

**FIRST ENGROSSMENT
with House Amendments
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 chapter 38-25 of the North Dakota Century Code, relating
2 to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of
3 the underground storage of oil or gas; and to amend and reenact sections 15-05-09 and
4 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil
5 leases.

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

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

9 **15-05-09. Leases for oil, gas, and other products.**

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

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

17 **15-05-10. Royalties from oil and gas leases - Rents from other leases - Rules.**

18 Oil and gas leases must be made by the board of university and school lands at such
19 annual minimum payments as are determined by the board, but the royalty shall be not less
20 than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas
21 leases made by the board may authorize a royalty of less than twelve and one-half percent for
22 production from stripper well properties or individual stripper wells and qualifying secondary
23 recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases ~~for~~
24 ~~gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone,~~

1 ~~chemical substances, metallic ores, or colloidal or other clays issued by the board under section~~
2 ~~15-05-09 for products other than oil and gas must be made by the board in such annual~~
3 ~~payments provide for adequate rental payments and other provisions as are determined by the~~
4 board. The board may adopt rules regarding ~~annual~~ rental payments and royalties under this
5 section.

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

8 **38-25-01. Definitions.**

9 As used in this chapter:

- 10 1. "Commission" mean the industrial commission.
- 11 2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not
12 defined as oil.
- 13 3. "Geological storage" means the underground storage of oil or gas in a storage
14 reservoir or salt cavern.
- 15 4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which
16 are produced at the wellhead in liquid form and the liquid hydrocarbons known as
17 distillate or condensate recovered or extracted from gas, other than gas produced in
18 association with oil and commonly known as casinghead gas.
- 19 5. "Permit" means a permit issued by the commission allowing a person to operate an
20 underground storage facility.
- 21 6. "Pore space" has the same meaning as in section 47-31-02.
- 22 7. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or
23 producing of any oil or gas storage well or facility in a manner that increases the
24 quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil
25 or gas.
- 26 8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,
27 whether natural or artificially created, including oil and gas reservoirs and saline
28 formations suitable for or capable of being made suitable for injecting, storing, and
29 withdrawing oil or gas. The term does not include salt caverns.

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

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

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

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

12 13. "Waste" means the inefficient storing of oil or gas.

13 **38-25-02. Commission authority.**

14 The commission has authority:

15 1. Over all persons and property necessary to administer and enforce this chapter when
16 necessary to prevent waste, to protect correlative rights of the mineral and surface
17 estate, or to effect greater ultimate storage and recovery of oil and gas.

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

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

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

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

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

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

1 8. After notice and hearing, to grant exceptions to this chapter's requirements and
2 implementing rules 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. Written notice of hearing must be mailed to each surface owner of record of land
13 overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer]
14 of the reservoir's or salt cavern's boundaries. The notice of hearing must be mailed to
15 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 mailed to each mineral lessee, mineral
18 owner of record, and pore space owner of record within the storage reservoir and
19 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 mailed to each salt mineral lessee, salt mineral owner of
22 record, and pore space owner of record within the salt cavern outer boundaries and
23 within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as
24 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 mailed 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, in which case the percentage in the order required to pool the mineral
17 interests prevails as to the percentage of pore space owners from whom the storage
18 operator 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, in which case the percentage in the
23 order 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. The method of underground storage is reasonably necessary to effectively carry on
16 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
17 estate, and, with reasonable probability, will result in the increased storage and
18 recovery of more oil and gas.
- 19 17. The time, conditions, and method by which the storage facility must be dissolved and
20 the facility's affairs wound up. A storage facility may be dissolved ten years after the
21 storage facility permit is issued upon a petition to the commission by the pore space
22 owners and mineral owners that are credited with at least the percentage of interest of
23 the pore space required to ratify the storage facility amalgamation agreement, and a
24 subsequent hearing and order by the commission.
- 25 18. All nonconsenting owners are or will be compensated equitably.

26 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

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

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

- 1 2. The storage operator has complied with all requirements set by the commission.
- 2 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of
3 oil or gas.
- 4 4. The storage operator has made a good-faith effort to obtain the consent of all persons
5 that own the storage reservoir's pore space.
- 6 5. The storage operator has obtained the consent of persons that own at least sixty
7 percent of the storage reservoir's pore space.
- 8 6. The proposed storage facility will not affect adversely surface waters or formations
9 containing fresh water.
- 10 7. The injected oil or gas will not escape from the storage reservoir.
- 11 8. The storage facility will not endanger health or unduly endanger the environment.
- 12 9. The storage facility is in the public interest.
- 13 10. The vertical boundaries of the storage reservoir are defined to include any necessary
14 or reasonable buffer zones for the purpose of ensuring the safe operations of the
15 storage facility and to protect the storage facility against pollution, invasion, and
16 escape or migration of oil or gas therefrom.
- 17 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by
18 reasonable means and confirmed through appropriate monitoring methods, are
19 defined to include any necessary or reasonable buffer zones for the purpose of
20 ensuring the safe operations of the storage facility and to protect the storage facility
21 against pollution, invasion, and escape or migration of oil or gas therefrom.
- 22 12. The storage operator will establish monitoring facilities and protocols to assess the
23 location and migration of oil and gas, if any, injected for storage and to ensure
24 compliance with all permit, statutory, and administrative requirements.
- 25 13. The method of underground storage is reasonably necessary to effectively carry on
26 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
27 estate, and, with reasonable probability, will result in the increased storage and
28 recovery of more oil and gas.
- 29 14. The time, conditions, and method by which the storage facility must be dissolved and
30 the facility's affairs wound up. A storage facility may be dissolved ten years after the
31 storage facility permit is issued upon a petition to the commission by the pore space

1 owners and mineral owners that are credited with at least the percentage of interest of
2 the pore space required to ratify the storage facility amalgamation agreement, and a
3 subsequent hearing and order by the commission.

4 15. All nonconsenting pore space owners are or will be compensated equitably.

5 **38-25-07. Permit requirements - Storage in salt cavern.**

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

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

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

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 obtain the consent of all persons
15 that own the salt cavern's pore space.

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

18 6. The storage operator has obtained the consent of persons that own at least sixty
19 percent of the salt cavern's pore space.

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

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

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

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

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

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

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

4 14. The method of underground storage is reasonably necessary to effectively carry on
5 the joint effort, will prevent waste, protect correlative rights of the mineral and surface
6 estate, and, with reasonable probability, will result in the increased storage and
7 recovery of more oil and gas.

8 15. The time, conditions, and method by which the storage facility must be dissolved and
9 the facility's affairs wound up. A storage facility may be dissolved ten years after the
10 storage facility permit is issued upon a petition to the commission by the pore space
11 owners and mineral owners that are credited with at least the percentage of interest of
12 the pore space required to ratify the storage facility amalgamation agreement, and a
13 subsequent hearing and order by the commission.

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

15 **38-25-08. Amalgamating property interests.**

16 If a storage operator does not obtain the consent of all persons owning a pore space and of
17 mineral interest owners when required by this chapter, the commission may require the interest
18 owned by the nonconsenting owners be included in an approved storage facility and subject to
19 geologic storage if the minimum percentage of consent is obtained as specified in this chapter.
20 Any pore space owner who does not have responsibility over the construction, management,
21 supervision, or control of the storage facility operations is not liable for money damages for
22 personal or other property damages proximately caused by the operations.

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.