petrochemical processing:



The following topics need clarification with regards to geologic storage of oil, natural gas liquids, and natural gas:

- 1) Add clarifying language that grants NDIC-OGD the authority to require non-consenting pore space owners to be included in a gas storage facility (i.e. amalgamation of property interests). **See page 2 lines 5-7, lines 8-10, and line 28.**
- 2) Clarify the percentage of pore space for which an operator is required to obtain consent in order to establish a temporary gas storage reservoir. See page 2 lines 8-10.
- 3) Add clarifying language that NDCC 47-31 Subsurface Pore Space Policy is only applicable to non-mineral-bearing geologic formations (i.e. saline formations). To use a mineral-bearing formation to store produced gas, the operator would be required to obtain consent from only the mineral owners within the gas storage reservoir, and not the pore space owners (see page 2 lines 11-16) and which make the pore space ownership required equal to the mineral interest ownership (see page 2 lines 8-10). Typically, storage in a depleted reservoir will result in enhanced oil or enhanced gas recovery as well as storage benefits.
- 4) Modify the tax law to lengthen the period of the tax exemption or add language to the law that ties the length of the tax exemption period directly to the gas storage period. **This is not under NDIC jurisdiction.** See ?? bill ??? that amends 57-51-02.2 and 57-51-02.6.
- 5) Develop royalty payment rules that are specific to natural gas storage operations, both in saline formations and depleted oil & gas reservoirs. New rules, or modifications to existing rules, should specifically address the point at which royalties will be paid on natural gas that is injected into a designated natural gas storage facility. This is typically a private contract matter, however NDCC 38-08-09.8 contains the following language “Property rights, leases, contracts, and all other rights and obligations must be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of sections 38-08-09.1 through 38-08-09.16 and to any valid and applicable plan of unitization or order of the commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.” that should be amended into this bill. **This is not under NDIC jurisdiction.**
- 6) Add clarifying language related to the “artificially created” pore space and the applicability of the rules to solution mined salt caverns. **NDIC feels this is covered in the definition of pore space NDCC 38-11.1-03.**
- 7) Provide clarity that the mineral owner owns the solution mined cavern, granting storage ownership rights to the mineral owner. **NDIC is opposed to this.**
- 8) Amend the NDIC Produced Gas Storage Permitting Guideline to include NGL storage and specifically identify NGL storage as non-transportation-related gas storage. **I offer an amendment: Page 1, line 21 after oil insert “, natural gas liquids,”**
- 9) Amend the NDIC Produced Gas Storage Facility Permit Application Guideline to include NGL salt cavern storage, with a specific section on the construction and operation of brine storage ponds that dovetails with the NDGS regulatory framework. **NDIC is opposed to this and feels that alternatives such as salt cavern storage of the working brine should be investigated.**

Troy Coons
Northwest Landowners Association
Energy and Natural Resources Committee
Testimony for SB 2065
January 8, 2021



Good afternoon, Senator Kreun 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 over 560 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

I am here to testify in support of SB 2065. Our organization has always prided itself on working cooperatively with energy developers. We appreciate that this legislation ensures that the owners of the pore space have a say in the development of their property, and also recognizes the right to equitable compensation when their property is being used by others, sometimes against their will.

Landowners are also very aware of the need for solutions to the flaring of natural gas. Flaring natural gas is an unfortunate loss of a natural resource, and it is also one of the main complaints many landowners have who live near oil wells. We appreciate the efforts to find new solutions that help avoid flaring.

Senate Bill 2065 is modeled after prior legislation related to carbon dioxide sequestration. This legislation came from a study and working group made up of all stakeholders, and the end result is an excellent reflection of the cooperative nature of that effort. We hope to see more legislation like this bill that recognizes everyone's rights and attempts to find solutions to problems without making one stakeholder bear the entire cost.

Thank you for taking the time to consider our comments.

Sincerely,

A handwritten signature in black ink, appearing to be 'Troy Coons', is located below the 'Sincerely,' text. The signature is written in a cursive style with a small diamond-shaped mark at the beginning.

Troy Coons, Chairman
Northwest Landowners Association



Senate Bill 2065
Testimony of Brady Pelton
Senate Energy and Natural Resources Committee
January 8, 2021

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, my name is Brady Pelton, general counsel and director of government affairs for the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 650 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of Senate Bill 2065.

Senate Bill 2065 establishes a regulatory structure for the underground storage of natural gas under North Dakota Industrial Commission (“NDIC”) authority. Currently, such a legal and regulatory framework is absent, halting development of critical research endeavors and field-testing projects that hold the potential to bring North Dakota’s oil and gas economy to the next level.

The North Dakota oil and gas industry has a significant interest in ensuring such a regulatory structure is established quickly for two distinct reasons. First, regulatory parameters provide a path forward for continued research and development of manufactured cavern space techniques used to store large quantities of North Dakota-produced natural gas in underground caverns on a long-term basis. Such techniques allow advancement of innovative value-added energy initiatives within the state that use the stored gas as feedstock.

Secondly, the regulatory framework in this bill allows the NDIC to properly standardize and control temporary underground injection of associated natural gas, providing oil and gas producers another option by

which to avoid flaring. This option is of particular use in instances where a producing unit is considered “stranded” due to geographic challenges in gas gathering pipeline construction. A producer is much more likely to consider and develop stranded areas of the Bakken if the added challenge of meeting gas capture goals may be accomplished by injecting the produced natural gas underground and temporarily storing it until gas gathering infrastructure is in place. Such a gas capture option provides an added opportunity for gas midstream companies to invest beyond the over-\$20 billion they have already invested in the state and continue development of the gathering lines and other infrastructure necessary to successfully gather, transport, and process North Dakota’s abundant natural gas resource.

Both avenues of underground gas storage described here hold vast potential for the state and its oil and gas industry. The ability to temporarily store natural gas underground further advances the gas capture goals of the state, reduces emissions, and demonstrates a commitment to developing cleaner energy. Such innovations open even greater possibilities of accessing, producing, and adding value to the immense natural resources of the state, and do so in a way that significantly reduces environmental impacts.

We therefore urge a **Do Pass** on Senate Bill 2065. I would be happy to answer any questions.

**Written Testimony
Senate Energy and Natural Resources Committee
Chairman Curt Kreun**

**Shane Goettle, Lobbyist/Vice Chair
Bakken Midstream Natural Gas, LLC**
sgoettle@odney.com

SENATE BILL 2065

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, my name is Shane Goettle. In addition to serving as a lobbyist today on behalf of Bakken Midstream Natural Gas, LLC, (“BMNG”), I am actively involved with BMNG Board leadership, serving as Vice-Chair. I submit this written testimony today in both capacities in favor of SB 2065.

BAKKEN MIDSTREAM NATURAL GAS, LLC

BMNG is developing opportunities for adding value to North Dakota energy in general, and natural gas liquids (“NGLs”) in particular. BMNG is a Delaware limited liability company. Its principals, advisors and strategic partners have considerable experience in development, construction and management of energy related value-added projects. After years of work dedicated towards studying the feasibility of value-added energy opportunities in natural gas liquids (NGLs) in North Dakota, BMNG and its strategic partners are in the advanced stages of concluding the feasibility phase and, indeed, have, in many respects, already entered the development phase for one such project. That having been said, there is still considerably more that needs to be done, particularly in the area of NGL underground storage.

In places like Alberta, Kansas, Texas, and other parts of the world where you find a robust petrochemical industry, you will also find that it is supported by underground storage for NGLs.

Storing NGLs underground requires the development of manufactured cavern space. Put simply, one first identifies salt zones that can be solution mined to open up underground caverns. NGLs or other liquids (such as crude oil), can then be pumped into these underground caverns. These manufactured caverns need to have high integrity—in short, they can NOT display any signs of underground migration of NGLs while being stored.

To recover the NGLs, water is necessary. The water is pumped into the cavern. The NGLs rise to the top and can be pumped out. Nearly 99 percent of the NGLs can be recovered before the cavern is emptied and then reprepared to store NGLs again.

A good deal of study still needs to be done to determine whether or not North Dakota's geologic features can lend themselves to support underground storage. To get there, we also need legal and regulatory certainty.

SB 2065 represents the first step toward providing the legal and regulatory certainty necessary for the development and operation of underground manufactured cavern space. We believe the bill needs some work, and we look forward to working with this committee to improve the bill toward that end.

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2065
1/21/2021 PM

Committee Work on SB 2065 -A BILL for an Act to amend and reenact subdivision b of subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.

Chairman Kreun called the committee to order at 2:52pm
Senators Schaible, Bell, Piepkorn, Patten, J. Roers, and Kreun Present

Discussion Topics:

- Refresher of the bill
- Previous testimony
- Potential amendment

Senator Patten introduced an amendment and took questions #4093 (2:53pm)

Chairman Kreun adjourned at 2:54pm

Dave Owen, Committee Clerk

21.8029.01003
Title.

Prepared by the Legislative Council staff for
Senator Patten

January 27, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university of school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.

7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.
9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
10. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
11. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of this chapter.
8. After notice and hearing, to grant exceptions to this chapter's requirements and implementing rules for good cause.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.
8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.
9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
15. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.
10. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
11. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
12. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.

5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.
13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.

2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section."

Renumber accordingly

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2065
1/28/2021 AM

A BILL for an Act to amend and reenact subdivision b of subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.

Chairman Kreun called the committee to order for committee work at 9:33am
Senators J. Roers, Patten, Piepkorn, Schaible, Bell, and Kreun all present

Discussion Topics:

- Potential amendments
- How amendments change the bill
- Underground storage
- Storage agreement compensation

Senator Patten, District 39, introduced his amendment and discussed the changes that will occur #4093 (9:35am).

Senator Kreun, in order to give the committee time to digest the amendment suggested the committee work on a different bill for a brief period (9:39am).

Senator Patten after committee work on a previous bill, returned to discuss the bill and go into more detail on his amendment (9:44am).

Chairman Kreun called the committee work to a close at 9:58AM

Dave Owen, Committee Clerk

21.8029.01003
Title.

Prepared by the Legislative Council staff for
Senator Patten

January 27, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university of school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.

7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.
9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
10. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
11. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of this chapter.
8. After notice and hearing, to grant exceptions to this chapter's requirements and implementing rules for good cause.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.
8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.
9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
15. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.
10. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
11. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
12. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.

5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.
13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.

2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section."

Renumber accordingly

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2065
1/28/2021 PM

A BILL for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

Chairman Kreun called the hearing to order at 2:26pm
Senators Patten, Schaible, J. Roers, Bell, Kreun, and Piepkorn all present

Discussion Topics:

- NW Landowners questions and concerns
- Storage and Pore space partitioning and reasoning
- Salt Caverns
- Industry Perspectives
- Royalty Percentages Rulemaking/Statute
- Exceptions in Statute
- Requests for additional time

Senator Patten, introduced the speakers and provided updates (2:26pm)

Troy Coons, NW Landowners Association, Director, asked questions of the committee (2:27pm)

Derrick Bratten, NW Landowners Association, Legal Counsel, discussed further concerns (2:28pm)

Shane Goettle, Bakken Midstream and Natural Gas, Board Member, testified neutral (2:31pm)

Lynn Helms, Department of Mineral Resources, Director, testified in favor of amended bill (2:43pm)

Troy Coons, NW Landowners Association, Director, reintroduced counsel to ask more questions (3:04pm)

Derrick Braaten, NW Landowners Association, legal counsel, addressed more questions (3:04pm)

Lynn Helms, Department of Mineral Resources, Director, further answered questions (3:07pm)

Senate Energy and Natural Resources Committee

SB 2065

1-28-21

Page 2

Derrick Braaten, NW Landowners Association, legal counsel, asked questions of Lynn Helms (3:16pm)

Troy Coons, NW Landowners Association, Director, made additional comments(3:20pm)

Chairman Kreun called the hearing to a close at 3:22pm

Dave Owen, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2065
2/4/2021

A BILL for an Act to amend and reenact subdivision b of subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.

Chairman Kreun called the committee work to order at 3:46pm
Senators J. Roers, Patten, Piepkorn, Schaible, Bell, and Kreun all present

Discussion Topics:

- Salt Mine Storage Tax
- Salt Cavern Federal Laws

Senator Patten, discussed his potential Amendment #21.8029.01005 **(3:46 pm)**

Troy Coons, President Northwest Landowners Association, stated position **(3:49 pm)**

Lynn Helms, Director Department of Mineral Resources, answered questions **(3:52 pm)**

Senator Patten, moved the Proposed Amendment # 21.8029.01005 **(3:57 pm)**

Senator Bell, seconded the motion **(3:58 pm)**

Move the amendments	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	Y

Roll call vote was taken on Proposed Amendment # 21.8029.01005 **(3:59 pm)**
Motion Passed 5-1-0

Senator Patten, moved DO PASS AS AMENDED on SB 2065 **(3:59.02 pm)**

Senator J. Roers, seconded the motion **(3:60 pm)**

DO PASS AS AMENDED	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	Y

Roll call vote was taken on a Do Pass as Amended **(4:00 pm)**

Motion passed 5-1-0

Senator Patten will carry the Bill.

Chairman Kreun closed the committee work **(4:01 pm)**

Dave Owen, Committee Clerk

February 3, 2021

CJ
2/14
1052

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.

7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.
9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
10. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
11. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of this chapter.
8. After notice and hearing, to grant exceptions to this chapter's requirements and implementing rules for good cause.

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38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.
8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.
9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The horizontal extent of the injected gas within the storage reservoir, as estimated by reasonable means and confirmed through appropriate monitoring methods, are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
15. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
16. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.
10. The vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
11. The horizontal extent of the injected gas within the storage reservoir, as estimated by reasonable means and confirmed through appropriate monitoring methods, are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
12. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
13. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.
13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.
2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section.

38-25-11. Application.

This chapter does not apply to applications filed with the commission which propose to use produced gas for an enhanced oil or gas recovery project. Those applications must be processed under chapter 38-08."

Renumber accordingly

X to X

REPORT OF STANDING COMMITTEE

SB 2065: Energy and Natural Resources Committee (Sen. Kreun, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2065 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.
7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.

9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
10. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
11. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of this chapter.
8. After notice and hearing, to grant exceptions to this chapter's requirements and implementing rules for good cause.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.

3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.
8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.

9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The horizontal extent of the injected gas within the storage reservoir, as estimated by reasonable means and confirmed through appropriate monitoring methods, are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
15. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
16. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.

10. The vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
11. The horizontal extent of the injected gas within the storage reservoir, as estimated by reasonable means and confirmed through appropriate monitoring methods, are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
12. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
13. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of

ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.

13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.
2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section.

38-25-11. Application.

This chapter does not apply to applications filed with the commission which propose to use produced gas for an enhanced oil or gas recovery project. Those applications must be processed under chapter 38-08."

Renumber accordingly

2021 HOUSE ENERGY AND NATURAL RESOURCES

SB 2065

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065
3/4/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

10:42 am

Present: Representatives Porter, Damschen, Anderson, Roers Jones, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, M Ruby, Zubke, Guggisberg, and Ista.

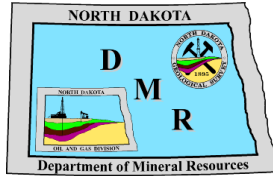
Discussion Topics:

- Underground storage
- Salt formations
- Pore space owners
- Rights of mineral developers
- Mineral owners
- Underground storage

#7275 Lynn Helms, director, ND Industrial Commission, DMR
#7444 Charles Gorecki, ND EERC
#7387 Brady Pelton, general counsel, ND Petroleum Council
#7374 Shane Goettle, lobbyist/vice chair/Bakken Midstream Natural Gas, LLC
#7437 Jody Smith commissioner for ND Department of Trust Lands
#7459 James Lieman, commissioner, ND Commerce Commission and Empower
oral testimony Mike Rude, ND Marketing and Retailers Association
#7386 Derrick Braaten, attorney, Braaten Law Firm
#7383 Troy Coons, NW Landowners Association

11:32 AM hearing adjourned.

Kathleen Davis, Committee Clerk



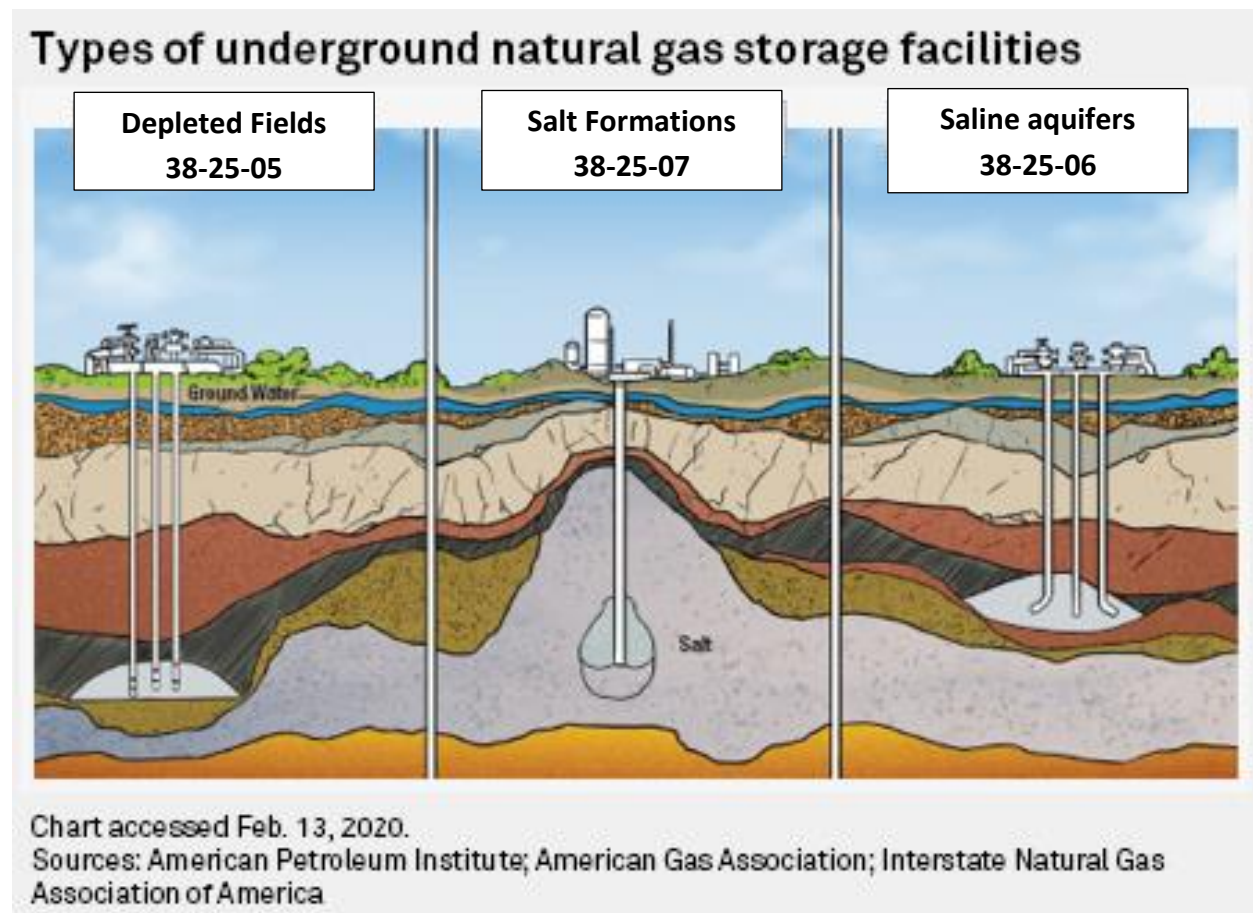
Testimony of Lynn D. Helms
Director, North Dakota Industrial Commission Department of Mineral Resources
March 4, 2021
House Energy and Natural Resources Committee
SB 2065

The North Dakota Industrial Commission (NDIC) pre-filed SB 2065 and urges a do pass of the engrossed version with Senate amendments.

This bill removes numerous uncertainties surrounding the rights of mineral developers, pore space owners, and mineral owners to utilize pore space for underground storage of oil, natural gas liquids, and natural gas.

The bill now creates a new chapter instead of incorporating new language into NDCC 38-08-04 and Section 2 provides the required definitions. This chapter mirrors NDCC 38-22 which was adopted in 2009 and has become the national model for storage of carbon dioxide .

I would like to offer the following regarding underground storage natural gas:



The EERC has studied the potential for produced gas storage in saline aquifers and determined that it is technically and economically feasible in North Dakota based on computer simulations:

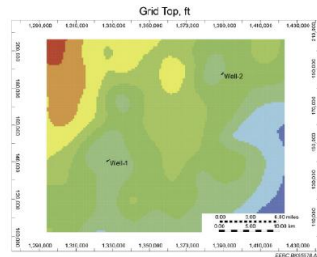


Figure 8. Map view of the simulation model showing the injection well locations and depth of the Broom Creek Formation top. North is toward the top of the image.

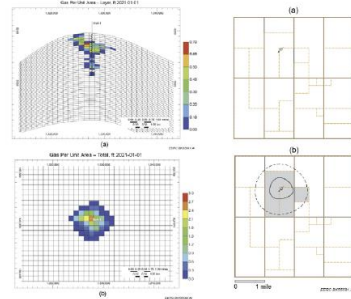


Figure 11. Cross-sectional view (a) and area view (b) of one simulated gas plume after 7 years of injection at 10 MMscf/day. Note that the vertical axes in (a) represent a compression and not the actual vertical feet in the reservoir model. The vertical exaggeration is approximately 75:1.

Produced gas injector surrounded by 1200-pore cell storage units (DSCs) controlled by handwashing division (dashed rectangles).

Produced gas storage facility area (solid oval) represents the extent of pore space that will be occupied by the injection and storage coverage of produced gas over the life of the project.

Class of reserves (dashed oval - full-scale buffer around the gas storage facility area). Gas area represents boundaries to be included in the pore space simulation process.

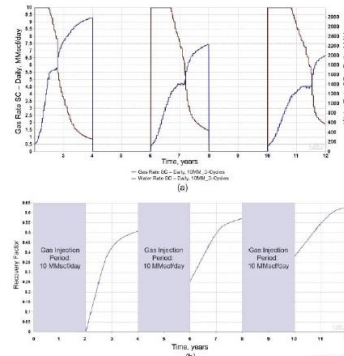
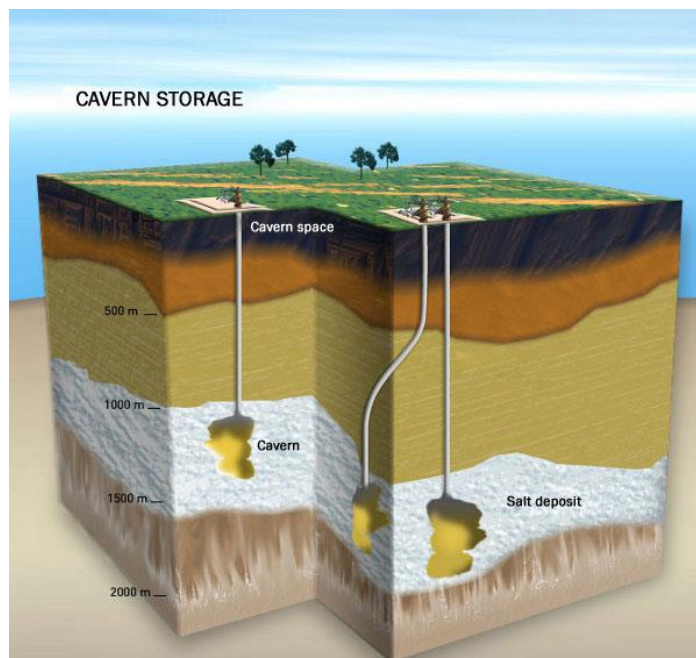


Figure 12. Gas and water production rates following 2 years of gas injection (a) and gas recovery factors (b) for a cyclic gas injection and recovery scenario.

	cycle 1	cycle 2	cycle 3
MCFD Inj	10,000	10,000	10,000
Days/Yr	365	365	365
Years	4	4	4
MCF Inj	7,300,000	7,300,000	7,300,000
RF	50%	57%	63%
MCF Prod	3,650,000	4,161,000	4,599,000
Investment	\$15,700,000		
\$/MCF	\$2.15		
Oper Cost	\$7,000,000	\$7,000,000	\$7,000,000
Total Cost	\$22,700,000	\$7,000,000	\$7,000,000
\$/MCF	\$6.22	\$1.68	\$1.52
			\$2.96

The EERC was contracted by NDIC to study the feasibility of developing salt caverns for hydrocarbon storage in western North Dakota and to identify topics needing clarification with regards to geologic storage of oil, natural gas liquids, and natural gas. EERC provided a 94 page STUDY TO DETERMINE THE FEASIBILITY OF DEVELOPING SALT CAVERNS FOR HYDROCARBON STORAGE IN WESTERN NORTH DAKOTA concluding:

- salt cavern storage of hydrocarbons is technically feasible in North Dakota
- salt cavern storage is a necessary infrastructure to support petrochemical processing
- the following topics need clarification with regards to geologic storage



- 1) Add clarifying language that grants NDIC-OGD the authority to require non-consenting pore space owners to be included in a gas storage facility (i.e. amalgamation of property interests). (38-25-08).
- 2) Clarify the percentage of pore space for which an operator is required to obtain consent in order to establish a temporary gas storage reservoir. (Set at 55% in 38-25-05, 38-25-06, and 38-25-07 to match current oil and gas unitization statute).
- 3) Add clarifying language that NDCC 47-31 Subsurface Pore Space Policy is only applicable to non-mineral-bearing geologic formations (i.e. saline formations). To use a mineral-bearing formation to store produced gas, the operator would be required to obtain consent from only the mineral owners within the gas storage reservoir, and not the pore space owners and which make the pore space ownership required equal to the mineral interest ownership (38-25-05 requires 55% of both pore space and oil & gas mineral owners to match current oil and gas unitization statute). Typically, storage in a depleted reservoir will result in enhanced oil or enhanced gas recovery as well as storage benefits.
- 4) Modify the tax law to lengthen the period of the tax exemption or add language to the law that ties the length of the tax exemption period directly to the gas storage period. (This is not under NDIC jurisdiction. Interested parties agreed that this is not a barrier at this time, but it may require future amendment of 57-51-02.2 and 57-51-02.6).
- 5) Develop royalty payment rules that are specific to natural gas storage operations, both in saline formations and depleted oil & gas reservoirs. New rules, or modifications to existing rules, should specifically address the point at which royalties will be paid on natural gas that is injected into a designated natural gas storage facility. (38-25-10).
- 6) Add clarifying language related to the “artificially created” pore space and the applicability of the rules to solution mined salt caverns. (38-25-07).
- 7) Provide clarity that the mineral owner owns the solution mined cavern, granting storage ownership rights to the mineral owner. (38-25-07 requires 55% of both pore space and salt mineral owners).
- 8) Amend the NDIC Produced Gas Storage Permitting Guideline to include NGL storage and specifically identify NGL storage as non-transportation-related gas storage. (38-25-01).
- 9) Amend the NDIC Produced Gas Storage Facility Permit Application Guideline to include NGL salt cavern storage, with a specific section on the construction and operation of brine storage ponds that dovetails with the NDGS regulatory framework. (NDIC is opposed to this and feels that alternatives such as salt cavern storage of the working brine should be investigated).

Section 1 creates NDCC 15-05-09.1 to grant authority for the board of university and school lands to lease its surface, pore space, and mineral rights for underground storage.

38-25-02, 38-25-03, 38-25-04 grant permitting, regulation, inspection, bonding, permit transfer, and public hearing authority to the NDIC.

38-25-09 establishes the ownership of injected oil or gas.

Testimony of Charles D. Gorecki
CEO

Energy & Environmental Research Center, UND
Senate Bill No. 2065
March 11, 2021

Through various efforts funded by the North Dakota Industrial Commission, the Energy & Environmental Research Center (EERC) has been evaluating different aspects of subsurface produced gas injection since 2017. The focus of the various efforts, which have been conducted in collaboration with industry partners, has been to evaluate subsurface gas storage and/or injection for oil recovery in conventional and unconventional oil reservoirs as a means of mitigating flaring and preserving the state's resources while allowing for ongoing development and production of oil from the Bakken petroleum system (Bakken).

The first effort evaluated by the EERC, in conjunction with Liberty Resources, was produced gas injection for enhanced oil recovery (EOR) in the Stomping Horse Field of the Bakken. The results of the pilot testing in the Stomping Horse Field and the key lessons learned are currently being applied to implement a second produced gas EOR pilot in a different Bakken field.

In 2018, the EERC received funding from NDIC to perform an initial evaluation of produced gas injection as a mechanism to mitigate flaring and to circumvent curtailed oil production in areas that had no available infrastructure to transport gas off-site to gas-processing facilities. Through that effort, a variety of different scenarios were evaluated, including produced gas storage in saline formations and other subsurface targets, as well as produced gas injection for EOR in conventional and unconventional oil fields. The key conclusion of that effort was that gas storage to alleviate flaring and circumvent curtailed Bakken oil production may be technically and economically viable, but that additional work was needed to implement pilot projects to fully evaluate the technical feasibility and to better understand the regulatory aspects that needed to be addressed prior to project permitting.

To further facilitate the evaluation of potential mechanisms to mitigate flaring, in 2019 the Sixty-Sixth Legislative Assembly of North Dakota included wording in Section 25 of House Bill 1014, which was signed into law by Governor Burgum, that states funding will be made available to the EERC for "pilot projects relating to the underground storage of produced natural gas." The overall goal of the ongoing effort has been to demonstrate the technological and economic feasibility of produced gas injection into non-hydrocarbon-producing subsurface formations in the Williston Basin for future recovery and use or for pressure maintenance and/or EOR in conventional or unconventional oil reservoirs. To achieve the goals that were intended by the legislature, the EERC has been partnering with North Dakota operators to evaluate various subsurface gas injection scenarios and, ultimately, to implement one or more pilot projects entailing gas injection either for storage or for EOR.

In July of 2019, the EERC worked closely with XTO Energy (XTO) on the assessment of two potential subsurface gas injection projects, including 1) produced gas storage in a saline formation and 2) produced gas EOR in the Bakken petroleum system. A thorough assessment of

the technical feasibility of gas storage/injection in these subsurface targets was evaluated by the EERC. The key conclusions of the assessment indicated that temporary produced gas storage in saline formations as a mechanism to store stranded gas and bring new Bakken wells online is technically and economically viable. Similarly, produced gas injection for EOR in the Bakken was also deemed beneficial if sufficient volumes of gas are injected. Throughout the evaluation, the EERC and XTO worked closely with the NDIC Department of Mineral Resources (DMR), the North Dakota Office of the State Tax Commissioner, the North Dakota Department of Trust Lands, and the U.S. Department of the Interior Bureau of Land Management (BLM) to define the key tax, royalty, and regulatory components that would need to be addressed to implement the project, including areas where regulatory clarity was needed with respect to implementation of gas storage projects.

In the fall of 2020, again with NDIC funding, the EERC performed an evaluation of natural gas liquid (NGL) storage in artificially created subsurface salt caverns. The key goal of the effort was to evaluate locations in western North Dakota where infrastructure and required resources are colocated with salt formations that may be suitable candidates for NGL storage caverns. The ability to effectively store large volumes of NGLs is a prerequisite for petrochemical development, which could provide value-added products using North Dakota's produced gas. The initial results of the study suggest that the development of small caverns is achievable in North Dakota salt beds and that multiple caverns could be used as a viable design approach to support NGL storage. As is the case with produced gas storage, several areas of regulatory uncertainty were identified that could affect the development of salt cavern storage projects in North Dakota.

Moving forward, the EERC is working with a large publicly traded company and two smaller private equity-backed companies on the evaluation of multiple gas storage/injection pilot projects. In each of these efforts, the EERC is assisting our industry partners with the technical evaluation of the concepts, as well as with the permitting process and project implementation if the concepts appear technically and economically viable. Each of the proposed efforts will help build our knowledge of the technical and economic feasibility of various produced gas storage/injection approaches as mechanisms to reduce flaring and preserve the state's natural resources.

Having regulatory clarity for each of the potential produced gas or NGL storage approaches is critical for providing industry with the information needed to make decisions on the viability of project implementation. Ultimately, the option to economically store gas or NGLs in the subsurface to facilitate Bakken oil production, to reduce flaring, to support EOR, and to attract the petrochemical industry to North Dakota provides economic and environmental benefit to the people of North Dakota and its industries. It underscores the importance of this bill and its passage.



Engrossed Senate Bill 2065
Testimony of Brady Pelton
House Energy and Natural Resources Committee
March 4, 2021

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Brady Pelton, general counsel and director of government affairs for the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 650 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of Engrossed Senate Bill 2065.

Introduced at the request of the North Dakota Industrial Commission (“NDIC”), Engrossed Senate Bill 2065 establishes a regulatory structure for the underground storage of natural gas under NDIC authority. Currently, such a legal and regulatory framework is absent, halting development of critical research endeavors and field-testing projects that hold the potential to bring North Dakota’s oil and gas economy to the next level. Engrossed Senate Bill 2065 is the product of many discussions between lawmakers, the state’s oil and gas regulatory agency, pore space owners, mineral owners, oil and gas industry developers, and other stakeholders. The engrossed bill with Senate amendments before you today provides clear regulatory parameters on underground gas storage that will allow the NDIC to proceed with rulemaking.

The North Dakota oil and gas industry has a significant interest in ensuring such a regulatory structure is established quickly for two distinct reasons. First, regulatory parameters provide a structured path forward for continued research and development of manufactured cavern space techniques used to store large quantities of North Dakota-produced natural gas in underground caverns on a long-term basis. Such techniques allow advancement of innovative value-added energy initiatives within the state that use the stored gas as feedstock.

Secondly, the regulatory framework in this bill allows the NDIC to properly standardize and control underground injection of associated natural gas, providing oil and gas producers another tool by which to avoid flaring. This option is of particular use in instances where a producing unit is considered “stranded” due to geographic challenges in gas gathering pipeline construction. A producer is much more likely to consider and develop stranded areas of the Bakken if the added challenge of meeting gas capture goals may be accomplished by injecting the produced natural gas underground and temporarily storing it until gas gathering infrastructure is in place. Such a gas capture option provides an added opportunity for gas midstream companies to invest beyond the over-\$20 billion they have already invested in the state and continue development of the gathering lines and other infrastructure necessary to successfully gather, transport, and process North Dakota’s abundant natural gas resource.

Both avenues of underground gas storage described here hold vast potential for the state and its oil and gas industry. The ability to temporarily store natural gas underground further advances the gas capture goals of the state, reduces emissions, and demonstrates a commitment to developing cleaner energy. Such innovations open even greater possibilities of accessing, producing, and adding value to the immense natural resources of the state, and do so in a way that significantly reduces environmental impacts.

The new chapter created by Senate Bill 2065 mirrors N.D.C.C. Chapter 38-22, which provides the regulatory parameters for carbon dioxide underground storage. After Senate Bill 2065 was amended and passed in the Senate, further review by industry experts indicates an addition may be valuable to providing further consistency and clarity to underground natural gas storage. Specifically, absent in the bill before you today is language providing an application exception for enhanced oil or gas recovery projects. We believe it appropriate to have such non-application provisions included in the natural gas and oil underground storage statute created by Senate Bill 2065, as they are for carbon dioxide underground storage in N.D.C.C. 38-22-19. To best provide clarity on use of natural gas and other gaseous or liquid substances for enhanced oil or gas recovery projects, we urge consideration of adding a similar section to this bill and a **Do Pass** on Engrossed Senate Bill 2065 as amended. I would be happy to try to answer any questions.

Testimony
House Energy and Natural Resources Committee
Chairman Todd Porter

Shane Goettle, Lobbyist/Vice Chair
Bakken Midstream Natural Gas, LLC
sgoettle@odney.com

SENATE BILL 2065

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Shane Goettle. In addition to serving as a lobbyist today on behalf of Bakken Midstream Natural Gas, LLC, (“BMNG”), I am actively involved with BMNG Board leadership, serving as Vice-Chair. I submit this written testimony today in both capacities in favor of SB 2065.

BAKKEN MIDSTREAM NATURAL GAS, LLC

BMNG is developing opportunities for adding value to North Dakota energy in general, and natural gas liquids (“NGLs”) in particular. BMNG is a Delaware limited liability company. Its principals, advisors and strategic partners have considerable experience in development, construction and management of energy related value-added projects.

After years of work dedicated towards studying the feasibility of value-added energy opportunities in natural gas liquids (NGLs) in North Dakota, BMNG and its strategic partners are in the advanced stages of concluding the feasibility phase and, indeed, have, in many respects, already entered the development phase for one such project—namely an electric generation plant that we hope will serve as an anchor to support further value-added industrial development in North Dakota. That having been said, there is still considerably more that needs to be done to make our state attractive for NGL value-added projects, particularly in the area of NGL underground salt cavern storage.

In places like Alberta, Kansas, Texas, and other parts of the world where you find a robust value-added NGL use, such as the petrochemical industry, and you will also find that it is supported by underground storage for NGLs.

Storing NGLs underground requires the development of manufactured cavern space. Put simply, one first identifies salt zones that can be solution mined to open up underground caverns. NGLs or other liquids (such as crude oil, hydrogen, etc.), can then be pumped into these underground caverns. These manufactured caverns need to have high integrity—in short, they can NOT display any signs of underground migration of NGLs while being stored.

To recover the NGLs, water is necessary. The water is pumped into the cavern. The NGLs rise to the top and can be pumped out. Nearly 99 percent of the NGLs can be recovered before the cavern is emptied of NGLs and then reprepared to store NGLs again.

A good deal of study still needs to be done to determine whether or not North Dakota's geologic features can lend themselves to support underground storage. In fact, in a companion to this bill, SB 2014 (the Industrial Commission budget) provides up to \$14 million in state-sponsored research to investigate salt cavern development. The project consists of \$9 million to drill one hole, draw a salt core sample, and then conduct some geotechnical analysis. The additional \$5 million is for a contingent second hole: if the first drilling project is successful, there won't be any need to access the additional \$5 million, but it is there if a second drilling scenario becomes necessary. But, to even conduct this reserach, we need legal and regulatory certainty.

SB 2065 represents the first step toward providing the legal and regulatory certainty necessary for the development and operation of underground manufactured cavern space. You will find those provision on lines 13-30 on page 6 and lines 1-13 on page 7 in the version that

passed the Senate. We look forward to working with this committee to improve the bill toward the ends I have described.

Mr. Chairman and members of the committee, thanks for this opportunity to testify and to work with you on creating a value-added energy future in North Dakota.



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2065

House Energy and Natural Resources Committee

March 4, 2021

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on Senate Bill 2065.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages five additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

The title of SB 2065, as amended, provides:

A BILL for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

SB 2065 includes an authorization for the Board to lease for underground storage of oil or gas. Lines 9 through 13 of SB 2065 (21.8029.02000) state:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.
The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

The Board can already establish an encumbrance, by entering into an easement agreement, for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons. The authority to issue easements has always been a part of the Board's governing law. N.D. Const. art. IX, § 3; N.D.C.C. § 15-01-02(1); *Fuller v. Bd. of Univ. & Sch. Lands*, 129 N.W. 1029 (N.D. 1911).

The North Dakota Constitution limits the leasing of trust land.

Article IX, Section 5 of the North Dakota Constitution states:

In all sales of lands subject to the provisions of this article all minerals therein, including but not limited to oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ores, or colloidal or other clays, shall be reserved and excepted to the state of North Dakota, **except that leases may be executed for the extraction and sale of such materials in such manner and upon such terms as the legislative assembly may provide.**

Article IX, Section 8 of the North Dakota Constitution states:

The legislative assembly shall have authority to provide by law for the leasing and lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. **Said lands shall only be leased for pasturage and meadow purposes and at a public auction** after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance. . .

The concern is that the Board can lease the surface estate, which includes the pore space, **only** for pasture and meadow purposes and **not** for oil and gas storage. However, the Board can enter into an encumbrance for storage.

We feel the addition of the proposed N.D.C.C. § 15-05-09.1, even in its permissive state, is unnecessary and could potentially cause future issues as the Board already has the authority to enter into an encumbrance by issuing easement agreements for storage.

We are respectfully requesting the following language, Lines 9 through 13 of SB 2065 (21.8029.02000), be deleted:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.
The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

We look forward to working with the Committee on these issues and would be happy to answer any questions.

Chairman Porter and Members of the Committee,

My name is James Leiman and I serve as the Commissioner of Commerce as well as Chairman of the EmPower Commission. On behalf of both organizations, I am here to testify in support of this legislation. Given the regulatory as well as financial dynamics that currently impact the energy sector, this bill is one of many steps the legislature is taking to create a clean energy economy as well as new value-added production opportunities. In lieu of echoing those that have testified in support of this legislation before me, I will keep it short and testify in support. Thank you.

Troy Coons
Northwest Landowners Association
Energy and Natural Resources
Testimony for SB 2065
March 4, 2021



Good morning Chairman Porter 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 over 560 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

The Northwest Landowners Association is not opposed to the goal that this bill is intended to accomplish, which is allowing for state regulation of underground storage of oil and gas. Although we appreciate that this bill recognizes the property rights that are being impacted and that the surface owner must be compensated for use of his pore space, we have some concerns with this bill that we hope can be addressed through an amendment.

As an example, the bill states that the industrial commission can create an exception to the requirements of this entire new chapter of the Century Code. We have pointed out to the bill's sponsors that this provision is likely unconstitutional. For landowners, the primary concern is that this would create a way to avoid paying surface owners compensation for their pore space, or it could mean that there is not a certain percentage of consenting surface owners required to amalgamate a storage reservoir. In other words, this is an example of an exception that could swallow the rule.

We also want to ensure that the landowners' rights to have access to the court system is protected. We do not want a situation where we have a regulatory agency determining compensation for all landowners. While we are not opposed to the commission setting up a process of its own, we want to ensure that landowners can choose to go to court as well.

These are examples of our primary concerns, and we do believe that the bill can be amended in a manner that accomplishes all of the goals of the industry and the commission, but also addresses landowner concerns. As the bill is currently written, we are opposed. But we hope you will give us time to work with the folks who proposed this legislation and allow us to take a cooperative approach on this bill to address our concerns so that the interests of all stakeholders can be addressed.

Sincerely,

Troy Coons, Chairman
Northwest Landowners Association

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/11/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

8:00 am

Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg.

Discussion Topics:

- Constitutionality
- Right to court system access
- 55% increase to 65% - Chapter 38-22
- Pore space
- Surface rights
- Scope of Authority
- Salt mineral Leases
- Lease or grant
- Minerals for underground storage
- Commission authority
- EERC concerns
- Storage to enhanced recovery
- CO2 – Chapter 38-08-25

Testimony:

Oral testimony Troy Coons, NW Area Landowners

Oral testimony Derrick Braaten, Bratten Law Firm

#8779 Lynn Helms, director, DMR

8:42 AM meeting adjourned.

Kathleen Davis, Committee Clerk

Page 1 lines 9-13**15 - 05 - 09.1. Authorization to lease for the underground storage of oil or gas .**

The board of university and school lands may grant easements or other encumbrances for Use of surface and pore space and may lease any minerals lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

Page 3 lines 8-9**38 - 25 - 02. Commission authority.**

8. After notice and hearing, to grant exceptions to this chapter's requirements and implementing rules as required to comply with the United States government regulations. for good cause.

Page 5 insert after line 13**38 - 25 - 05. Permit requirements - Storage in oil and gas reservoir**

17. The time when, conditions under which, and the method by which the storage facility must or may be dissolved and its affairs wound up; however, the storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners who are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission. In any proceeding to dissolve a storage facility permit, the commission must consider whether the facility has been permanently or temporarily abandoned, the length of time the facility has not operated or has failed to operate in a prudent manner, the likelihood the facility will resume full operations in the future, and any other matter as the commission may deem appropriate.

Page 6 insert after line 13

38 - 25 - 06. Permit requirements - Storage in saline reservoir or aquifer

14. The time when, conditions under which, and the method by which the storage facility must or may be dissolved and its affairs wound up; however, the storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners who are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

Page 7 insert after line 13

38 - 25 - 07. Permit requirements - Storage in salt cavern

15. The time when, conditions under which, and the method by which the storage facility must or may be dissolved and its affairs wound up; however, the storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and salt mineral owners who are credited with at least the percentage of interest required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE

3/18/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

8:00 am

Chairman Keiser opened the hearing.

Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- Determination of compensation
- Equitable compensation
- Eminent domain proceedings
- Fees
- Right of appeal
- Formula approach for compensation
- State lands
- Standard of review
- Arbitration
- Pore space compensation at 65%
- Unitization at 55%
- Time of payment
- Surface Damage Act
- Carbon sequestration
- Compensation guidelines,

Troy Coons, NW Area Landowners #9989

Oral Testimony Derrick Braaten, NW Landowners Association legal counsel

Oral Testimony Christopher Joseph, ND Legislative Council legal counsel

Additional written testimony:

#9993 Jodi Smith, ND State Trust Lands

8:54 AM meeting adjourned.

Kathleen Davis, Committee Clerk

Troy Coons
Northwest Landowners Association
House Energy and Natural Resources Committee
SB 2065 Subcommittee
March 18, 2021



Re: Amendments to Senate Bill 2065

Chairman George Keiser and Members of the Subcommittee:

We are submitting some redlined edits to SB 2065 with our proposed amendments. I will walk through each change to explain, and to explain the underlying concern it addresses as well.

Executive agencies cannot create wholesale exceptions to laws passed by the Legislative Assembly

On page two, in the new section 38-25-02, subsection 8 states that the Industrial Commission has the power “After notice and hearing, to grant exceptions to this chapter’s requirements and implementing rules for good cause.” We understand from Mr. Helms and his prior testimony to this subcommittee that this language arose in the context of the 2009 carbon sequestration laws, and a concern over changing federal standards. NWLA’s primary concern is that the requirements to equitably compensate landowners, and to obtain a certain percentage of consenting owners prior to amalgamation could simply be exceptions under this language. Additionally, and aside from our specific concerns, we do not believe that it is constitutional to allow an executive branch agency to create blanket exceptions to a statute passed by the legislative branch. This is essentially a wholesale delegation of the lawmaking power to the executive branch, and it is both concerning because it violates the bedrock principle of separation of powers at the core of constitutional law. The delegation of authority for exceptions to administrative rules may run into the same problems, but our amendment is only to exclude exceptions to the statute because issues with delegation of power under rulemaking are likely premature at this time.

Consent threshold at 65%

The next addition we have made is to the new NDCC § 38-25-05(6), NDCC § 38-25-06(5), and NDCC § 38-25-07(6), changing 55% to 65%. The carbon sequestration laws passed in 2009 require 60% (Mr. Helms corrected us that it is 60%, not 65%). We believe that 60%, and even 65% is insufficient. We are attempting to compromise at 65%. In our view, the authority to “amalgamate” as it is referred to in this law is questionable. Although there is a long history of authority under the police power to use pooling and spacing of minerals in certain situations, the justifications for pooling and unitizing mineral interests simply do not hold true for pore space. The reason for pooling and spacing is to ensure that we are not drilling unnecessary wells, and to ensure orderly development. The law developed this way because the former “rule of capture” meant that mineral owners with minerals in the same pool had only one remedy for drainage – to drill more wells. Because of the excessive number of wells that were being drilled in order to drain the pools of oil before your neighbor did, the states developed

conservation laws that allowed for forced-pooling and unitization. The courts have said that the state is at the limits of its police powers when it exercises this authority. We do not believe that the justification holds up for amalgamation of surface interests for gas storage, because it is a taking of that interest, whereas if you own minerals, even when you are force-pooled, you are guaranteed to receive your equitable share of the oil. In the interest of compromising, we are proposing to raise the percentage required to amalgamate the surface estate interests.

Minor clarification

In new section 38-25-08, we simply added language to clarify that the amalgamation authority is still subject to the applicant obtaining the minimum consent percentage. We assume this was the intent, so this change is only intended for clarification.

Liability

While we do not believe that a nonconsenting owner should have any legal liability for the operation of such a storage facility on their property, we would like to make this clear.

Compensation determined by neutral third party

Although the statute does require that pore space owners be paid equitable compensation, it does not explain how a pore space owner forces an operator to pay compensation if the pore space owner and operator cannot come to a voluntary agreement. At the last subcommittee meeting, Mr. Helms indicated that he does not believe an action in district court is workable because it would disrupt the permitting process and prevent any project from happening. We respectfully disagree. Gas storage projects are already occurring, and some are occurring in Wyoming under the jurisdiction of the Federal Energy Regulatory Commission. FERC allows for condemnation of interests, and whether it is gas storage or an interstate gas pipeline, the requirement for operators to pay compensation and to use the courts for condemnation of interests necessary for those projects has not stopped them. Indeed, many of the interstate gas pipelines and gas storage facilities have used eminent domain to some extent. Far from preventing these projects, the federal courts have generally allowed the projects to take immediate possession of land when necessary, even before the eminent domain proceeding has run its course.

It appears that the goal is to require landowners to seek compensation solely from the Industrial Commission if they cannot come to a voluntary agreement for use of their pore space. We believe a jury of North Dakotans are in a better position to make that determination for us. In his testimony in support of SB 2344 in 2019, Mr. Helms said the following: “... you can see this project stores and reproduces the gas at \$2.96, which means it can’t endure any additional burden from having to compensate for pore space being temporarily used for the storage of natural gas. The economics aren’t there.”¹ The Industrial Commission testified in support of SB 2344, which took away any rights to compensation for pore space. The Commission also took the position that “the economics aren’t there” to compensate pore space owners for use of their property for gas storage. These comments from the Commission, the

¹ <https://www.legis.nd.gov/files/resource/66-2019/library/sb2344.pdf>

very agency proposing to determine compensation for landowners, are deeply concerning. Landowners should not be forced to look only to this same agency for compensation.

We are not asking for anything more than the constitution provides, though. We would like access to the courts if we disagree with the determination made by the Commission on the amount of equitable compensation we are owed. If we disagree, our proposed amendment would allow us to file an appeal to the district court, where the court would hold a jury trial and we could attempt to make our case to a jury of North Dakotans. The important difference between our amendment, and the existing right to appeal any decision of the Commission, is that the standard appeal from the Commission requires the district court to sustain the Commission's decision in almost all cases.

That language for standard appeals from the Industrial Commission states that "Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its finds and conclusions are sustained by the law and by substantial and credible evidence."² The Supreme Court of ND has said that this only requires a Commission decision to have "substantial evidence" even if there might be more evidence on the other side.³

In other words, it's not a fair playing field if we disagree with the Commission. This standard makes sense if you are talking about deciding complicated issues in oil and gas regulation. It does not make sense when you are talking about deciding fair compensation for the use of *our property*. We are simply asking that we be able to go ask a jury to decide the issue if we do disagree. If the Commission awards compensation that is truly equitable, then perhaps these appeals will not be used very often. If the Commission gets it wrong, though, we should be able to make our case on level ground, and to a group of North Dakota citizens.

We have modeled our proposal on an existing law rather than recreating the wheel. In Minnesota, eminent domain proceedings allow for the appointment of a panel to decide compensation, and if the landowner disagrees, he can appeal to the district court and present his evidence to a jury. I have attached the Minnesota statutes, and a copy of North Dakota Century Code section 38-08-14, which is the section that provides for the standard appeal from Commission orders. Our proposal combines the basic and relevant provisions of these two laws. We have also used an appeal procedure rather than a separate legal action to address concerns about a determination of compensation holding up a permit. Additionally, we have stated plainly in our proposal that the permit decision stands regardless of an appeal regarding compensation.

We have truly tried to work toward a resolution with this bill. We are happy to see recognition of the right to compensation for owners of pore space, but as currently written Senate Bill 2065 does not provide adequate protections to ensure our property is not taken without equitable compensation. There are many other ways in which we would like to see this legislation

² N.D.C.C. § 38-08-14.

³ "Substantial evidence," for purposes of the weight of evidence test applicable to findings of Industrial Commission, is such relevant evidence as reasonable mind might accept as adequate to support conclusion; it is something less than greater weight of evidence and less than preponderance of evidence. NDCC 38-08-14, subd. 4. *Hanson v. Industrial Com'n of North Dakota*, 1991, 466 N.W.2d 587.

improved, but in the interest of compromise and reaching resolution, we are limiting our proposed amendments to those we find most critical. We request that you adopt these amendments in order to help find a balance.

Thank you for taking the time to consider our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Coons". The signature is fluid and cursive, with a prominent loop at the end.

Troy Coons, Chairman
Northwest Landowners Association

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university of school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

- .1... "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.

7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.
9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
10. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
11. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

- 1... Over all persons and property necessary to administer and enforce this chapter.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of **this** chapter.
8. After notice and hearing, to grant exceptions to implementing rules for good cause.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least sixty-five percent of the storage reservoir's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.
8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.
9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
15. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

- .1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least sixty-five percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.
10. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
11. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
12. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.

5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least sixty-five percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.
13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage if the minimum percentage of consent is obtained as specified in this chapter. No nonconsenting owner of pore space or surface estate may be held liable for money damages for personal or property damage proximately caused by the operation of the storage facility.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.

2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section."

Renumber accordingly

38-25-11. Appeal for determination of equitable compensation.

1. Any nonconsenting surface or pore space owner may appeal any decision of the Commission on the issue of the amount of equitable compensation owed to that owner for use of the owner's surface or pore space. The appeal may be taken to the district court for the county in which the property affected by the order is located or if the property is located in or underlies more than one county, to the district court for any county in which the property is located.
2. The owner must file a notice of appeal with the district court within sixty (60) days of notice of the Commission's decision. The notice of appeal will specify the decision or compensation determination appealed from and describe the real property valued. The notice of appeal must also be served on the storage operator via certified U.S. Mail.
3. In all such proceedings under this section where an appeal is taken to the district court from the decision or award of the Commission on the issue of the amount of equitable compensation owed to the owner, the owner will be entitled to a jury trial. Such appeal may be noticed for trial and tried as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require.
4. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow as taxable costs reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements. No expert witness fees, costs or disbursements shall be awarded to the storage operator or Commission regardless of who is the prevailing party.
5. The remedy provided in this section is cumulative and does not replace the right to appeal provided in N.D.C.C. 38-08-14. Appeals under this section are limited to the issue of the amount of equitable compensation owed to any nonconsenting surface or pore space owner whose property is being amalgamated under this chapter. The Commission's decision will remain in full and force and effect when an appeal is taken under this section.

West's North Dakota Century Code Annotated
Title 38. Mining and Gas and Oil Production
Chapter 38-08. Control of Gas and Oil Resources

NDCC, 38-08-14

§ 38-08-14. Party adversely affected may appeal to district court

Currentness

1. Any party adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.

2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-48.

3. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence.

Credits

S.L. 1953, ch. 227, § 15; S.L. 1963, ch. 263, §§ 1, 2; S.L. 1985, ch. 402, § 1; S.L. 1987, ch. 426, § 1; S.L. 1987, ch. 427, § 1; S.L. 1991, ch. 342, § 35; S.L. 2001, ch. 293, § 15; S.L. 2005, ch. 318, § 2.

Codifications: R.C. 1943, 1957 Supp., § 38-0814.

NDCC 38-08-14, ND ST 38-08-14

Current through the 2019 Regular Session of the 66th Legislative Assembly.

Minnesota Statutes Annotated

Eminent Domain; Local Depositories and Investments (Ch. 117-119)

Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.145

117.145. Appeal: deadline, notice, service, contents; by other parties

Currentness

At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

If any notice of appeal is filed, any other party may appeal within 50 days from the date that the report was filed by: (1) filing with the court administrator a notice of the appeal; and (2) serving the notice of appeal by mail, as provided in this section. Service by mail is deemed effective upon deposit of the notice in the United States mail, by first class mail, with postage prepaid, and addressed to each person served at the address shown in the petitioner's affidavit of mailing required by section 117.115, subdivision 2. Proof of service by mail of a notice of appeal shall be filed with the court administrator promptly following the mailing of any notice of appeal. The notice of appeal shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and grounds of the appeal, and if applicable, the notice required in section 117.086.

Credits

Laws 1971, c. 595, § 18. Amended by Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1995, c. 106, § 3.

M. S. A. § 117.145, MN ST § 117.145

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

Minnesota Statutes AnnotatedEminent Domain; Local Depositories and Investments (Ch. 117-119)Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.155

117.155. Payments; partial payment pending appeal

Currentness

Except as otherwise provided herein payment of damages awarded may be made or tendered at any time after the filing of the report; and the duty of the petitioner to pay the amount of any award or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the lands. If either the petitioner or any respondent appeals from an award, the respondent or respondents, if there is more than one, except encumbrancers having an interest in the award which has been appealed, may demand of the petitioner a partial payment of the award pending the final determination thereof, and it shall be the duty of the petitioner to comply with such demand and to promptly pay the amount demanded but not in excess of an amount equal to three-fourths of the award of damages for the parcel which has been appealed, less any payments made by petitioner pursuant to [section 117.042](#); provided, however, that the petitioner may by motion after due notice to all interested parties request, and the court may order, reduction in the amount of the partial payment for cause shown. If an appeal is taken from an award the petitioner may, but it cannot be compelled to, pay the entire amount of the award pending the final determination thereof. If any respondent or respondents having an interest in the award refuses to accept such payment the petitioner may pay the amount thereof to the court administrator of district court to be paid out under direction of the court. A partial or full payment as herein provided shall not draw interest from the condemner from the date of payment or deposit, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial or full payment. If any partial or full payment exceeds the amount of the award of compensation as finally determined, upon petitioner's motion, final judgment must be entered in the condemnation action in favor of the petitioner in the amount of the balance owed to the petitioner and is recoverable within the original condemnation action.

Credits

Laws 1971, c. 595, § 19. Amended by Laws 1980, c. 607, art. 19, § 2; Laws 1986, 1st Sp., c. 3, art. 1, § 82; [Laws 1997, c. 231, art. 16, § 3](#).

M. S. A. § 117.155, MN ST § 117.155

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

Minnesota Statutes Annotated

Eminent Domain; Local Depositories and Investments (Ch. 117-119)

Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.165

117.165. Jury trials; disclosure

Currentness

Subdivision 1. Appeal. In all eminent domain proceedings where an appeal is taken to the district court from the award of commissioners, the owner or the petitioner shall be entitled to a jury trial.

Subd. 2. Disclosure of witnesses, appraisals of damages. In the event of an appeal from the award of commissioners, and upon written demand by a party, the other party shall disclose under oath in writing within 15 days the appraisal witnesses the disclosing party proposes to call on its behalf at trial, and the amount of their appraisals of the damages. The demand shall be deemed continuing.

Subd. 3. Failure to disclose. A party shall not be permitted at the trial, except for just cause shown, to use any expert witness on the matter of damages whose name, address and appraisal was not disclosed to the other party following a written demand.

Credits

Laws 1971, c. 595, § 20.

M. S. A. § 117.165, MN ST § 117.165

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

Minnesota Statutes Annotated

Eminent Domain; Local Depositories and Investments (Ch. 117-119)

Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.175

117.175. Trial, burden of proof, costs

Currentness

Subdivision 1. Trial. Such appeal may be noticed for trial and tried except as herein otherwise provided as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require. Upon request of a party to such appeal, the jury or court shall show in the verdict or order the amount of the award of damages which is to reimburse the owner for the land taken and the amount of the award of damages, if any, which is to reimburse the owner for damages to the remainder tract not taken whether or not described in the petition. The amounts awarded to each person shall also be shown separately. A commissioner in a condemnation proceeding may be called by any party as a witness to testify as to the amount and the basis of the award of commissioners and may be examined and qualified as any other witness.

Subd. 2. Fees, costs, and disbursements. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow as taxable costs reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements. No expert witness fees, costs or disbursements shall be awarded to the petitioner regardless of who is the prevailing party.

Credits

Laws 1971, c. 595, § 21.

M. S. A. § 117.175, MN ST § 117.175

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2065

House Energy and Natural Resources Sub-Committee

March 18, 2021

Chairman Keiser and members of the House Energy and Natural Resources Sub-Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on Senate Bill 2065.

The Department of Trust Lands (Department) met with representatives of the Northwest Landowners Association, the North Dakota Petroleum Council, and the Department of Mineral Resources to review the Department's proposed amendment to SB 2065 (version 21.8029.02000). The Department proposes the following:

Page 1, line 1 remove "section 15-05-09.1 and"

Page 1, line 1, after "38-25" insert "and to amend and reenact sections 15-05-09 and 15-05-10,"

Page 1, line 7, replace "Section 15-05-09.1" with "Sections 15-05-09 and 15-05-10"

Page 1, line 7, replace "is created and enacted" with "are amended and reenacted"

Page 1, remove lines 9 through 13

Page 1, after line 8, insert:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally occurring elements and their compounds, and may make and establish rules and regulations for development, ~~and drilling,~~ and mining operations.

**15-05-10. Royalties from oil and gas leases - Rents from other leases
- Rules.**

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board.~~ The board may adopt rules regarding annual rental payments and royalties under this section.

The Northwest Landowners Association, the North Dakota Petroleum Council, and the Department of Mineral Resources have agreed to the Department's proposed amendments.

We look forward to working with the Sub-Committee on these issues and would be happy to answer any questions.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/19/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

8:00 am

Chairman Keiser opened the hearing. Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- Legal rights to spaces
- Access to Court system
- 55% for underground storage-unitized
- CO2 at 60% oil/gas unitization
- Pore space rights
- 9 sections of land-81 sq mil
- Project Tundra-Red Trail 60%
- Surface vs mineral rights
- 3 different kinds of storage space
- Marriage of ownership and geology
- Legal vs geology
- Constitutionality
- Surface vs minerals
- Pooling and unitizing
- Rule of capture issue
- Attorney's fees

Troy Coons, NW Area Landowners- #9989 with proposed amendment
Derrick Bratten, Bratten Law Firm - oral testimony
Lynn Helms, director, ND DMR - oral testimony
Chris Joseph, legal counsel, Legislative Council - oral testimony
Jodi Smith, ND Trust Lands – #9993 with proposed amendment

9:10 AM meeting adjourned.

Kathleen Davis, Committee Clerk

Troy Coons
Northwest Landowners Association
House Energy and Natural Resources Committee
SB 2065 Subcommittee
March 18, 2021



Re: Amendments to Senate Bill 2065

Chairman George Keiser and Members of the Subcommittee:

We are submitting some redlined edits to SB 2065 with our proposed amendments. I will walk through each change to explain, and to explain the underlying concern it addresses as well.

Executive agencies cannot create wholesale exceptions to laws passed by the Legislative Assembly

On page two, in the new section 38-25-02, subsection 8 states that the Industrial Commission has the power “After notice and hearing, to grant exceptions to this chapter’s requirements and implementing rules for good cause.” We understand from Mr. Helms and his prior testimony to this subcommittee that this language arose in the context of the 2009 carbon sequestration laws, and a concern over changing federal standards. NWLA’s primary concern is that the requirements to equitably compensate landowners, and to obtain a certain percentage of consenting owners prior to amalgamation could simply be exceptions under this language. Additionally, and aside from our specific concerns, we do not believe that it is constitutional to allow an executive branch agency to create blanket exceptions to a statute passed by the legislative branch. This is essentially a wholesale delegation of the lawmaking power to the executive branch, and it is both concerning because it violates the bedrock principle of separation of powers at the core of constitutional law. The delegation of authority for exceptions to administrative rules may run into the same problems, but our amendment is only to exclude exceptions to the statute because issues with delegation of power under rulemaking are likely premature at this time.

Consent threshold at 65%

The next addition we have made is to the new NDCC § 38-25-05(6), NDCC § 38-25-06(5), and NDCC § 38-25-07(6), changing 55% to 65%. The carbon sequestration laws passed in 2009 require 60% (Mr. Helms corrected us that it is 60%, not 65%). We believe that 60%, and even 65% is insufficient. We are attempting to compromise at 65%. In our view, the authority to “amalgamate” as it is referred to in this law is questionable. Although there is a long history of authority under the police power to use pooling and spacing of minerals in certain situations, the justifications for pooling and unitizing mineral interests simply do not hold true for pore space. The reason for pooling and spacing is to ensure that we are not drilling unnecessary wells, and to ensure orderly development. The law developed this way because the former “rule of capture” meant that mineral owners with minerals in the same pool had only one remedy for drainage – to drill more wells. Because of the excessive number of wells that were being drilled in order to drain the pools of oil before your neighbor did, the states developed

conservation laws that allowed for forced-pooling and unitization. The courts have said that the state is at the limits of its police powers when it exercises this authority. We do not believe that the justification holds up for amalgamation of surface interests for gas storage, because it is a taking of that interest, whereas if you own minerals, even when you are force-pooled, you are guaranteed to receive your equitable share of the oil. In the interest of compromising, we are proposing to raise the percentage required to amalgamate the surface estate interests.

Minor clarification

In new section 38-25-08, we simply added language to clarify that the amalgamation authority is still subject to the applicant obtaining the minimum consent percentage. We assume this was the intent, so this change is only intended for clarification.

Liability

While we do not believe that a nonconsenting owner should have any legal liability for the operation of such a storage facility on their property, we would like to make this clear.

Compensation determined by neutral third party

Although the statute does require that pore space owners be paid equitable compensation, it does not explain how a pore space owner forces an operator to pay compensation if the pore space owner and operator cannot come to a voluntary agreement. At the last subcommittee meeting, Mr. Helms indicated that he does not believe an action in district court is workable because it would disrupt the permitting process and prevent any project from happening. We respectfully disagree. Gas storage projects are already occurring, and some are occurring in Wyoming under the jurisdiction of the Federal Energy Regulatory Commission. FERC allows for condemnation of interests, and whether it is gas storage or an interstate gas pipeline, the requirement for operators to pay compensation and to use the courts for condemnation of interests necessary for those projects has not stopped them. Indeed, many of the interstate gas pipelines and gas storage facilities have used eminent domain to some extent. Far from preventing these projects, the federal courts have generally allowed the projects to take immediate possession of land when necessary, even before the eminent domain proceeding has run its course.

It appears that the goal is to require landowners to seek compensation solely from the Industrial Commission if they cannot come to a voluntary agreement for use of their pore space. We believe a jury of North Dakotans are in a better position to make that determination for us. In his testimony in support of SB 2344 in 2019, Mr. Helms said the following: “... you can see this project stores and reproduces the gas at \$2.96, which means it can’t endure any additional burden from having to compensate for pore space being temporarily used for the storage of natural gas. The economics aren’t there.”¹ The Industrial Commission testified in support of SB 2344, which took away any rights to compensation for pore space. The Commission also took the position that “the economics aren’t there” to compensate pore space owners for use of their property for gas storage. These comments from the Commission, the

¹ <https://www.legis.nd.gov/files/resource/66-2019/library/sb2344.pdf>

very agency proposing to determine compensation for landowners, are deeply concerning. Landowners should not be forced to look only to this same agency for compensation.

We are not asking for anything more than the constitution provides, though. We would like access to the courts if we disagree with the determination made by the Commission on the amount of equitable compensation we are owed. If we disagree, our proposed amendment would allow us to file an appeal to the district court, where the court would hold a jury trial and we could attempt to make our case to a jury of North Dakotans. The important difference between our amendment, and the existing right to appeal any decision of the Commission, is that the standard appeal from the Commission requires the district court to sustain the Commission's decision in almost all cases.

That language for standard appeals from the Industrial Commission states that "Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its finds and conclusions are sustained by the law and by substantial and credible evidence."² The Supreme Court of ND has said that this only requires a Commission decision to have "substantial evidence" even if there might be more evidence on the other side.³

In other words, it's not a fair playing field if we disagree with the Commission. This standard makes sense if you are talking about deciding complicated issues in oil and gas regulation. It does not make sense when you are talking about deciding fair compensation for the use of *our property*. We are simply asking that we be able to go ask a jury to decide the issue if we do disagree. If the Commission awards compensation that is truly equitable, then perhaps these appeals will not be used very often. If the Commission gets it wrong, though, we should be able to make our case on level ground, and to a group of North Dakota citizens.

We have modeled our proposal on an existing law rather than recreating the wheel. In Minnesota, eminent domain proceedings allow for the appointment of a panel to decide compensation, and if the landowner disagrees, he can appeal to the district court and present his evidence to a jury. I have attached the Minnesota statutes, and a copy of North Dakota Century Code section 38-08-14, which is the section that provides for the standard appeal from Commission orders. Our proposal combines the basic and relevant provisions of these two laws. We have also used an appeal procedure rather than a separate legal action to address concerns about a determination of compensation holding up a permit. Additionally, we have stated plainly in our proposal that the permit decision stands regardless of an appeal regarding compensation.

We have truly tried to work toward a resolution with this bill. We are happy to see recognition of the right to compensation for owners of pore space, but as currently written Senate Bill 2065 does not provide adequate protections to ensure our property is not taken without equitable compensation. There are many other ways in which we would like to see this legislation

² N.D.C.C. § 38-08-14.

³ "Substantial evidence," for purposes of the weight of evidence test applicable to findings of Industrial Commission, is such relevant evidence as reasonable mind might accept as adequate to support conclusion; it is something less than greater weight of evidence and less than preponderance of evidence. NDCC 38-08-14, subd. 4. *Hanson v. Industrial Com'n of North Dakota*, 1991, 466 N.W.2d 587.

improved, but in the interest of compromise and reaching resolution, we are limiting our proposed amendments to those we find most critical. We request that you adopt these amendments in order to help find a balance.

Thank you for taking the time to consider our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy Coons', with a stylized flourish at the end.

Troy Coons, Chairman
Northwest Landowners Association

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university of school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

- .1... "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.

7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.
9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
10. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
11. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

- 1... Over all persons and property necessary to administer and enforce this chapter.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of **this** chapter.
8. After notice and hearing, to grant exceptions to implementing rules for good cause.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least sixty-five percent of the storage reservoir's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.
8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.
9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
15. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

- .1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least sixty-five percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.
10. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
11. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
12. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.

5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least sixty-five percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.
13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage if the minimum percentage of consent is obtained as specified in this chapter. No nonconsenting owner of pore space or surface estate may be held liable for money damages for personal or property damage proximately caused by the operation of the storage facility.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

- .1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.

2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section."

Renumber accordingly

38-25-11. Appeal for determination of equitable compensation.

1. Any nonconsenting surface or pore space owner may appeal any decision of the Commission on the issue of the amount of equitable compensation owed to that owner for use of the owner's surface or pore space. The appeal may be taken to the district court for the county in which the property affected by the order is located or if the property is located in or underlies more than one county, to the district court for any county in which the property is located.
2. The owner must file a notice of appeal with the district court within sixty (60) days of notice of the Commission's decision. The notice of appeal will specify the decision or compensation determination appealed from and describe the real property valued. The notice of appeal must also be served on the storage operator via certified U.S. Mail.
3. In all such proceedings under this section where an appeal is taken to the district court from the decision or award of the Commission on the issue of the amount of equitable compensation owed to the owner, the owner will be entitled to a jury trial. Such appeal may be noticed for trial and tried as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require.
4. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow as taxable costs reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements. No expert witness fees, costs or disbursements shall be awarded to the storage operator or Commission regardless of who is the prevailing party.
5. The remedy provided in this section is cumulative and does not replace the right to appeal provided in N.D.C.C. 38-08-14. Appeals under this section are limited to the issue of the amount of equitable compensation owed to any nonconsenting surface or pore space owner whose property is being amalgamated under this chapter. The Commission's decision will remain in full and force and effect when an appeal is taken under this section.

West's North Dakota Century Code Annotated
Title 38. Mining and Gas and Oil Production
Chapter 38-08. Control of Gas and Oil Resources

NDCC, 38-08-14

§ 38-08-14. Party adversely affected may appeal to district court

Currentness

1. Any party adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.

2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-48.

3. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence.

Credits

S.L. 1953, ch. 227, § 15; S.L. 1963, ch. 263, §§ 1, 2; S.L. 1985, ch. 402, § 1; S.L. 1987, ch. 426, § 1; S.L. 1987, ch. 427, § 1; S.L. 1991, ch. 342, § 35; S.L. 2001, ch. 293, § 15; S.L. 2005, ch. 318, § 2.

Codifications: R.C. 1943, 1957 Supp., § 38-0814.

NDCC 38-08-14, ND ST 38-08-14

Current through the 2019 Regular Session of the 66th Legislative Assembly.

Minnesota Statutes Annotated

Eminent Domain; Local Depositories and Investments (Ch. 117-119)

Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.145

117.145. Appeal: deadline, notice, service, contents; by other parties

Currentness

At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

If any notice of appeal is filed, any other party may appeal within 50 days from the date that the report was filed by: (1) filing with the court administrator a notice of the appeal; and (2) serving the notice of appeal by mail, as provided in this section. Service by mail is deemed effective upon deposit of the notice in the United States mail, by first class mail, with postage prepaid, and addressed to each person served at the address shown in the petitioner's affidavit of mailing required by section 117.115, subdivision 2. Proof of service by mail of a notice of appeal shall be filed with the court administrator promptly following the mailing of any notice of appeal. The notice of appeal shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and grounds of the appeal, and if applicable, the notice required in section 117.086.

Credits

Laws 1971, c. 595, § 18. Amended by Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1995, c. 106, § 3.

M. S. A. § 117.145, MN ST § 117.145

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

Minnesota Statutes Annotated

Eminent Domain; Local Depositories and Investments (Ch. 117-119)

Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.155

117.155. Payments; partial payment pending appeal

Currentness

Except as otherwise provided herein payment of damages awarded may be made or tendered at any time after the filing of the report; and the duty of the petitioner to pay the amount of any award or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the lands. If either the petitioner or any respondent appeals from an award, the respondent or respondents, if there is more than one, except encumbrancers having an interest in the award which has been appealed, may demand of the petitioner a partial payment of the award pending the final determination thereof, and it shall be the duty of the petitioner to comply with such demand and to promptly pay the amount demanded but not in excess of an amount equal to three-fourths of the award of damages for the parcel which has been appealed, less any payments made by petitioner pursuant to section 117.042; provided, however, that the petitioner may by motion after due notice to all interested parties request, and the court may order, reduction in the amount of the partial payment for cause shown. If an appeal is taken from an award the petitioner may, but it cannot be compelled to, pay the entire amount of the award pending the final determination thereof. If any respondent or respondents having an interest in the award refuses to accept such payment the petitioner may pay the amount thereof to the court administrator of district court to be paid out under direction of the court. A partial or full payment as herein provided shall not draw interest from the condemner from the date of payment or deposit, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial or full payment. If any partial or full payment exceeds the amount of the award of compensation as finally determined, upon petitioner's motion, final judgment must be entered in the condemnation action in favor of the petitioner in the amount of the balance owed to the petitioner and is recoverable within the original condemnation action.

Credits

Laws 1971, c. 595, § 19. Amended by Laws 1980, c. 607, art. 19, § 2; Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1997, c. 231, art. 16, § 3.

M. S. A. § 117.155, MN ST § 117.155

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

Minnesota Statutes Annotated

Eminent Domain; Local Depositories and Investments (Ch. 117-119)

Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.165

117.165. Jury trials; disclosure

Currentness

Subdivision 1. Appeal. In all eminent domain proceedings where an appeal is taken to the district court from the award of commissioners, the owner or the petitioner shall be entitled to a jury trial.

Subd. 2. Disclosure of witnesses, appraisals of damages. In the event of an appeal from the award of commissioners, and upon written demand by a party, the other party shall disclose under oath in writing within 15 days the appraisal witnesses the disclosing party proposes to call on its behalf at trial, and the amount of their appraisals of the damages. The demand shall be deemed continuing.

Subd. 3. Failure to disclose. A party shall not be permitted at the trial, except for just cause shown, to use any expert witness on the matter of damages whose name, address and appraisal was not disclosed to the other party following a written demand.

Credits

Laws 1971, c. 595, § 20.

M. S. A. § 117.165, MN ST § 117.165

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

Minnesota Statutes Annotated

Eminent Domain; Local Depositories and Investments (Ch. 117-119)

Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.175

117.175. Trial, burden of proof, costs

Currentness

Subdivision 1. Trial. Such appeal may be noticed for trial and tried except as herein otherwise provided as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require. Upon request of a party to such appeal, the jury or court shall show in the verdict or order the amount of the award of damages which is to reimburse the owner for the land taken and the amount of the award of damages, if any, which is to reimburse the owner for damages to the remainder tract not taken whether or not described in the petition. The amounts awarded to each person shall also be shown separately. A commissioner in a condemnation proceeding may be called by any party as a witness to testify as to the amount and the basis of the award of commissioners and may be examined and qualified as any other witness.

Subd. 2. Fees, costs, and disbursements. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow as taxable costs reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements. No expert witness fees, costs or disbursements shall be awarded to the petitioner regardless of who is the prevailing party.

Credits

Laws 1971, c. 595, § 21.

M. S. A. § 117.175, MN ST § 117.175

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2065

House Energy and Natural Resources Sub-Committee

March 18, 2021

Chairman Keiser and members of the House Energy and Natural Resources Sub-Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on Senate Bill 2065.

The Department of Trust Lands (Department) met with representatives of the Northwest Landowners Association, the North Dakota Petroleum Council, and the Department of Mineral Resources to review the Department's proposed amendment to SB 2065 (version 21.8029.02000). The Department proposes the following:

Page 1, line 1 remove "section 15-05-09.1 and"

Page 1, line 1, after "38-25" insert "and to amend and reenact sections 15-05-09 and 15-05-10,"

Page 1, line 7, replace "Section 15-05-09.1" with "Sections 15-05-09 and 15-05-10"

Page 1, line 7, replace "is created and enacted" with "are amended and reenacted"

Page 1, remove lines 9 through 13

Page 1, after line 8, insert:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally occurring elements and their compounds, and may make and establish rules and regulations for development, ~~and drilling,~~ and mining operations.

**15-05-10. Royalties from oil and gas leases - Rents from other leases
- Rules.**

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board.~~ The board may adopt rules regarding annual rental payments and royalties under this section.

The Northwest Landowners Association, the North Dakota Petroleum Council, and the Department of Mineral Resources have agreed to the Department's proposed amendments.

We look forward to working with the Sub-Committee on these issues and would be happy to answer any questions.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/22/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.
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8:00 AM

Chairman Keiser opened the hearing. Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- Just compensation
- Access to the Court
- Constitutionality
- Unlawful delegation of authority
- Right to a jury trial
- 28-32 procedure- adjudicative proceeding
- Path to litigation
- 38-08-14 separate standard
- Salt cavern storage
- Saline aquifer storage
- Mining salt for pore space
- Lease for mining and encumbrance/compensation
- Definition of equitably compensated
- Protections and damages

Troy Coons NW Landowners Association #10267

Christoher Joseph, ND Legislative Council oral testimony

Chairman Keiser # 10272 and 10273

Derrick Braaten Legal Counsel NW Landowners Association answered questions

Shane Goettle Bakken Midstream Natural Gas LLC oral testimony

Brady Pelton, ND Petroleum Council oral testimony

Jody Smith Commissioner ND Department of Lands #10268

8:58 AM meeting adjourned.

Kathleen Davis, Committee Clerk

Troy Coons
Northwest Landowners Association
House Energy and Natural Resources Committee
SB 2065 Subcommittee
March 21, 2021



Re: Senate Bill 2065

Chairman George Keiser and Members of the Subcommittee:

We are writing to address our request for an amendment to SB 2065 to allow landowners a trial by a jury of our peers for damages arising from forced amalgamation of pore space. While we understand that there have been some reservations with the idea of a jury trial de novo following a Commission determination on compensation, we want to ensure that our position has been clearly stated before the subcommittee takes action. More importantly, since we last spoke our legal counsel has conducted additional research in the process of trying to explain our own proposal, as well as draft an alternative appeal procedure with a normal standard of review from NDCC Chapter 28-32. In conducting this research, our legal counsel has concluded that it is unconstitutional to deny the right to have a jury determine compensation for a nonconsenting amalgamated pore space owner.

We do not believe it is legal to allow the Industrial Commission to determine the compensation owed to a landowner for a forced “amalgamation” of their property interest unless that landowner has the right to a trial by jury de novo. A jury must decide just compensation. Both the North Dakota constitution, Art. 1, § 16, and N.D.C.C. § 32-15-01 state clearly: “Compensation shall be ascertained by a jury, unless a jury be waived.”

To be clear, the forced amalgamation of the pore space interest is a taking of private property. It is questionable whether it is a taking of private property for a public use, but that will depend on the nature of each individual project and that project’s proponent (a public utility might have less risk in this regard, for example). The reason we are not simply saying that this is an unconstitutional taking is that, as we have always said, private property may not be taken without just compensation. But “just compensation” has requirements of its own, and is not simply synonymous with “some compensation.” There are legal requirements, and if the legal requirements for an award of “just compensation” are not met, it is an illegal taking.

It is an illegal taking to simply remove any right to compensation for the pore space property interest. SB 2065, rather than entirely removing the right to compensation, states that the landowner will get “equitable” compensation, something that is undefined. Therefore, even if the Commission moves ahead with its proceeding and issues an award of what it believes to be “equitable” compensation, this does not necessarily satisfy the constitutional requirement that property cannot be taken without “just” compensation being paid, and it is a jury, unless waived by the landowner, who must determine this. It is also clear that the goal of the Commission here is to ensure that landowners receive less than they would otherwise, so it is almost certain that the first time this statute is used the landowner will not receive just compensation, and we know compensation will not be determined by a jury.

We are willing to agree to the Commission having its own process, and we think that this can be done constitutionally, but only if the landowners have the ability to demand a jury trial if they are unhappy with that process. Otherwise the landowners are having their right to a jury trial and their rights to open access to the courts barred and the legislation is unconstitutional.

Putting this aside, we would also like to note that the typical appeal from an administrative agency, and the unique appeal standard for the Industrial Commission, are not appropriate. To use an example that has been discussed, Workforce Safety Insurance issues compensation awards for workers' compensation claims, and while there are appeals allowed, the law is very clear that no separate legal actions are allowed. The Century Code chapter created for WSI starts out by stating: "sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction of the courts of the state over those causes are abolished except as is otherwise provided in this title. A civil action or civil claim arising under this title, which is subject to judicial review, must be reviewed solely on the merits of the action or claim." Even in this arena, abrogating all rights to civil actions is an incredibly broad action for a legislature to take. It is acceptable, however, because the legislature simultaneously created a comprehensive framework to fund and pay those claims, along with specific rules on how those compensation awards would be determined. As such, WSI is really a unique agency administering a unique law, and because it is an agency and law designed with the actual and primary purpose of assessing and paying such compensation awards under a detailed rubric for decision-making, it withstood constitutional scrutiny that would arise from taking away other remedies (but note that there is no constitutional guarantee of a jury for worker's compensation claims, so the threshold inquiry was different in that context).

Additionally, it makes sense that typical decisions of administrative agencies need to have some degree of finality. For that reason, we generally only have appeals from administrative agency determinations, with somewhat deferential standards of review. In the typical context, this makes sense. Indeed, the amendment proposed by NWLA does not change this for any of the decisions made by the Commission. Even if a landowner files for a jury trial to determine compensation, our language states clearly that "Appeals under this section are limited to the issue of the amount of equitable compensation owed to any nonconsenting surface or pore space owner whose property is being amalgamated under this chapter. The Commission's decision will remain in full and force and effect when an appeal is taken under this section."

We understand that the industry is looking for certainty, and we understand that there is perhaps less certainty with a civil jury trial than with the Industrial Commission determining compensation. Our concern is the same, however – we know that the greater certainty with damages being awarded by the Commission comes down to a plain truth – the Commission is going to award less compensation. If that is not true, and the Commission awards truly fair and adequate compensation, then these jury trials should be rare. Most projects with some form of eminent domain authority still manage to obtain most landowner consent required without use of condemnation. And if projects are not successful without using condemnation, it should

perhaps reflect more on that project and its approach with landowners than it does on the landowners who were approached.

Again, we are truly trying to bend over backwards to only ask for what we consider to be the minimum amendments needed to protect our constitutional rights, and our property. We regret that we are just raising this significant constitutional issue now, but would only note that we have had very little communication from proponents of the bill and we are doing our best to research and review the legislation being proposed.

We do view a right to appeal under the standard of review in N.D.C.C. § 28-32-46 rather than 38-08-14 to be a far superior remedy. If this were combined with some definition for “equitable” compensation so that there was an objective standard by which a reviewing court could assess the Commission’s decision, we would be more comfortable. Having the hearings before the Commission conducted by the Office of Administrative Hearings would make the process more objective. If a landowner taking such an appeal could recover fees and expenses, this would also make the legislation much better in our view. These changes would not, however, address the constitutional right to a jury for determination of just compensation. So while we would certainly support such an amendment and believe it would be far superior to what exists now, we simply cannot negotiate on constitutional rights. Even if we did, the constitution controls.

With respect to our proposal, we asked our legal counsel to look into the Minnesota law on which we based our proposed amendment and it was this research that led us to the conclusion that denying the right to a jury trial is unconstitutional. Putting that aside, our legal counsel found that numerous other states have similar laws and frameworks for such claims. Many states likely have such a system in recognition of how many states also have a right to a jury trial for these types of compensation claims. We are providing two memos from legal counsel describing similar laws in other states along with this letter.

We look forward to continuing our discussion and negotiating in good faith to find a resolution that produces constitutional legislation and addresses the concerns of all stakeholders.

Thank you for taking the time to consider our comments.

Sincerely,



Troy Coons, Chairman
Northwest Landowners Association

Montana

70-30-304. Appeal to district court from assessment of condemnation commissioners - Mont. Code Ann. § 70-30-304

The plaintiff grounds its contention upon the proposition that section 7344 authorizes an appeal from “any assessment,” and argues that, since under section 7341 the commissioners are required to “ascertain and assess” the various elements of damage (but not the total), each finding made in accordance with that section, constitutes “an assessment” from which appeal will lie. We think this is untenable. The very section (7344) on which the right of appeal depends, provides that the appeal-

“shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the damages to which appellant may be entitled by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners.”

This clearly implies that not only is the case to be tried **de novo** before the jury, but it is to be tried **de novo** as to all the elements which go to make up “the damages,” to which the owner may be entitled “by reason of the appropriation of his property.” Again:

“Upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that *** the right *** to take, use and appropriate the property described in such verdict or assessment *** shall *** be and remain in the plaintiff. *** In case the party appealing from the award of commissioners *** shall not succeed *46 in increasing the amount of damages finally awarded to him in such proceeding, he shall not recover the costs of such appeal.”

These expressions make it obvious, in our opinion, that the words “any assessment,” as used in the first sentence of the section, are intended to refer, not to the findings or specifications going to make up the award, but to the award itself-the total assessment of damages as made pursuant to section 7341.

“That our statutes require a trial de novo has been settled in *Great Northern Ry. Co. v. Fiske*, 54 Mont. 231, 169 P. 44.” *State v. Bare*, 141 Mont. 288, 294, 377 P.2d 357, 360 (1962)

Indiana

Indiana has court appointed appraisers. The section describing this process is found below.

The court, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint:

- (1) one (1) disinterested freeholder of the county; and
 - (2) two (2) disinterested appraisers licensed under IC 25-34.1;
- who are residents of Indiana to assess the damages, or the benefits and damages, as the case may be, that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property.

Ind. Code Ann. § 32-24-1-7(c). “[I]f exceptions are filed within the requisite period, the issue of the defendants' compensation and damages is formed as a matter of law upon the filing of those exceptions. *Van Sickle v. Kokomo Water Works Co.* (1959) 239 Ind. 612, 616, 158 N.E.2d 460, 462. The trial is then *de novo*. *Toledo & Chicago Interurban Railway v. Wilson* (1909) 44 Ind.App. 213, 86 N.E. 508, 88 N.E. 864.” *Best Realty Corp. v. State*, 400 N.E.2d 1204, 1205 (Ind. Ct. App. 1980)

Alaska

“(5) Appeal From Master's Report. (A) Appeal in the form of a trial *de novo* may be taken from the master's report by filing a memorandum to set trial within the following time limits:

(i) the plaintiff may appeal within ten days after service of the master's report; and

(ii) a defendant may appeal within fifteen days after service of the master's report.

(B) The memorandum to set trial must contain the information required by Rule 40(b)(1)(a)-(d), (f), and (g).

(6) Demand for Jury Trial. (A) If all parties to the action have waived appointment of a master under subparagraph (h)(3), a jury trial may be had if demand is made by any party within twenty days after service of the Notice of Waiver of Master's Hearing upon that party. Otherwise, trial will be by the court.” Alaska R. Civ. P. 72

The proceeding before the jury is truly *de novo* in nature. *Inglima v. Alaska State Hous. Auth.*, 462 P.2d 1002, 1004 (Alaska 1970)

Colorado

“Unless a jury is requested by the owner of the property as provided in section 38-1-106, the court shall appoint a board of commissioners of not less than three disinterested and impartial freeholders to determine compensation in the manner provided in this article to be allowed to the owner and persons interested in the lands, real estate, claims, or other property proposed to be taken or damaged in such county for the purposes alleged in the petition.” Colo. Rev. Stat. Ann. § 38-1-105 .

Not sure if *de novo* review

New Mexico

“If appraisers have not been appointed pursuant to Section 42A-1-5 NMSA 1978 and if the court is satisfied that proper notice of the petition has been given, it shall appoint up to three disinterested commissioners who are residents of the county in which the property or a part thereof is situated and who are familiar with the property values in the area of the proposed taking. The commissioners shall assess the damages which the condemnees may severally sustain by reason of the proposed taking and make a report to the clerk of the court within thirty days, unless extended by the court for good cause shown, setting forth the amount of the damages. The clerk of the court shall file the report prepared by the commissioners. Should more than one condemnee be included in the petition, the commissioners shall state the damages

allowed each condemnee separately, together with a specific description of the property for which such damages are assessed.” N.M. Stat. Ann. § 42A-1-19

“A. Within twenty days after the filing of the petition if an appraisal has been prepared pursuant to Section 42A-1-5 NMSA 1978 or after the final confirmation of the report of the commissioners, a party may demand trial of any issues remaining in the cause. The cause shall be tried de novo, and unless waived, the parties shall be entitled to a trial by jury.

B. If no issues other than compensation are raised, the court shall render a final judgment awarding the property to the condemnor contingent upon payment of the awarded compensation to the condemnee. In all other cases, the court shall render final judgment upon decision of all contested questions of law and fact.” N.M. Stat. Ann. § 42A-1-21

“The proposition was stated without any citation to authority and is at odds with the Yandell majority's holding that, once confirmation of the commissioner's report is appealed for trial de novo, the report as **1284 *567 well as the act of confirmation become functus officio. Id. at 453, 367 P.2d at 941. Although the trial de novo is not the beginning of a new action, it is a new and distinct adjudication that requires a fresh presentation of evidence.” *Yates Petroleum Corp. v. Kennedy*, 1989-NMSC-039, ¶ 9, 108 N.M. 564, 566–67, 775 P.2d 1281, 1283–84

“Giving the words of the statute their ordinary and usual meaning, *State ex rel. State Highway Comm'n v. Marquez*, 67 N.M. 353, 359, 355 P.2d 287, 291 (1960), we hold that Section 42A–1–21 provides the right to a jury trial on all issues in condemnation actions brought under the Code.” *Santa Fe S. Ry., Inc. v. Baucis Liab. Co.*, 1998-NMCA-002, ¶ 10, 124 N.M. 430, 432, 952 P.2d 31, 33

Texas

“(a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. The judge appointing the special commissioners shall give preference to persons agreed on by the parties. The judge shall provide each party a reasonable period to strike one of the three commissioners appointed by the judge. If a person fails to serve as a commissioner or is struck by a party to the suit, the judge shall appoint a replacement.” Tex. Prop. Code Ann. § 21.014.

“The trial court's function in a condemnation proceeding is “appellate” in the sense that the case is first considered by the special commissioners, and hence, as we noted in *Nelson*, the court's jurisdiction “is appellate as distinguished from original or concurrent.”¹¹ The court's jurisdiction is not, however, “appellate” in the sense that the evidence is fixed in the record of the proceedings below and the court is confined to that paper record, as ordinarily occurs when an appellate court reviews a case. Quite the opposite, the statutory scheme makes no provision for the commissioners' hearing to be recorded, and provides that “[i]f a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.”¹² In other words, the proceedings that occurred before the special commissioners are not considered, and the case is tried to the court de novo. There is

no option typically available to an appellate tribunal to simply affirm the special commissioners' award; instead, “[u]pon the filing of objections, the Special Commissioners' award is vacated and the administrative proceeding converts into a normal pending cause....”¹³ We agree with TxDOT that it is incongruous to label the trial court as appellate in the ordinary sense “given that its function is not to review and correct, but to determine the value of the property anew.”

⁴ A trial de novo, conducted “in the same manner as other civil causes,” is not confined to the same evidence that was presented at the administrative phase. By analogy, the statute governing judicial review of final decisions of state agencies provides that if judicial review is by trial de novo, “the reviewing court shall try each issue of fact and law in the manner that applies to other civil suits in this state as though there had not been an intervening agency action or decision,” and generally may not even “admit in evidence the fact of prior state agency action.”¹⁴

Similarly, in a condemnation case, the commissioners' award is generally not admissible in the trial court proceeding.” *PR Invs. & Specialty Retailers, Inc. v. State*, 251 S.W.3d 472, 476 (Tex. 2008).

Tennessee

“The jury will consist of five (5) persons, unless the parties agree upon a different number, and either party may challenge, for cause or peremptorily, as in other civil cases.” Tenn. Code Ann. § 29-16-108

“The jurors shall not be interested in the same or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff.” Tenn. Code Ann. § 29-16-109.

“(a) Either party may also appeal from the finding of the jury, and, on giving security for the costs, have a trial anew, before a jury in the usual way.

(b) In all cases where the right to condemn is not contested and the sole question before the jury is that of damages the property owner shall be entitled to open and close the argument before the court and jury.” Tenn. Code Ann. § 29-16-118

“Following the trial court's confirmation of the jury of view's report, Platinum filed an appeal requesting a *de novo* jury trial pursuant to Tennessee Code Annotated section 29–16–118. A number of pre-trial matters soon ensued, including the filing of several motions in limine. After these pre-trial matters were resolved, a trial was held over the course of several dates in August 2016. Upon the conclusion of the trial proceedings, the jury returned a verdict finding that the value of the Property was \$2,032,380.00 at the time of the taking.” *Metro. Dev. & Hous. Agency v. Nashville Downtown Platinum, LLC*, No. M201700450COAR3CV, 2017 WL 6210855, at *1 (Tenn. Ct. App. Dec. 8, 2017)

Other state eminent domain proceedings have used methods similar to Minnesota in determining compensation. While each statute has its variations, like Minnesota, other states will ask courts to first appoint a small body of disinterested individuals to investigate just compensation. *See* Mont. Code Ann. § 70-30-207 (“The court shall appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived”); Ind. Code Ann. § 32-24-1-7(c) (directing the court to appoint “one disinterested freeholder of the count . . . [and] . . . two disinterested appraisers”); N.M. Stat. Ann. § 42A-1-19 (“If appraisers have not been appointed pursuant to Section 42A-1-5 NMSA 1978 and if the court is satisfied that proper notice of the petition has been given, it shall appoint up to three disinterested commissioners who are residents of the county in which the property or a part thereof is situated and who are familiar with the property values in the area of the proposed taking.”); Tex. Prop. Code Ann. § 21.014 (“The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned.”); Tenn. Code Ann. §§ 29-16-108-109 (stating that the “jury will consist of five (5) persons, unless the parties agree upon a different number, and either party may challenge, for cause or peremptorily, as in other civil cases” and that the jurors “may be nominated by the court, selected by consent of parties, or summoned by the sheriff.”).

Whether referred to as commissioners, appraisers, or jurors, the compensation determinations of these bodies are subject to *de novo* review at the district court. *See State v. Bare*, 377 P.2d 357, 360 (1962) (confirming that the Montana eminent domain statute requires “a trial de novo” and that in a previous case “this court approved the use of commissioners testifying as witnesses so long as the award itself was not testified to”). Indiana courts have

similarly stated that “if exceptions are filed within the requisite period, the issue of the defendants' compensation and damages is formed as a matter of law upon the filing of those exceptions. The trial is then de novo.” *Best Realty Corp. v. State*, 400 N.E.2d 1204, 1205 (Ind. Ct. App. 1980) (internal citations omitted). New Mexico courts have also found that their eminent domain statutes provide the right to trial on all issues. *See Santa Fe S. Ry., Inc. v. Baucis Liab. Co.*, 952 P.2d 31, 33 (N.M. Ct. App. 1997); *see also Yates Petroleum Corp. v. Kennedy*, 775 P.2d 1281, 1283–84 (N.M. 1989) (reviewing New Mexico eminent domain statutes to find that “[a]lthough the trial de novo is not the beginning of a new action, it is a new and distinct adjudication that requires a fresh presentation of evidence.”). Texas courts have described the trial court’s “function” in an eminent domain proceeding as “appellate,” even though the evidence is not “fixed in the record of the proceedings below.” *PR Invs. & Specialty Retailers, Inc. v. State*, 251 S.W.3d 472, 476 (Tex. 2008). “In other words, the proceedings that occurred before the special commissioners are not considered, and the case is tried to the court de novo.” *Id.* Tennessee, likewise, allows for a “*de novo* jury trial pursuant to Tennessee Code Annotated section 29–16–118” following the “jury of view’s report.” *Metro. Dev. & Hous. Agency v. Nashville Downtown Platinum, LLC*, No. M201700450COAR3CV, 2017 WL 6210855, at *1 (Tenn. Ct. App. Dec. 8, 2017). Finally, the Alaska eminent domain statute contains a provision expressly granting parties the right to appeal “in the form of a trial de novo” from the report of the court appointed master. AS § 09.55.300(b) (directing the court to appoint a master “to determine the amount to be paid by the plaintiffs to each owner or other person interested in the property as compensation and damages by reason of the appropriation of the property” unless all parties object to the master and prefer a jury trial); Alaska R. Civ. P. 72(h)(5)(A) (“Appeal in the

form of a trial de novo may be taken from the master's report by filing a memorandum to set trial . . .”).

21.8029.02001

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
4 commission to regulate the permitting and amalgamation of the underground storage of oil or
5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
14 ~~such rights.~~

15 **SECTION 1. AMENDMENT.** Section 15-05-09 of the North Dakota Century Code is
16 amended and reenacted as follows:
17 **15-05-09. Leases for oil, gas, and other products.**
18 The board of university and school lands may lease any lands under its control believed to
19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
21 occurring elements and their compounds, and may make and establish rules and regulations for
22 development and drilling operations.
23 **SECTION 2. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.**

2 Oil and gas leases must be made by the board of university and school lands at such
3 annual minimum payments as are determined by the board, but the royalty shall be not less
4 than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas
5 leases made by the board may authorize a royalty of less than twelve and one-half percent for
6 production from stripper well properties or individual stripper wells and qualifying secondary
7 recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for~~
8 ~~gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone,~~
9 ~~chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section
10 15-05-09 for products other than oil and gas must ~~be made by the board in such annual~~
11 ~~payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the
12 board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this
13 section.

14 **SECTION 3.** Chapter 38-25 of the North Dakota Century Code is created and enacted as
15 follows:

16 **38-25-01. Definitions.**

17 As used in this section:

- 18 1. "Commission" mean the industrial commission.
- 19 2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not
20 defined as oil.
- 21 3. "Geological storage" means the underground storage of oil or gas in a storage
22 reservoir or salt cavern.
- 23 4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which
24 are produced at the wellhead in liquid form and the liquid hydrocarbons known as
25 distillate or condensate recovered or extracted from gas, other than gas produced in
26 association with oil and commonly known as casinghead gas.
- 27 5. "Permit" means a permit issued by the commission allowing a person to operate an
28 underground storage facility.
- 29 6. "Pore space" has the same meaning as in section 47-31-02.
- 30 7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
31 whether natural or artificially created, including oil and gas reservoirs and saline

1 formations suitable for or capable of being made suitable for injecting, storing, and
2 withdrawing oil or gas. The term does not include salt caverns.

3 8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a
4 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
5 withdrawing oil or gas.

6 9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
7 or other readily soluble rock to create a salt cavern for underground storage of oil or
8 gas.

9 10. "Storage facility" means the reservoir, salt cavern, underground equipment, and
10 surface facilities and equipment used or proposed to be used in an underground
11 storage operation. The term does not include a pipeline used to transport oil or gas to
12 the storage facility.

13 11. "Storage operator" means a person holding or applying for a permit.

14 **38-25-02. Commission authority.**

15 The commission has authority:

16 1. Over all persons and property necessary to administer and enforce this chapter.

17 2. To regulate activities relating to an underground storage facility, including construction,
18 solution mining to create salt caverns, operation, and closure.

19 3. To enter an underground storage facility at a reasonable time and manner to inspect
20 equipment and facilities, to observe, monitor, and investigate operations, and to
21 inspect records required to be maintained at the facility.

22 4. To require storage operators provide financial assurance, including bonds, to ensure
23 money is available to fulfill the storage operator's duties.

24 5. To exercise continuing jurisdiction over storage operators and storage facilities,
25 including the authority to amend or revoke a permit after notice and hearing.

26 6. After notice and hearing, to dissolve or change the boundaries of any commission
27 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
28 boundaries.

29 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
30 implement the policies of this chapter.

1 8. After notice and hearing, to grant exceptions to this chapter's requirements and
2 implementing rules for good cause.

3 **38-25-03. Permit required - Permit transfer.**

4 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
5 the commission consents.

6 **38-25-04. Permit hearing - Hearing notice.**

7 1. The commission shall hold a public hearing before issuing any storage permit.

8 2. Notice of the hearing must be published for two consecutive weeks in the official
9 newspaper of the county or counties where the storage reservoir or salt cavern is
10 proposed to be located and in any other newspaper the commission requires.

11 Publication deadlines must comply with commission requirements.

12 3. Notice of hearing must be given to each surface owner of land overlying the storage
13 reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or
14 salt cavern's boundaries.

15 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
16 reservoir, notice of the hearing also must be given to each mineral lessee, mineral
17 owner, and pore space owner within the storage reservoir and within one-half mile
18 [0.80 kilometer] of the storage reservoir's boundaries.

19 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
20 notice of the hearing must be given to each salt mineral lessee, salt mineral owner,
21 and pore space owner within the salt cavern outer boundaries and within one-half mile
22 [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be
23 required by the commission.

24 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
25 notice of hearing must be given to each pore space owner within the storage reservoir
26 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

27 7. Hearing notices required by this section must comply with the deadlines set by the
28 commission and must contain the information the commission requires.

29 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

30 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

- 1 1. The storage operator has or will obtain the consent by lease, purchase, or other
2 agreement from all surface owners where surface disturbance activities are necessary
3 and surface facilities will be located.
- 4 2. The storage operator has complied with all requirements set by the commission.
- 5 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
6 oil or gas.
- 7 4. The storage operator has made a good-faith effort to get the consent of all persons
8 that own the storage reservoir's pore space.
- 9 5. The storage operator has made a good-faith effort to obtain the consent of all persons
10 that own oil and gas minerals and oil and gas leases.
- 11 6. The storage operator has obtained the consent of persons that own at least fifty-five
12 percent of the storage reservoir's pore space unless the percentage required to unitize
13 the oil and gas unit is otherwise provided for by order of the commission before
14 August 1, 2021, if so the percentage in the order prevails.
- 15 7. The storage operator has obtained the consent of persons that own at least fifty-five
16 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
17 the percentage required to unitize the oil and gas unit is otherwise provided for by
18 order of the commission before August 1, 2021, if so then the percentage in the order
19 prevails.
- 20 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
21 minerals and, if it does, a permit may be issued only if the commission is satisfied the
22 interests of the mineral owners or mineral lessees will not be affected adversely or
23 have been addressed in an arrangement entered by the mineral owners or mineral
24 lessees and the storage operator.
- 25 9. The proposed storage facility will not affect adversely surface waters or formations
26 containing fresh water.
- 27 10. The injected oil or gas will not escape from the storage reservoir.
- 28 11. The storage facility will not endanger health or unduly endanger the environment.
- 29 12. The storage facility is in the public interest.
- 30 13. The vertical boundaries of the storage reservoir are defined to include any necessary
31 or reasonable buffer zones for the purpose of ensuring the safe operations of the

1 storage facility and to protect the storage facility against pollution, invasion, and
2 escape or migration of oil or gas therefrom.

3 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
4 reasonable means and confirmed through appropriate monitoring methods, are
5 defined to include any necessary or reasonable buffer zones for the purpose of
6 ensuring the safe operations of the storage facility and to protect the storage facility
7 against pollution, invasion, and escape or migration of oil or gas therefrom.

8 15. The storage operator will establish monitoring facilities and protocols to assess the
9 location and migration of oil and gas, if any, injected for storage and to ensure
10 compliance with all permit, statutory, and administrative requirements.

11 16. All nonconsenting owners are or will be compensated equitably.

12 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

13 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

14 find:

15 1. The storage operator has or will obtain the consent by lease, purchase, or other
16 agreement from all surface owners where surface disturbance activities are necessary
17 and surface facilities will be located.

18 2. The storage operator has complied with all requirements set by the commission.

19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.

21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the storage reservoir's pore space.

23 5. The storage operator has obtained the consent of persons that own at least

24 ~~fifty-five~~sixty percent of the storage reservoir's pore space.

25 6. The proposed storage facility will not affect adversely surface waters or formations
26 containing fresh water.

27 7. The injected oil or gas will not escape from the storage reservoir.

28 8. The storage facility will not endanger health or unduly endanger the environment.

29 9. The storage facility is in the public interest.

30 10. The vertical boundaries of the storage reservoir are defined to include any necessary
31 or reasonable buffer zones for the purpose of ensuring the safe operations of the

1 storage facility and to protect the storage facility against pollution, invasion, and
2 escape or migration of oil or gas therefrom.

3 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
4 reasonable means and confirmed through appropriate monitoring methods, are
5 defined to include any necessary or reasonable buffer zones for the purpose of
6 ensuring the safe operations of the storage facility and to protect the storage facility
7 against pollution, invasion, and escape or migration of oil or gas therefrom.

8 12. The storage operator will establish monitoring facilities and protocols to assess the
9 location and migration of oil and gas, if any, injected for storage and to ensure
10 compliance with all permit, statutory, and administrative requirements.

11 13. All nonconsenting pore space owners are or will be compensated equitably.

12 **38-25-07. Permit requirements - Storage in salt cavern.**

13 Before issuing a permit for storage in a salt cavern, the commission shall find:

14 1. The storage operator has or will obtain the consent by lease, purchase, or other
15 agreement from all surface owners where surface disturbance activities are necessary
16 and surface facilities will be located.

17 2. The storage operator has complied with all requirements set by the commission,
18 including all necessary permits to conduct solution mining, if applicable.

19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.

21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the salt cavern's pore space.

23 5. The storage operator has made a good-faith effort to obtain the consent of all persons
24 that own the salt cavern's salt minerals and salt leases.

25 6. The storage operator has obtained the consent of persons that own at least
26 fifty-fivesixty percent of the salt cavern's pore space.

27 7. The storage operator has obtained the consent of persons that own at least
28 fifty-fivesixty percent of the salt cavern's salt minerals and salt leases.

29 8. The proposed storage facility will not affect adversely surface waters or formations
30 containing fresh water.

31 9. The injected oil or gas will not escape from the salt cavern.

1 10. The storage facility will not endanger health or unduly endanger the environment.

2 11. The storage facility is in the public interest.

3 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
4 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
5 operation of the storage facility and to protect the storage facility against pollution,
6 invasion, and escape or migration of gas therefrom.

7 13. The storage operator will establish monitoring facilities and protocols to assess the
8 location and migration of oil and gas, if any, injected for storage and to ensure
9 compliance with all permit, statutory, and administrative requirements.

10 14. That all nonconsenting owners are or will be equitably compensated.

11 **38-25-08. Amalgamating property interests.**

12 If a storage operator does not obtain the consent of all persons owning a pore space and of
13 mineral interest owners when required by this chapter, the commission may require the interest
14 owned by the nonconsenting owners be included in an approved storage facility and subject to
15 geologic storage.

16 **38-25-09. Ownership of oil and gas.**

17 All oil or gas previously reduced to possession and subsequently injected into underground
18 storage facilities must be deemed the property of the storage operator subject to the obligation
19 to pay royalties as set forth in section 38-25-10.

20 **38-25-10. Injection of produced gas - When royalties owed.**

21 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
22 owners, royalties on gas produced but not sold and which is injected into a storage
23 facility instead of flaring or for lack of market, are not due on the produced and stored
24 gas until gas volumes actually are withdrawn from the storage facility, sold, and
25 proceeds received from the sale.

26 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
27 storage operator, after notice and hearing, shall obtain approval from the commission
28 evidencing a reasonable and equitable method of allocation of the stored gas sale
29 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
30 storage. The commission may adopt such rules and orders as necessary to implement
31 the purposes of this section.

1 **38-25-11. Application.**

2 This chapter does not apply to applications filed with the commission which propose to use
3 produced gas for an enhanced oil or gas recovery project. Those applications must be
4 processed under chapter 38-08.

21.8029.02001
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 19, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development and drilling operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so then the percentage in the order prevails"

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 27, replace "fifty-five" with "sixty"

Page 6, line 29, replace "fifty-five" with "sixty"

Renumber accordingly



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2065

House Energy and Natural Resources Sub-Committee

March 22, 2021

Chairman Keiser and members of the House Energy and Natural Resources Sub-Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on Senate Bill 2065.

The Department of Trust Lands (Department) met with representatives of the Northwest Landowners Association and the North Dakota Petroleum Council, and the Department of Mineral Resources to review the Department's proposed amendment to SB 2065 (version 21.8029.02001). The Department proposes adding the following:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays,~~ or other naturally occurring elements and their compounds, and may make and establish rules and regulations for development, ~~and drilling,~~ and mining operations.

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental

payments and other provisions as ~~are~~ determined by the board. The board may adopt rules regarding annual-rental payments and royalties under this section.

The Department recommends adding the following language to this bill based on conversation with the Northwest Landowners Association and the North Dakota Petroleum Council:

38 - 25 - 08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage. Any pore space owner who does not have responsibility over the management, supervision or control of the storage facility operations may not be held liable for money damages for personal or other property damages proximately caused by the operations or presence of the storage facility.

We look forward to working with the Sub-Committee on these issues and would be happy to answer any questions.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/23/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

2:30 pm

Chairman Keiser opened the hearing. Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- Constitutionality
- Proposed amendment 02002
- Mined and mining
- Royalties
- Commission authority
- Permit required – transfer
- Permit hearing – notice
- Owner of record at last known address
- Permit requirements- storage in oil and gas reservoir
- Equitable compensation
- Eminent domain power
- Pooling and unitization
- Definition of waste
- Correlative mineral rights, pore space rights,
- Prevention of waste
- Nonconsenting owners
- Consenting owners
- Appeals by nonconsenting owner
- Just compensation
- Definition of owner

Jodi Smith, ND Trust Lands – #10268

Chris Joseph, Legislative Council- #10561, #10562

Troy Coons, NW Area Landowners – oral testimony

Derrick Braaten, Braaten Law Firm- oral testimony

Lynn Helms, director, DMR- oral testimony

Ron Ness, ND Petroleum Council – oral testimony

Brady Pelton, governmental affairs manager, NDPC- oral testimony

Shane Goettle, Bakken Midstream Natural Gas, LLC- oral testimony

3:51 PM meeting adjourned.

Kathleen Davis, Committee Clerk



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2065

House Energy and Natural Resources Sub-Committee

March 22, 2021

Chairman Keiser and members of the House Energy and Natural Resources Sub-Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on Senate Bill 2065.

The Department of Trust Lands (Department) met with representatives of the Northwest Landowners Association and the North Dakota Petroleum Council, and the Department of Mineral Resources to review the Department's proposed amendment to SB 2065 (version 21.8029.02001). The Department proposes adding the following:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally occurring elements and their compounds, and may make and establish rules and regulations for development, ~~and drilling,~~ and mining operations.

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental

payments and other provisions as ~~are~~ determined by the board. The board may adopt rules regarding annual-rental payments and royalties under this section.

The Department recommends adding the following language to this bill based on conversation with the Northwest Landowners Association and the North Dakota Petroleum Council:

38 - 25 - 08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage. Any pore space owner who does not have responsibility over the management, supervision or control of the storage facility operations may not be held liable for money damages for personal or other property damages proximately caused by the operations or presence of the storage facility.

We look forward to working with the Sub-Committee on these issues and would be happy to answer any questions.

21.8029.02002
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 22, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development ~~and, drilling, and mining~~ operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 27, replace "fifty-five" with "sixty"

Page 6, line 29, replace "fifty-five" with "sixty"

Renumber accordingly

21.8029.02002

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
4 commission to regulate the permitting and amalgamation of the underground storage of oil or
5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
14 ~~such rights.~~

15 **SECTION 1. AMENDMENT.** Section 15-05-09 of the North Dakota Century Code is
16 amended and reenacted as follows:
17 **15-05-09. Leases for oil, gas, and other products.**
18 The board of university and school lands may lease any lands under its control believed to
19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
21 occurring elements and their compounds, and may make and establish rules and regulations for
22 development ~~and~~, drilling, and mining operations.
23 **SECTION 2. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section 15-05-09 for products other than oil and gas must ~~be made by the board in such annual payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this section.

SECTION 3. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.
7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline

1 formations suitable for or capable of being made suitable for injecting, storing, and
2 withdrawing oil or gas. The term does not include salt caverns.

3 8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a
4 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
5 withdrawing oil or gas.

6 9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
7 or other readily soluble rock to create a salt cavern for underground storage of oil or
8 gas.

9 10. "Storage facility" means the reservoir, salt cavern, underground equipment, and
10 surface facilities and equipment used or proposed to be used in an underground
11 storage operation. The term does not include a pipeline used to transport oil or gas to
12 the storage facility.

13 11. "Storage operator" means a person holding or applying for a permit.

14 **38-25-02. Commission authority.**

15 The commission has authority:

16 1. Over all persons and property necessary to administer and enforce this chapter.

17 2. To regulate activities relating to an underground storage facility, including construction,
18 solution mining to create salt caverns, operation, and closure.

19 3. To enter an underground storage facility at a reasonable time and manner to inspect
20 equipment and facilities, to observe, monitor, and investigate operations, and to
21 inspect records required to be maintained at the facility.

22 4. To require storage operators provide financial assurance, including bonds, to ensure
23 money is available to fulfill the storage operator's duties.

24 5. To exercise continuing jurisdiction over storage operators and storage facilities,
25 including the authority to amend or revoke a permit after notice and hearing.

26 6. After notice and hearing, to dissolve or change the boundaries of any commission
27 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
28 boundaries.

29 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
30 implement the policies of this chapter.

1 8. After notice and hearing, to grant exceptions to this chapter's requirements and
2 implementing rules for good cause.

3 **38-25-03. Permit required - Permit transfer.**

4 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
5 the commission consents.

6 **38-25-04. Permit hearing - Hearing notice.**

7 1. The commission shall hold a public hearing before issuing any storage permit.

8 2. Notice of the hearing must be published for two consecutive weeks in the official
9 newspaper of the county or counties where the storage reservoir or salt cavern is
10 proposed to be located and in any other newspaper the commission requires.

11 Publication deadlines must comply with commission requirements.

12 3. Notice of hearing must be given to each surface owner of land overlying the storage
13 reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or
14 salt cavern's boundaries.

15 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
16 reservoir, notice of the hearing also must be given to each mineral lessee, mineral
17 owner, and pore space owner within the storage reservoir and within one-half mile
18 [0.80 kilometer] of the storage reservoir's boundaries.

19 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
20 notice of the hearing must be given to each salt mineral lessee, salt mineral owner,
21 and pore space owner within the salt cavern outer boundaries and within one-half mile
22 [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be
23 required by the commission.

24 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
25 notice of hearing must be given to each pore space owner within the storage reservoir
26 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

27 7. Hearing notices required by this section must comply with the deadlines set by the
28 commission and must contain the information the commission requires.

29 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

30 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

- 1 1. The storage operator has or will obtain the consent by lease, purchase, or other
2 agreement from all surface owners where surface disturbance activities are necessary
3 and surface facilities will be located.
- 4 2. The storage operator has complied with all requirements set by the commission.
- 5 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
6 oil or gas.
- 7 4. The storage operator has made a good-faith effort to get the consent of all persons
8 that own the storage reservoir's pore space.
- 9 5. The storage operator has made a good-faith effort to obtain the consent of all persons
10 that own oil and gas minerals and oil and gas leases.
- 11 6. The storage operator has obtained the consent of persons that own at least fifty-five
12 percent of the storage reservoir's pore space unless the percentage required to unitize
13 the oil and gas unit is otherwise provided for by order of the commission before
14 August 1, 2021, if so the percentage in the order prevails.
- 15 7. The storage operator has obtained the consent of persons that own at least fifty-five
16 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
17 the percentage required to unitize the oil and gas unit is otherwise provided for by
18 order of the commission before August 1, 2021, if so the percentage in the order
19 prevails.
- 20 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
21 minerals and, if it does, a permit may be issued only if the commission is satisfied the
22 interests of the mineral owners or mineral lessees will not be affected adversely or
23 have been addressed in an arrangement entered by the mineral owners or mineral
24 lessees and the storage operator.
- 25 9. The proposed storage facility will not affect adversely surface waters or formations
26 containing fresh water.
- 27 10. The injected oil or gas will not escape from the storage reservoir.
- 28 11. The storage facility will not endanger health or unduly endanger the environment.
- 29 12. The storage facility is in the public interest.
- 30 13. The vertical boundaries of the storage reservoir are defined to include any necessary
31 or reasonable buffer zones for the purpose of ensuring the safe operations of the

1 storage facility and to protect the storage facility against pollution, invasion, and
2 escape or migration of oil or gas therefrom.

3 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
4 reasonable means and confirmed through appropriate monitoring methods, are
5 defined to include any necessary or reasonable buffer zones for the purpose of
6 ensuring the safe operations of the storage facility and to protect the storage facility
7 against pollution, invasion, and escape or migration of oil or gas therefrom.

8 15. The storage operator will establish monitoring facilities and protocols to assess the
9 location and migration of oil and gas, if any, injected for storage and to ensure
10 compliance with all permit, statutory, and administrative requirements.

11 16. All nonconsenting owners are or will be compensated equitably.

12 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

13 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

14 find:

15 1. The storage operator has or will obtain the consent by lease, purchase, or other
16 agreement from all surface owners where surface disturbance activities are necessary
17 and surface facilities will be located.

18 2. The storage operator has complied with all requirements set by the commission.

19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.

21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the storage reservoir's pore space.

23 5. The storage operator has obtained the consent of persons that own at least

24 ~~fifty-five~~sixty percent of the storage reservoir's pore space.

25 6. The proposed storage facility will not affect adversely surface waters or formations
26 containing fresh water.

27 7. The injected oil or gas will not escape from the storage reservoir.

28 8. The storage facility will not endanger health or unduly endanger the environment.

29 9. The storage facility is in the public interest.

30 10. The vertical boundaries of the storage reservoir are defined to include any necessary
31 or reasonable buffer zones for the purpose of ensuring the safe operations of the

1 storage facility and to protect the storage facility against pollution, invasion, and
2 escape or migration of oil or gas therefrom.

3 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
4 reasonable means and confirmed through appropriate monitoring methods, are
5 defined to include any necessary or reasonable buffer zones for the purpose of
6 ensuring the safe operations of the storage facility and to protect the storage facility
7 against pollution, invasion, and escape or migration of oil or gas therefrom.

8 12. The storage operator will establish monitoring facilities and protocols to assess the
9 location and migration of oil and gas, if any, injected for storage and to ensure
10 compliance with all permit, statutory, and administrative requirements.

11 13. All nonconsenting pore space owners are or will be compensated equitably.

12 **38-25-07. Permit requirements - Storage in salt cavern.**

13 Before issuing a permit for storage in a salt cavern, the commission shall find:

14 1. The storage operator has or will obtain the consent by lease, purchase, or other
15 agreement from all surface owners where surface disturbance activities are necessary
16 and surface facilities will be located.

17 2. The storage operator has complied with all requirements set by the commission,
18 including all necessary permits to conduct solution mining, if applicable.

19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.

21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the salt cavern's pore space.

23 5. The storage operator has made a good-faith effort to obtain the consent of all persons
24 that own the salt cavern's salt minerals and salt leases.

25 6. The storage operator has obtained the consent of persons that own at least
26 fifty-fivesixty percent of the salt cavern's pore space.

27 7. The storage operator has obtained the consent of persons that own at least
28 fifty-fivesixty percent of the salt cavern's salt minerals and salt leases.

29 8. The proposed storage facility will not affect adversely surface waters or formations
30 containing fresh water.

31 9. The injected oil or gas will not escape from the salt cavern.

1 10. The storage facility will not endanger health or unduly endanger the environment.

2 11. The storage facility is in the public interest.

3 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
4 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
5 operation of the storage facility and to protect the storage facility against pollution,
6 invasion, and escape or migration of gas therefrom.

7 13. The storage operator will establish monitoring facilities and protocols to assess the
8 location and migration of oil and gas, if any, injected for storage and to ensure
9 compliance with all permit, statutory, and administrative requirements.

10 14. That all nonconsenting owners are or will be equitably compensated.

11 **38-25-08. Amalgamating property interests.**

12 If a storage operator does not obtain the consent of all persons owning a pore space and of
13 mineral interest owners when required by this chapter, the commission may require the interest
14 owned by the nonconsenting owners be included in an approved storage facility and subject to
15 geologic storage.

16 **38-25-09. Ownership of oil and gas.**

17 All oil or gas previously reduced to possession and subsequently injected into underground
18 storage facilities must be deemed the property of the storage operator subject to the obligation
19 to pay royalties as set forth in section 38-25-10.

20 **38-25-10. Injection of produced gas - When royalties owed.**

21 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
22 owners, royalties on gas produced but not sold and which is injected into a storage
23 facility instead of flaring or for lack of market, are not due on the produced and stored
24 gas until gas volumes actually are withdrawn from the storage facility, sold, and
25 proceeds received from the sale.

26 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
27 storage operator, after notice and hearing, shall obtain approval from the commission
28 evidencing a reasonable and equitable method of allocation of the stored gas sale
29 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
30 storage. The commission may adopt such rules and orders as necessary to implement
31 the purposes of this section.

1 **38-25-11. Application.**

2 This chapter does not apply to applications filed with the commission which propose to use
3 produced gas for an enhanced oil or gas recovery project. Those applications must be
4 processed under chapter 38-08.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/24/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

2:38 PM

Chairman Keiser opened the hearing. Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- Definition of waste
- Written notice
- Pore space
- Unitization
- Liability
- Good faith effort
- Court challenges
- Surface Damage
- Store and inject gas

Chris Joseph, Legislative Council- #10669,#10670 (02003), 10681, 10682 (#02004)

Lynn Helms, director, DMR- oral testimony

Troy Coons, NW Area Landowners- oral testimony

Jodi Smith, ND Trust Lands- oral testimony

Derrick Braaten, Braaten Law Firm- #10674 (#01003)

Brady Pelton, governmental affairs manager, NDPC- oral testimony

Ron Ness, ND Petroleum Council- oral testimony

3:46 PM meeting adjourned.

Kathleen Davis, Committee Clerk

21.8029.02003

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
4 commission to regulate the permitting and amalgamation of the underground storage of oil or
5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
14 ~~such rights.~~

15 SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 15-05-09. Leases for oil, gas, and other products.

18 The board of university and school lands may lease any lands under its control believed to
19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
21 occurring elements and their compounds, and may make and establish rules and regulations for
22 development ~~and~~, drilling, and mining operations.

23 SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section 15-05-09 for products other than oil and gas must ~~be made by the board in such annual payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section.

SECTION 3. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.
7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline

1 formations suitable for or capable of being made suitable for injecting, storing, and
2 withdrawing oil or gas. The term does not include salt caverns.

3 8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a
4 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
5 withdrawing oil or gas.

6 9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
7 or other readily soluble rock to create a salt cavern for underground storage of oil or
8 gas.

9 10. "Storage facility" means the reservoir, salt cavern, underground equipment, and
10 surface facilities and equipment used or proposed to be used in an underground
11 storage operation. The term does not include a pipeline used to transport oil or gas to
12 the storage facility.

13 11. "Storage operator" means a person holding or applying for a permit.

14 **38-25-02. Commission authority.**

15 The commission has authority:

16 1. Over all persons and property necessary to administer and enforce this chapter.

17 2. To regulate activities relating to an underground storage facility, including construction,
18 solution mining to create salt caverns, operation, and closure.

19 3. To enter an underground storage facility at a reasonable time and manner to inspect
20 equipment and facilities, to observe, monitor, and investigate operations, and to
21 inspect records required to be maintained at the facility.

22 4. To require storage operators provide financial assurance, including bonds, to ensure
23 money is available to fulfill the storage operator's duties.

24 5. To exercise continuing jurisdiction over storage operators and storage facilities,
25 including the authority to amend or revoke a permit after notice and hearing.

26 6. After notice and hearing, to dissolve or change the boundaries of any commission
27 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
28 boundaries.

29 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
30 implement the policies of this chapter.

1 8. After notice and hearing, to grant exceptions to this chapter's requirements and
2 implementing rules ~~for good cause~~if required to comply with applicable federal law.

3 **38-25-03. Permit required - Permit transfer.**

4 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
5 the commission consents.

6 **38-25-04. Permit hearing - Hearing notice.**

7 1. The commission shall hold a public hearing before issuing any storage permit.

8 2. Notice of the hearing must be published for two consecutive weeks in the official
9 newspaper of the county or counties where the storage reservoir or salt cavern is
10 proposed to be located and in any other newspaper the commission requires.

11 Publication deadlines must comply with commission requirements.

12 3. Notice~~Written notice~~ of hearing must be givenmailed to each surface owner of record
13 of land overlying the storage reservoir or salt cavern and within one-half mile [0.80
14 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be
15 mailed to an owner's last known address.

16 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
17 reservoir, notice of the hearing also must be givenmailed to each mineral lessee,
18 mineral owner of record, and pore space owner of record within the storage reservoir
19 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

20 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
21 notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral
22 owner of record, and pore space owner of record within the salt cavern outer
23 boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt
24 cavern, or as otherwise may be required by the commission.

25 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
26 notice of hearing must be givenmailed to each pore space owner of record within the
27 storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's
28 boundaries.

29 7. Hearing notices required by this section must comply with the deadlines set by the
30 commission and must contain the information the commission requires.

1 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

2 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

- 3 1. The storage operator has or will obtain the consent by lease, purchase, or other
4 agreement from all surface owners where surface disturbance activities are necessary
5 and surface facilities will be located.
- 6 2. The storage operator has complied with all requirements set by the commission.
- 7 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
8 oil or gas.
- 9 4. The storage operator has made a good-faith effort to get the consent of all persons
10 that own the storage reservoir's pore space.
- 11 5. The storage operator has made a good-faith effort to obtain the consent of all persons
12 that own oil and gas minerals and oil and gas leases.
- 13 6. The storage operator has obtained the consent of persons that own at least fifty-five
14 percent of the storage reservoir's pore space unless the percentage required to unitize
15 the oil and gas unit is otherwise provided for by order of the commission before
16 August 1, 2021, if so the percentage in the order prevails.
- 17 7. The storage operator has obtained the consent of persons that own at least fifty-five
18 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
19 the percentage required to unitize the oil and gas unit is otherwise provided for by
20 order of the commission before August 1, 2021, if so the percentage in the order
21 prevails.
- 22 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
23 minerals and, if it does, a permit may be issued only if the commission is satisfied the
24 interests of the mineral owners or mineral lessees will not be affected adversely or
25 have been addressed in an arrangement entered by the mineral owners or mineral
26 lessees and the storage operator.
- 27 9. The proposed storage facility will not affect adversely surface waters or formations
28 containing fresh water.
- 29 10. The injected oil or gas will not escape from the storage reservoir.
- 30 11. The storage facility will not endanger health or unduly endanger the environment.
- 31 12. The storage facility is in the public interest.

1 13. The vertical boundaries of the storage reservoir are defined to include any necessary
2 or reasonable buffer zones for the purpose of ensuring the safe operations of the
3 storage facility and to protect the storage facility against pollution, invasion, and
4 escape or migration of oil or gas therefrom.

5 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
6 reasonable means and confirmed through appropriate monitoring methods, are
7 defined to include any necessary or reasonable buffer zones for the purpose of
8 ensuring the safe operations of the storage facility and to protect the storage facility
9 against pollution, invasion, and escape or migration of oil or gas therefrom.

10 15. The storage operator will establish monitoring facilities and protocols to assess the
11 location and migration of oil and gas, if any, injected for storage and to ensure
12 compliance with all permit, statutory, and administrative requirements.

13 16. All nonconsenting owners are or will be compensated equitably.

14 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

15 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

16 find:

17 1. The storage operator has or will obtain the consent by lease, purchase, or other
18 agreement from all surface owners where surface disturbance activities are necessary
19 and surface facilities will be located.

20 2. The storage operator has complied with all requirements set by the commission.

21 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
22 oil or gas.

23 4. The storage operator has made a good-faith effort to obtain the consent of all persons
24 that own the storage reservoir's pore space.

25 5. The storage operator has obtained the consent of persons that own at least
26 fifty-fivesixty percent of the storage reservoir's pore space.

27 6. The proposed storage facility will not affect adversely surface waters or formations
28 containing fresh water.

29 7. The injected oil or gas will not escape from the storage reservoir.

30 8. The storage facility will not endanger health or unduly endanger the environment.

31 9. The storage facility is in the public interest.

- 1 10. The vertical boundaries of the storage reservoir are defined to include any necessary
2 or reasonable buffer zones for the purpose of ensuring the safe operations of the
3 storage facility and to protect the storage facility against pollution, invasion, and
4 escape or migration of oil or gas therefrom.
- 5 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
6 reasonable means and confirmed through appropriate monitoring methods, are
7 defined to include any necessary or reasonable buffer zones for the purpose of
8 ensuring the safe operations of the storage facility and to protect the storage facility
9 against pollution, invasion, and escape or migration of oil or gas therefrom.
- 10 12. The storage operator will establish monitoring facilities and protocols to assess the
11 location and migration of oil and gas, if any, injected for storage and to ensure
12 compliance with all permit, statutory, and administrative requirements.
- 13 13. All nonconsenting pore space owners are or will be compensated equitably.

14 **38-25-07. Permit requirements - Storage in salt cavern.**

15 Before issuing a permit for storage in a salt cavern, the commission shall find:

- 16 1. The storage operator has or will obtain the consent by lease, purchase, or other
17 agreement from all surface owners where surface disturbance activities are necessary
18 and surface facilities will be located.
- 19 2. The storage operator has complied with all requirements set by the commission,
20 including all necessary permits to conduct solution mining, if applicable.
- 21 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
22 oil or gas.
- 23 4. The storage operator has made a good-faith effort to obtain the consent of all persons
24 that own the salt cavern's pore space.
- 25 5. The storage operator has made a good-faith effort to obtain the consent of all persons
26 that own the salt cavern's salt minerals and salt leases.
- 27 6. The storage operator has obtained the consent of persons that own at least
28 fifty-fivesixty percent of the salt cavern's pore space.
- 29 7. The storage operator has obtained the consent of persons that own at least fifty-five
30 percent of the salt cavern's salt minerals and salt leases.

1 8. The proposed storage facility will not affect adversely surface waters or formations
2 containing fresh water.

3 9. The injected oil or gas will not escape from the salt cavern.

4 10. The storage facility will not endanger health or unduly endanger the environment.

5 11. The storage facility is in the public interest.

6 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
7 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
8 operation of the storage facility and to protect the storage facility against pollution,
9 invasion, and escape or migration of gas therefrom.

10 13. The storage operator will establish monitoring facilities and protocols to assess the
11 location and migration of oil and gas, if any, injected for storage and to ensure
12 compliance with all permit, statutory, and administrative requirements.

13 14. That all nonconsenting owners are or will be equitably compensated.

14 **38-25-08. Amalgamating property interests.**

15 If a storage operator does not obtain the consent of all persons owning a pore space and of
16 mineral interest owners when required by this chapter, the commission may require the interest
17 owned by the nonconsenting owners be included in an approved storage facility and subject to
18 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
19 Any pore space owner who does not have responsibility over the construction, management,
20 supervision, or control of the storage facility operations is not liable for money damages for
21 personal or other property damages proximately caused by the operations or presence of the
22 storage facility.

23 **38-25-09. Ownership of oil and gas.**

24 All oil or gas previously reduced to possession and subsequently injected into underground
25 storage facilities must be deemed the property of the storage operator subject to the obligation
26 to pay royalties as set forth in section 38-25-10.

27 **38-25-10. Injection of produced gas - When royalties owed.**

28 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
29 owners, royalties on gas produced but not sold and which is injected into a storage
30 facility instead of flaring or for lack of market, are not due on the produced and stored

1 gas until gas volumes actually are withdrawn from the storage facility, sold, and
2 proceeds received from the sale.
3 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
4 storage operator, after notice and hearing, shall obtain approval from the commission
5 evidencing a reasonable and equitable method of allocation of the stored gas sale
6 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
7 storage. The commission may adopt such rules and orders as necessary to implement
8 the purposes of this section.

9 **38-25-11. Application.**

10 This chapter does not apply to applications filed with the commission which propose to use
11 produced gas for an enhanced oil or gas recovery project. Those applications must be
12 processed under chapter 38-08.

21.8029.02003
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 23, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development ~~and, drilling, and mining~~ operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 3, line 19, replace "Notice" with "Written notice"

Page 3, line 19, replace "given" with "mailed"

Page 3, line 19, after "owner" insert "of record"

Page 3, line 21, after the underscored period insert "The notice of hearing must be mailed to an owner's last known address."

Page 3, line 23, replace "given" with "mailed"

Page 3, line 24, after the first "owner" insert "of record"

Page 3, line 24, after the second "owner" insert "of record"

Page 3, line 27, replace "given" with "mailed"

Page 3, line 27, after "owner" insert "of record"

Page 3, line 28, after "owner" insert "of record"

Page 4, line 2, replace "given" with "mailed"

Page 4, line 2, after "owner" insert "of record"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 27, replace "fifty-five" with "sixty"

Page 7, line 18, after "storage" insert "if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations or presence of the storage facility"

Re-number accordingly

21.8029.02004
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 24, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development ~~and, drilling, and mining~~ operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 2, line 6, after "7." insert "Prevent waste" means locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas stored, or which causes or tends to cause unnecessary loss or destruction of oil or gas.

8."

Page 2, line 10, replace "8." with "9."

Page 2, line 13, replace "9." with "10."

Page 2, line 16, replace "10." with "11."

Page 2, line 20, replace "11." with "12."

Page 2, after line 20, insert:

"13. "Waste" means the inefficient storing of oil or gas."

Page 2, line 23, after "chapter" insert "when necessary to prevent waste, to protect correlative rights, or to effect greater ultimate storage and recovery of oil and gas"

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 13, after "16." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

18."

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 13, after "13." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

14. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

15."

Page 6, line 27, replace "fifty-five" with "sixty"

Page 6, line 29, replace "fifty-five" with "sixty"

Page 7, line 13, after "14." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

15. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

16."

Renumber accordingly

21.8029.02004

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
4 commission to regulate the permitting and amalgamation of the underground storage of oil or
5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
14 ~~such rights.~~

15 SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 15-05-09. Leases for oil, gas, and other products.

18 The board of university and school lands may lease any lands under its control believed to
19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
21 occurring elements and their compounds, and may make and establish rules and regulations for
22 development ~~and~~, drilling, and mining operations.

23 SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.**

2 Oil and gas leases must be made by the board of university and school lands at such
3 annual minimum payments as are determined by the board, but the royalty shall be not less
4 than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas
5 leases made by the board may authorize a royalty of less than twelve and one-half percent for
6 production from stripper well properties or individual stripper wells and qualifying secondary
7 recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for~~
8 ~~gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone,~~
9 ~~chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section
10 15-05-09 for products other than oil and gas must ~~be made by the board in such annual~~
11 ~~payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the
12 board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this
13 section.

14 **SECTION 3.** Chapter 38-25 of the North Dakota Century Code is created and enacted as
15 follows:

16 **38-25-01. Definitions.**

17 As used in this section:

- 18 1. "Commission" mean the industrial commission.
- 19 2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not
20 defined as oil.
- 21 3. "Geological storage" means the underground storage of oil or gas in a storage
22 reservoir or salt cavern.
- 23 4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which
24 are produced at the wellhead in liquid form and the liquid hydrocarbons known as
25 distillate or condensate recovered or extracted from gas, other than gas produced in
26 association with oil and commonly known as casinghead gas.
- 27 5. "Permit" means a permit issued by the commission allowing a person to operate an
28 underground storage facility.
- 29 6. "Pore space" has the same meaning as in section 47-31-02.
- 30 7. "Prevent waste" means locating, spacing, drilling, equipping, operating, or producing
31 of any oil or gas storage well or facility in a manner that causes, or tends to cause, a

1 reduction in the quantity of oil or gas stored, or which causes or tends to cause
2 unnecessary loss or destruction of oil or gas.

3 8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
4 whether natural or artificially created, including oil and gas reservoirs and saline
5 formations suitable for or capable of being made suitable for injecting, storing, and
6 withdrawing oil or gas. The term does not include salt caverns.

7 ~~8-9.~~ "Salt cavern" means a natural occurring cavity contained within a salt formation or a
8 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
9 withdrawing oil or gas.

10 ~~9-10.~~ "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
11 or other readily soluble rock to create a salt cavern for underground storage of oil or
12 gas.

13 ~~10-11.~~ "Storage facility" means the reservoir, salt cavern, underground equipment, and
14 surface facilities and equipment used or proposed to be used in an underground
15 storage operation. The term does not include a pipeline used to transport oil or gas to
16 the storage facility.

17 ~~11-12.~~ "Storage operator" means a person holding or applying for a permit.

18 13. "Waste" means the inefficient storing of oil or gas.

19 **38-25-02. Commission authority.**

20 The commission has authority:

- 21 1. Over all persons and property necessary to administer and enforce this chapter when
22 necessary to prevent waste, to protect correlative rights, or to effect greater ultimate
23 storage and recovery of oil and gas.
- 24 2. To regulate activities relating to an underground storage facility, including construction,
25 solution mining to create salt caverns, operation, and closure.
- 26 3. To enter an underground storage facility at a reasonable time and manner to inspect
27 equipment and facilities, to observe, monitor, and investigate operations, and to
28 inspect records required to be maintained at the facility.
- 29 4. To require storage operators provide financial assurance, including bonds, to ensure
30 money is available to fulfill the storage operator's duties.

- 1 5. To exercise continuing jurisdiction over storage operators and storage facilities,
2 including the authority to amend or revoke a permit after notice and hearing.
- 3 6. After notice and hearing, to dissolve or change the boundaries of any commission
4 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
5 boundaries.
- 6 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
7 implement the policies of this chapter.
- 8 8. After notice and hearing, to grant exceptions to this chapter's requirements and
9 implementing rules ~~for good cause~~ if required to comply with applicable federal law.

10 **38-25-03. Permit required - Permit transfer.**

11 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
12 the commission consents.

13 **38-25-04. Permit hearing - Hearing notice.**

- 14 1. The commission shall hold a public hearing before issuing any storage permit.
- 15 2. Notice of the hearing must be published for two consecutive weeks in the official
16 newspaper of the county or counties where the storage reservoir or salt cavern is
17 proposed to be located and in any other newspaper the commission requires.
18 Publication deadlines must comply with commission requirements.
- 19 3. Notice of hearing must be given to each surface owner of land overlying the storage
20 reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or
21 salt cavern's boundaries.
- 22 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
23 reservoir, notice of the hearing also must be given to each mineral lessee, mineral
24 owner, and pore space owner within the storage reservoir and within one-half mile
25 [0.80 kilometer] of the storage reservoir's boundaries.
- 26 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
27 notice of the hearing must be given to each salt mineral lessee, salt mineral owner,
28 and pore space owner within the salt cavern outer boundaries and within one-half mile
29 [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be
30 required by the commission.

1 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
2 notice of hearing must be given to each pore space owner within the storage reservoir
3 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

4 7. Hearing notices required by this section must comply with the deadlines set by the
5 commission and must contain the information the commission requires.

6 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

7 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

8 1. The storage operator has or will obtain the consent by lease, purchase, or other
9 agreement from all surface owners where surface disturbance activities are necessary
10 and surface facilities will be located.

11 2. The storage operator has complied with all requirements set by the commission.

12 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
13 oil or gas.

14 4. The storage operator has made a good-faith effort to get the consent of all persons
15 that own the storage reservoir's pore space.

16 5. The storage operator has made a good-faith effort to obtain the consent of all persons
17 that own oil and gas minerals and oil and gas leases.

18 6. The storage operator has obtained the consent of persons that own at least fifty-five
19 percent of the storage reservoir's pore space unless the percentage required to unitize
20 the oil and gas unit is otherwise provided for by order of the commission before
21 August 1, 2021, if so the percentage in the order prevails.

22 7. The storage operator has obtained the consent of persons that own at least fifty-five
23 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
24 the percentage required to unitize the oil and gas unit is otherwise provided for by
25 order of the commission before August 1, 2021, if so the percentage in the order
26 prevails.

27 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
28 minerals and, if it does, a permit may be issued only if the commission is satisfied the
29 interests of the mineral owners or mineral lessees will not be affected adversely or
30 have been addressed in an arrangement entered by the mineral owners or mineral
31 lessees and the storage operator.

- 1 9. The proposed storage facility will not affect adversely surface waters or formations
2 containing fresh water.
- 3 10. The injected oil or gas will not escape from the storage reservoir.
- 4 11. The storage facility will not endanger health or unduly endanger the environment.
- 5 12. The storage facility is in the public interest.
- 6 13. The vertical boundaries of the storage reservoir are defined to include any necessary
7 or reasonable buffer zones for the purpose of ensuring the safe operations of the
8 storage facility and to protect the storage facility against pollution, invasion, and
9 escape or migration of oil or gas therefrom.
- 10 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
11 reasonable means and confirmed through appropriate monitoring methods, are
12 defined to include any necessary or reasonable buffer zones for the purpose of
13 ensuring the safe operations of the storage facility and to protect the storage facility
14 against pollution, invasion, and escape or migration of oil or gas therefrom.
- 15 15. The storage operator will establish monitoring facilities and protocols to assess the
16 location and migration of oil and gas, if any, injected for storage and to ensure
17 compliance with all permit, statutory, and administrative requirements.
- 18 16. The method of underground storage is reasonably necessary to effectively carry on
19 the joint effort, will prevent waste, and, with reasonable probability, will result in the
20 increased storage and recovery of more oil and gas.
- 21 17. The time, conditions, and method by which the storage facility must be dissolved and
22 the facility's affairs wound up. A storage facility may be dissolved ten years after the
23 storage facility permit is issued upon a petition to the commission by the pore space
24 owners and mineral owners that are credited with at least the percentage of interest of
25 the pore space required to ratify the storage facility amalgamation agreement, and a
26 subsequent hearing and order by the commission.
- 27 18. All nonconsenting owners are or will be compensated equitably.

28 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

29 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

30 find:

- 1 1. The storage operator has or will obtain the consent by lease, purchase, or other
- 2 agreement from all surface owners where surface disturbance activities are necessary
- 3 and surface facilities will be located.
- 4 2. The storage operator has complied with all requirements set by the commission.
- 5 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
- 6 oil or gas.
- 7 4. The storage operator has made a good-faith effort to obtain the consent of all persons
- 8 that own the storage reservoir's pore space.
- 9 5. The storage operator has obtained the consent of persons that own at least
- 10 fifty-fivesixty percent of the storage reservoir's pore space.
- 11 6. The proposed storage facility will not affect adversely surface waters or formations
- 12 containing fresh water.
- 13 7. The injected oil or gas will not escape from the storage reservoir.
- 14 8. The storage facility will not endanger health or unduly endanger the environment.
- 15 9. The storage facility is in the public interest.
- 16 10. The vertical boundaries of the storage reservoir are defined to include any necessary
- 17 or reasonable buffer zones for the purpose of ensuring the safe operations of the
- 18 storage facility and to protect the storage facility against pollution, invasion, and
- 19 escape or migration of oil or gas therefrom.
- 20 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
- 21 reasonable means and confirmed through appropriate monitoring methods, are
- 22 defined to include any necessary or reasonable buffer zones for the purpose of
- 23 ensuring the safe operations of the storage facility and to protect the storage facility
- 24 against pollution, invasion, and escape or migration of oil or gas therefrom.
- 25 12. The storage operator will establish monitoring facilities and protocols to assess the
- 26 location and migration of oil and gas, if any, injected for storage and to ensure
- 27 compliance with all permit, statutory, and administrative requirements.
- 28 13. The method of underground storage is reasonably necessary to effectively carry on
- 29 the joint effort, will prevent waste, and, with reasonable probability, will result in the
- 30 increased storage and recovery of more oil and gas.

- 1 14. The time, conditions, and method by which the storage facility must be dissolved and
2 the facility's affairs wound up. A storage facility may be dissolved ten years after the
3 storage facility permit is issued upon a petition to the commission by the pore space
4 owners and mineral owners that are credited with at least the percentage of interest of
5 the pore space required to ratify the storage facility amalgamation agreement, and a
6 subsequent hearing and order by the commission.
- 7 15. All nonconsenting pore space owners are or will be compensated equitably.

8 **38-25-07. Permit requirements - Storage in salt cavern.**

9 Before issuing a permit for storage in a salt cavern, the commission shall find:

- 10 1. The storage operator has or will obtain the consent by lease, purchase, or other
11 agreement from all surface owners where surface disturbance activities are necessary
12 and surface facilities will be located.
- 13 2. The storage operator has complied with all requirements set by the commission,
14 including all necessary permits to conduct solution mining, if applicable.
- 15 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
16 oil or gas.
- 17 4. The storage operator has made a good-faith effort to obtain the consent of all persons
18 that own the salt cavern's pore space.
- 19 5. The storage operator has made a good-faith effort to obtain the consent of all persons
20 that own the salt cavern's salt minerals and salt leases.
- 21 6. The storage operator has obtained the consent of persons that own at least
22 fifty-fivesixty percent of the salt cavern's pore space.
- 23 7. The storage operator has obtained the consent of persons that own at least
24 fifty-fivesixty percent of the salt cavern's salt minerals and salt leases.
- 25 8. The proposed storage facility will not affect adversely surface waters or formations
26 containing fresh water.
- 27 9. The injected oil or gas will not escape from the salt cavern.
- 28 10. The storage facility will not endanger health or unduly endanger the environment.
- 29 11. The storage facility is in the public interest.
- 30 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
31 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe

1 operation of the storage facility and to protect the storage facility against pollution,
2 invasion, and escape or migration of gas therefrom.

3 13. The storage operator will establish monitoring facilities and protocols to assess the
4 location and migration of oil and gas, if any, injected for storage and to ensure
5 compliance with all permit, statutory, and administrative requirements.

6 14. The method of underground storage is reasonably necessary to effectively carry on
7 the joint effort, will prevent waste, and, with reasonable probability, will result in the
8 increased storage and recovery of more oil and gas.

9 15. The time, conditions, and method by which the storage facility must be dissolved and
10 the facility's affairs wound up. A storage facility may be dissolved ten years after the
11 storage facility permit is issued upon a petition to the commission by the pore space
12 owners and mineral owners that are credited with at least the percentage of interest of
13 the pore space required to ratify the storage facility amalgamation agreement, and a
14 subsequent hearing and order by the commission.

15 16. That all nonconsenting owners are or will be equitably compensated.

16 **38-25-08. Amalgamating property interests.**

17 If a storage operator does not obtain the consent of all persons owning a pore space and of
18 mineral interest owners when required by this chapter, the commission may require the interest
19 owned by the nonconsenting owners be included in an approved storage facility and subject to
20 geologic storage.

21 **38-25-09. Ownership of oil and gas.**

22 All oil or gas previously reduced to possession and subsequently injected into underground
23 storage facilities must be deemed the property of the storage operator subject to the obligation
24 to pay royalties as set forth in section 38-25-10.

25 **38-25-10. Injection of produced gas - When royalties owed.**

26 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
27 owners, royalties on gas produced but not sold and which is injected into a storage
28 facility instead of flaring or for lack of market, are not due on the produced and stored
29 gas until gas volumes actually are withdrawn from the storage facility, sold, and
30 proceeds received from the sale.

1 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
2 storage operator, after notice and hearing, shall obtain approval from the commission
3 evidencing a reasonable and equitable method of allocation of the stored gas sale
4 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
5 storage. The commission may adopt such rules and orders as necessary to implement
6 the purposes of this section.

7 **38-25-11. Application.**

8 This chapter does not apply to applications filed with the commission which propose to use
9 produced gas for an enhanced oil or gas recovery project. Those applications must be
10 processed under chapter 38-08.

21.8029.01003
Title.

Prepared by the Legislative Council staff for
Senator Patten

January 27, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university of school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

- .1... "Commission" mean the industrial commission.
2. "Equitable compensation" includes as a minimum just compensation, and may also include any damages as allowed under N.D.C.C. ch. 38-11.1.
3. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
4. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
5. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
6. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.

7. "Pore space" has the same meaning as in section 47-31-02.

8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
9. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.
10. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
11. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
- .11.. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

- 1... Over all persons and property necessary to administer and enforce this chapter.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of **this** chapter.
8. After notice and hearing, to grant exceptions to implementing rules for good cause.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space. unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021 . if so the percentage in the order **required to pool the mineral interests** prevails **as to the percentage of pore space owners from whom the storage operator must obtain consent.**
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least sixty-five percent of the storage reservoir's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.
8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.
9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
15. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

- .1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least sixty-five percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.
10. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
11. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
12. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.

5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least sixty-five percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.
13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage if the minimum percentage of consent is obtained as specified in this chapter. [replace with language from Dept. of Trust Lands]

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

- .1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.

2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section."

Renumber accordingly

38-25-11. Appeal for determination of equitable compensation.

1. Any nonconsenting surface or pore space owner may appeal any decision of the Commission on the issue of the amount of equitable compensation owed to that owner for use of the owner's surface or pore space. The appeal may be taken to the district court for the county in which the property affected by the order is located or if the property is located in or underlies more than one county, to the district court for any county in which the property is located.
2. The owner must file a notice of appeal with the district court within sixty (60) days of notice of the Commission's decision. The notice of appeal will specify the decision or compensation determination appealed from and describe the real property valued. The notice of appeal must also be served on the storage operator via certified U.S. Mail.
3. In all such proceedings under this section where an appeal is taken to the district court from the decision or award of the Commission on the issue of the amount of equitable compensation owed to the owner, the owner will be entitled to a jury trial. Such appeal may be noticed for trial and tried as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require.
4. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow attorney fees and expenses to the owner as allowed by N.D.C.C. ch. 32-15.
5. The remedy provided in this section is cumulative and does not replace the right to appeal provided in N.D.C.C. 38-08-14 or under N.D.C.C. ch. 28-32. Appeals under this section are limited to the issue of the amount of equitable compensation owed to any nonconsenting surface or pore space owner whose property is being amalgamated under this chapter. The Commission's decision will remain in full and force and effect when an appeal is taken under this section.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/25/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

3:00 PM

Chairman Keiser opened the hearing. Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- 10 year language
- Correlative language
- Review request
- Equitable compensation
- Definition of waste
- Fair compensation
- Constitutional right to trial
- Buffer zones
- Consenting landowners
- Equitable / just compensation
- Diminution of property
- Eminent domain
- Evidentiary rules
- Surface Damage Act
- Amendments 02005; 02006

Troy Coons, NW Area Landowners- #10779

Chris Joseph, Legislative Council- #10783 ,#10784, #10785, #10786

Lynn Helms, director, DMR- oral testimony

Derrick Braaten, Braaten Law Firm- oral testimony

Brady Pelton, governmental affairs manager, NDPC- oral testimony

Ron Ness, ND Petroleum Council- oral testimony

Shane Goettle, Bakken Midstream Natural Gas, LLC- testimony

4:25 PM meeting adjourned.

Kathleen Davis, Committee Clerk

Troy Coons
Northwest Landowners Association
House Energy and Natural Resources Subcommittee
Testimony for SB 2065
March 25, 2021



Chairman Keiser and members of the subcommittee:

On behalf of Troy Coons and the Northwest Landowners Association, we are writing to ensure that we have stated clearly what we consider to be necessary for SB 2065 to be constitutional. It must provide for a jury trial on the issue of the amount of compensation. It must provide “just” compensation for nonconsenting owners of pore space. Our proposed language to fix these constitutional problems is below. The Department of Trust Lands has proposed using an Oklahoma law that allows for an appeal to a jury when condemnation powers are used for gas storage. We would also support taking this approach if the Dept. of Trust Lands is willing to work on the Oklahoma law. We are comfortable with this because as with North Dakota, Oklahoma’s constitution requires a jury trial in this context as well. Oklahoma’s constitution says: “Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record.” Okla. Const. art. II, § 24.

Our language based on other statutes is below:

38-25-11. Appeal for determination of equitable compensation.

1. Any nonconsenting surface or pore space owner may appeal any decision of the Commission on the issue of the amount of equitable compensation owed to that owner for use of the owner’s surface or pore space. The appeal may be taken to the district court for the county in which the property affected by the order is located or if the property is located in or underlies more than one county, to the district court for any county in which the property is located.
2. The owner must file a notice of appeal with the district court within sixty (60) days of notice of the Commission’s decision. The notice of appeal will specify the decision or compensation determination appealed from and describe the real property valued. The notice of appeal must also be served on the storage operator via certified U.S. Mail.
3. In all such proceedings under this section where an appeal is taken to the district court from the decision or award of the Commission on the issue of the amount of equitable compensation owed to the owner, the owner will be entitled to a jury trial. Such appeal may be noticed for trial and tried as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require.
4. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow attorney fees and expenses to the owner as allowed by N.D.C.C. ch. 32-15.

5. The remedy provided in this section is cumulative and does not replace the right to appeal provided in N.D.C.C. 38-08-14 or under N.D.C.C. ch. 28-32. Appeals under this section are limited to the issue of the amount of equitable compensation owed to any nonconsenting surface or pore space owner whose property is being amalgamated under this chapter. The Commission's decision will remain in full and force and effect when an appeal is taken under this section.

Additionally, the law must provide "just" compensation. Right now, it provides "equitable" compensation, but no one knows what that means. It's not a legal term of art like "just compensation," and is not defined anywhere. We have proposed the following definition: "Equitable compensation" includes as a minimum just compensation, and may also include any damages as allowed under N.D.C.C. ch. 38-11.1." The first part of this cures the constitutional problem. The second part references 38-11.1, which is the surface damage act that allows for compensation to landowners for oilfield development. That is what we, as landowners, feel is appropriate here as we have argued for years. We have included both in our definition.

Again, we are compromising as much as possible, but when it comes to constitutional rights, it is not even in our power to negotiate them away for any amount of money. We are just pointing out where this legislation violates the constitution, and attempting to offer constructive proposals on how to overcome these obstacles. If the proposal from the Dept. of Trust Lands will get this legislation across the finish line, we are ready to do whatever we can to help with that effort.

Sincerely,

Troy Coons, Chairman

Dave King, Vice Chairman

Amy Shelton, Executive Director

21.8029.02005
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 24, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development ~~and, drilling, and mining~~ operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 2, line 6, after "7." insert "Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil or gas.

8."

Page 2, line 10, replace "8." with "9."

Page 2, line 13, replace "9." with "10."

Page 2, line 16, replace "10." with "11."

Page 2, line 20, replace "11." with "12."

Page 2, after line 20, insert:

"13. "Waste" means the inefficient storing of oil or gas."

Page 2, line 23, after "chapter" insert "when necessary to prevent waste, to protect correlative rights, or to effect greater ultimate storage and recovery of oil and gas"

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 13, after "16." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

18."

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 13, after "13." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

14. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

15."

Page 6, line 27, replace "fifty-five" with "sixty"

Page 6, line 29, replace "fifty-five" with "sixty"

Page 7, line 13, after "14." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

15. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

16."

Renumber accordingly

21.8029.0200

5

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
4 commission to regulate the permitting and amalgamation of the underground storage of oil or
5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
14 ~~such rights.~~

15 SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is
16 amended and reenacted as follows:
17 15-05-09. Leases for oil, gas, and other products.
18 The board of university and school lands may lease any lands under its control believed to
19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
21 occurring elements and their compounds, and may make and establish rules and regulations for
22 development ~~and~~, drilling, and mining operations.

1 **SECTION 2. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.**

4 Oil and gas leases must be made by the board of university and school lands at such
5 annual minimum payments as are determined by the board, but the royalty shall be not less
6 than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas
7 leases made by the board may authorize a royalty of less than twelve and one-half percent for
8 production from stripper well properties or individual stripper wells and qualifying secondary
9 recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for~~
10 ~~gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone,~~
11 ~~chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section
12 15-05-09 for products other than oil and gas must ~~be made by the board in such annual~~
13 ~~payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the
14 board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this
15 section.

16 **SECTION 3.** Chapter 38-25 of the North Dakota Century Code is created and enacted as
17 follows:

18 **38-25-01. Definitions.**

19 As used in this section:

- 20 1. "Commission" mean the industrial commission.
- 21 2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not
22 defined as oil.
- 23 3. "Geological storage" means the underground storage of oil or gas in a storage
24 reservoir or salt cavern.
- 25 4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which
26 are produced at the wellhead in liquid form and the liquid hydrocarbons known as
27 distillate or condensate recovered or extracted from gas, other than gas produced in
28 association with oil and commonly known as casinghead gas.
- 29 5. "Permit" means a permit issued by the commission allowing a person to operate an
30 underground storage facility.
- 31 6. "Pore space" has the same meaning as in section 47-31-02.

1 7. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or
2 producing of any oil or gas storage well or facility in a manner that increases the
3 quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil
4 or gas.

5 8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
6 whether natural or artificially created, including oil and gas reservoirs and saline
7 formations suitable for or capable of being made suitable for injecting, storing, and
8 withdrawing oil or gas. The term does not include salt caverns.

9 ~~8-9.~~ "Salt cavern" means a natural occurring cavity contained within a salt formation or a
10 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
11 withdrawing oil or gas.

12 ~~9-10.~~ "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
13 or other readily soluble rock to create a salt cavern for underground storage of oil or
14 gas.

15 ~~10-11.~~ "Storage facility" means the reservoir, salt cavern, underground equipment, and
16 surface facilities and equipment used or proposed to be used in an underground
17 storage operation. The term does not include a pipeline used to transport oil or gas to
18 the storage facility.

19 ~~11-12.~~ "Storage operator" means a person holding or applying for a permit.

20 13. "Waste" means the inefficient storing of oil or gas.

21 **38-25-02. Commission authority.**

22 The commission has authority:

- 23 1. Over all persons and property necessary to administer and enforce this chapter when
24 necessary to prevent waste, to protect correlative rights, or to effect greater ultimate
25 storage and recovery of oil and gas.
- 26 2. To regulate activities relating to an underground storage facility, including construction,
27 solution mining to create salt caverns, operation, and closure.
- 28 3. To enter an underground storage facility at a reasonable time and manner to inspect
29 equipment and facilities, to observe, monitor, and investigate operations, and to
30 inspect records required to be maintained at the facility.

- 1 4. To require storage operators provide financial assurance, including bonds, to ensure
2 money is available to fulfill the storage operator's duties.
- 3 5. To exercise continuing jurisdiction over storage operators and storage facilities,
4 including the authority to amend or revoke a permit after notice and hearing.
- 5 6. After notice and hearing, to dissolve or change the boundaries of any commission
6 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
7 boundaries.
- 8 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
9 implement the policies of this chapter.
- 10 8. After notice and hearing, to grant exceptions to this chapter's requirements and
11 implementing rules ~~for good cause~~if required to comply with applicable federal law.

12 **38-25-03. Permit required - Permit transfer.**

13 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
14 the commission consents.

15 **38-25-04. Permit hearing - Hearing notice.**

- 16 1. The commission shall hold a public hearing before issuing any storage permit.
- 17 2. Notice of the hearing must be published for two consecutive weeks in the official
18 newspaper of the county or counties where the storage reservoir or salt cavern is
19 proposed to be located and in any other newspaper the commission requires.
20 Publication deadlines must comply with commission requirements.
- 21 3. Notice of hearing must be given to each surface owner of land overlying the storage
22 reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or
23 salt cavern's boundaries.
- 24 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
25 reservoir, notice of the hearing also must be given to each mineral lessee, mineral
26 owner, and pore space owner within the storage reservoir and within one-half mile
27 [0.80 kilometer] of the storage reservoir's boundaries.
- 28 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
29 notice of the hearing must be given to each salt mineral lessee, salt mineral owner,
30 and pore space owner within the salt cavern outer boundaries and within one-half mile.

1 [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be
2 required by the commission.

3 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
4 notice of hearing must be given to each pore space owner within the storage reservoir
5 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

6 7. Hearing notices required by this section must comply with the deadlines set by the
7 commission and must contain the information the commission requires.

8 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

9 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

10 1. The storage operator has or will obtain the consent by lease, purchase, or other
11 agreement from all surface owners where surface disturbance activities are necessary
12 and surface facilities will be located.

13 2. The storage operator has complied with all requirements set by the commission.

14 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
15 oil or gas.

16 4. The storage operator has made a good-faith effort to get the consent of all persons
17 that own the storage reservoir's pore space.

18 5. The storage operator has made a good-faith effort to obtain the consent of all persons
19 that own oil and gas minerals and oil and gas leases.

20 6. The storage operator has obtained the consent of persons that own at least fifty-five
21 percent of the storage reservoir's pore space unless the percentage required to unitize
22 the oil and gas unit is otherwise provided for by order of the commission before
23 August 1, 2021, if so the percentage in the order prevails.

24 7. The storage operator has obtained the consent of persons that own at least fifty-five
25 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
26 the percentage required to unitize the oil and gas unit is otherwise provided for by
27 order of the commission before August 1, 2021, if so the percentage in the order
28 prevails.

29 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
30 minerals and, if it does, a permit may be issued only if the commission is satisfied the
31 interests of the mineral owners or mineral lessees will not be affected adversely or

1 have been addressed in an arrangement entered by the mineral owners or mineral
2 lessees and the storage operator.

3 9. The proposed storage facility will not affect adversely surface waters or formations
4 containing fresh water.

5 10. The injected oil or gas will not escape from the storage reservoir.

6 11. The storage facility will not endanger health or unduly endanger the environment.

7 12. The storage facility is in the public interest.

8 13. The vertical boundaries of the storage reservoir are defined to include any necessary
9 or reasonable buffer zones for the purpose of ensuring the safe operations of the
10 storage facility and to protect the storage facility against pollution, invasion, and
11 escape or migration of oil or gas therefrom.

12 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
13 reasonable means and confirmed through appropriate monitoring methods, are
14 defined to include any necessary or reasonable buffer zones for the purpose of
15 ensuring the safe operations of the storage facility and to protect the storage facility
16 against pollution, invasion, and escape or migration of oil or gas therefrom.

17 15. The storage operator will establish monitoring facilities and protocols to assess the
18 location and migration of oil and gas, if any, injected for storage and to ensure
19 compliance with all permit, statutory, and administrative requirements.

20 16. The method of underground storage is reasonably necessary to effectively carry on
21 the joint effort, will prevent waste, and, with reasonable probability, will result in the
22 increased storage and recovery of more oil and gas.

23 17. The time, conditions, and method by which the storage facility must be dissolved and
24 the facility's affairs wound up. A storage facility may be dissolved ten years after the
25 storage facility permit is issued upon a petition to the commission by the pore space
26 owners and mineral owners that are credited with at least the percentage of interest of
27 the pore space required to ratify the storage facility amalgamation agreement, and a
28 subsequent hearing and order by the commission.

29 18. All nonconsenting owners are or will be compensated equitably.

1 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

2 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

3 find:

4 1. The storage operator has or will obtain the consent by lease, purchase, or other
5 agreement from all surface owners where surface disturbance activities are necessary
6 and surface facilities will be located.

7 2. The storage operator has complied with all requirements set by the commission.

8 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
9 oil or gas.

10 4. The storage operator has made a good-faith effort to obtain the consent of all persons
11 that own the storage reservoir's pore space.

12 5. The storage operator has obtained the consent of persons that own at least
13 fifty-fivesixty percent of the storage reservoir's pore space.

14 6. The proposed storage facility will not affect adversely surface waters or formations
15 containing fresh water.

16 7. The injected oil or gas will not escape from the storage reservoir.

17 8. The storage facility will not endanger health or unduly endanger the environment.

18 9. The storage facility is in the public interest.

19 10. The vertical boundaries of the storage reservoir are defined to include any necessary
20 or reasonable buffer zones for the purpose of ensuring the safe operations of the
21 storage facility and to protect the storage facility against pollution, invasion, and
22 escape or migration of oil or gas therefrom.

23 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
24 reasonable means and confirmed through appropriate monitoring methods, are
25 defined to include any necessary or reasonable buffer zones for the purpose of
26 ensuring the safe operations of the storage facility and to protect the storage facility
27 against pollution, invasion, and escape or migration of oil or gas therefrom.

28 12. The storage operator will establish monitoring facilities and protocols to assess the
29 location and migration of oil and gas, if any, injected for storage and to ensure
30 compliance with all permit, statutory, and administrative requirements.

1 13. The method of underground storage is reasonably necessary to effectively carry on
2 the joint effort, will prevent waste, and, with reasonable probability, will result in the
3 increased storage and recovery of more oil and gas.

4 14. The time, conditions, and method by which the storage facility must be dissolved and
5 the facility's affairs wound up. A storage facility may be dissolved ten years after the
6 storage facility permit is issued upon a petition to the commission by the pore space
7 owners and mineral owners that are credited with at least the percentage of interest of
8 the pore space required to ratify the storage facility amalgamation agreement, and a
9 subsequent hearing and order by the commission.

10 15. All nonconsenting pore space owners are or will be compensated equitably.

11 **38-25-07. Permit requirements - Storage in salt cavern.**

12 Before issuing a permit for storage in a salt cavern, the commission shall find:

- 13 1. The storage operator has or will obtain the consent by lease, purchase, or other
14 agreement from all surface owners where surface disturbance activities are necessary
15 and surface facilities will be located.
- 16 2. The storage operator has complied with all requirements set by the commission,
17 including all necessary permits to conduct solution mining, if applicable.
- 18 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
19 oil or gas.
- 20 4. The storage operator has made a good-faith effort to obtain the consent of all persons
21 that own the salt cavern's pore space.
- 22 5. The storage operator has made a good-faith effort to obtain the consent of all persons
23 that own the salt cavern's salt minerals and salt leases.
- 24 6. The storage operator has obtained the consent of persons that own at least
25 ~~fifty-five~~sixty percent of the salt cavern's pore space.
- 26 7. The storage operator has obtained the consent of persons that own at least
27 ~~fifty-five~~sixty percent of the salt cavern's salt minerals and salt leases.
- 28 8. The proposed storage facility will not affect adversely surface waters or formations
29 containing fresh water.
- 30 9. The injected oil or gas will not escape from the salt cavern.
- 31 10. The storage facility will not endanger health or unduly endanger the environment.

1 11. The storage facility is in the public interest.

2 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
3 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
4 operation of the storage facility and to protect the storage facility against pollution,
5 invasion, and escape or migration of gas therefrom.

6 13. The storage operator will establish monitoring facilities and protocols to assess the
7 location and migration of oil and gas, if any, injected for storage and to ensure
8 compliance with all permit, statutory, and administrative requirements.

9 14. The method of underground storage is reasonably necessary to effectively carry on
10 the joint effort, will prevent waste, and, with reasonable probability, will result in the
11 increased storage and recovery of more oil and gas.

12 15. The time, conditions, and method by which the storage facility must be dissolved and
13 the facility's affairs wound up. A storage facility may be dissolved ten years after the
14 storage facility permit is issued upon a petition to the commission by the pore space
15 owners and mineral owners that are credited with at least the percentage of interest of
16 the pore space required to ratify the storage facility amalgamation agreement, and a
17 subsequent hearing and order by the commission.

18 16. That all nonconsenting owners are or will be equitably compensated.

19 **38-25-08. Amalgamating property interests.**

20 If a storage operator does not obtain the consent of all persons owning a pore space and of
21 mineral interest owners when required by this chapter, the commission may require the interest
22 owned by the nonconsenting owners be included in an approved storage facility and subject to
23 geologic storage.

24 **38-25-09. Ownership of oil and gas.**

25 All oil or gas previously reduced to possession and subsequently injected into underground
26 storage facilities must be deemed the property of the storage operator subject to the obligation
27 to pay royalties as set forth in section 38-25-10.

28 **38-25-10. Injection of produced gas - When royalties owed.**

29 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
30 owners, royalties on gas produced but not sold and which is injected into a storage
31 facility instead of flaring or for lack of market, are not due on the produced and stored

1 gas until gas volumes actually are withdrawn from the storage facility, sold, and
2 proceeds received from the sale.
3 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
4 storage operator, after notice and hearing, shall obtain approval from the commission
5 evidencing a reasonable and equitable method of allocation of the stored gas sale
6 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
7 storage. The commission may adopt such rules and orders as necessary to implement
8 the purposes of this section.

9 **38-25-11. Application.**

10 This chapter does not apply to applications filed with the commission which propose to use
11 produced gas for an enhanced oil or gas recovery project. Those applications must be
12 processed under chapter 38-08.

21.8029.02006
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 24, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development ~~and, drilling, and mining~~ operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 3, line 19, replace "Notice" with "Written notice"

Page 3, line 19, replace "given" with "mailed"

Page 3, line 19, after "owner" insert "of record"

Page 3, line 21, after the underscored period insert "The notice of hearing must be mailed to an owner's last known address."

Page 3, line 23, replace "given" with "mailed"

Page 3, line 24, after the first "owner" insert "of record"

Page 3, line 24, after the second "owner" insert "of record"

Page 3, line 27, replace "given" with "mailed"

Page 3, line 27, after "owner" insert "of record"

Page 3, line 28, after "owner" insert "of record"

Page 4, line 2, replace "given" with "mailed"

Page 4, line 2, after "owner" insert "of record"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order required to pool the mineral interests prevails as to the percentage of pore space owners from whom the storage operator must obtain consent"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 27, replace "fifty-five" with "sixty"

Page 7, line 18, after "storage" insert "if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations"

Re-number accordingly

21.8029.02006

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
 2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
 3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
 4 commission to regulate the permitting and amalgamation of the underground storage of oil or
 5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
 6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
 9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
 12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
 13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
 14 ~~such rights.~~

15 SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is
 16 amended and reenacted as follows:

17 15-05-09. Leases for oil, gas, and other products.

18 The board of university and school lands may lease any lands under its control believed to
 19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
 20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
 21 occurring elements and their compounds, and may make and establish rules and regulations for
 22 development ~~and~~, drilling, and mining operations.

23 SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is
 24 amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section 15-05-09 for products other than oil and gas must ~~be made by the board in such annual payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section.

SECTION 3. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.
7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline

1 formations suitable for or capable of being made suitable for injecting, storing, and
2 withdrawing oil or gas. The term does not include salt caverns.

3 8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a
4 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
5 withdrawing oil or gas.

6 9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
7 or other readily soluble rock to create a salt cavern for underground storage of oil or
8 gas.

9 10. "Storage facility" means the reservoir, salt cavern, underground equipment, and
10 surface facilities and equipment used or proposed to be used in an underground
11 storage operation. The term does not include a pipeline used to transport oil or gas to
12 the storage facility.

13 11. "Storage operator" means a person holding or applying for a permit.

14 **38-25-02. Commission authority.**

15 The commission has authority:

16 1. Over all persons and property necessary to administer and enforce this chapter.

17 2. To regulate activities relating to an underground storage facility, including construction,
18 solution mining to create salt caverns, operation, and closure.

19 3. To enter an underground storage facility at a reasonable time and manner to inspect
20 equipment and facilities, to observe, monitor, and investigate operations, and to
21 inspect records required to be maintained at the facility.

22 4. To require storage operators provide financial assurance, including bonds, to ensure
23 money is available to fulfill the storage operator's duties.

24 5. To exercise continuing jurisdiction over storage operators and storage facilities,
25 including the authority to amend or revoke a permit after notice and hearing.

26 6. After notice and hearing, to dissolve or change the boundaries of any commission
27 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
28 boundaries.

29 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
30 implement the policies of this chapter.

1 8. After notice and hearing, to grant exceptions to this chapter's requirements and
2 implementing rules ~~for good cause~~ if required to comply with applicable federal law.

3 **38-25-03. Permit required - Permit transfer.**

4 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
5 the commission consents.

6 **38-25-04. Permit hearing - Hearing notice.**

7 1. The commission shall hold a public hearing before issuing any storage permit.

8 2. Notice of the hearing must be published for two consecutive weeks in the official
9 newspaper of the county or counties where the storage reservoir or salt cavern is
10 proposed to be located and in any other newspaper the commission requires.

11 Publication deadlines must comply with commission requirements.

12 3. Notice ~~Written notice~~ of hearing must be givenmailed to each surface owner of record
13 of land overlying the storage reservoir or salt cavern and within one-half mile [0.80
14 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be
15 mailed to an owner's last known address.

16 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
17 reservoir, notice of the hearing also must be givenmailed to each mineral lessee,
18 mineral owner of record, and pore space owner of record within the storage reservoir
19 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

20 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
21 notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral
22 owner of record, and pore space owner of record within the salt cavern outer
23 boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt
24 cavern, or as otherwise may be required by the commission.

25 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
26 notice of hearing must be givenmailed to each pore space owner of record within the
27 storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's
28 boundaries.

29 7. Hearing notices required by this section must comply with the deadlines set by the
30 commission and must contain the information the commission requires.

1 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

2 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

- 3 1. The storage operator has or will obtain the consent by lease, purchase, or other
4 agreement from all surface owners where surface disturbance activities are necessary
5 and surface facilities will be located.
- 6 2. The storage operator has complied with all requirements set by the commission.
- 7 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
8 oil or gas.
- 9 4. The storage operator has made a good-faith effort to get the consent of all persons
10 that own the storage reservoir's pore space.
- 11 5. The storage operator has made a good-faith effort to obtain the consent of all persons
12 that own oil and gas minerals and oil and gas leases.
- 13 6. The storage operator has obtained the consent of persons that own at least fifty-five
14 percent of the storage reservoir's pore space unless the percentage required to unitize
15 the oil and gas unit is otherwise provided for by order of the commission before
16 August 1, 2021, if so the percentage in the order required to pool the mineral interests
17 prevails as to the percentage of pore space owners from whom the storage operator
18 must obtain consent.
- 19 7. The storage operator has obtained the consent of persons that own at least fifty-five
20 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
21 the percentage required to unitize the oil and gas unit is otherwise provided for by
22 order of the commission before August 1, 2021, if so the percentage in the order
23 prevails.
- 24 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
25 minerals and, if it does, a permit may be issued only if the commission is satisfied the
26 interests of the mineral owners or mineral lessees will not be affected adversely or
27 have been addressed in an arrangement entered by the mineral owners or mineral
28 lessees and the storage operator.
- 29 9. The proposed storage facility will not affect adversely surface waters or formations
30 containing fresh water.
- 31 10. The injected oil or gas will not escape from the storage reservoir.

- 1 11. The storage facility will not endanger health or unduly endanger the environment.
- 2 12. The storage facility is in the public interest.
- 3 13. The vertical boundaries of the storage reservoir are defined to include any necessary
4 or reasonable buffer zones for the purpose of ensuring the safe operations of the
5 storage facility and to protect the storage facility against pollution, invasion, and
6 escape or migration of oil or gas therefrom.
- 7 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
8 reasonable means and confirmed through appropriate monitoring methods, are
9 defined to include any necessary or reasonable buffer zones for the purpose of
10 ensuring the safe operations of the storage facility and to protect the storage facility
11 against pollution, invasion, and escape or migration of oil or gas therefrom.
- 12 15. The storage operator will establish monitoring facilities and protocols to assess the
13 location and migration of oil and gas, if any, injected for storage and to ensure
14 compliance with all permit, statutory, and administrative requirements.
- 15 16. All nonconsenting owners are or will be compensated equitably.

16 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

17 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

18 find:

- 19 1. The storage operator has or will obtain the consent by lease, purchase, or other
20 agreement from all surface owners where surface disturbance activities are necessary
21 and surface facilities will be located.
- 22 2. The storage operator has complied with all requirements set by the commission.
- 23 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
24 oil or gas.
- 25 4. The storage operator has made a good-faith effort to obtain the consent of all persons
26 that own the storage reservoir's pore space.
- 27 5. The storage operator has obtained the consent of persons that own at least
28 fifty-fivesixty percent of the storage reservoir's pore space.
- 29 6. The proposed storage facility will not affect adversely surface waters or formations
30 containing fresh water.
- 31 7. The injected oil or gas will not escape from the storage reservoir.

- 1 8. The storage facility will not endanger health or unduly endanger the environment.
- 2 9. The storage facility is in the public interest.
- 3 10. The vertical boundaries of the storage reservoir are defined to include any necessary
4 or reasonable buffer zones for the purpose of ensuring the safe operations of the
5 storage facility and to protect the storage facility against pollution, invasion, and
6 escape or migration of oil or gas therefrom.
- 7 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
8 reasonable means and confirmed through appropriate monitoring methods, are
9 defined to include any necessary or reasonable buffer zones for the purpose of
10 ensuring the safe operations of the storage facility and to protect the storage facility
11 against pollution, invasion, and escape or migration of oil or gas therefrom.
- 12 12. The storage operator will establish monitoring facilities and protocols to assess the
13 location and migration of oil and gas, if any, injected for storage and to ensure
14 compliance with all permit, statutory, and administrative requirements.
- 15 13. All nonconsenting pore space owners are or will be compensated equitably.

16 **38-25-07. Permit requirements - Storage in salt cavern.**

17 Before issuing a permit for storage in a salt cavern, the commission shall find:

- 18 1. The storage operator has or will obtain the consent by lease, purchase, or other
19 agreement from all surface owners where surface disturbance activities are necessary
20 and surface facilities will be located.
- 21 2. The storage operator has complied with all requirements set by the commission,
22 including all necessary permits to conduct solution mining, if applicable.
- 23 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
24 oil or gas.
- 25 4. The storage operator has made a good-faith effort to obtain the consent of all persons
26 that own the salt cavern's pore space.
- 27 5. The storage operator has made a good-faith effort to obtain the consent of all persons
28 that own the salt cavern's salt minerals and salt leases.
- 29 6. The storage operator has obtained the consent of persons that own at least
30 ~~fifty-fivesixty~~ percent of the salt cavern's pore space.

1 7. The storage operator has obtained the consent of persons that own at least fifty-five
2 percent of the salt cavern's salt minerals and salt leases.

3 8. The proposed storage facility will not affect adversely surface waters or formations
4 containing fresh water.

5 9. The injected oil or gas will not escape from the salt cavern.

6 10. The storage facility will not endanger health or unduly endanger the environment.

7 11. The storage facility is in the public interest.

8 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
9 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
10 operation of the storage facility and to protect the storage facility against pollution,
11 invasion, and escape or migration of gas therefrom.

12 13. The storage operator will establish monitoring facilities and protocols to assess the
13 location and migration of oil and gas, if any, injected for storage and to ensure
14 compliance with all permit, statutory, and administrative requirements.

15 14. That all nonconsenting owners are or will be equitably compensated.

16 **38-25-08. Amalgamating property interests.**

17 If a storage operator does not obtain the consent of all persons owning a pore space and of
18 mineral interest owners when required by this chapter, the commission may require the interest
19 owned by the nonconsenting owners be included in an approved storage facility and subject to
20 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
21 Any pore space owner who does not have responsibility over the construction, management,
22 supervision, or control of the storage facility operations is not liable for money damages for
23 personal or other property damages proximately caused by the operations.

24 **38-25-09. Ownership of oil and gas.**

25 All oil or gas previously reduced to possession and subsequently injected into underground
26 storage facilities must be deemed the property of the storage operator subject to the obligation
27 to pay royalties as set forth in section 38-25-10.

28 **38-25-10. Injection of produced gas - When royalties owed.**

29 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
30 owners, royalties on gas produced but not sold and which is injected into a storage
31 facility instead of flaring or for lack of market, are not due on the produced and stored

1 gas until gas volumes actually are withdrawn from the storage facility, sold, and
2 proceeds received from the sale.
3 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
4 storage operator, after notice and hearing, shall obtain approval from the commission
5 evidencing a reasonable and equitable method of allocation of the stored gas sale
6 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
7 storage. The commission may adopt such rules and orders as necessary to implement
8 the purposes of this section.

9 **38-25-11. Application.**

10 This chapter does not apply to applications filed with the commission which propose to use
11 produced gas for an enhanced oil or gas recovery project. Those applications must be
12 processed under chapter 38-08.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/29/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

9:00 AM

Chairman Keiser opened the hearing. Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- Amendments 02007, 02008 and 02009
- Correlative rights
- equitable compensation appeals process
- De novo review and attorney's fees
- Definition of equitable compensation
- Just compensation
- Constitutional taking
- Natural gas storage
- Cavern, depleted oil fields, salt water formations
- Attorney's fees
- Issue of compensation
- Gas storage permit
- 10 year language
- Review request
- Constitutional right to trial
- Appeal by jury

Chris Joseph, Legislative Council- #10905, #10906, #10988, #10989

Derrick Braaten, Braaten Law Firm- oral testimony

Ron Ness, ND Petroleum Council- oral testimony

Lynn Helms, director, DMR- oral testimony

Jodi Smith, Commission – ND Trust Lands – oral testimony

Troy Coons, NW Area Landowners – oral testimony

Shane Goettle, Bakken Midstream Natural Gas, LLC- oral testimony

9:58 AM meeting adjourned.

Kathleen Davis, Committee Clerk

21.8029.02007
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 26, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development ~~and, drilling, and mining~~ operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 2, line 6, after "7." insert "Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil or gas.

8."

Page 2, line 10, replace "8." with "9."

Page 2, line 13, replace "9." with "10."

Page 2, line 16, replace "10." with "11."

Page 2, line 20, replace "11." with "12."

Page 2, after line 20, insert:

"13. "Waste" means the inefficient storing of oil or gas."

Page 2, line 23, after "chapter" insert "when necessary to prevent waste, to protect correlative rights of the mineral and surface estate, or to effect greater ultimate storage and recovery of oil and gas"

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 3, line 19, replace "Notice" with "Written notice"

Page 3, line 19, replace "given" with "mailed"

Page 3, line 19, after "owner" insert "of record"

Page 3, line 21, after the underscored period insert "The notice of hearing must be mailed to an owner's last known address."

Page 3, line 23, replace "given" with "mailed"

Page 3, line 24, after the first "owner" insert "of record"

Page 3, line 24, after the second "owner" insert "of record"

Page 3, line 27, replace "given" with "mailed"

Page 3, line 27, after "owner" insert "of record"

Page 3, line 28, after "owner" insert "of record"

Page 4, line 2, replace "given" with "mailed"

Page 4, line 2, after "owner" insert "of record"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order required to pool the mineral interests prevails as to the percentage of pore space owners from whom the storage operator must obtain consent"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 13, after "16." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a

petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

18."

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 13, after "13." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

14. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

15."

Page 6, line 27, replace "fifty-five" with "sixty"

Page 7, line 13, after "14." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

15. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

16."

Page 7, line 18, after "storage" insert "if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations"

Renumber accordingly

21.8029.02007

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
4 commission to regulate the permitting and amalgamation of the underground storage of oil or
5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
14 ~~such rights.~~

15 SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 15-05-09. Leases for oil, gas, and other products.

18 The board of university and school lands may lease any lands under its control believed to
19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
21 occurring elements and their compounds, and may make and establish rules and regulations for
22 development ~~and~~, drilling, and mining operations.

23 SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section 15-05-09 for products other than oil and gas must ~~be made by the board in such annual payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this section.

SECTION 3. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.
7. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the

1 quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil
2 or gas.

3 8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
4 whether natural or artificially created, including oil and gas reservoirs and saline
5 formations suitable for or capable of being made suitable for injecting, storing, and
6 withdrawing oil or gas. The term does not include salt caverns.

7 ~~8-9.~~ "Salt cavern" means a natural occurring cavity contained within a salt formation or a
8 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
9 withdrawing oil or gas.

10 ~~9-10.~~ "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
11 or other readily soluble rock to create a salt cavern for underground storage of oil or
12 gas.

13 ~~10-11.~~ "Storage facility" means the reservoir, salt cavern, underground equipment, and
14 surface facilities and equipment used or proposed to be used in an underground
15 storage operation. The term does not include a pipeline used to transport oil or gas to
16 the storage facility.

17 ~~11-12.~~ "Storage operator" means a person holding or applying for a permit.

18 13. "Waste" means the inefficient storing of oil or gas.

19 **38-25-02. Commission authority.**

20 The commission has authority:

- 21 1. Over all persons and property necessary to administer and enforce this chapter when
22 necessary to prevent waste, to protect correlative rights of the mineral and surface
23 estate, or to effect greater ultimate storage and recovery of oil and gas.
- 24 2. To regulate activities relating to an underground storage facility, including construction,
25 solution mining to create salt caverns, operation, and closure.
- 26 3. To enter an underground storage facility at a reasonable time and manner to inspect
27 equipment and facilities, to observe, monitor, and investigate operations, and to
28 inspect records required to be maintained at the facility.
- 29 4. To require storage operators provide financial assurance, including bonds, to ensure
30 money is available to fulfill the storage operator's duties.

- 1 5. To exercise continuing jurisdiction over storage operators and storage facilities,
2 including the authority to amend or revoke a permit after notice and hearing.
- 3 6. After notice and hearing, to dissolve or change the boundaries of any commission
4 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
5 boundaries.
- 6 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
7 implement the policies of this chapter.
- 8 8. After notice and hearing, to grant exceptions to this chapter's requirements and
9 implementing rules ~~for good cause~~ if required to comply with applicable federal law.

10 **38-25-03. Permit required - Permit transfer.**

11 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
12 the commission consents.

13 **38-25-04. Permit hearing - Hearing notice.**

- 14 1. The commission shall hold a public hearing before issuing any storage permit.
- 15 2. Notice of the hearing must be published for two consecutive weeks in the official
16 newspaper of the county or counties where the storage reservoir or salt cavern is
17 proposed to be located and in any other newspaper the commission requires.
18 Publication deadlines must comply with commission requirements.
- 19 3. Notice ~~Written notice~~ of hearing must be givenmailed to each surface owner of record
20 of land overlying the storage reservoir or salt cavern and within one-half mile [0.80
21 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be
22 mailed to an owner's last known address.
- 23 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
24 reservoir, notice of the hearing also must be givenmailed to each mineral lessee,
25 mineral owner of record, and pore space owner of record within the storage reservoir
26 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
- 27 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
28 notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral
29 owner of record, and pore space owner of record within the salt cavern outer
30 boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt
31 cavern, or as otherwise may be required by the commission.

1 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
2 notice of hearing must be given mailed to each pore space owner of record within the
3 storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's
4 boundaries.

5 7. Hearing notices required by this section must comply with the deadlines set by the
6 commission and must contain the information the commission requires.

7 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

8 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

9 1. The storage operator has or will obtain the consent by lease, purchase, or other
10 agreement from all surface owners where surface disturbance activities are necessary
11 and surface facilities will be located.

12 2. The storage operator has complied with all requirements set by the commission.

13 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
14 oil or gas.

15 4. The storage operator has made a good-faith effort to get the consent of all persons
16 that own the storage reservoir's pore space.

17 5. The storage operator has made a good-faith effort to obtain the consent of all persons
18 that own oil and gas minerals and oil and gas leases.

19 6. The storage operator has obtained the consent of persons that own at least fifty-five
20 percent of the storage reservoir's pore space unless the percentage required to unitize
21 the oil and gas unit is otherwise provided for by order of the commission before
22 August 1, 2021, if so the percentage in the order required to pool the mineral interests
23 prevails as to the percentage of pore space owners from whom the storage operator
24 must obtain consent.

25 7. The storage operator has obtained the consent of persons that own at least fifty-five
26 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
27 the percentage required to unitize the oil and gas unit is otherwise provided for by
28 order of the commission before August 1, 2021, if so the percentage in the order
29 prevails.

30 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
31 minerals and, if it does, a permit may be issued only if the commission is satisfied the

1 interests of the mineral owners or mineral lessees will not be affected adversely or
2 have been addressed in an arrangement entered by the mineral owners or mineral
3 lessees and the storage operator.

4 9. The proposed storage facility will not affect adversely surface waters or formations
5 containing fresh water.

6 10. The injected oil or gas will not escape from the storage reservoir.

7 11. The storage facility will not endanger health or unduly endanger the environment.

8 12. The storage facility is in the public interest.

9 13. The vertical boundaries of the storage reservoir are defined to include any necessary
10 or reasonable buffer zones for the purpose of ensuring the safe operations of the
11 storage facility and to protect the storage facility against pollution, invasion, and
12 escape or migration of oil or gas therefrom.

13 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
14 reasonable means and confirmed through appropriate monitoring methods, are
15 defined to include any necessary or reasonable buffer zones for the purpose of
16 ensuring the safe operations of the storage facility and to protect the storage facility
17 against pollution, invasion, and escape or migration of oil or gas therefrom.

18 15. The storage operator will establish monitoring facilities and protocols to assess the
19 location and migration of oil and gas, if any, injected for storage and to ensure
20 compliance with all permit, statutory, and administrative requirements.

21 16. The method of underground storage is reasonably necessary to effectively carry on
22 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
23 estate, and, with reasonable probability, will result in the increased storage and
24 recovery of more oil and gas.

25 17. The time, conditions, and method by which the storage facility must be dissolved and
26 the facility's affairs wound up. A storage facility may be dissolved ten years after the
27 storage facility permit is issued upon a petition to the commission by the pore space
28 owners and mineral owners that are credited with at least the percentage of interest of
29 the pore space required to ratify the storage facility amalgamation agreement, and a
30 subsequent hearing and order by the commission.

31 18. All nonconsenting owners are or will be compensated equitably.

1 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

2 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

3 find:

4 1. The storage operator has or will obtain the consent by lease, purchase, or other
5 agreement from all surface owners where surface disturbance activities are necessary
6 and surface facilities will be located.

7 2. The storage operator has complied with all requirements set by the commission.

8 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
9 oil or gas.

10 4. The storage operator has made a good-faith effort to obtain the consent of all persons
11 that own the storage reservoir's pore space.

12 5. The storage operator has obtained the consent of persons that own at least
13 fifty-fivesixty percent of the storage reservoir's pore space.

14 6. The proposed storage facility will not affect adversely surface waters or formations
15 containing fresh water.

16 7. The injected oil or gas will not escape from the storage reservoir.

17 8. The storage facility will not endanger health or unduly endanger the environment.

18 9. The storage facility is in the public interest.

19 10. The vertical boundaries of the storage reservoir are defined to include any necessary
20 or reasonable buffer zones for the purpose of ensuring the safe operations of the
21 storage facility and to protect the storage facility against pollution, invasion, and
22 escape or migration of oil or gas therefrom.

23 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
24 reasonable means and confirmed through appropriate monitoring methods, are
25 defined to include any necessary or reasonable buffer zones for the purpose of
26 ensuring the safe operations of the storage facility and to protect the storage facility
27 against pollution, invasion, and escape or migration of oil or gas therefrom.

28 12. The storage operator will establish monitoring facilities and protocols to assess the
29 location and migration of oil and gas, if any, injected for storage and to ensure
30 compliance with all permit, statutory, and administrative requirements.

- 1 13. The method of underground storage is reasonably necessary to effectively carry on
2 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
3 estate, and, with reasonable probability, will result in the increased storage and
4 recovery of more oil and gas.
- 5 14. The time, conditions, and method by which the storage facility must be dissolved and
6 the facility's affairs wound up. A storage facility may be dissolved ten years after the
7 storage facility permit is issued upon a petition to the commission by the pore space
8 owners and mineral owners that are credited with at least the percentage of interest of
9 the pore space required to ratify the storage facility amalgamation agreement, and a
10 subsequent hearing and order by the commission.
- 11 15. All nonconsenting pore space owners are or will be compensated equitably.

12 **38-25-07. Permit requirements - Storage in salt cavern.**

13 Before issuing a permit for storage in a salt cavern, the commission shall find:

- 14 1. The storage operator has or will obtain the consent by lease, purchase, or other
15 agreement from all surface owners where surface disturbance activities are necessary
16 and surface facilities will be located.
- 17 2. The storage operator has complied with all requirements set by the commission,
18 including all necessary permits to conduct solution mining, if applicable.
- 19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.
- 21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the salt cavern's pore space.
- 23 5. The storage operator has made a good-faith effort to obtain the consent of all persons
24 that own the salt cavern's salt minerals and salt leases.
- 25 6. The storage operator has obtained the consent of persons that own at least
26 fifty-fivesixty percent of the salt cavern's pore space.
- 27 7. The storage operator has obtained the consent of persons that own at least fifty-five
28 percent of the salt cavern's salt minerals and salt leases.
- 29 8. The proposed storage facility will not affect adversely surface waters or formations
30 containing fresh water.
- 31 9. The injected oil or gas will not escape from the salt cavern.

1 10. The storage facility will not endanger health or unduly endanger the environment.

2 11. The storage facility is in the public interest.

3 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
4 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
5 operation of the storage facility and to protect the storage facility against pollution,
6 invasion, and escape or migration of gas therefrom.

7 13. The storage operator will establish monitoring facilities and protocols to assess the
8 location and migration of oil and gas, if any, injected for storage and to ensure
9 compliance with all permit, statutory, and administrative requirements.

10 14. The method of underground storage is reasonably necessary to effectively carry on
11 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
12 estate, and, with reasonable probability, will result in the increased storage and
13 recovery of more oil and gas.

14 15. The time, conditions, and method by which the storage facility must be dissolved and
15 the facility's affairs wound up. A storage facility may be dissolved ten years after the
16 storage facility permit is issued upon a petition to the commission by the pore space
17 owners and mineral owners that are credited with at least the percentage of interest of
18 the pore space required to ratify the storage facility amalgamation agreement, and a
19 subsequent hearing and order by the commission.

20 16. That all nonconsenting owners are or will be equitably compensated.

21 **38-25-08. Amalgamating property interests.**

22 If a storage operator does not obtain the consent of all persons owning a pore space and of
23 mineral interest owners when required by this chapter, the commission may require the interest
24 owned by the nonconsenting owners be included in an approved storage facility and subject to
25 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
26 Any pore space owner who does not have responsibility over the construction, management,
27 supervision, or control of the storage facility operations is not liable for money damages for
28 personal or other property damages proximately caused by the operations.

1 **38-25-09. Ownership of oil and gas.**

2 All oil or gas previously reduced to possession and subsequently injected into underground
3 storage facilities must be deemed the property of the storage operator subject to the obligation
4 to pay royalties as set forth in section 38-25-10.

5 **38-25-10. Injection of produced gas - When royalties owed.**

6 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
7 owners, royalties on gas produced but not sold and which is injected into a storage
8 facility instead of flaring or for lack of market, are not due on the produced and stored
9 gas until gas volumes actually are withdrawn from the storage facility, sold, and
10 proceeds received from the sale.

11 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
12 storage operator, after notice and hearing, shall obtain approval from the commission
13 evidencing a reasonable and equitable method of allocation of the stored gas sale
14 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
15 storage. The commission may adopt such rules and orders as necessary to implement
16 the purposes of this section.

17 **38-25-11. Application.**

18 This chapter does not apply to applications filed with the commission which propose to use
19 produced gas for an enhanced oil or gas recovery project. Those applications must be
20 processed under chapter 38-08.

21.8029.02008

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ a new subdivision to subsection 2
2 of section 28-32-01 and chapter 38-25 of the North Dakota Century Code, relating to ~~the~~
3 ~~authority of the board of university and school lands to lease lands under its control for the~~
4 ~~underground storage of oil or gas and the~~ definition of an administrative agency and the
5 jurisdiction of the industrial commission to regulate the permitting and amalgamation of the
6 underground storage of oil or gas; and to amend and reenact sections 15-05-09 and 15-05-10
7 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases.

8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
10 ~~as follows:~~

11 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

12 ~~The board of university and school lands may lease any lands under the board's control for~~
13 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
14 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
15 ~~such rights.~~

16 **SECTION 1. AMENDMENT.** Section 15-05-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15-05-09. Leases for oil, gas, and other products.**

19 The board of university and school lands may lease any lands under its control believed to
20 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
21 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
22 occurring elements and their compounds, and may make and establish rules and regulations for
23 development ~~and~~, drilling, and mining operations.

1 **SECTION 2. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.**

4 Oil and gas leases must be made by the board of university and school lands at such
5 annual minimum payments as are determined by the board, but the royalty shall be not less
6 than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas
7 leases made by the board may authorize a royalty of less than twelve and one-half percent for
8 production from stripper well properties or individual stripper wells and qualifying secondary
9 recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for~~
10 ~~gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone,~~
11 ~~chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section
12 15-05-09 for products other than oil and gas must ~~be made by the board in such annual~~
13 ~~payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the
14 board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this
15 section.

16 **SECTION 3.** A new subdivision to subsection 2 of section 28-32-01 of the North Dakota
17 Century Code is created and enacted as follows:

18 The industrial commission with respect to an appeal for the determination of
19 equitable compensation under chapter 38-25.

20 **SECTION 4.** Chapter 38-25 of the North Dakota Century Code is created and enacted as
21 follows:

22 **38-25-01. Definitions.**

23 As used in this section:

- 24 1. "Commission" mean the industrial commission.
25 2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not
26 defined as oil.
27 3. "Geological storage" means the underground storage of oil or gas in a storage
28 reservoir or salt cavern.
29 4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which
30 are produced at the wellhead in liquid form and the liquid hydrocarbons known as

1 distillate or condensate recovered or extracted from gas, other than gas produced in
2 association with oil and commonly known as casinghead gas.

3 5. "Permit" means a permit issued by the commission allowing a person to operate an
4 underground storage facility.

5 6. "Pore space" has the same meaning as in section 47-31-02.

6 7. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or
7 producing of any oil or gas storage well or facility in a manner that increases the
8 quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil
9 or gas.

10 8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
11 whether natural or artificially created, including oil and gas reservoirs and saline
12 formations suitable for or capable of being made suitable for injecting, storing, and
13 withdrawing oil or gas. The term does not include salt caverns.

14 ~~8.9.~~ "Salt cavern" means a natural occurring cavity contained within a salt formation or a
15 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
16 withdrawing oil or gas.

17 ~~9.10.~~ "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
18 or other readily soluble rock to create a salt cavern for underground storage of oil or
19 gas.

20 ~~10.11.~~ "Storage facility" means the reservoir, salt cavern, underground equipment, and
21 surface facilities and equipment used or proposed to be used in an underground
22 storage operation. The term does not include a pipeline used to transport oil or gas to
23 the storage facility.

24 ~~11.12.~~ "Storage operator" means a person holding or applying for a permit.

25 13. "Waste" means the inefficient storing of oil or gas.

26 **38-25-02. Commission authority.**

27 The commission has authority:

28 1. Over all persons and property necessary to administer and enforce this chapter when
29 necessary to prevent waste, to protect correlative rights of the mineral and surface
30 estate, or to effect greater ultimate storage and recovery of oil and gas.

- 1 2. To regulate activities relating to an underground storage facility, including construction,
2 solution mining to create salt caverns, operation, and closure.
- 3 3. To enter an underground storage facility at a reasonable time and manner to inspect
4 equipment and facilities, to observe, monitor, and investigate operations, and to
5 inspect records required to be maintained at the facility.
- 6 4. To require storage operators provide financial assurance, including bonds, to ensure
7 money is available to fulfill the storage operator's duties.
- 8 5. To exercise continuing jurisdiction over storage operators and storage facilities,
9 including the authority to amend or revoke a permit after notice and hearing.
- 10 6. After notice and hearing, to dissolve or change the boundaries of any commission
11 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
12 boundaries.
- 13 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
14 implement the policies of this chapter.
- 15 8. After notice and hearing, to grant exceptions to this chapter's requirements and
16 implementing rules ~~for good cause~~ if required to comply with applicable federal law.

17 **38-25-03. Permit required - Permit transfer.**

18 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
19 the commission consents.

20 **38-25-04. Permit hearing - Hearing notice.**

- 21 1. The commission shall hold a public hearing before issuing any storage permit.
- 22 2. Notice of the hearing must be published for two consecutive weeks in the official
23 newspaper of the county or counties where the storage reservoir or salt cavern is
24 proposed to be located and in any other newspaper the commission requires.
25 Publication deadlines must comply with commission requirements.
- 26 3. Notice ~~Written notice~~ of hearing must be given ~~mailed~~ to each surface owner of record
27 of land overlying the storage reservoir or salt cavern and within one-half mile [0.80
28 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be
29 mailed to an owner's last known address.
- 30 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
31 reservoir, notice of the hearing also must be given ~~mailed~~ to each mineral lessee.

1 mineral owner of record, and pore space owner of record within the storage reservoir
2 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

3 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
4 notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral
5 owner of record, and pore space owner of record within the salt cavern outer
6 boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt
7 cavern, or as otherwise may be required by the commission.

8 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
9 notice of hearing must be givenmailed to each pore space owner of record within the
10 storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's
11 boundaries.

12 7. Hearing notices required by this section must comply with the deadlines set by the
13 commission and must contain the information the commission requires.

14 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

15 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

16 1. The storage operator has or will obtain the consent by lease, purchase, or other
17 agreement from all surface owners where surface disturbance activities are necessary
18 and surface facilities will be located.

19 2. The storage operator has complied with all requirements set by the commission.

20 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
21 oil or gas.

22 4. The storage operator has made a good-faith effort to get the consent of all persons
23 that own the storage reservoir's pore space.

24 5. The storage operator has made a good-faith effort to obtain the consent of all persons
25 that own oil and gas minerals and oil and gas leases.

26 6. The storage operator has obtained the consent of persons that own at least fifty-five
27 percent of the storage reservoir's pore space unless the percentage required to unitize
28 the oil and gas unit is otherwise provided for by order of the commission before
29 August 1, 2021, if so the percentage in the order required to pool the mineral interests
30 prevails as to the percentage of pore space owners from whom the storage operator
31 must obtain consent.

- 1 7. The storage operator has obtained the consent of persons that own at least fifty-five
2 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
3 the percentage required to unitize the oil and gas unit is otherwise provided for by
4 order of the commission before August 1, 2021, if so the percentage in the order
5 prevails.
- 6 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
7 minerals and, if it does, a permit may be issued only if the commission is satisfied the
8 interests of the mineral owners or mineral lessees will not be affected adversely or
9 have been addressed in an arrangement entered by the mineral owners or mineral
10 lessees and the storage operator.
- 11 9. The proposed storage facility will not affect adversely surface waters or formations
12 containing fresh water.
- 13 10. The injected oil or gas will not escape from the storage reservoir.
- 14 11. The storage facility will not endanger health or unduly endanger the environment.
- 15 12. The storage facility is in the public interest.
- 16 13. The vertical boundaries of the storage reservoir are defined to include any necessary
17 or reasonable buffer zones for the purpose of ensuring the safe operations of the
18 storage facility and to protect the storage facility against pollution, invasion, and
19 escape or migration of oil or gas therefrom.
- 20 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
21 reasonable means and confirmed through appropriate monitoring methods, are
22 defined to include any necessary or reasonable buffer zones for the purpose of
23 ensuring the safe operations of the storage facility and to protect the storage facility
24 against pollution, invasion, and escape or migration of oil or gas therefrom.
- 25 15. The storage operator will establish monitoring facilities and protocols to assess the
26 location and migration of oil and gas, if any, injected for storage and to ensure
27 compliance with all permit, statutory, and administrative requirements.
- 28 16. The method of underground storage is reasonably necessary to effectively carry on
29 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
30 estate, and, with reasonable probability, will result in the increased storage and
31 recovery of more oil and gas.

1 17. The time, conditions, and method by which the storage facility must be dissolved and
2 the facility's affairs wound up. A storage facility may be dissolved ten years after the
3 storage facility permit is issued upon a petition to the commission by the pore space
4 owners and mineral owners that are credited with at least the percentage of interest of
5 the pore space required to ratify the storage facility amalgamation agreement, and a
6 subsequent hearing and order by the commission.

7 18. All nonconsenting owners are or will be compensated equitably.

8 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

9 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

10 find:

- 11 1. The storage operator has or will obtain the consent by lease, purchase, or other
12 agreement from all surface owners where surface disturbance activities are necessary
13 and surface facilities will be located.
- 14 2. The storage operator has complied with all requirements set by the commission.
- 15 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
16 oil or gas.
- 17 4. The storage operator has made a good-faith effort to obtain the consent of all persons
18 that own the storage reservoir's pore space.
- 19 5. The storage operator has obtained the consent of persons that own at least
20 fifty-five~~sixty~~ percent of the storage reservoir's pore space.
- 21 6. The proposed storage facility will not affect adversely surface waters or formations
22 containing fresh water.
- 23 7. The injected oil or gas will not escape from the storage reservoir.
- 24 8. The storage facility will not endanger health or unduly endanger the environment.
- 25 9. The storage facility is in the public interest.
- 26 10. The vertical boundaries of the storage reservoir are defined to include any necessary
27 or reasonable buffer zones for the purpose of ensuring the safe operations of the
28 storage facility and to protect the storage facility against pollution, invasion, and
29 escape or migration of oil or gas therefrom.
- 30 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
31 reasonable means and confirmed through appropriate monitoring methods, are

1 defined to include any necessary or reasonable buffer zones for the purpose of
2 ensuring the safe operations of the storage facility and to protect the storage facility
3 against pollution, invasion, and escape or migration of oil or gas therefrom.

4 12. The storage operator will establish monitoring facilities and protocols to assess the
5 location and migration of oil and gas, if any, injected for storage and to ensure
6 compliance with all permit, statutory, and administrative requirements.

7 13. The method of underground storage is reasonably necessary to effectively carry on
8 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
9 estate, and, with reasonable probability, will result in the increased storage and
10 recovery of more oil and gas.

11 14. The time, conditions, and method by which the storage facility must be dissolved and
12 the facility's affairs wound up. A storage facility may be dissolved ten years after the
13 storage facility permit is issued upon a petition to the commission by the pore space
14 owners and mineral owners that are credited with at least the percentage of interest of
15 the pore space required to ratify the storage facility amalgamation agreement, and a
16 subsequent hearing and order by the commission.

17 15. All nonconsenting pore space owners are or will be compensated equitably.

18 **38-25-07. Permit requirements - Storage in salt cavern.**

19 Before issuing a permit for storage in a salt cavern, the commission shall find:

20 1. The storage operator has or will obtain the consent by lease, purchase, or other
21 agreement from all surface owners where surface disturbance activities are necessary
22 and surface facilities will be located.

23 2. The storage operator has complied with all requirements set by the commission,
24 including all necessary permits to conduct solution mining, if applicable.

25 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
26 oil or gas.

27 4. The storage operator has made a good-faith effort to obtain the consent of all persons
28 that own the salt cavern's pore space.

29 5. The storage operator has made a good-faith effort to obtain the consent of all persons
30 that own the salt cavern's salt minerals and salt leases.

- 1 6. The storage operator has obtained the consent of persons that own at least
- 2 fifty-fivesixty percent of the salt cavern's pore space.
- 3 7. The storage operator has obtained the consent of persons that own at least fifty-five
- 4 percent of the salt cavern's salt minerals and salt leases.
- 5 8. The proposed storage facility will not affect adversely surface waters or formations
- 6 containing fresh water.
- 7 9. The injected oil or gas will not escape from the salt cavern.
- 8 10. The storage facility will not endanger health or unduly endanger the environment.
- 9 11. The storage facility is in the public interest.
- 10 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
- 11 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
- 12 operation of the storage facility and to protect the storage facility against pollution,
- 13 invasion, and escape or migration of gas therefrom.
- 14 13. The storage operator will establish monitoring facilities and protocols to assess the
- 15 location and migration of oil and gas, if any, injected for storage and to ensure
- 16 compliance with all permit, statutory, and administrative requirements.
- 17 14. The method of underground storage is reasonably necessary to effectively carry on
- 18 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
- 19 estate, and, with reasonable probability, will result in the increased storage and
- 20 recovery of more oil and gas.
- 21 15. The time, conditions, and method by which the storage facility must be dissolved and
- 22 the facility's affairs wound up. A storage facility may be dissolved ten years after the
- 23 storage facility permit is issued upon a petition to the commission by the pore space
- 24 owners and mineral owners that are credited with at least the percentage of interest of
- 25 the pore space required to ratify the storage facility amalgamation agreement, and a
- 26 subsequent hearing and order by the commission.
- 27 16. That all nonconsenting owners are or will be equitably compensated.

28 **38-25-08. Amalgamating property interests.**

29 If a storage operator does not obtain the consent of all persons owning a pore space and of
30 mineral interest owners when required by this chapter, the commission may require the interest
31 owned by the nonconsenting owners be included in an approved storage facility and subject to

1 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
2 Any pore space owner who does not have responsibility over the construction, management,
3 supervision, or control of the storage facility operations is not liable for money damages for
4 personal or other property damages proximately caused by the operations.

5 **38-25-09. Ownership of oil and gas.**

6 All oil or gas previously reduced to possession and subsequently injected into underground
7 storage facilities must be deemed the property of the storage operator subject to the obligation
8 to pay royalties as set forth in section 38-25-10.

9 **38-25-10. Injection of produced gas - When royalties owed.**

- 10 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
11 owners, royalties on gas produced but not sold and which is injected into a storage
12 facility instead of flaring or for lack of market, are not due on the produced and stored
13 gas until gas volumes actually are withdrawn from the storage facility, sold, and
14 proceeds received from the sale.
- 15 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
16 storage operator, after notice and hearing, shall obtain approval from the commission
17 evidencing a reasonable and equitable method of allocation of the stored gas sale
18 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
19 storage. The commission may adopt such rules and orders as necessary to implement
20 the purposes of this section.

21 **38-25-11. Appeal for determination of equitable compensation.**

- 22 1. A nonconsenting surface or pore space owner may appeal the commission's decision
23 on the amount of equitable compensation owed to that owner for use of the owner's
24 surface or pore space. The appeal must be taken to the district court for the county
25 where the property affected by the order is located unless the property is located in or
26 underlies more than one county, then the appeal may be taken to the district court for
27 any county in which the property is located.
- 28 2. The owner shall file the notice of appeal with the district court within sixty days of
29 notice of the commission's decision.
- 30 a. The notice of appeal must specify the compensation determination appealed
31 from and describe the real property valued.

1 b. The notice of appeal also must be served on the storage operator by certified
2 mail.

3 3. In a proceeding in district court under this section, the amount of equitable
4 compensation must be made by a jury, unless a jury is waived by the owner.

5 a. The appeal may be noticed for trial and tried as in the case of a civil action and
6 the court may direct issues to be framed, and require other parties to be joined
7 and to plead therein when necessary for the proper determination of equitable
8 compensation.

9 b. The owner shall present evidence, has the burden of proof, and has the right to
10 an opening and closing statement.

11 4. The remedy provided in this section is cumulative and does not replace the right to
12 appeal under section 38-08-14 or chapter 28-32.

13 a. An appeal under this section is limited to the amount of equitable compensation
14 owed to a nonconsenting surface or pore space owner whose property is being
15 amalgamated under this chapter.

16 b. The commission's decision remains in effect when an appeal is taken under this
17 section.

18 **38-25-1138-25-12. Application.**

19 This chapter does not apply to applications filed with the commission which propose to use
20 produced gas for an enhanced oil or gas recovery project. Those applications must be
21 processed under chapter 38-08.

21.8029.02009

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ a new subdivision to subsection 2
2 of section 28-32-01 and chapter 38-25 of the North Dakota Century Code, relating to ~~the~~
3 ~~authority of the board of university and school lands to lease lands under its control for the~~
4 ~~underground storage of oil or gas and the~~ definition of an administrative agency and the
5 jurisdiction of the industrial commission to regulate the permitting and amalgamation of the
6 underground storage of oil or gas; and to amend and reenact sections 15-05-09 and 15-05-10
7 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases.

8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
10 ~~as follows:~~

11 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

12 ~~The board of university and school lands may lease any lands under the board's control for~~
13 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
14 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
15 ~~such rights.~~

16 **SECTION 1. AMENDMENT.** Section 15-05-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15-05-09. Leases for oil, gas, and other products.**

19 The board of university and school lands may lease any lands under its control believed to
20 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
21 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
22 occurring elements and their compounds, and may make and establish rules and regulations for
23 development ~~and~~, drilling, and mining operations.

1 **SECTION 2. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.**

4 Oil and gas leases must be made by the board of university and school lands at such
5 annual minimum payments as are determined by the board, but the royalty shall be not less
6 than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas
7 leases made by the board may authorize a royalty of less than twelve and one-half percent for
8 production from stripper well properties or individual stripper wells and qualifying secondary
9 recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for~~
10 ~~gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone,~~
11 ~~chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section
12 15-05-09 for products other than oil and gas must ~~be made by the board in such annual~~
13 ~~payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the
14 board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this
15 section.

16 **SECTION 3.** A new subdivision to subsection 2 of section 28-32-01 of the North Dakota
17 Century Code is created and enacted as follows:

18 The industrial commission with respect to an appeal for the determination of
19 equitable compensation under chapter 38-25.

20 **SECTION 4.** Chapter 38-25 of the North Dakota Century Code is created and enacted as
21 follows:

22 **38-25-01. Definitions.**

23 As used in this ~~section~~ chapter:

- 24 1. "Commission" mean the industrial commission.
- 25 2. "Equitable compensation" means just compensation and includes any damages
26 allowed under chapter 38-11.1.
- 27 3. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not
28 defined as oil.
- 29 ~~3.4.~~ "Geological storage" means the underground storage of oil or gas in a storage
30 reservoir or salt cavern.

1 4.5. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which
2 are produced at the wellhead in liquid form and the liquid hydrocarbons known as
3 distillate or condensate recovered or extracted from gas, other than gas produced in
4 association with oil and commonly known as casinghead gas.

5 5.6. "Permit" means a permit issued by the commission allowing a person to operate an
6 underground storage facility.

7 6.7. "Pore space" has the same meaning as in section 47-31-02.

8 7.8. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or
9 producing of any oil or gas storage well or facility in a manner that increases the
10 quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil
11 or gas.

12 9. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
13 whether natural or artificially created, including oil and gas reservoirs and saline
14 formations suitable for or capable of being made suitable for injecting, storing, and
15 withdrawing oil or gas. The term does not include salt caverns.

16 8.10. "Salt cavern" means a natural occurring cavity contained within a salt formation or a
17 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
18 withdrawing oil or gas.

19 9.11. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
20 or other readily soluble rock to create a salt cavern for underground storage of oil or
21 gas.

22 10.12. "Storage facility" means the reservoir, salt cavern, underground equipment, and
23 surface facilities and equipment used or proposed to be used in an underground
24 storage operation. The term does not include a pipeline used to transport oil or gas to
25 the storage facility.

26 11.13. "Storage operator" means a person holding or applying for a permit.

27 14. "Waste" means the inefficient storing of oil or gas.

28 **38-25-02. Commission authority.**

29 The commission has authority:

- 1 1. Over all persons and property necessary to administer and enforce this chapter ~~when~~
2 necessary to prevent waste, to protect correlative rights of the mineral and surface
3 estate, or to effect greater ultimate storage and recovery of oil and gas.
- 4 2. To regulate activities relating to an underground storage facility, including construction,
5 solution mining to create salt caverns, operation, and closure.
- 6 3. To enter an underground storage facility at a reasonable time and manner to inspect
7 equipment and facilities, to observe, monitor, and investigate operations, and to
8 inspect records required to be maintained at the facility.
- 9 4. To require storage operators provide financial assurance, including bonds, to ensure
10 money is available to fulfill the storage operator's duties.
- 11 5. To exercise continuing jurisdiction over storage operators and storage facilities,
12 including the authority to amend or revoke a permit after notice and hearing.
- 13 6. After notice and hearing, to dissolve or change the boundaries of any commission
14 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
15 boundaries.
- 16 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
17 implement the policies of this chapter.
- 18 8. After notice and hearing, to grant exceptions to this chapter's requirements and
19 implementing rules ~~for good cause~~ if required to comply with applicable federal law.

20 **38-25-03. Permit required - Permit transfer.**

21 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
22 the commission consents.

23 **38-25-04. Permit hearing - Hearing notice.**

- 24 1. The commission shall hold a public hearing before issuing any storage permit.
- 25 2. Notice of the hearing must be published for two consecutive weeks in the official
26 newspaper of the county or counties where the storage reservoir or salt cavern is
27 proposed to be located and in any other newspaper the commission requires.
28 Publication deadlines must comply with commission requirements.
- 29 3. ~~Notice~~ ~~Written notice~~ of hearing must be ~~given~~ ~~mailed~~ to each surface owner ~~of record~~
30 of land overlying the storage reservoir or salt cavern and within one-half mile [0.80

1 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be
2 mailed to an owner's last known address.

3 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
4 reservoir, notice of the hearing also must be givenmailed to each mineral lessee,
5 mineral owner of record, and pore space owner of record within the storage reservoir
6 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

7 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
8 notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral
9 owner of record, and pore space owner of record within the salt cavern outer
10 boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt
11 cavern, or as otherwise may be required by the commission.

12 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
13 notice of hearing must be givenmailed to each pore space owner of record within the
14 storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's
15 boundaries.

16 7. Hearing notices required by this section must comply with the deadlines set by the
17 commission and must contain the information the commission requires.

18 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

19 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

20 1. The storage operator has or will obtain the consent by lease, purchase, or other
21 agreement from all surface owners where surface disturbance activities are necessary
22 and surface facilities will be located.

23 2. The storage operator has complied with all requirements set by the commission.

24 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
25 oil or gas.

26 4. The storage operator has made a good-faith effort to get the consent of all persons
27 that own the storage reservoir's pore space.

28 5. The storage operator has made a good-faith effort to obtain the consent of all persons
29 that own oil and gas minerals and oil and gas leases.

30 6. The storage operator has obtained the consent of persons that own at least fifty-five
31 percent of the storage reservoir's pore space unless the percentage required to unitize

1 the oil and gas unit is otherwise provided for by order of the commission before
2 August 1, 2021, if so the percentage in the order required to pool the mineral interests
3 prevails as to the percentage of pore space owners from whom the storage operator
4 must obtain consent.

5 7. The storage operator has obtained the consent of persons that own at least fifty-five
6 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
7 the percentage required to unitize the oil and gas unit is otherwise provided for by
8 order of the commission before August 1, 2021, if so the percentage in the order
9 prevails.

10 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
11 minerals and, if it does, a permit may be issued only if the commission is satisfied the
12 interests of the mineral owners or mineral lessees will not be affected adversely or
13 have been addressed in an arrangement entered by the mineral owners or mineral
14 lessees and the storage operator.

15 9. The proposed storage facility will not affect adversely surface waters or formations
16 containing fresh water.

17 10. The injected oil or gas will not escape from the storage reservoir.

18 11. The storage facility will not endanger health or unduly endanger the environment.

19 12. The storage facility is in the public interest.

20 13. The vertical boundaries of the storage reservoir are defined to include any necessary
21 or reasonable buffer zones for the purpose of ensuring the safe operations of the
22 storage facility and to protect the storage facility against pollution, invasion, and
23 escape or migration of oil or gas therefrom.

24 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
25 reasonable means and confirmed through appropriate monitoring methods, are
26 defined to include any necessary or reasonable buffer zones for the purpose of
27 ensuring the safe operations of the storage facility and to protect the storage facility
28 against pollution, invasion, and escape or migration of oil or gas therefrom.

29 15. The storage operator will establish monitoring facilities and protocols to assess the
30 location and migration of oil and gas, if any, injected for storage and to ensure
31 compliance with all permit, statutory, and administrative requirements.

1 16. The method of underground storage is reasonably necessary to effectively carry on
2 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
3 estate, and, with reasonable probability, will result in the increased storage and
4 recovery of more oil and gas.

5 17. The time, conditions, and method by which the storage facility must be dissolved and
6 the facility's affairs wound up. A storage facility may be dissolved ten years after the
7 storage facility permit is issued upon a petition to the commission by the pore space
8 owners and mineral owners that are credited with at least the percentage of interest of
9 the pore space required to ratify the storage facility amalgamation agreement, and a
10 subsequent hearing and order by the commission.

11 18. All nonconsenting owners are or will be compensated equitably.

12 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

13 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

14 find:

- 15 1. The storage operator has or will obtain the consent by lease, purchase, or other
16 agreement from all surface owners where surface disturbance activities are necessary
17 and surface facilities will be located.
- 18 2. The storage operator has complied with all requirements set by the commission.
- 19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.
- 21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the storage reservoir's pore space.
- 23 5. The storage operator has obtained the consent of persons that own at least
24 ~~fifty-five~~sixty percent of the storage reservoir's pore space.
- 25 6. The proposed storage facility will not affect adversely surface waters or formations
26 containing fresh water.
- 27 7. The injected oil or gas will not escape from the storage reservoir.
- 28 8. The storage facility will not endanger health or unduly endanger the environment.
- 29 9. The storage facility is in the public interest.
- 30 10. The vertical boundaries of the storage reservoir are defined to include any necessary
31 or reasonable buffer zones for the purpose of ensuring the safe operations of the

1 storage facility and to protect the storage facility against pollution, invasion, and
2 escape or migration of oil or gas therefrom.

3 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
4 reasonable means and confirmed through appropriate monitoring methods, are
5 defined to include any necessary or reasonable buffer zones for the purpose of
6 ensuring the safe operations of the storage facility and to protect the storage facility
7 against pollution, invasion, and escape or migration of oil or gas therefrom.

8 12. The storage operator will establish monitoring facilities and protocols to assess the
9 location and migration of oil and gas, if any, injected for storage and to ensure
10 compliance with all permit, statutory, and administrative requirements.

11 13. The method of underground storage is reasonably necessary to effectively carry on
12 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
13 estate, and, with reasonable probability, will result in the increased storage and
14 recovery of more oil and gas.

15 14. The time, conditions, and method by which the storage facility must be dissolved and
16 the facility's affairs wound up. A storage facility may be dissolved ten years after the
17 storage facility permit is issued upon a petition to the commission by the pore space
18 owners and mineral owners that are credited with at least the percentage of interest of
19 the pore space required to ratify the storage facility amalgamation agreement, and a
20 subsequent hearing and order by the commission.

21 15. All nonconsenting pore space owners are or will be compensated equitably.

22 **38-25-07. Permit requirements - Storage in salt cavern.**

23 Before issuing a permit for storage in a salt cavern, the commission shall find:

24 1. The storage operator has or will obtain the consent by lease, purchase, or other
25 agreement from all surface owners where surface disturbance activities are necessary
26 and surface facilities will be located.

27 2. The storage operator has complied with all requirements set by the commission,
28 including all necessary permits to conduct solution mining, if applicable.

29 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
30 oil or gas.

- 1 4. The storage operator has made a good-faith effort to obtain the consent of all persons
2 that own the salt cavern's pore space.
- 3 5. The storage operator has made a good-faith effort to obtain the consent of all persons
4 that own the salt cavern's salt minerals and salt leases.
- 5 6. The storage operator has obtained the consent of persons that own at least
6 fifty-fivesixty percent of the salt cavern's pore space.
- 7 7. The storage operator has obtained the consent of persons that own at least fifty-five
8 percent of the salt cavern's salt minerals and salt leases.
- 9 8. The proposed storage facility will not affect adversely surface waters or formations
10 containing fresh water.
- 11 9. The injected oil or gas will not escape from the salt cavern.
- 12 10. The storage facility will not endanger health or unduly endanger the environment.
- 13 11. The storage facility is in the public interest.
- 14 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
15 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
16 operation of the storage facility and to protect the storage facility against pollution,
17 invasion, and escape or migration of gas therefrom.
- 18 13. The storage operator will establish monitoring facilities and protocols to assess the
19 location and migration of oil and gas, if any, injected for storage and to ensure
20 compliance with all permit, statutory, and administrative requirements.
- 21 14. The method of underground storage is reasonably necessary to effectively carry on
22 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
23 estate, and, with reasonable probability, will result in the increased storage and
24 recovery of more oil and gas.
- 25 15. The time, conditions, and method by which the storage facility must be dissolved and
26 the facility's affairs wound up. A storage facility may be dissolved ten years after the
27 storage facility permit is issued upon a petition to the commission by the pore space
28 owners and mineral owners that are credited with at least the percentage of interest of
29 the pore space required to ratify the storage facility amalgamation agreement, and a
30 subsequent hearing and order by the commission.
- 31 16. That all nonconsenting owners are or will be equitably compensated.

1 **38-25-08. Amalgamating property interests.**

2 If a storage operator does not obtain the consent of all persons owning a pore space and of
3 mineral interest owners when required by this chapter, the commission may require the interest
4 owned by the nonconsenting owners be included in an approved storage facility and subject to
5 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
6 Any pore space owner who does not have responsibility over the construction, management,
7 supervision, or control of the storage facility operations is not liable for money damages for
8 personal or other property damages proximately caused by the operations.

9 **38-25-09. Ownership of oil and gas.**

10 All oil or gas previously reduced to possession and subsequently injected into underground
11 storage facilities must be deemed the property of the storage operator subject to the obligation
12 to pay royalties as set forth in section 38-25-10.

13 **38-25-10. Injection of produced gas - When royalties owed.**

- 14 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
15 owners, royalties on gas produced but not sold and which is injected into a storage
16 facility instead of flaring or for lack of market, are not due on the produced and stored
17 gas until gas volumes actually are withdrawn from the storage facility, sold, and
18 proceeds received from the sale.
- 19 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
20 storage operator, after notice and hearing, shall obtain approval from the commission
21 evidencing a reasonable and equitable method of allocation of the stored gas sale
22 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
23 storage. The commission may adopt such rules and orders as necessary to implement
24 the purposes of this section.

25 **38-25-11. Appeal for determination of equitable compensation.**

- 26 1. A nonconsenting surface or pore space owner may appeal the commission's decision
27 on the amount of equitable compensation owed to that owner for use of the owner's
28 surface or pore space. The appeal must be taken to the district court for the county
29 where the property affected by the order is located unless the property is located in or
30 underlies more than one county, then the appeal may be taken to the district court for
31 any county in which the property is located.

1 2. The owner shall file the notice of appeal with the district court within sixty days of
2 notice of the commission's decision.

3 a. The notice of appeal must specify the compensation determination appealed
4 from and describe the real property valued.

5 b. The notice of appeal also must be served on the storage operator by certified
6 mail.

7 3. In a proceeding in district court under this section, the amount of equitable
8 compensation must be made by a jury, unless a jury is waived by the owner.

9 a. The appeal may be noticed for trial and tried as in the case of a civil action and
10 the court may direct issues to be framed, and require other parties to be joined
11 and to plead therein when necessary for the proper determination of equitable
12 compensation.

13 b. The owner shall present evidence, has the burden of proof, and has the right to
14 an opening and closing statement.

15 c. The amount of equitable compensation must be reassessed de novo and
16 apportion the same as the evidence and justice may require.

17 4. After a verdict has been rendered of an appeal under this section, the court may
18 award attorney fees and expenses to the owner in accordance with chapter 32-15.

19 5. The remedy provided in this section is cumulative and does not replace the right to
20 appeal under section 38-08-14 or chapter 28-32.

21 a. An appeal under this section is limited to the amount of equitable compensation
22 owed to a nonconsenting surface or pore space owner whose property is being
23 amalgamated under this chapter.

24 b. The commission's decision remains in effect when an appeal is taken under this
25 section.

26 **38-25-1138-25-12. Application.**

27 This chapter does not apply to applications filed with the commission which propose to use
28 produced gas for an enhanced oil or gas recovery project. Those applications must be
29 processed under chapter 38-08.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
3/31/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

9:00 AM

Chairman Keiser opened the hearing. Present: Representatives Keiser, Anderson, Zubke, Lefor, Guggisberg

Discussion Topics:

- Amendments 21.8029.02007 and 21.8029.02010
- 02007 taking without jury trial
- De Novo – jury trial
- Constitutionality

Chris Joseph, Legislative Council- #11158, #11159
Troy Coons, NW Area Landowners – #11153
Ron Ness, ND Petroleum Council- oral testimony
Lynn Helms, director, DMR- oral testimony
Derrick Braaten, Braaten Law Firm- oral testimony

Rep Anderson moved the recommendation of amendment 02007 to the full committee, seconded by Rep Lefor.

REPRESENTATIVE	YES	NO
Rep Keiser	Y	
Rep Anderson	Y	
Rep Zubke	Y	
Rep Lefor	Y	
Rep Guggisberg	N	

Motion carried. 5-1-0

9:17 AM meeting adjourned.

Kathleen Davis, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or colloidal or other clays, or other naturally occurring elements and their compounds,~~ and may make and establish rules and regulations for development ~~and, drilling, and mining~~ operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section."~~

Page 2, line 6, after "7." insert "Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil or gas.

8."

Page 2, line 10, replace "8." with "9."

Page 2, line 13, replace "9." with "10."

Page 2, line 16, replace "10." with "11."

Page 2, line 20, replace "11." with "12."

Page 2, after line 20, insert:

"13. "Waste" means the inefficient storing of oil or gas."

Page 2, line 23, after "chapter" insert "when necessary to prevent waste, to protect correlative rights of the mineral and surface estate, or to effect greater ultimate storage and recovery of oil and gas"

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 3, line 19, replace "Notice" with "Written notice"

Page 3, line 19, replace "given" with "mailed"

Page 3, line 19, after "owner" insert "of record"

Page 3, line 21, after the underscored period insert "The notice of hearing must be mailed to an owner's last known address."

Page 3, line 23, replace "given" with "mailed"

Page 3, line 24, after the first "owner" insert "of record"

Page 3, line 24, after the second "owner" insert "of record"

Page 3, line 27, replace "given" with "mailed"

Page 3, line 27, after "owner" insert "of record"

Page 3, line 28, after "owner" insert "of record"

Page 4, line 2, replace "given" with "mailed"

Page 4, line 2, after "owner" insert "of record"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order required to pool the mineral interests prevails as to the percentage of pore space owners from whom the storage operator must obtain consent"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 13, after "16." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas."

17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a

petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

18."

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 13, after "13." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

14. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

15."

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15. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

16."

Page 7, line 18, after "storage" insert "if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations"

Renumber accordingly

21.8029.02010
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 29, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, replace "section 15-05-09.1 and" with "a new subdivision to subsection 2 of section 28-32-01 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 3, after the second "the" insert "definition of an administrative agency and the"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

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SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

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Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section.~~

SECTION 3. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to an appeal for the determination of equitable compensation under chapter 38-25."

Page 1, line 17, replace "section" with "chapter"

Page 1, line 19, after "2." insert "\"Equitable compensation\" means just compensation and includes any damages allowed under chapter 38-11.1.

3."

Page 1, line 21, replace "3." with "4."

Page 1, line 23, replace "4." with "5."

Page 2, line 3, replace "5." with "6."

Page 2, line 5, replace "6." with "7."

Page 2, line 6, replace "7." with "8. \"Prevent waste\" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil or gas.

9."

Page 2, line 10, replace "8." with "10."

Page 2, line 13, replace "9." with "11."

Page 2, line 16, replace "10." with "12."

Page 2, line 20, replace "11." with "13."

Page 2, after line 20, insert:

"14. \"Waste\" means the inefficient storing of oil or gas."

Page 2, line 23, after "chapter" insert "when necessary to prevent waste, to protect correlative rights of the mineral and surface estate, or to effect greater ultimate storage and recovery of oil and gas"

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 3, line 19, replace "Notice" with "Written notice"

Page 3, line 19, replace "given" with "mailed"

Page 3, line 19, after "owner" insert "of record"

Page 3, line 21, after the underscored period insert "The notice of hearing must be mailed to an owner's last known address."

Page 3, line 23, replace "given" with "mailed"

Page 3, line 24, after the first "owner" insert "of record"

Page 3, line 24, after the second "owner" insert "of record"

Page 3, line 27, replace "given" with "mailed"

Page 3, line 27, after "owner" insert "of record"

Page 3, line 28, after "owner" insert "of record"

Page 4, line 2, replace "given" with "mailed"

Page 4, line 2, after "owner" insert "of record"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order required to pool the mineral interests prevails as to the percentage of pore space owners from whom the storage operator must obtain consent"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, if so the percentage in the order prevails"

Page 5, line 13, after "16." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

18."

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 13, after "13." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

14. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

15."

Page 6, line 27, replace "fifty-five" with "sixty"

Page 7, line 13, after "14." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

15. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be

dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

16."

Page 7, line 18, after "storage" insert "if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations"

Page 8, after line 3, insert:

"38-25-11. Appeal for determination of equitable compensation.

1. A nonconsenting surface or pore space owner may appeal the commission's decision on the amount of equitable compensation owed to that owner for use of the owner's surface or pore space. The appeal must be taken to the district court for the county where the property affected by the order is located unless the property is located in or underlies more than one county, then the appeal may be taken to the district court for any county in which the property is located.
2. The owner shall file the notice of appeal with the district court within sixty days of notice of the commission's decision.
 - a. The notice of appeal must specify the compensation determination appealed from and describe the real property valued.
 - b. The notice of appeal also must be served on the storage operator by certified mail.
3. In a proceeding in district court under this section, the amount of equitable compensation must be made by a jury, unless a jury is waived by the owner.
 - a. The appeal may be noticed for trial and tried as in the case of a civil action and the court may direct issues to be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of equitable compensation.
 - b. The owner shall present evidence, has the burden of proof, and has the right to an opening and closing statement.
 - c. The amount of equitable compensation must be reassessed de novo and apportion the same as the evidence and justice may require.
4. The remedy provided in this section is cumulative and does not replace the right to appeal under section 38-08-14 or chapter 28-32.
 - a. An appeal under this section is limited to the amount of equitable compensation owed to a nonconsenting surface or pore space owner whose property is being amalgamated under this chapter.

- b. The commission's decision remains in effect when an appeal is taken under this section."

Page 8, line 4, replace "**38-25-11**" with "**38-25-12**"

Renumber accordingly

21.8029.02010

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ a new subdivision to subsection 2
2 of section 28-32-01 and chapter 38-25 of the North Dakota Century Code, relating to ~~the~~
3 ~~authority of the board of university and school lands to lease lands under its control for the~~
4 ~~underground storage of oil or gas and the~~ definition of an administrative agency and the
5 jurisdiction of the industrial commission to regulate the permitting and amalgamation of the
6 underground storage of oil or gas; and to amend and reenact sections 15-05-09 and 15-05-10
7 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases.

8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
10 ~~as follows:~~

11 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

12 ~~The board of university and school lands may lease any lands under the board's control for~~
13 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
14 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
15 ~~such rights.~~

16 **SECTION 1. AMENDMENT.** Section 15-05-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15-05-09. Leases for oil, gas, and other products.**

19 The board of university and school lands may lease any lands under its control believed to
20 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
21 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
22 occurring elements and their compounds, and may make and establish rules and regulations for
23 development ~~and~~, drilling, and mining operations.

1 **SECTION 2. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.**

4 Oil and gas leases must be made by the board of university and school lands at such
5 annual minimum payments as are determined by the board, but the royalty shall be not less
6 than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas
7 leases made by the board may authorize a royalty of less than twelve and one-half percent for
8 production from stripper well properties or individual stripper wells and qualifying secondary
9 recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for~~
10 ~~gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone,~~
11 ~~chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section
12 15-05-09 for products other than oil and gas must ~~be made by the board in such annual~~
13 ~~payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the
14 board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this
15 section.

16 **SECTION 3.** A new subdivision to subsection 2 of section 28-32-01 of the North Dakota
17 Century Code is created and enacted as follows:

18 The industrial commission with respect to an appeal for the determination of
19 equitable compensation under chapter 38-25.

20 **SECTION 4.** Chapter 38-25 of the North Dakota Century Code is created and enacted as
21 follows:

22 **38-25-01. Definitions.**

23 As used in this ~~section~~ chapter:

- 24 1. "Commission" mean the industrial commission.
- 25 2. "Equitable compensation" means just compensation and includes any damages
26 allowed under chapter 38-11.1.
- 27 3. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not
28 defined as oil.
- 29 ~~3.4.~~ "Geological storage" means the underground storage of oil or gas in a storage
30 reservoir or salt cavern.

1 ~~4.5.~~ "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which
2 are produced at the wellhead in liquid form and the liquid hydrocarbons known as
3 distillate or condensate recovered or extracted from gas, other than gas produced in
4 association with oil and commonly known as casinghead gas.

5 ~~5.6.~~ "Permit" means a permit issued by the commission allowing a person to operate an
6 underground storage facility.

7 ~~6.7.~~ "Pore space" has the same meaning as in section 47-31-02.

8 ~~7.8.~~ "Prevent waste" means the locating, spacing, drilling, equipping, operating, or
9 producing of any oil or gas storage well or facility in a manner that increases the
10 quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil
11 or gas.

12 ~~9.~~ "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
13 whether natural or artificially created, including oil and gas reservoirs and saline
14 formations suitable for or capable of being made suitable for injecting, storing, and
15 withdrawing oil or gas. The term does not include salt caverns.

16 ~~8.10.~~ "Salt cavern" means a natural occurring cavity contained within a salt formation or a
17 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
18 withdrawing oil or gas.

19 ~~9.11.~~ "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
20 or other readily soluble rock to create a salt cavern for underground storage of oil or
21 gas.

22 ~~10.12.~~ "Storage facility" means the reservoir, salt cavern, underground equipment, and
23 surface facilities and equipment used or proposed to be used in an underground
24 storage operation. The term does not include a pipeline used to transport oil or gas to
25 the storage facility.

26 ~~11.13.~~ "Storage operator" means a person holding or applying for a permit.

27 ~~14.~~ "Waste" means the inefficient storing of oil or gas.

28 **38-25-02. Commission authority.**

29 The commission has authority:

- 1 1. Over all persons and property necessary to administer and enforce this chapter ~~when~~
2 necessary to prevent waste, to protect correlative rights of the mineral and surface
3 estate, or to effect greater ultimate storage and recovery of oil and gas.
- 4 2. To regulate activities relating to an underground storage facility, including construction,
5 solution mining to create salt caverns, operation, and closure.
- 6 3. To enter an underground storage facility at a reasonable time and manner to inspect
7 equipment and facilities, to observe, monitor, and investigate operations, and to
8 inspect records required to be maintained at the facility.
- 9 4. To require storage operators provide financial assurance, including bonds, to ensure
10 money is available to fulfill the storage operator's duties.
- 11 5. To exercise continuing jurisdiction over storage operators and storage facilities,
12 including the authority to amend or revoke a permit after notice and hearing.
- 13 6. After notice and hearing, to dissolve or change the boundaries of any commission
14 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
15 boundaries.
- 16 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
17 implement the policies of this chapter.
- 18 8. After notice and hearing, to grant exceptions to this chapter's requirements and
19 implementing rules ~~for good cause~~ if required to comply with applicable federal law.

20 **38-25-03. Permit required - Permit transfer.**

21 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
22 the commission consents.

23 **38-25-04. Permit hearing - Hearing notice.**

- 24 1. The commission shall hold a public hearing before issuing any storage permit.
- 25 2. Notice of the hearing must be published for two consecutive weeks in the official
26 newspaper of the county or counties where the storage reservoir or salt cavern is
27 proposed to be located and in any other newspaper the commission requires.
28 Publication deadlines must comply with commission requirements.
- 29 3. ~~Notice~~ ~~Written notice~~ of hearing must be ~~given~~ ~~mailed~~ to each surface owner ~~of record~~
30 of land overlying the storage reservoir or salt cavern and within one-half mile [0.80

1 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be
2 mailed to an owner's last known address.

3 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
4 reservoir, notice of the hearing also must be givenmailed to each mineral lessee,
5 mineral owner of record, and pore space owner of record within the storage reservoir
6 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

7 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
8 notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral
9 owner of record, and pore space owner of record within the salt cavern outer
10 boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt
11 cavern, or as otherwise may be required by the commission.

12 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
13 notice of hearing must be givenmailed to each pore space owner of record within the
14 storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's
15 boundaries.

16 7. Hearing notices required by this section must comply with the deadlines set by the
17 commission and must contain the information the commission requires.

18 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

19 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

20 1. The storage operator has or will obtain the consent by lease, purchase, or other
21 agreement from all surface owners where surface disturbance activities are necessary
22 and surface facilities will be located.

23 2. The storage operator has complied with all requirements set by the commission.

24 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
25 oil or gas.

26 4. The storage operator has made a good-faith effort to get the consent of all persons
27 that own the storage reservoir's pore space.

28 5. The storage operator has made a good-faith effort to obtain the consent of all persons
29 that own oil and gas minerals and oil and gas leases.

30 6. The storage operator has obtained the consent of persons that own at least fifty-five
31 percent of the storage reservoir's pore space unless the percentage required to unitize

1 the oil and gas unit is otherwise provided for by order of the commission before
2 August 1, 2021, if so the percentage in the order required to pool the mineral interests
3 prevails as to the percentage of pore space owners from whom the storage operator
4 must obtain consent.

5 7. The storage operator has obtained the consent of persons that own at least fifty-five
6 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
7 the percentage required to unitize the oil and gas unit is otherwise provided for by
8 order of the commission before August 1, 2021, if so the percentage in the order
9 prevails.

10 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
11 minerals and, if it does, a permit may be issued only if the commission is satisfied the
12 interests of the mineral owners or mineral lessees will not be affected adversely or
13 have been addressed in an arrangement entered by the mineral owners or mineral
14 lessees and the storage operator.

15 9. The proposed storage facility will not affect adversely surface waters or formations
16 containing fresh water.

17 10. The injected oil or gas will not escape from the storage reservoir.

18 11. The storage facility will not endanger health or unduly endanger the environment.

19 12. The storage facility is in the public interest.

20 13. The vertical boundaries of the storage reservoir are defined to include any necessary
21 or reasonable buffer zones for the purpose of ensuring the safe operations of the
22 storage facility and to protect the storage facility against pollution, invasion, and
23 escape or migration of oil or gas therefrom.

24 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
25 reasonable means and confirmed through appropriate monitoring methods, are
26 defined to include any necessary or reasonable buffer zones for the purpose of
27 ensuring the safe operations of the storage facility and to protect the storage facility
28 against pollution, invasion, and escape or migration of oil or gas therefrom.

29 15. The storage operator will establish monitoring facilities and protocols to assess the
30 location and migration of oil and gas, if any, injected for storage and to ensure
31 compliance with all permit, statutory, and administrative requirements.

1 16. The method of underground storage is reasonably necessary to effectively carry on
2 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
3 estate, and, with reasonable probability, will result in the increased storage and
4 recovery of more oil and gas.

5 17. The time, conditions, and method by which the storage facility must be dissolved and
6 the facility's affairs wound up. A storage facility may be dissolved ten years after the
7 storage facility permit is issued upon a petition to the commission by the pore space
8 owners and mineral owners that are credited with at least the percentage of interest of
9 the pore space required to ratify the storage facility amalgamation agreement, and a
10 subsequent hearing and order by the commission.

11 18. All nonconsenting owners are or will be compensated equitably.

12 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

13 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

14 find:

- 15 1. The storage operator has or will obtain the consent by lease, purchase, or other
16 agreement from all surface owners where surface disturbance activities are necessary
17 and surface facilities will be located.
- 18 2. The storage operator has complied with all requirements set by the commission.
- 19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.
- 21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the storage reservoir's pore space.
- 23 5. The storage operator has obtained the consent of persons that own at least
24 ~~fifty-five~~sixty percent of the storage reservoir's pore space.
- 25 6. The proposed storage facility will not affect adversely surface waters or formations
26 containing fresh water.
- 27 7. The injected oil or gas will not escape from the storage reservoir.
- 28 8. The storage facility will not endanger health or unduly endanger the environment.
- 29 9. The storage facility is in the public interest.
- 30 10. The vertical boundaries of the storage reservoir are defined to include any necessary
31 or reasonable buffer zones for the purpose of ensuring the safe operations of the

1 storage facility and to protect the storage facility against pollution, invasion, and
2 escape or migration of oil or gas therefrom.

3 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
4 reasonable means and confirmed through appropriate monitoring methods, are
5 defined to include any necessary or reasonable buffer zones for the purpose of
6 ensuring the safe operations of the storage facility and to protect the storage facility
7 against pollution, invasion, and escape or migration of oil or gas therefrom.

8 12. The storage operator will establish monitoring facilities and protocols to assess the
9 location and migration of oil and gas, if any, injected for storage and to ensure
10 compliance with all permit, statutory, and administrative requirements.

11 13. The method of underground storage is reasonably necessary to effectively carry on
12 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
13 estate, and, with reasonable probability, will result in the increased storage and
14 recovery of more oil and gas.

15 14. The time, conditions, and method by which the storage facility must be dissolved and
16 the facility's affairs wound up. A storage facility may be dissolved ten years after the
17 storage facility permit is issued upon a petition to the commission by the pore space
18 owners and mineral owners that are credited with at least the percentage of interest of
19 the pore space required to ratify the storage facility amalgamation agreement, and a
20 subsequent hearing and order by the commission.

21 15. All nonconsenting pore space owners are or will be compensated equitably.

22 **38-25-07. Permit requirements - Storage in salt cavern.**

23 Before issuing a permit for storage in a salt cavern, the commission shall find:

24 1. The storage operator has or will obtain the consent by lease, purchase, or other
25 agreement from all surface owners where surface disturbance activities are necessary
26 and surface facilities will be located.

27 2. The storage operator has complied with all requirements set by the commission,
28 including all necessary permits to conduct solution mining, if applicable.

29 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
30 oil or gas.

- 1 4. The storage operator has made a good-faith effort to obtain the consent of all persons
2 that own the salt cavern's pore space.
- 3 5. The storage operator has made a good-faith effort to obtain the consent of all persons
4 that own the salt cavern's salt minerals and salt leases.
- 5 6. The storage operator has obtained the consent of persons that own at least
6 fifty-fivesixty percent of the salt cavern's pore space.
- 7 7. The storage operator has obtained the consent of persons that own at least fifty-five
8 percent of the salt cavern's salt minerals and salt leases.
- 9 8. The proposed storage facility will not affect adversely surface waters or formations
10 containing fresh water.
- 11 9. The injected oil or gas will not escape from the salt cavern.
- 12 10. The storage facility will not endanger health or unduly endanger the environment.
- 13 11. The storage facility is in the public interest.
- 14 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
15 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
16 operation of the storage facility and to protect the storage facility against pollution,
17 invasion, and escape or migration of gas therefrom.
- 18 13. The storage operator will establish monitoring facilities and protocols to assess the
19 location and migration of oil and gas, if any, injected for storage and to ensure
20 compliance with all permit, statutory, and administrative requirements.
- 21 14. The method of underground storage is reasonably necessary to effectively carry on
22 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
23 estate, and, with reasonable probability, will result in the increased storage and
24 recovery of more oil and gas.
- 25 15. The time, conditions, and method by which the storage facility must be dissolved and
26 the facility's affairs wound up. A storage facility may be dissolved ten years after the
27 storage facility permit is issued upon a petition to the commission by the pore space
28 owners and mineral owners that are credited with at least the percentage of interest of
29 the pore space required to ratify the storage facility amalgamation agreement, and a
30 subsequent hearing and order by the commission.
- 31 16. That all nonconsenting owners are or will be equitably compensated.

1 **38-25-08. Amalgamating property interests.**

2 If a storage operator does not obtain the consent of all persons owning a pore space and of
3 mineral interest owners when required by this chapter, the commission may require the interest
4 owned by the nonconsenting owners be included in an approved storage facility and subject to
5 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
6 Any pore space owner who does not have responsibility over the construction, management,
7 supervision, or control of the storage facility operations is not liable for money damages for
8 personal or other property damages proximately caused by the operations.

9 **38-25-09. Ownership of oil and gas.**

10 All oil or gas previously reduced to possession and subsequently injected into underground
11 storage facilities must be deemed the property of the storage operator subject to the obligation
12 to pay royalties as set forth in section 38-25-10.

13 **38-25-10. Injection of produced gas - When royalties owed.**

- 14 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
15 owners, royalties on gas produced but not sold and which is injected into a storage
16 facility instead of flaring or for lack of market, are not due on the produced and stored
17 gas until gas volumes actually are withdrawn from the storage facility, sold, and
18 proceeds received from the sale.
- 19 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
20 storage operator, after notice and hearing, shall obtain approval from the commission
21 evidencing a reasonable and equitable method of allocation of the stored gas sale
22 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
23 storage. The commission may adopt such rules and orders as necessary to implement
24 the purposes of this section.

25 **38-25-11. Appeal for determination of equitable compensation.**

- 26 1. A nonconsenting surface or pore space owner may appeal the commission's decision
27 on the amount of equitable compensation owed to that owner for use of the owner's
28 surface or pore space. The appeal must be taken to the district court for the county
29 where the property affected by the order is located unless the property is located in or
30 underlies more than one county, then the appeal may be taken to the district court for
31 any county in which the property is located.

1 2. The owner shall file the notice of appeal with the district court within sixty days of
2 notice of the commission's decision.

3 a. The notice of appeal must specify the compensation determination appealed
4 from and describe the real property valued.

5 b. The notice of appeal also must be served on the storage operator by certified
6 mail.

7 3. In a proceeding in district court under this section, the amount of equitable
8 compensation must be made by a jury, unless a jury is waived by the owner.

9 a. The appeal may be noticed for trial and tried as in the case of a civil action and
10 the court may direct issues to be framed, and require other parties to be joined
11 and to plead therein when necessary for the proper determination of equitable
12 compensation.

13 b. The owner shall present evidence, has the burden of proof, and has the right to
14 an opening and closing statement.

15 c. The amount of equitable compensation must be reassessed de novo and
16 apportion the same as the evidence and justice may require.

17 4. The remedy provided in this section is cumulative and does not replace the right to
18 appeal under section 38-08-14 or chapter 28-32.

19 a. An appeal under this section is limited to the amount of equitable compensation
20 owed to a nonconsenting surface or pore space owner whose property is being
21 amalgamated under this chapter.

22 b. The commission's decision remains in effect when an appeal is taken under this
23 section.

24 **38-25-1138-25-12. Application.**

25 This chapter does not apply to applications filed with the commission which propose to use
26 produced gas for an enhanced oil or gas recovery project. Those applications must be
27 processed under chapter 38-08.

From: [Zubke, Denton B.](#)
To: [NDLA, Intern 01 - Hogue, Megan](#)
Subject: Fwd: SB 2065 version .02010
Date: Wednesday, March 31, 2021 8:55:19 AM
Attachments: [21.8029.02010m.pdf](#)
[21.8029.02010a.pdf](#)

From: NW Landowners Association <northwestlandownersassociation@gmail.com>
Sent: Tuesday, March 30, 2021 7:36:59 PM
To: Keiser, George J. <gkeiser@nd.gov>; Zubke, Denton B. <dzubke@nd.gov>; Anderson, Dick D. <dickanderson@nd.gov>; Guggisberg, Ron L. <rguggisberg@nd.gov>; Lefor, Mike <mlefor@nd.gov>
Cc: Troy Coons <Troy.Coons22@gmail.com>; David King <kingd@restel.net>; Joseph, Christopher <cjoseph@nd.gov>; Derrick Braaten <derrick@braatenlawfirm.com>; NDLA, H NAT - Davis, Kathleen <hnat@nd.gov>
Subject: SB 2065 version .02010

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Chairman Keiser and subcommittee members:

We are writing to ask the subcommittee on SB 2065 to vote “**do pass**” on this amended **version .02010**. Northwest Landowners Association continues to believe the prior versions are unconstitutional, but would support a “do pass” recommendation on this version. We have worked hard and compromised where we can to help produce a balanced piece of legislation that considers the rights of all stakeholders. We appreciate the hours of hard work and loss of sleep for some on the subcommittee, and we recognize that these are not simple or easy decisions and issues. If we can answer any questions please do not hesitate to call or write anytime.

Sincerely,
Troy Coons, Chairman
Dave King, Vice Chairman

Amy Shelton
Executive Director
Northwest Landowners Association
northwestlandownersassociation@gmail.com
701-721-4446



2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2065 SUBCOMMITTEE
4/1/2021

Relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

10:00 AM

Chairman Porter opened the hearing. Present: Present: Representatives Porter, Damschen, Anderson, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Roers Jones, M Ruby, Zubke, Guggisberg, and Ista.

Discussion Topics:

- Access to pore space
- EERC research
- Amendment 02007
- Big issue is a taking (10:07:27)
- A taking is in the constitution (10:07:59)
- Participating, nonparticipating, and adjacent owners
- De Novo trials at the Court level
- Generate a permit, standard 60% of owners signing off you can proceed
- Access to Court
- Adequate rental payments
- Redefining and preventing waste
- Commission authority
- Mailed written notice
- Consent of 55% of owners
- 10 years then dissolution of agreements
- 60% of owners' consent
- Nonparticipating owners cannot be held liable
- A reverse taking - a single nonparticipating partner could stop a project
- Value of pore space

Rep Keiser, District 47, #10906

Rep Keiser moved to adopt amendment 02007 with technical corrections, seconded by Rep D Anderson.

Voice vote. Motion carried

Rep Keiser moved a Do Pass as Amended, seconded by Rep. D Anderson.

REPRESENTATIVES	YES	NO		REPRESENTATIVES	YES	NO
Chairman Porter	Y			Rep Ista	Y	
Vice Chairman Damschen	Y			Rep Keiser	Y	
Rep D Anderson	Y			Rep Lefor	Y	
Rep Bosch	Y			Rep Marschall	Y	
Rep Devlin	Y			Rep Roers Jones	Y	
Rep Guggisberg		N		Rep M Ruby	Y	
Rep Heinert	Y			Rep Zubke	Y	

Motion carried. 13 – 1 – 0 Rep Keiser is carrier.

10:32 AM meeting adjourned.

Kathleen Davis, Committee Clerk

DB 4/1/21
1043

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays, or other naturally occurring elements and their compounds, and may make and establish rules and regulations for development ~~and~~, drilling, and mining operations.

SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. ~~Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section.~~

Page 1, line 17, replace "section" with "chapter"

Page 2, line 6, after "7." insert """Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil or gas."

8."

Page 2, line 10, replace "8." with "9."

Page 2, line 13, replace "9." with "10."

Page 2, line 16, replace "10." with "11."

Page 2, line 20, replace "11." with "12."

Page 2, after line 20, insert:

"13. "Waste" means the inefficient storing of oil or gas."

Page 2, line 23, after "chapter" insert "when necessary to prevent waste, to protect correlative rights of the mineral and surface estate, or to effect greater ultimate storage and recovery of oil and gas"

Page 3, line 9, replace "for good cause" with "if required to comply with applicable federal law"

Page 3, line 19, replace "Notice" with "Written notice"

Page 3, line 19, replace "given" with "mailed"

Page 3, line 19, after "owner" insert "of record"

Page 3, line 21, after the underscored period insert "The notice of hearing must be mailed to an owner's last known address."

Page 3, line 23, replace "given" with "mailed"

Page 3, line 24, after the first "owner" insert "of record"

Page 3, line 24, after the second "owner" insert "of record"

Page 3, line 27, replace "given" with "mailed"

Page 3, line 27, after "owner" insert "of record"

Page 3, line 28, after "owner" insert "of record"

Page 4, line 2, replace "given" with "mailed"

Page 4, line 2, after "owner" insert "of record"

Page 4, line 19, after "space" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, in which case the percentage in the order required to pool the mineral interests prevails as to the percentage of pore space owners from whom the storage operator must obtain consent"

Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, in which case the percentage in the order prevails"

Page 5, line 13, after "16." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas."

17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

18."

Page 5, line 25, replace "fifty-five" with "sixty"

Page 6, line 13, after "13." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

14. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

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Page 6, line 27, replace "fifty-five" with "sixty"

Page 7, line 13, after "14." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

15. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

16."

Page 7, line 18, after "storage" insert "if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2065, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2065 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "section 15-05-09.1 and"

Page 1, line 2, remove "the authority of the board of university and school lands to lease lands"

Page 1, line 3, remove "under its control for the underground storage of oil or gas and"

Page 1, line 5, after "gas" insert "; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases"

Page 1, replace lines 7 through 13 with:

"SECTION 1. AMENDMENT. Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

15-05-09. Leases for oil, gas, and other products.

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SECTION 2. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

~~Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays issued by the board under section 15-05-09 for products other than oil and gas must be made by the board in such annual payments provide for adequate rental payments and other provisions as are determined by the board. The board may adopt rules regarding annual rental payments and royalties under this section.~~

Page 1, line 17, replace "section" with "chapter"

Page 2, line 6, after "7." insert "Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil or gas.

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"13. "Waste" means the inefficient storing of oil or gas."

Page 2, line 23, after "chapter" insert "when necessary to prevent waste, to protect correlative rights of the mineral and surface estate, or to effect greater ultimate storage and recovery of oil and gas"

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Page 3, line 19, replace "Notice" with "Written notice"

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Page 4, line 21, after "leases" insert "unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, in which case the percentage in the order prevails"

Page 5, line 13, after "16." insert "The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners

that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.

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16."

Page 7, line 18, after "storage" insert "if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations"

Renumber accordingly

21.8029.02007

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ chapter 38-25 of the North Dakota
2 Century Code, relating to ~~the authority of the board of university and school lands to lease lands~~
3 ~~under its control for the underground storage of oil or gas and~~ the jurisdiction of the industrial
4 commission to regulate the permitting and amalgamation of the underground storage of oil or
5 gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century
6 Code, relating to oil and gas leases and royalties from oil leases.

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

8 ~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted~~
9 ~~as follows:~~

10 ~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

11 ~~The board of university and school lands may lease any lands under the board's control for~~
12 ~~the underground storage of oil, natural gas, including hydrogen, and any other liquid~~
13 ~~hydrocarbons and may establish any rules and regulations necessary concerning the leasing of~~
14 ~~such rights.~~

15 **SECTION 1. AMENDMENT.** Section 15-05-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **15-05-09. Leases for oil, gas, and other products.**

18 The board of university and school lands may lease any lands under its control believed to
19 contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building
20 stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally
21 occurring elements and their compounds, and may make and establish rules and regulations for
22 development ~~and~~, drilling, and mining operations.

23 **SECTION 2. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.

Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays~~ issued by the board under section 15-05-09 for products other than oil and gas must ~~be made by the board in such annual payments~~ provide for adequate rental payments and other provisions as ~~are~~ determined by the board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this section.

SECTION 3. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.
7. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the

1 quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil
2 or gas.

3 8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
4 whether natural or artificially created, including oil and gas reservoirs and saline
5 formations suitable for or capable of being made suitable for injecting, storing, and
6 withdrawing oil or gas. The term does not include salt caverns.

7 ~~8-9.~~ "Salt cavern" means a natural occurring cavity contained within a salt formation or a
8 cavity created in a salt formation by solution mining, suitable for injecting, storing, and
9 withdrawing oil or gas.

10 ~~9-10.~~ "Solution mining" means the process of injecting fluid into a well to dissolve rock salt
11 or other readily soluble rock to create a salt cavern for underground storage of oil or
12 gas.

13 ~~10-11.~~ "Storage facility" means the reservoir, salt cavern, underground equipment, and
14 surface facilities and equipment used or proposed to be used in an underground
15 storage operation. The term does not include a pipeline used to transport oil or gas to
16 the storage facility.

17 ~~11-12.~~ "Storage operator" means a person holding or applying for a permit.

18 13. "Waste" means the inefficient storing of oil or gas.

19 **38-25-02. Commission authority.**

20 The commission has authority:

- 21 1. Over all persons and property necessary to administer and enforce this chapter when
22 necessary to prevent waste, to protect correlative rights of the mineral and surface
23 estate, or to effect greater ultimate storage and recovery of oil and gas.
- 24 2. To regulate activities relating to an underground storage facility, including construction,
25 solution mining to create salt caverns, operation, and closure.
- 26 3. To enter an underground storage facility at a reasonable time and manner to inspect
27 equipment and facilities, to observe, monitor, and investigate operations, and to
28 inspect records required to be maintained at the facility.
- 29 4. To require storage operators provide financial assurance, including bonds, to ensure
30 money is available to fulfill the storage operator's duties.

- 1 5. To exercise continuing jurisdiction over storage operators and storage facilities,
2 including the authority to amend or revoke a permit after notice and hearing.
- 3 6. After notice and hearing, to dissolve or change the boundaries of any commission
4 established oil or gas field or unit within or near a storage reservoir's or salt cavern's
5 boundaries.
- 6 7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to
7 implement the policies of this chapter.
- 8 8. After notice and hearing, to grant exceptions to this chapter's requirements and
9 implementing rules ~~for good cause~~ if required to comply with applicable federal law.

10 **38-25-03. Permit required - Permit transfer.**

11 Geologic storage is allowed if permitted by the commission. A permit may be transferred if
12 the commission consents.

13 **38-25-04. Permit hearing - Hearing notice.**

- 14 1. The commission shall hold a public hearing before issuing any storage permit.
- 15 2. Notice of the hearing must be published for two consecutive weeks in the official
16 newspaper of the county or counties where the storage reservoir or salt cavern is
17 proposed to be located and in any other newspaper the commission requires.
18 Publication deadlines must comply with commission requirements.
- 19 3. Notice ~~Written notice~~ of hearing must be givenmailed to each surface owner of record
20 of land overlying the storage reservoir or salt cavern and within one-half mile [0.80
21 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be
22 mailed to an owner's last known address.
- 23 4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas
24 reservoir, notice of the hearing also must be givenmailed to each mineral lessee,
25 mineral owner of record, and pore space owner of record within the storage reservoir
26 and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
- 27 5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,
28 notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral
29 owner of record, and pore space owner of record within the salt cavern outer
30 boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt
31 cavern, or as otherwise may be required by the commission.

1 6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,
2 notice of hearing must be ~~given~~mailed to each pore space owner of record within the
3 storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's
4 boundaries.

5 7. Hearing notices required by this section must comply with the deadlines set by the
6 commission and must contain the information the commission requires.

7 **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

8 Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

9 1. The storage operator has or will obtain the consent by lease, purchase, or other
10 agreement from all surface owners where surface disturbance activities are necessary
11 and surface facilities will be located.

12 2. The storage operator has complied with all requirements set by the commission.

13 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
14 oil or gas.

15 4. The storage operator has made a good-faith effort to get the consent of all persons
16 that own the storage reservoir's pore space.

17 5. The storage operator has made a good-faith effort to obtain the consent of all persons
18 that own oil and gas minerals and oil and gas leases.

19 6. The storage operator has obtained the consent of persons that own at least fifty-five
20 percent of the storage reservoir's pore space unless the percentage required to unitize
21 the oil and gas unit is otherwise provided for by order of the commission before
22 August 1, 2021, if so the percentage in the order required to pool the mineral interests
23 prevails as to the percentage of pore space owners from whom the storage operator
24 must obtain consent.

25 7. The storage operator has obtained the consent of persons that own at least fifty-five
26 percent of the storage reservoir's oil and gas minerals and oil and gas leases unless
27 the percentage required to unitize the oil and gas unit is otherwise provided for by
28 order of the commission before August 1, 2021, if so the percentage in the order
29 prevails.

30 8. Whether the storage reservoir contains any commercially valuable oil, gas, or other
31 minerals and, if it does, a permit may be issued only if the commission is satisfied the

1 interests of the mineral owners or mineral lessees will not be affected adversely or
2 have been addressed in an arrangement entered by the mineral owners or mineral
3 lessees and the storage operator.

4 9. The proposed storage facility will not affect adversely surface waters or formations
5 containing fresh water.

6 10. The injected oil or gas will not escape from the storage reservoir.

7 11. The storage facility will not endanger health or unduly endanger the environment.

8 12. The storage facility is in the public interest.

9 13. The vertical boundaries of the storage reservoir are defined to include any necessary
10 or reasonable buffer zones for the purpose of ensuring the safe operations of the
11 storage facility and to protect the storage facility against pollution, invasion, and
12 escape or migration of oil or gas therefrom.

13 14. The horizontal extent of the injected gas within the storage reservoir, as estimated by
14 reasonable means and confirmed through appropriate monitoring methods, are
15 defined to include any necessary or reasonable buffer zones for the purpose of
16 ensuring the safe operations of the storage facility and to protect the storage facility
17 against pollution, invasion, and escape or migration of oil or gas therefrom.

18 15. The storage operator will establish monitoring facilities and protocols to assess the
19 location and migration of oil and gas, if any, injected for storage and to ensure
20 compliance with all permit, statutory, and administrative requirements.

21 16. The method of underground storage is reasonably necessary to effectively carry on
22 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
23 estate, and, with reasonable probability, will result in the increased storage and
24 recovery of more oil and gas.

25 17. The time, conditions, and method by which the storage facility must be dissolved and
26 the facility's affairs wound up. A storage facility may be dissolved ten years after the
27 storage facility permit is issued upon a petition to the commission by the pore space
28 owners and mineral owners that are credited with at least the percentage of interest of
29 the pore space required to ratify the storage facility amalgamation agreement, and a
30 subsequent hearing and order by the commission.

31 18. All nonconsenting owners are or will be compensated equitably.

1 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

2 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall

3 find:

4 1. The storage operator has or will obtain the consent by lease, purchase, or other
5 agreement from all surface owners where surface disturbance activities are necessary
6 and surface facilities will be located.

7 2. The storage operator has complied with all requirements set by the commission.

8 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
9 oil or gas.

10 4. The storage operator has made a good-faith effort to obtain the consent of all persons
11 that own the storage reservoir's pore space.

12 5. The storage operator has obtained the consent of persons that own at least
13 fifty-fivesixty percent of the storage reservoir's pore space.

14 6. The proposed storage facility will not affect adversely surface waters or formations
15 containing fresh water.

16 7. The injected oil or gas will not escape from the storage reservoir.

17 8. The storage facility will not endanger health or unduly endanger the environment.

18 9. The storage facility is in the public interest.

19 10. The vertical boundaries of the storage reservoir are defined to include any necessary
20 or reasonable buffer zones for the purpose of ensuring the safe operations of the
21 storage facility and to protect the storage facility against pollution, invasion, and
22 escape or migration of oil or gas therefrom.

23 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
24 reasonable means and confirmed through appropriate monitoring methods, are
25 defined to include any necessary or reasonable buffer zones for the purpose of
26 ensuring the safe operations of the storage facility and to protect the storage facility
27 against pollution, invasion, and escape or migration of oil or gas therefrom.

28 12. The storage operator will establish monitoring facilities and protocols to assess the
29 location and migration of oil and gas, if any, injected for storage and to ensure
30 compliance with all permit, statutory, and administrative requirements.

- 1 13. The method of underground storage is reasonably necessary to effectively carry on
2 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
3 estate, and, with reasonable probability, will result in the increased storage and
4 recovery of more oil and gas.
- 5 14. The time, conditions, and method by which the storage facility must be dissolved and
6 the facility's affairs wound up. A storage facility may be dissolved ten years after the
7 storage facility permit is issued upon a petition to the commission by the pore space
8 owners and mineral owners that are credited with at least the percentage of interest of
9 the pore space required to ratify the storage facility amalgamation agreement, and a
10 subsequent hearing and order by the commission.
- 11 15. All nonconsenting pore space owners are or will be compensated equitably.

12 **38-25-07. Permit requirements - Storage in salt cavern.**

13 Before issuing a permit for storage in a salt cavern, the commission shall find:

- 14 1. The storage operator has or will obtain the consent by lease, purchase, or other
15 agreement from all surface owners where surface disturbance activities are necessary
16 and surface facilities will be located.
- 17 2. The storage operator has complied with all requirements set by the commission,
18 including all necessary permits to conduct solution mining, if applicable.
- 19 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
20 oil or gas.
- 21 4. The storage operator has made a good-faith effort to obtain the consent of all persons
22 that own the salt cavern's pore space.
- 23 5. The storage operator has made a good-faith effort to obtain the consent of all persons
24 that own the salt cavern's salt minerals and salt leases.
- 25 6. The storage operator has obtained the consent of persons that own at least
26 fifty-fivesixty percent of the salt cavern's pore space.
- 27 7. The storage operator has obtained the consent of persons that own at least fifty-five
28 percent of the salt cavern's salt minerals and salt leases.
- 29 8. The proposed storage facility will not affect adversely surface waters or formations
30 containing fresh water.
- 31 9. The injected oil or gas will not escape from the salt cavern.

1 10. The storage facility will not endanger health or unduly endanger the environment.

2 11. The storage facility is in the public interest.

3 12. The horizontal and vertical boundaries of the salt cavern are defined to include a
4 buffer zone from the outer walls of the cavern for the purpose of ensuring the safe
5 operation of the storage facility and to protect the storage facility against pollution,
6 invasion, and escape or migration of gas therefrom.

7 13. The storage operator will establish monitoring facilities and protocols to assess the
8 location and migration of oil and gas, if any, injected for storage and to ensure
9 compliance with all permit, statutory, and administrative requirements.

10 14. The method of underground storage is reasonably necessary to effectively carry on
11 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
12 estate, and, with reasonable probability, will result in the increased storage and
13 recovery of more oil and gas.

14 15. The time, conditions, and method by which the storage facility must be dissolved and
15 the facility's affairs wound up. A storage facility may be dissolved ten years after the
16 storage facility permit is issued upon a petition to the commission by the pore space
17 owners and mineral owners that are credited with at least the percentage of interest of
18 the pore space required to ratify the storage facility amalgamation agreement, and a
19 subsequent hearing and order by the commission.

20 16. That all nonconsenting owners are or will be equitably compensated.

21 **38-25-08. Amalgamating property interests.**

22 If a storage operator does not obtain the consent of all persons owning a pore space and of
23 mineral interest owners when required by this chapter, the commission may require the interest
24 owned by the nonconsenting owners be included in an approved storage facility and subject to
25 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
26 Any pore space owner who does not have responsibility over the construction, management,
27 supervision, or control of the storage facility operations is not liable for money damages for
28 personal or other property damages proximately caused by the operations.

1 **38-25-09. Ownership of oil and gas.**

2 All oil or gas previously reduced to possession and subsequently injected into underground
3 storage facilities must be deemed the property of the storage operator subject to the obligation
4 to pay royalties as set forth in section 38-25-10.

5 **38-25-10. Injection of produced gas - When royalties owed.**

6 1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease
7 owners, royalties on gas produced but not sold and which is injected into a storage
8 facility instead of flaring or for lack of market, are not due on the produced and stored
9 gas until gas volumes actually are withdrawn from the storage facility, sold, and
10 proceeds received from the sale.

11 2. Prior to gas being withdrawn and sold from a storage facility under this section, the
12 storage operator, after notice and hearing, shall obtain approval from the commission
13 evidencing a reasonable and equitable method of allocation of the stored gas sale
14 proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into
15 storage. The commission may adopt such rules and orders as necessary to implement
16 the purposes of this section.

17 **38-25-11. Application.**

18 This chapter does not apply to applications filed with the commission which propose to use
19 produced gas for an enhanced oil or gas recovery project. Those applications must be
20 processed under chapter 38-08.