

**FIRST ENGROSSMENT  
with House Amendments  
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 contract obligations; and to  
3 amend and reenact sections 38-08-25, 38-11.1-01, and 38-11.1-03 of the North Dakota Century  
4 Code, relating to 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. 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. 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. 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 formation for temporary storage of natural gas;  
20           unit operations for enhanced oil recovery; utilization of carbon dioxide for enhanced  
21           recovery of oil, gas, and other minerals; disposal operations; or any other operation  
22           conducted under this chapter. As used in this section, "subsurface geologic formation"  
23           means any cavity or void, whether natural or artificially created, in a subsurface  
24           sedimentary stratum.

25           7. 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 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 through the utilization of subsurface pore space  
5        in accordance with an approved unitization or similar agreement, an oil and gas lease,  
6        or as otherwise permitted by law.
- 7        2. Exploration for and development of oil and gas reserves in this state interferes with the  
8        use, agricultural or otherwise, of the surface of certain land.
- 9        3. Owners of the surface estate and other persons should be justly compensated for  
10       injury to their persons or property and interference with the use of their property  
11       occasioned by oil and gas development.
- 12       4. This chapter may not be construed to alter, amend, repeal, or modify the law  
13       concerning title to pore space under section 47-31-03.

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 - Contracts.**

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. This section and chapter 38-08 may not be  
17 construed to impair the obligations in a contract between parties who have entered an  
18 agreement for the use of the surface estate for disposal operations.