

**Senate Bill 2317**  
**Testimony of Ron Ness**  
**Senate Energy and Natural Resources Committee**  
**January 27, 2023**

Chairman Patten and members of the Committee, my name is Ron Ness, President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 600 companies involved 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 opposition of Senate Bill 2317.

Senate Bill 2317 is an attempt to amend certain sections of Chapter 38-25 of the North Dakota Century Code. Chapter 38-25 was enacted by the Legislative Assembly in 2021 in order to establish a regulatory structure for the geologic storage of oil and gas under the jurisdiction of the North Dakota Industrial Commission (“Commission”). The legislation enacted as Chapter 38-25 was the product of many discussions between lawmakers, the Commission, pore space owners, mineral owners, and industry developers, and it was meant to advance North Dakota’s gas capture goals, reduce emissions, and demonstrate North Dakota’s commitment to developing cleaner energy.

Senate Bill 2317 will amend Chapter 38-25 to require the consent of 85% of the pore space owners in order to permit an underground natural gas storage facility. The Legislative Assembly that enacted Chapter 38-25 recognized that underground storage of oil and gas is all but impossible if the storage facility operator was required to obtain the consent of 85% of the pore space owners within the proposed storage facility. This understanding was likely a result of the Commission’s experience with oil and gas unitization. Historically, the statute governing unitization of oil and gas interests required the approval of at least 80% of the interest owners within the unit. When the Little Knife Field located in parts of Billings, McKenzie, and Dunn Counties

was proposed, the operator was unable to obtain the approval of 80% of the owners and the unit was never created. At the time, the operator estimated that approximately 50 million barrels of oil was left unrecovered because the field was not unitized. This prompted the Legislative Assembly to reduce the threshold for unitization from 80% to 70%. Later, when the 70% threshold could not be secured for Cedar Hills Field located in Bowman County, the Commission was forced to restrict production in the field until the Legislative Assembly further reduced the threshold from 70% to 60%. More recently, the threshold was reduced to 55%, which has resulted in many additional secondary recovery units being formed which has greatly increased the ultimate recovery of oil and gas in the State.

With the history of oil and gas unitization in mind, the Legislative Assembly included within Chapter 38-25 a procedure that allows the Commission to amalgamate or “unitize” the pore space of nonconsenting owners within a proposed natural gas storage facility as long as the storage operator obtains the consent of at least 55% of the pore space owners within the proposed storage facility area. This number recognizes that a majority of owners must decide, but also provides additional assurance of more widespread support amongst the owners for the project. It should also be noted that Chapter 38-25 requires that the nonconsenting pore space owners whose interests are amalgamated to be compensated for the use of their pore space the same as all the owners who signed pore space leases. Therefore, there is no taking of private property rights.

SB 2317 should also be viewed as a hinderance to the State’s aggressive flaring goals for the oil and gas industry. Many operators view the underground storage of oil and gas as a means to reduce flaring until the necessary infrastructure is put in place to capture and process the natural gas produced at the wellhead. SB 2317, if enacted, would all but eliminate the underground storage of natural gas as a viable option to reduce flaring. With a threshold of 85%, it is entirely possible that a single pore space owner within a proposed storage facility could prevent an underground storage project from proceeding even if the remaining pore space owners within the proposed storage facility area have consented. Furthermore, any special interest entity or person who opposes a proposed underground natural gas storage facility could purchase a small, minority

surface interest within the proposed storage facility area strictly for the purpose of stopping the project. For these reasons, the Legislative Assembly has put in place approval thresholds that reflect majority approval, but which are not so high as to deter the proper and orderly development of the State's natural resources.

If you believe that energy development is important to North Dakota, defeat this bill. SB 2228 is a mirror image of SB 2317 except that SB 2228 requires 100% approval for amalgamation of pore space interest the for the underground storage of carbon dioxide. The North Dakota Petroleum Council strongly opposes Senate Bill 2317 and urges a **Do Not Pass Recommendation**.

I would be happy to answer any questions.