

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2065

Introduced by

Energy and Natural Resources Committee

(At the request of the Industrial Commission)

A BILL for an Act to create and enact ~~section 15-05-09.1 and~~ a new subdivision to subsection 2 of section 28-32-01 and chapter 38-25 of the North Dakota Century Code, relating to ~~the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and~~ the definition of an administrative agency and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas; and to amend and reenact sections 15-05-09 and 15-05-10 of the North Dakota Century Code, relating to oil and gas leases and royalties from oil leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:~~

~~15-05-09.1. Authorization to lease for the underground storage of oil or gas.~~

~~The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.~~

**SECTION 1. AMENDMENT.** Section 15-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-05-09. Leases for oil, gas, and other products.**

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, ~~or~~ colloidal or other clays, or other naturally occurring elements and their compounds, and may make and establish rules and regulations for development ~~and~~ drilling, and mining operations.

1           distillate or condensate recovered or extracted from gas, other than gas produced in  
2           association with oil and commonly known as casinghead gas.

3           5. "Permit" means a permit issued by the commission allowing a person to operate an  
4           underground storage facility.

5           6. "Pore space" has the same meaning as in section 47-31-02.

6           7. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or  
7           producing of any oil or gas storage well or facility in a manner that increases the  
8           quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil  
9           or gas.

10          8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void,  
11          whether natural or artificially created, including oil and gas reservoirs and saline  
12          formations suitable for or capable of being made suitable for injecting, storing, and  
13          withdrawing oil or gas. The term does not include salt caverns.

14          ~~8.9.~~ "Salt cavern" means a natural occurring cavity contained within a salt formation or a  
15          cavity created in a salt formation by solution mining, suitable for injecting, storing, and  
16          withdrawing oil or gas.

17          ~~9.10.~~ "Solution mining" means the process of injecting fluid into a well to dissolve rock salt  
18          or other readily soluble rock to create a salt cavern for underground storage of oil or  
19          gas.

20          ~~10.11.~~ "Storage facility" means the reservoir, salt cavern, underground equipment, and  
21          surface facilities and equipment used or proposed to be used in an underground  
22          storage operation. The term does not include a pipeline used to transport oil or gas to  
23          the storage facility.

24          ~~11.12.~~ "Storage operator" means a person holding or applying for a permit.

25          13. "Waste" means the inefficient storing of oil or gas.

26          **38-25-02. Commission authority.**

27          The commission has authority:

28          1. Over all persons and property necessary to administer and enforce this chapter when  
29          necessary to prevent waste, to protect correlative rights of the mineral and surface  
30          estate, or to effect greater ultimate storage and recovery of oil and gas.

1        mineral owner of record, and pore space owner of record within the storage reservoir  
2        and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

3        5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern,  
4        notice of the hearing must be givenmailed to each salt mineral lessee, salt mineral  
5        owner of record, and pore space owner of record within the salt cavern outer  
6        boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt  
7        cavern, or as otherwise may be required by the commission.

8        6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer,  
9        notice of hearing must be givenmailed to each pore space owner of record within the  
10       storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's  
11       boundaries.

12       7. Hearing notices required by this section must comply with the deadlines set by the  
13       commission and must contain the information the commission requires.

14       **38-25-05. Permit requirements - Storage in oil and gas reservoir.**

15       Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

16       1. The storage operator has or will obtain the consent by lease, purchase, or other  
17       agreement from all surface owners where surface disturbance activities are necessary  
18       and surface facilities will be located.

19       2. The storage operator has complied with all requirements set by the commission.

20       3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of  
21       oil or gas.

22       4. The storage operator has made a good-faith effort to get the consent of all persons  
23       that own the storage reservoir's pore space.

24       5. The storage operator has made a good-faith effort to obtain the consent of all persons  
25       that own oil and gas minerals and oil and gas leases.

26       6. The storage operator has obtained the consent of persons that own at least fifty-five  
27       percent of the storage reservoir's pore space unless the percentage required to unitize  
28       the oil and gas unit is otherwise provided for by order of the commission before  
29       August 1, 2021, if so the percentage in the order required to pool the mineral interests  
30       prevails as to the percentage of pore space owners from whom the storage operator  
31       must obtain consent.



1 17. The time, conditions, and method by which the storage facility must be dissolved and  
2 the facility's affairs wound up. A storage facility may be dissolved ten years after the  
3 storage facility permit is issued upon a petition to the commission by the pore space  
4 owners and mineral owners that are credited with at least the percentage of interest of  
5 the pore space required to ratify the storage facility amalgamation agreement, and a  
6 subsequent hearing and order by the commission.

7 18. All nonconsenting owners are or will be compensated equitably.

8 **38-25-06. Permit requirements - Storage in saline reservoir or aquifer.**

9 Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall  
10 find:

- 11 1. The storage operator has or will obtain the consent by lease, purchase, or other  
12 agreement from all surface owners where surface disturbance activities are necessary  
13 and surface facilities will be located.
- 14 2. The storage operator has complied with all requirements set by the commission.
- 15 3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of  
16 oil or gas.
- 17 4. The storage operator has made a good-faith effort to obtain the consent of all persons  
18 that own the storage reservoir's pore space.
- 19 5. The storage operator has obtained the consent of persons that own at least  
20 ~~fifty-five~~sixty percent of the storage reservoir's pore space.
- 21 6. The proposed storage facility will not affect adversely surface waters or formations  
22 containing fresh water.
- 23 7. The injected oil or gas will not escape from the storage reservoir.
- 24 8. The storage facility will not endanger health or unduly endanger the environment.
- 25 9. The storage facility is in the public interest.
- 26 10. The vertical boundaries of the storage reservoir are defined to include any necessary  
27 or reasonable buffer zones for the purpose of ensuring the safe operations of the  
28 storage facility and to protect the storage facility against pollution, invasion, and  
29 escape or migration of oil or gas therefrom.
- 30 11. The horizontal extent of the injected gas within the storage reservoir, as estimated by  
31 reasonable means and confirmed through appropriate monitoring methods, are



- 1       6. The storage operator has obtained the consent of persons that own at least  
2       ~~fifty-fivesixty~~ percent of the salt cavern's pore space.
- 3       7. The storage operator has obtained the consent of persons that own at least fifty-five  
4       percent of the salt cavern's salt minerals and salt leases.
- 5       8. The proposed storage facility will not affect adversely surface waters or formations  
6       containing fresh water.
- 7       9. The injected oil or gas will not escape from the salt cavern.
- 8       10. The storage facility will not endanger health or unduly endanger the environment.
- 9       11. The storage facility is in the public interest.
- 10      12. The horizontal and vertical boundaries of the salt cavern are defined to include a  
11      buffer zone from the outer walls of the cavern for the purpose of ensuring the safe  
12      operation of the storage facility and to protect the storage facility against pollution,  
13      invasion, and escape or migration of gas therefrom.
- 14      13. The storage operator will establish monitoring facilities and protocols to assess the  
15      location and migration of oil and gas, if any, injected for storage and to ensure  
16      compliance with all permit, statutory, and administrative requirements.
- 17      14. The method of underground storage is reasonably necessary to effectively carry on  
18      the joint effort, will prevent waste, protect correlative rights of the mineral and surface  
19      estate, and, with reasonable probability, will result in the increased storage and  
20      recovery of more oil and gas.
- 21      15. The time, conditions, and method by which the storage facility must be dissolved and  
22      the facility's affairs wound up. A storage facility may be dissolved ten years after the  
23      storage facility permit is issued upon a petition to the commission by the pore space  
24      owners and mineral owners that are credited with at least the percentage of interest of  
25      the pore space required to ratify the storage facility amalgamation agreement, and a  
26      subsequent hearing and order by the commission.
- 27      16. That all nonconsenting owners are or will be equitably compensated.
- 28      **38-25-08. Amalgamating property interests.**
- 29      If a storage operator does not obtain the consent of all persons owning a pore space and of  
30      mineral interest owners when required by this chapter, the commission may require the interest  
31      owned by the nonconsenting owners be included in an approved storage facility and subject to

1       b. The notice of appeal also must be served on the storage operator by certified  
2       mail.

3       3. In a proceeding in district court under this section, the amount of equitable  
4       compensation must be made by a jury, unless a jury is waived by the owner.

5       a. The appeal may be noticed for trial and tried as in the case of a civil action and  
6       the court may direct issues to be framed, and require other parties to be joined  
7       and to plead therein when necessary for the proper determination of equitable  
8       compensation.

9       b. The owner shall present evidence, has the burden of proof, and has the right to  
10      an opening and closing statement.

11      4. The remedy provided in this section is cumulative and does not replace the right to  
12      appeal under section 38-08-14 or chapter 28-32.

13      a. An appeal under this section is limited to the amount of equitable compensation  
14      owed to a nonconsenting surface or pore space owner whose property is being  
15      amalgamated under this chapter.

16      b. The commission's decision remains in effect when an appeal is taken under this  
17      section.

18      ~~38-25-11~~**38-25-12. Application.**

19      This chapter does not apply to applications filed with the commission which propose to use  
20      produced gas for an enhanced oil or gas recovery project. Those applications must be  
21      processed under chapter 38-08.