2011 SENATE NATURAL RESOURCES

SB 2318

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2318
February 3, 2011
13934

☐ Conference Committee

Committee Clerk Signature Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to duration of carbon dioxide storage easements

Minutes: Testimony Attached

Chairman Lyson opened the hearing on SB 2318.

Senator John Warner introduced the bill. See **Attachment #1**.
He regards the amendment Sandy Tabor will bring in as a friendly amendment. He introduced

Senator Schneider: Do we define Geologic Reservoir anywhere in Code?

Senator John Warner: Mr. Rogers can more adequately address that.

Senator Uglem: Do you see this lease as covering only the point of injection or covering a large area?

Senator Warner: Very large area. The surface owner, not the mineral owner, owns the pore space, the space between the mineral molecules.

Mr. Barclay Rogers, representing Willow Grove Carbon Solutions, was called as an expert witness. He presented written testimony. See **Attachment # 2**. #1 it's about increasing landowner income. #2 it's about ensuring the viability of the coal industry going forward. The EPA and other entities are putting pressure on coal companies to address and codify power plants to address the CO2 emissions and we are looking to develop viable compliance options in the event that those regulations come down. Finally it's about increasing the productivity of the oil patch in ND. ND has the nation's leading CO2 storage law. ND is very well positioned for CO2 storage.

Senator Triplett: What are the terms of the agreements you have made with the people you have signed up? Are they 99 year leases?

Mr. Barclay Rogers: They are 5 year agreements with a rollover provision. Upon injection of the CO2, the easement goes into a perpetual nature. Since no carbon has gone into the ground yet, we have not dealt with that 99 year limit.

Senator Triplett: So at this point you are just leasing with the option to have a perpetual easement.

Opposition

Sandi Tabor with the Lignite Energy Council presented written testimony in opposition to SB 2318. She presented some amendments. See **Attachment #3**. Reservoir is defined in 38-22.

There was a short discussion about the content of the amendments.

Senator Triplett: Are you trying to redefine easement and severance? Will this cause confusion?

Sandi Tabor: We are trying to find a way to do what the sponsors are trying to do. I appreciate your struggle. It is being looked at.

Senator Hogue: The legislature has always rejected perpetual easements. Why would this be different?

Sandi Tabor: John Haryew from the Environment and Energy Research Center is one of the leaders in doing CO2 sequestration. The CO2 Reduction Partnership is at the forefront of this issue in the nation. He showed how the CO2 will move over tens/ hundreds/ thousands of years. So one of the issues we will have in this area is how will we maintain control over the surface. Our group decided that the best way to do that would be by way of a lease. 47-31-06 is in there for that reason. How do you make sure there is control over the projects for many generations?

Chairman Lyson: You have someone studying it?

Sandi Tabor: Yes

Chairman Lyson: If we wait until next Thursday, you'll have an answer on this?

Sandi Tabor: Yes

Dale Neizwaag, representing Basin Electric Power Cooperative and Dakota Gasification Company, presented written testimony in opposition to SB 2318. See **Attachment #4**.

Sandy Clark with ND Farm Bureau spoke in opposition to SB 2318. ND Farm Bureau opposes perpetual easements.

Mr. Barclay Rogers made closing comments. The concerns raised by Basin Electric are totally understandable and we fully support the proposed amendments. With regard to

easement vs. lease issue, the only thing I would raise with respect to that is there is provision in ND law that limits the time period on a lease as well. So in the event that we opted for a lease as opposed to an easement, we essentially would have the same problem. A lease is limited to ten years whereas an easement is limited to 99 years. We are simply trying to get one of an appropriate duration for geologic storage. As a final matter, I would like to address compensation to the landowner. The compensation is an upfront payment, a royalty associated with CO2 sequestration, as well as annual payments associated with any kind of surface infrastructure, roads, pipes, so on, every year that those things are there.

Chairman Lyson closed the hearing on 2318.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2318
February 11, 2011
Job # 14460 audio 33:10-38:22and audio 53:06-59:20

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to duration of carbon dioxide storage easements.

Minutes: *Amendment Attached*

Senator Lyson calls the Senate Natural Resources Committee for discussion of SB 2318.

Senator Lyson indicates the prime sponsor has asked him if we could submit an amendment to SB 2318 and put in to "a study". Sandi Tabor has no problems with amending this bill. Senator Lyson asks intern to draw up an amendment for this.

Sandi Tabor states that they had problems with the bill. They are going to call back the CO2 work study group and reconvene and ask to get back together to study SB 2318 again. Our dilemma is that no one likes "perpetual easements". We thought that the answer may be to use a lease but there are potential tax consequences with the language I provided in the amendment to you. We are going to have to sit down during the interim with the people who understand rural property and try to find a fix for this. We will be happy to report to an interim committee. If the legislature would like to have an internal committee, that would be fine.

Senator Uglem states the he is strongly against "perpetual lease or easements" but I think this a lot different than "surface rights" that affect the "surface owner" on a daily basis. So I think that could be something that could be worked around.

Sandi Tabor states that one of the things that we need to do is get the Farm Bureau, Farmers Union and the Stockman's Association to come to the table with us. We need to educate them about what this is all about. I have made some personal comments to people asking for help. They appear to be willing to join us at the table. We need to understand what this is all about. This isn't about "surface activities" per se. There will be some but not like these wetlands by any stretch of the imagination.

Senator Lyson passes out the amendment that puts SB 2318 into a study. See **Attachment #1**.

Senator Schneider states that Senator Lyson suggested that the prime sponsor wanted to turn this into a "study"?

Senator Lyson states that is correct.

Senator Freborg asks if we should be passing this giving the legislative management the option of studying it. We all think it is very important to get done so we can get this into bill form as soon as possible.

Senator Lyson asks if we should take the "consider" out of the amendment.

Senator Freborg states that if we want to know for a fact that it is going to get done, we have to. Otherwise, it is up to the legislative management committee.

Senator Lyson states that they change all these upstairs and it doesn't matter what we put in down here. The council does.

Senator Freborg states if we vote on it and pass it out, they can change it in the House but no one else can change it. It has to be voted on and they can defeat it.

Senator Hogue states that I think yesterday with Senator Laffen's bill we did and the downside to mandating the legislative management study, is that you may get some people to vote against it. It can go either way. We can require a study but the downside is that it may draw a lot of red votes.

Senator Hogue made a motion to adopt the amendments.

Senator Uglem: Second

Motion carried by voice vote.

Motion by Senator Hogue to DO PASS AS AMENDED.

Seconded by Senator Schneider.

Roll call vote: 6-0-1

Carrier: Senator Schneider

#1

PROPOSED AMENDMENT TO SB 2318

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to carbon dioxide storage easements and to the duration of carbon dioxide storage easements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY – CARBON DIOXIDE EASEMENTS.
Legislative management shall consider studying, during the 2011-2012 interim, carbon dioxide storage easements and the duration of carbon dioxide storage easements. Legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly.

Date: 2-11-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2318

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Hogue Seconded By Uglem

carried by voice vote

Senators	Yes	No	Senators	Yes	No
Chairman Lyson			Senator Schneider		
Vice-Chair Hogue			Senator Triplett		
Senator Burckhard					
Senator Freborg					
Senator Uglem					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-11-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2318

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Hogue Seconded By Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider	✓	
Vice-Chair Hogue	✓		Senator Triplett		
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglem	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2318: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2318 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to carbon dioxide storage easements and to the duration of carbon dioxide storage easements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CARBON DIOXIDE STORAGE EASEMENTS. The legislative management shall consider studying, during the 2011-12 interim, carbon dioxide storage easements and the duration of carbon dioxide storage easements. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 HOUSE ENERGY AND NATURAL RESOURCES

SB 2318

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2318
03/4/2011
14932

☐ Conference Committee

Committee Clerk Signature

Minutes: no "attached testimony."

Rep. Porter: We will open the hearing on SB 2318.

Sandy Tabor: I represent the North Dakota Lignite Energy Council. This bill started in the senate as an effort to create easement and perpetuity. That is probably not the most popular theory. We were against that bill in the senate, but we did recognize that there is an issue in the long term storage in the CO2 and what legal document you use. I have been in contact with the State Bar Association Rural Property Probate and Trust Section and they have agreed to join our storage work group and try to figure this out during the interim so we are supportive to turn the bill into a study resolution.

Rep. Porter: During the last session we said what as far as storage?

Sandy Tabor: What we did on the bill is we said the floor space could not be severed from the surface. The issue is what document does the injector use with the surface owner in order to obtain the rights to do that injection. In the bill we said the lease would be the only document that would be available for that purpose and that the lease would be renewed periodically. If you are always renewing a lease it is almost like a severance. We said you can't sever so we have a problem. That is why we need to study this.

Rep. Porter: We know that just because it says "shall consider" doesn't mean it will get picked. Is EmPower willing to work on this?

Sandy Tabor: We can work through EmPower but as we know if someone suggests the leadership that would be an important thing to pick, perhaps it will be picked.

Dale Niezwaag: I represent Basin Electric and the Dakota Gasification Company. Since 2000 we have been capturing CO2 at the Dakota Gasification Plant and then sending it to Canada to be re-injected into an oil field for secondary oil recovery. Dakota Gasification has some additional CO2 that they can capture but it on an intermittent basis. We are looking at the ability to set up a test program at the Antelope Valley Station which is our coal generating power plant to develop a test to capture CO2 from the existing power plant and again we would need a place to store that.

Rep. Porter: Is there any opposition to SB 2318? We will close the hearing on SB 2318.

Rep. Hofstad: I move a Do Pass

Rep. Kelsh: Second.

Rep. Porter: Is there any discussion? The clerk will call a roll on a Do Pass on SB 2318. Motion Carried.

YES 11 NO 0 Absent 4 Carrier Rep. Clark.

Date: 3-4-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2318

House House Energy and Natural Resources Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Hofstad Seconded By Rep. Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey					
Rep. Hofstad	✓				
Rep. Kasper					
Rep. Keiser					
Rep. Kreun	✓				
Rep. Nathe					
Rep. Anderson	✓				

Total (Yes) 11 No 0

Absent 4

Floor Assignment Rep. Clark

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2318, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2318 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2318

#1

Testimony on SB 2318
Carbon Sequestration Easements
Senator John Warner
3 February 2011

Mr. Chairman, Members of the Committee,

Carbon sequestration is an emerging issue that is likely to be vital to the continued health of North Dakota's coal industry and at the same time provide a valuable natural resource to someday aid North Dakota's oil fields in optimizing recovery of the energy so vital to our American economy.

This legislature has done some excellent work in past sessions, defining who owned the pore space within geological formations, and developing clear rules associated with developing carbon storage projects. Among other things, the legislature has required a carbon storage operator to make a good faith effort to get the consent of all persons who own the storage reservoir's pore space and to obtain the consent of persons who own at least sixty percent of the storage reservoir's pore space.

An easement is the best legal vehicle for obtaining such consent. An easement confers a right of use and in the case of a carbon storage project, that use is the storage of carbon dioxide in the geologic reservoir.

For many and good reasons, North Dakota has not traditionally favored perpetual easements, preferring that obligations on the land run no more than ninety-nine years but once carbon dioxide is pumped into a geologic formation it is likely to remain there forever so the right to store the commodity must also be permanent and must run with the land as the land is transferred in the future.

Section 1 of the bill amends 47-05-01 Easements attached to other lands. The following land burdens or servitudes upon lands may be attached to other land as incidents or appurtenances and then are called easements:

1. The right of pasturage
2. The right of fishing
3. The right of way

4. The right of taking water, wood, minerals, and other things
5. The right of transacting business upon land.
6. The right of conducting lawful sports upon land.
7. The right of receiving air, light, or heat from or over, or discharging the same upon or over land
8. The right of receiving water from or discharging the same upon land.
9. The right of flooding land.
10. The right of having water flow without diminution or disturbance of any kind.
11. The right of using a wall as a party wall.
12. The right of receiving more than natural support from adjacent land or things affixed thereto.
13. The right of having the whole of a division fence maintained by a coterminous owner.
14. The right of having public conveyances stopped or of stopping the same on land.
15. The right of a seat in church.
16. The right of burial
17. <u>The right to store carbon dioxide in a geologic reservoir.</u>

Section 2 of the bill amends 47-05-02.1 to allow that <u>the duration of an easement to store carbon dioxide in a geologic reservoir may be perpetual, and the easement shall run with the land.</u>

Mr. Chairman, Members of the Committee, I think that these two small changes will enhance the efforts of previous sessions of the Legislature to provide protection to our vital coal industry and will create a storage device for a valuable commodity which will someday be needed to optimize recovery of oil and gas so necessary to our national economy.

I would stand for any questions but I would like to take this opportunity to introduce Mr. Barclay Rogers who would be better qualified than I to answer technical aspects of the bill and speak of this emerging industry.

#2

WillowGrove
Carbon Solutions

TESTIMONY OF BARCLAY ROGERS, OF WILLOW GROVE CARBON SOLUTIONS WITH RESPECT TO SB 2318

February 3, 2011

Introduction

Mr. Chairman, and members of the committee, my name is Barclay Rogers, and I represent Willow Grove Carbon Solutions LLC. I'm in favor of this bill because it will help to facilitate carbon dioxide (CO_2) storage, a potential significant economic gain, in the state. As the committee is aware, the bill would authorize CO_2 storage easements:

- To 'run with the land'
- To be perpetual.

As I will discuss in greater detail later in my testimony, the bill would facilitate CO_2 storage by:

- Allowing the right to store CO_2 to 'run with the land' as the land is transferred from one party to another
- Authorizing the permanent storage of CO_2 in geologic reservoirs.

By doing so, the bill will help to maintain a strong coal economy and increase oil production in the State of North Dakota.

C12 Energy and Willow Grove Carbon Solutions

Before elaborating on these points, I will provide some background on C12 Energy, Inc. and its wholly owned subsidiary Willow Grove Carbon Solutions, LLC, which is operating here in North Dakota. C12 Energy is the leading company working to develop commercial-scale CO_2 storage projects in the United States. We have secured rights to more than 350,000 acres of privately-owned land with 13 projects in 10 different states, corresponding approximately 10 billion tons of CO_2 storage capacity distributed throughout the nation. To put this in context, our sites are currently sufficient to permanently store CO_2 emissions from approximately 15% of the nation's fleet of coal plants for the next 30 years, and we're developing more capacity every day.

C12 Energy is based on two core principles:

- Geology Matters. We are focused on identifying and developing the best geologic sites for CO_2 storage in America. These sites represent the safest places

WillowGrove
Carbon Solutions

to store CO_2 in the nation, and ensure that it will stay where it is injected permanently.

- Landowners Matter. The most important people in this process are the landowners living in the area, and their participation is critical. We compensate landowners for the right to use the storage space beneath their land, and respect their wishes as to surface activity (which is minimal) associated with the project.

Dunn County Project

We have identified an excellent CO_2 storage reservoir in Dunn County, and are in the process of acquiring the rights to it. We have signed easements for approximately 31,000 acres (out of a total of 80,000 acres) to date, and are making steady progress in working with the other landowners. The project is well-positioned to provide substantial benefits to the state, including:

- Carbon storage options for the coal plants in Mercer County. As you know, the U.S. Environmental Protection Agency (EPA) is putting pressure on coal plants to address the CO_2 emissions, and we are preparing viable compliance options in the event that regulation of one form or another materializes. We're simply laying the groundwork for the future to ensure that coal remains a vital part of the economy.

- Enhanced oil recovery opportunities. Carbon dioxide may be used to enhance oil recovery by injecting CO_2 into oil fields in order to increase production. We are preparing a potential CO_2 reservoir that could be used to supply CO_2 to the oil fields, as and when this demand arises, to make the North Dakota oil patch even more productive.

This project means real economic gains for Dunn County. We have currently invested approximately $80,000 in Dunn County – literally putting more money in the hands of local residents. Once the project is operational, it is estimated that it will generate royalties of approximately $50/acre per year for every acre in the project area for a 30 year period. This amount is similar to the cash rent value of the land, and may double the income of landowners in the project area. The royalty stream would inject approximately $4 million per year into Dunn County for the next 30 years.

The economic benefits from CO_2 storage in Dunn County – in terms of compliance options for power plants to ensure coal continues to play a critical role in energy generation, production benefits for oil fields, and royalty payments to landowners – are substantial.

WillowGrove
Carbon Solutions

Reasons for Supporting SB 2318

The Legislature has enacted Chapter 38-22 to provide clear rules associated with developing CO_2 storage projects. We consider these rules to be the "gold standard" for state-level CO_2 storage legislation, and we commend the Legislature's work to facilitate this industry in North Dakota.

Among other things, Chapter 38-22 requires a CO_2 storage operator to make "a good faith effort to get the consent of all persons who own the storage reservoir's pore space" and to obtain "the consent of persons who own at least sixty percent of the storage reservoir's pore space." See 38-22-08.

An easement is the best legal vehicle for obtaining such consent. An easement is an estate in land that confers a 'right of use,' and in the case of a CO_2 storage project, that use is the storage of CO_2 in the geologic reservoir. Once CO_2 is injected into a reservoir, it will remain within that reservoir permanently. Consequently, the right to store the CO_2 within the reservoir must too be permanent, and must 'run with the land' as the land is transferred in the future (e.g., sold from one to another).

Absent the changes set out in SB2318, it would likely be impossible to satisfy the requirements of 38-22-08 as one would not be able to obtain the required consent for the indefinite period in which the CO_2 would remain in the reservoir. These minor legislative changes addressed in SB2318 are necessary to carry out the requirements of 38-22-08 and thus make CO_2 storage a reality in North Dakota. I fully support them.

I am happy to answer any questions.

Barclay Rogers
Director of Development
C12 Energy, Inc./Willow Grove Carbon Solutions, LLC.
Phone: 415-407-6614
Email: barclay.rogers@c12energy.com

#3

Testimony on SB 2318
Presented by Sandi Tabor
Lignite Energy Council

February 3, 2011

During the 2009 session the Legislative Assembly passed two bills dealing with the long-term geologic storage of carbon dioxide. One bill established a new chapter in the Century Code that authorized the ND Industrial Commission to establish rules regulating the underground storage of carbon dioxide in pore space.[1] The second bill established the state policy regarding pore space by, in part, defining pore space and prohibiting the severance of pore space from the surface estate.[2] Section 47-31-06 specifically allows the leasing of pore space. Nothing in either of the chapters allows for an easement of pore space. In fact, Section 47-31-05 states that an instrument seeking to sever title to pore space is void. Since an easement is a severance of the surface estate, there seems to be a direct contradiction between SB 2318 and existing law.

With this background in mind, it is our understanding that certain parties have been circulating and perhaps securing easements for geologic storage of carbon dioxide. Under present law these easements would be void. The Lignite Energy Council is concerned that SB 2318 is an attempt to rectify this problem after the fact.

SB 2318 allows an easement to store carbon dioxide in a geologic reservoir to be perpetual in duration. Nothing in chapter 47-31 dealing with the leasing of geologic storage allows for a perpetual lease. If the bill were to pass, it would create an inconsistency between chapter 47-05 and the chapter actually dealing with the geologic storage of carbon dioxide.

Finally, the issue of long-term geologic storage of carbon dioxide will directly impact our industry in the future as we look for ways to handle the carbon dioxide we capture from our power plants. While we hope to be able to sell our carbon dioxide for enhanced oil recovery, we know that we will also need to be able to store carbon dioxide in saline formations underground. We are concerned the language in SB 2318 will open the doors to speculators who will grab easements and later offer the easements to the highest bidder.

In light of these concerns we are opposed to the bill in its present form. If the committee is inclined to recommend a "do pass" to the bill, we request that the bill be amended to address our concerns. First, the amendment to Section 2 of the bill clarifies that the duration of an easement may be perpetual subject to Chapter 47-

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[1] See, Chapter 38-22, N.D.C.C.

[2] See, Chapter 47-31. Pore space is defined as a cavity or void in a subsurface sedimentary stratum.

31. Second, a new Section 3 is added to the bill to include an easement for use of the pore space as an "allowed transaction" in Section 47-31-06. Finally, a new Section 4 of the bill creates a new section to Chapter 47-31. This section addresses our concerns about speculators. It provides that a lease or easement of pore space is void and terminates if a permit for geologic storage is not issued within 10 years after the lease or easement is executed.

Thank you for your consideration.

Prepared by Sandi Tabor
Lignite Energy Council
February 3, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2318

Page 1, line 2, remove "and"

Page 1, line 4, after "easements" insert "; to amend and reenact section 47-31-06 of the North Dakota Century Code, relating to the duration of the term of a lease or easement of pore space; and to create and enact a new section 47-31-09, relating to the termination of a lease or easement of pore space"

Page 1, line 19, before "The" insert "Subject to chapter 47-31," and replace "The" with "the"

Page 1, after line 21 insert:

SECTION 3. AMENDMENT. Section 47-31-06 of the North Dakota Century Code is amended and reenacted as follows:

47-31-06. Transactions Allowed. Leasing pore space or securing an easement for the use of pore space is not a severance prohibited by this chapter. Subject to the provisions of Section 47-31-09, there is no limitation on the duration of the term of a lease or easement of pore space.

SECTION 4. A new section to Chapter 47-31 of the North Dakota Century Code is created and enacted as follows:

47-31-09. Pore Space Leases or Easements – Termination. A lease or easement of pore space is void and terminates if a permit for geologic storage pursuant to chapter 38-22 is not issued within 10 years after the lease or easement is executed.

Renumber accordingly.

#4

North Dakota Senate Bill 2318
Dale Niezwaag - Basin Electric Power Cooperative
Senate Natural Resources Committee
February 3, 2011

Mr. Chairman and members of the committee, my name is Dale Niezwaag. I represent Basin Electric Power Cooperative and Dakota Gasification Company and we are opposed to SB 2318.

As most of you know, the Dakota Gasification Company has been capturing carbon dioxide since 2000 at the Great Plains Synfuels plant located near Beulah North Dakota and sending it to oilfields in Weyburn, Saskatchewan for enhanced oil recovery. The Dakota Gasification Company also owns and operates the carbon dioxide pipeline system. Dakota Gasification Company could capture more carbon dioxide on an interruptible basis that would not lend itself for selling into the enhanced oil recovery market. For this reason, the Dakota Gasification Company has investigated storing carbon dioxide in deep geological formations near the facility.

Basin Electric has also worked very diligently to determine if carbon capture technology could be installed on an existing coal based power plant. Last year we conducted a Front End Engineering and Design Study on our Antelope Valley Power Station also located near Beulah. After evaluation of the study, our Board of Directors decided to put the project on hold because the economics were too costly to our members. If and when the economics become more favorable for Basin Electric to proceed with such a project, it could also store the carbon dioxide in deep underground geological formations using the pore space. Basin Electric and the Dakota Gasification Company will need to follow the existing carbon dioxide underground storage and pore space statutes if either of them decides to proceed.

Basin Electric supports the concerns and amendments highlighted by Sandi Tabor of the Lignite Energy Council that easements are not listed as a transaction that is allowed under section 47-31-06 along with the need to store carbon dioxide underground for potentially into perpetuity.

Another significant concern we have on this issue is the role of speculation in obtaining leases or easements for pore space. There was a similar problem with wind energy when it was beginning to be developed in the state. In that case people or companies would sign up landowners to wind leases when they had no intention of building wind projects. These

speculators were simply trying to tie up land with leases that they intended to sell to developers at a significant profit for themselves. To reduce that practice the North Dakota legislature passed a law, now in Chapter 17-04-05 stating an easement for a wind project is void and terminates if there is no development (certificate of site compatibility or conditional use permit and a transmission interconnection request) within five years of the easement commenment. .

We strongly believe a similar provision should be placed into this bill to prevent any potential speculation from tying up pore space by individuals with no time limit on getting a permit to commit to a project. We understand that the timeline involved for using pore space is much more extensive than a wind farm so we support the ten year time frame for obtaining a permit to show the intent to develop and use the pore space.

Mr. Chairman and members of the committee based on these reasons we are opposed to 2318 as written and would urge a "do not pass" vote on the bill. This concludes my testimony and I will try to answer any questions from the committee.