

**Summit Carbon Solutions Testimony on House Bill 1573**  
**February 3, 2025, 10:00 A.M.**  
**House Finance and Tax Committee**  
**Representative Headland, Chairman**  
**Jeffrey Skaare – Director of Land Summit Carbon Solutions**

**Opposition to HB 1573**

1           Thank you, Chairman Headland, and fellow Committee Members. My name is Jeffrey Skaare. I  
2 am the Director of Land for Summit Carbon Solutions (SCS). I am here today to ask for you opposition to  
3 HB 1573.

4           HB 1573 proposes a new tax of \$5/ton on all substances injected into ground for permanent  
5 storage. This proposed law would have significant negative impacts on North Dakota’s energy industry,  
6 including carbon capture, enhance oil recovery (EOR), and saltwater injection.

**The proposed law contradicts established policy**

7           The legislature has worked for many years to create a legal, tax, and regulatory framework to  
8 lead the world in CO<sub>2</sub> development, including the definition of pore space, granting the ND Industrial  
9 Commission authority to regulate CO<sub>2</sub> injection and storage, establishing the fee structure at the ND  
10 Industrial Commission, the long-term accountability for CO<sub>2</sub> storage, establishing tax incentives for  
11 commercial deployment of carbon capture, storage and utilization, and funding for research and  
12 development. This bill intends to impose a specific and punitive tax contrary to the policies that were  
13 put in place through the wisdom of prior legislative action to promote the development of our  
14 important industries. The future of agriculture and energy – our two most important industries –  
15 depend on stable and predictable CO<sub>2</sub> policies.

**The proposed law is unclear**

16           As written the law states, “there is imposed upon a person that transports a substance for the  
17 purpose of injection and permanent underground storage of the substance in pore space located in the  
18 state a tax as provided in this section.” This language would include produced water (saltwater) that is  
19 generated from oil and gas, if the gathering system is longer that 25 miles. Saltwater injection locations  
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1 typically measure by volume not weight. It is not clear whether this law would apply to enhance oil  
2 recovery projects using natural gas connected to large gathering systems. As written the tax is on all  
3 pipelines “in service after July 31, 2025.” While I suspect the drafters were trying to create an exception  
4 for existing pipelines in service prior to that date, the bill language is all inclusive and misleading. The  
5 bill seeks to create a new disaster fund without taking into consideration the currently existing  
6 protections under North Dakota law. The North Dakota Industrial Commission exercises its authority  
7 over injection wells and the North Dakota Public Service Commission exercises its authority over  
8 pipelines. In the case of Summit Carbon Solutions, both have instituted safeguards making the need for  
9 a disaster fund unnecessary.

10 **The proposed law is unconstitutional**

11 The North Dakota Supreme Court has held in the case *D.D.I., Inc., v. State of North Dakota* 2003  
12 ND 32 as follows:

13 “The Commerce Clause, U.S. Const. art. I, § 8, cl. 3, grants Congress the power “[t]o regulate  
14 commerce . . . among the several States.” Although the Commerce Clause is phrased as a grant of power  
15 to Congress, it has long been understood to have a “negative” or “dormant” aspect that denies states  
16 the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.” A  
17 Commerce Clause challenge to a state tax is subject to a four-part test. (1) the tax was applied to an  
18 activity with a substantial nexus with the taxing state, (2) the tax was fairly apportioned, (3) the tax did  
19 not discriminate against interstate commerce, and (4) the tax was fairly related to the services provided  
20 by the state.

