

**FIRST ENGROSSMENT
with Conference Committee 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 to amend and reenact
3 sections 38-08-25, 38-11.1-01, and 38-11.1-03 of the North Dakota Century Code, relating to
4 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 - Use of carbon dioxide - Designated as acceptable**
9 **recovery ~~process~~processes.**

- 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~~, and the use of carbon
13 dioxide for enhanced recovery of oil, gas, and other minerals acceptable recovery
14 ~~process~~processes in this state.
- 15 2. It is in the public interest to promote the use of carbon dioxide to benefit the state, to
16 help ensure the viability of the state's coal and power industries, and to benefit the
17 state economy. Carbon dioxide is a potentially valuable commodity, and increasing its
18 availability is important for commercial, industrial, or other uses, including enhanced
19 recovery of oil, gas, and other minerals.
- 20 3. It is in the public interest to encourage and authorize cycling, recycling, pressure
21 maintenance, secondary recovery operations, and enhanced recovery operations
22 utilizing carbon dioxide for the greatest possible economic recovery of oil and gas.
- 23 4. It is in the public interest for a person conducting operations authorized by the
24 commission under this chapter to use as much of a subsurface geologic formation as

1 reasonably necessary to allow for unit operations for enhanced oil recovery, utilization
2 of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal
3 operations, or any other operation authorized by this chapter.

4 5. Notwithstanding any other provision of law, a person conducting unit operations for
5 enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas,
6 and other minerals, disposal operations, or any other operation authorized by the
7 commission under this chapter may utilize subsurface geologic formations in the state
8 for such operations or any other permissible purpose under this chapter. Any other
9 provision of law may not be construed to entitle the owner of a subsurface geologic
10 formation to prohibit or demand payment for the use of the subsurface geologic
11 formation for unit operations for enhanced oil recovery, utilization of carbon dioxide for
12 enhanced recovery of oil, gas, and other minerals, disposal operations, or any other
13 operation conducted under this chapter. As used in this section, "subsurface geologic
14 formation" means any cavity or void, whether natural or artificially created, in a
15 subsurface sedimentary stratum.

16 6. The commission may adopt and enforce rules and orders to effectuate the purposes of
17 this section.

18 **SECTION 2. AMENDMENT.** Section 38-11.1-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **38-11.1-01. Legislative findings.**

21 The legislative assembly finds the following:

- 22 1. ~~It is necessary to exercise the police power of incumbent on the state to protect the~~
23 ~~public welfare of North Dakota which is largely dependent on agriculture and to protect~~
24 ~~the economic well-being of individuals engaged in agricultural production, while at the~~
25 ~~same time preserving and facilitating exploration through the utilization of subsurface~~
26 ~~pore space in accordance with an approved unitization or similar agreement, an oil~~
27 ~~and gas lease, or as otherwise permitted by law.~~
28 2. Exploration for and development of oil and gas reserves in this state interferes with the
29 use, agricultural or otherwise, of the surface of certain land.

1 3. Owners of the surface estate and other persons should be justly compensated for
2 injury to their persons or property and interference with the use of their property
3 occasioned by oil and gas development.

4 4. This chapter may not be construed to alter, amend, repeal, or modify the law
5 concerning title to pore space under section 47-31-03.

6 **SECTION 3. AMENDMENT.** Section 38-11.1-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **38-11.1-03. Definitions.**

9 In this chapter, unless the context or subject matter otherwise requires:

- 10 1. "Agricultural production" means the production of any growing grass or crop attached
11 to the surface of the land, whether or not the grass or crop is to be sold commercially,
12 and the production of any farm animals, including farmed elk, whether or not the
13 animals are to be sold commercially.
- 14 2. "Drilling operations" means the drilling of an oil and gas well and the production and
15 completion operations ensuing from the drilling which require entry upon the surface
16 estate and which were commenced after June 30, 1979, and oil and gas geophysical
17 and seismograph exploration activities commenced after June 30, 1983.
- 18 3. "Land" means the solid material of earth, regardless of ingredients, but excludes pore
19 space.
- 20 4. "Mineral developer" means the person who acquires the mineral estate or lease for the
21 purpose of extracting or using the minerals for nonagricultural purposes.
- 22 4.5. "Mineral estate" means an estate in or ownership of all or part of the minerals
23 underlying a specified tract of land.
- 24 5.6. "Minerals" means oil and gas.
- 25 7. "Pore space" means a cavity or void, naturally or artificially created, in a subsurface
26 sedimentary stratum.
- 27 6.8. "Surface estate" means an estate in or ownership of the surface of a particular tract of
28 land.
- 29 7.9. "Surface owner" means any person who holds record title to the surface of the land as
30 an ownerestate on which a drilling operation occurs or is conducted.

1 **SECTION 4.** Section 47-31-09 of the North Dakota Century Code is created and enacted as
2 follows:

3 **47-31-09. Injection of substances to facilitate production of oil, gas, or other**
4 **minerals.**

- 5 1. This chapter may not be construed to limit the rights or dominance of a mineral estate
6 to drill or recomplete a well under chapter 38-08. Injection or migration of substances
7 into pore space for disposal operations, for secondary or tertiary oil recovery
8 operations, or otherwise to facilitate production of oil, gas, or other minerals is not
9 unlawful and, by itself, does not constitute trespass, nuisance, or other tort.
- 10 2. This section and chapter 38-08 may not be construed to impair the obligations of any
11 contract for use of the surface estate for disposal operations, provided the contract
12 was entered before the effective date of the unit approved by the commission pursuant
13 to sections 38-08-09 through 38-08-09.17, and provided the disposal well is located
14 within the unit area of the approved unit.
- 15 3. This section and chapter 38-08 may not be construed to allow the operator of a
16 disposal well where the contract has expired after the effective date of the unit
17 approved by the commission pursuant to sections 38-08-09 through 38-08-09.17 to
18 claim the surface owner should not be compensated as if the new contract for the
19 disposal well on which the contract has expired had been entered after the effective
20 date of the approved unit.
- 21 4. The owner of the surface estate upon which the surface location of a disposal well is
22 located does not lose, and may not be deemed to have lost, a claim for trespass,
23 nuisance, or other tort if the operator of the disposal well commences or continues
24 operations of the disposal well in violation of subsections 2 or 3.