

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.