

Engrossed Senate Bill 2065
Testimony of Brady Pelton
House Energy and Natural Resources Committee
March 4, 2021

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Brady Pelton, general counsel and director of government affairs for the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 650 companies 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 support of Engrossed Senate Bill 2065.

Introduced at the request of the North Dakota Industrial Commission (“NDIC”), Engrossed Senate Bill 2065 establishes a regulatory structure for the underground storage of natural gas under NDIC authority. Currently, such a legal and regulatory framework is absent, halting development of critical research endeavors and field-testing projects that hold the potential to bring North Dakota’s oil and gas economy to the next level. Engrossed Senate Bill 2065 is the product of many discussions between lawmakers, the state’s oil and gas regulatory agency, pore space owners, mineral owners, oil and gas industry developers, and other stakeholders. The engrossed bill with Senate amendments before you today provides clear regulatory parameters on underground gas storage that will allow the NDIC to proceed with rulemaking. An important item to note in this bill is that it is simply providing the statutory authority by which more substantive law on underground oil and gas storage may be created by the NDIC via administrative rule.

The North Dakota oil and gas industry has a significant interest in ensuring such a regulatory structure is established quickly for two distinct reasons. First, regulatory parameters provide a structured path forward for continued research and development of manufactured cavern space techniques used to store large quantities of North Dakota-produced natural gas in underground caverns on a long-term basis. Such

techniques allow advancement of innovative value-added energy initiatives within the state that use the stored gas as feedstock.

Secondly, the regulatory framework in this bill allows the NDIC to properly standardize and control underground injection of associated natural gas, providing oil and gas producers another tool by which to avoid flaring. This option is of particular use in instances where a producing unit is considered “stranded” due to geographic challenges in gas gathering pipeline construction. A producer is much more likely to consider and develop stranded areas of the Bakken if the added challenge of meeting gas capture goals may be accomplished by injecting the produced natural gas underground and temporarily storing it until gas gathering infrastructure is in place. Such a gas capture option provides an added opportunity for gas midstream companies to invest beyond the over-\$20 billion they have already invested in the state and continue development of the gathering lines and other infrastructure necessary to successfully gather, transport, and process North Dakota’s abundant natural gas resource.

Both avenues of underground gas storage described here hold vast potential for the state and its oil and gas industry. The ability to temporarily store natural gas underground further advances the gas capture goals of the state, reduces emissions, and demonstrates a commitment to developing cleaner energy. Such innovations open even greater possibilities of accessing, producing, and adding value to the immense natural resources of the state, and do so in a way that significantly reduces environmental impacts.

The new chapter created by Senate Bill 2065 mirrors N.D.C.C. Chapter 38-22, which provides the regulatory parameters for carbon dioxide underground storage. After Senate Bill 2065 was amended and passed in the Senate, further review by industry experts indicates an addition may be valuable to providing further consistency and clarity to underground natural gas storage. Specifically, absent in the bill before you today is language providing an application exception for enhanced oil or gas recovery projects. We believe it appropriate to have such non-application provisions included in the natural gas and oil underground storage statute created by Senate Bill 2065, as they are for carbon dioxide underground storage in N.D.C.C. 38-22-19. To best provide clarity on use of natural gas and other gaseous or liquid substances for enhanced

oil or gas recovery projects, we urge consideration of adding a similar section to this bill and a **Do Pass** on Engrossed Senate Bill 2065 as amended.

Before I conclude, Mr. Chairman, I would like to address two points that have been raised in opposition testimony. First is the ability of the NDIC to grant exceptions to the bill's requirements and rules for good cause, provided for on Page 3, Line 8 of the bill. This language again mirrors that of the carbon dioxide underground storage provisions in N.D.C.C. Chapter 38-22. We would argue that this flexibility is necessary, as the NDIC needs to be able to react quickly to potential changes from federal regulatory agencies like the Pipeline and Hazardous Materials Safety Administration ("PHMSA") within the U.S. Department of Transportation. We feel this ability to adapt the law quickly to a rapidly changing federal regulatory environment, coupled with the added protection of requiring a notice and hearing in order to grant exceptions, provides appropriate flexibility and adequate parameters for due process in the rare event an exception is needed.

The second issue relates to access to courts. Again, this bill simply creates regulatory parameters and not the majority of substantive law on underground gas storage. That substantive law will be established via administrative rules after appropriate public notice and hearing. The Administrative Agencies Practice Act provides a legal process for appealing an administrative agency decision to North Dakota district court. *See* N.D.C.C. Chapter 28-32. The structure for gaining access to courts is therefore already in place and need not be duplicated in Senate Bill 2065.

The North Dakota Petroleum Council is eager to see this game changing legislation move forward and is committed to making its subject matter experts available to continue working with this committee and other stakeholders to perfect the details and nuances of this bill. Again, we urge a **Do Pass** on Engrossed Senate Bill 2065. I would be happy to try to answer any questions.