

Introduced by

Senators Unruh, Cook, Schaible

Representatives Kempenich, Porter

1 A BILL for an Act to create and enact section 47-31-09 of the North Dakota Century Code,  
2 relating to injection or migration of substances into pore space; and to amend and reenact  
3 sections 38-08-25, 38-11.1-01, and 38-11.1-03 of the North Dakota Century Code, relating to  
4 pore space and oil and gas production.

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

6 **SECTION 1. AMENDMENT.** Section 38-08-25 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **38-08-25. Hydraulic fracturing - Storage of natural gas and carbon dioxide - Use of**  
9 **carbon dioxide - Designated as acceptable recovery processes.**

- 10 1. Notwithstanding any other provision of law, the legislative assembly designates  
11 hydraulic fracturing, a mechanical method of increasing the permeability of rock to  
12 increase the amount of oil and gas produced from the rock, ~~an~~; the temporary  
13 underground storage of natural gas; geologic storage of carbon dioxide; and the use  
14 of carbon dioxide for enhanced recovery of oil, gas, and other minerals acceptable  
15 recovery processes in this state.
- 16 2. It is a valid exercise of the state's police powers to discourage the flaring of natural  
17 gas without hindering the continued exploration and production of oil and gas  
18 resources in the state. The temporary underground storage of natural gas is in the  
19 public interest because underground storage promotes conservation of natural gas.
- 20 3. It is in the public interest to promote the geologic storage of carbon dioxide to benefit  
21 the state and the global environment by reducing greenhouse gas emissions, to help  
22 ensure the viability of the state's coal and power industries, and to benefit the state  
23 economy. Carbon dioxide is a potentially valuable commodity, and geologic storage  
24 may increase its availability for commercial, industrial, or other uses, including

1           enhanced recovery of oil, gas, and other minerals. Geologic storage requires  
2           cooperative use of surface and subsurface property interests and collaboration among  
3           property owners.

4           4. It is in the public interest to encourage and authorize cycling, recycling, pressure  
5           maintenance, secondary recovery operations, and enhanced recovery operations  
6           utilizing carbon dioxide for the greatest possible economic recovery of oil and gas.

7           5. It is in the public interest a person conducting operations authorized by the  
8           commission under this chapter may use as much of a subsurface geologic formation  
9           as reasonably necessary to allow for the temporary storage of natural gas, unit  
10          operations for enhanced oil recovery, geologic storage of carbon dioxide, utilization of  
11          carbon dioxide for enhanced recovery of oil, gas, and other minerals, or any other  
12          operation authorized by this chapter.

13          6. Notwithstanding any other provision of law, a person conducting operations for  
14          temporary storage of natural gas, unit operations for enhanced oil recovery, geologic  
15          storage of carbon dioxide, utilization of carbon dioxide for enhanced recovery of oil,  
16          gas, and other minerals, or any other operation authorized by the commission under  
17          this chapter may utilize subsurface geologic formations in the state for the operations  
18          or any other permissible purpose under this chapter. Any other provision of law may  
19          not be construed to entitle the owner of a subsurface geologic formation to prohibit or  
20          demand payment for the use of the formation for temporary storage of natural gas, unit  
21          operations for enhanced oil recovery, geologic storage of carbon dioxide, utilization of  
22          carbon dioxide for enhanced recovery of oil, gas, and other minerals, or any other  
23          operation conducted under this chapter. As used in this section, "subsurface geologic  
24          formation" means any cavity or void, whether natural or artificially created, in a  
25          subsurface sedimentary stratum.

26          7. The commission may adopt and enforce rules and orders to effectuate the purposes of  
27          this section.

28          **SECTION 2. AMENDMENT.** Section 38-11.1-01 of the North Dakota Century Code is  
29          amended and reenacted as follows:

30          **38-11.1-01. Legislative findings.**

31          The legislative assembly finds the following:

- 1       1. It is necessary to exercise the police power of the state to protect the public welfare of  
2       North Dakota which is largely dependent on agriculture and to protect the economic  
3       well-being of individuals engaged in agricultural production, while at the same time  
4       preserving and facilitating exploration for, and development of, oil and gas reserves in  
5       this state so the greatest possible economic recovery of oil and gas might be obtained  
6       including through the utilization of subsurface pore space in accordance with an  
7       approved unitization or similar agreement, an oil and gas lease, or as otherwise  
8       permitted by law.
- 9       2. Exploration for and development of oil and gas reserves in this state interferes with the  
10      use, agricultural or otherwise, of the surface of certain land.
- 11      3. Owners of the surface estate and other persons should be justly compensated for  
12      injury to their persons or property and interference with the use of their property  
13      occasioned by oil and gas development.

14      **SECTION 3. AMENDMENT.** Section 38-11.1-03 of the North Dakota Century Code is  
15      amended and reenacted as follows:

16      **38-11.1-03. Definitions.**

17      In this chapter, unless the context or subject matter otherwise requires:

- 18      1. "Agricultural production" means the production of any growing grass or crop attached  
19      to the surface of the land, whether or not the grass or crop is to be sold commercially,  
20      and the production of any farm animals, including farmed elk, whether or not the  
21      animals are to be sold commercially.
- 22      2. "Drilling operations" means the drilling of an oil and gas well and the production and  
23      completion operations ensuing from the drilling which require entry upon the surface  
24      estate and which were commenced after June 30, 1979, and oil and gas geophysical  
25      and seismograph exploration activities commenced after June 30, 1983.
- 26      3. "Land" means the solid material of earth, regardless of ingredients, but excludes pore  
27      space.
- 28      4. "Mineral developer" means the person who acquires the mineral estate or lease for the  
29      purpose of extracting or using the minerals for nonagricultural purposes.
- 30      4-5. "Mineral estate" means an estate in or ownership of all or part of the minerals  
31      underlying a specified tract of land.

1     ~~5-6.~~ "Minerals" means oil and gas.

2         7. "Pore space" means a cavity or void, naturally or artificially created, in a subsurface  
3         sedimentary stratum.

4     ~~6-8.~~ "Surface estate" means an estate in or ownership of the surface of a particular tract of  
5         land.

6     ~~7-9.~~ "Surface owner" means any person who holds record title to the surface ~~of the land as~~  
7         ~~an owner~~estate on which a drilling operation occurs or is conducted.

8         **SECTION 4.** Section 47-31-09 of the North Dakota Century Code is created and enacted as  
9 follows:

10         **47-31-09. Injection of substances to facilitate production of oil, gas, or other**  
11 **minerals.**

12         This chapter may not be construed to limit the rights or dominance of a mineral estate to  
13 drill or recomplete a well under chapter 38-08. Injection or migration of substances into pore  
14 space for disposal operations, for secondary or tertiary oil recovery operations, or otherwise to  
15 facilitate production of oil, gas, or other minerals is not unlawful and, by itself, does not  
16 constitute trespass, nuisance, or other tort.