

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2344

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 - ~~Temporary storage of natural gas--Use of carbon~~**
9 **dioxide - Designated as acceptable recovery processprocesses.**

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;~~ and the use of carbon dioxide for enhanced
14 ~~recovery of oil, gas, and other minerals~~ acceptable recovery ~~processprocesses~~ in this
15 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 use of carbon dioxide to benefit the state and-~~
21 ~~the global environment by reducing greenhouse gas emissions, to help ensure the~~
22 ~~viability of the state's coal and power industries, and to benefit the state economy.~~
23 Carbon dioxide is a potentially valuable commodity, and increasing its availability is

1 important for commercial, industrial, or other uses, including enhanced recovery of oil,
2 gas, and other minerals.

3 4.3. It is in the public interest to encourage and authorize cycling, recycling, pressure
4 maintenance, secondary recovery operations, and enhanced recovery operations
5 utilizing carbon dioxide for the greatest possible economic recovery of oil and gas.

6 5.4. It is in the public interest for a person conducting operations authorized by the
7 commission under this chapter to use as much of a subsurface geologic formation as
8 reasonably necessary to allow for ~~the temporary storage of natural gas,~~ unit
9 operations for enhanced oil recovery, utilization of carbon dioxide for enhanced
10 recovery of oil, gas, and other minerals, disposal operations, or any other operation
11 authorized by this chapter.

12 6.5. Notwithstanding any other provision of law, a person conducting ~~operations for~~
13 ~~temporary storage of natural gas,~~ unit operations for enhanced oil recovery, utilization
14 of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal
15 operations, or any other operation authorized by the commission under this chapter
16 may utilize subsurface geologic formations in the state for such operations or any
17 other permissible purpose under this chapter. Any other provision of law may not be
18 construed to entitle the owner of a subsurface geologic formation to prohibit or
19 demand payment for the use of the subsurface geologic formation for ~~temporary~~
20 ~~storage of natural gas,~~ unit operations for enhanced oil recovery, utilization of carbon
21 dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or
22 any other operation conducted under this chapter. As used in this section, "subsurface
23 geologic formation" means any cavity or void, whether natural or artificially created, in
24 a subsurface sedimentary stratum.

25 7.6. The commission may adopt and enforce rules and orders to effectuate the purposes of
26 this section.

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

29 **38-11.1-01. Legislative findings.**

30 The legislative assembly finds the following:

- 1 1. It is ~~necessary to exercise the police power of~~incumbent on the state to protect the
2 public welfare of North Dakota which is largely dependent on agriculture and to protect
3 the economic well-being of individuals engaged in agricultural production, while at the
4 same time preserving and facilitating exploration ~~for, and development of, oil and gas~~
5 ~~reserves in this state so the greatest possible economic recovery of oil and gas might~~
6 ~~be obtained including~~ through the utilization of subsurface pore space in accordance
7 with an approved unitization or similar agreement, an oil and gas lease, or as
8 otherwise 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 4. This chapter may not be construed to alter, amend, repeal, or modify the law
15 concerning title to pore space under section 47-31-03.

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

18 **38-11.1-03. Definitions.**

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

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

1 4-5. "Mineral estate" means an estate in or ownership of all or part of the minerals
2 underlying a specified tract of land.

3 5-6. "Minerals" means oil and gas.

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

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

8 7-9. "Surface owner" means any person who holds record title to the surface of the land as
9 an owner estate on which a drilling operation occurs or is conducted.

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

12 **47-31-09. Injection of substances to facilitate production of oil, gas, or other**
13 **minerals.**

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

19 2. This section and chapter 38-08 may not be construed to impair the obligations of any
20 contract for use of the surface estate for disposal operations, provided the contract
21 was entered before the effective date of the unit approved by the commission pursuant
22 to sections 38-08-09 through 38-08-09.17, and provided the disposal well is located
23 within the unit area of the approved unit.

24 3. This section and chapter 38-08 may not be construed to allow the operator of a
25 disposal well where the contract has expired after the effective date of the unit
26 approved by the commission pursuant to sections 38-08-09 through 38-08-09.17 to
27 claim the surface owner should not be compensated as if the new contract for the
28 disposal well on which the contract has expired had been entered after the effective
29 date of the approved unit.

30 4. The owner of the surface estate upon which the surface location of a disposal well is
31 located does not lose, and may not be deemed to have lost, a claim for trespass.

- 1 | nuisance, or other tort if the operator of the disposal well commences or continues
- 2 | operations of the disposal well in violation of subsections 2 or 3.