

Sixty-first
Legislative Assembly
of North Dakota

Introduced by North Dakota Industrial Commission

1 A BILL for an Act to create and enact a new chapter in title 38 of the North Dakota
2 Century Code, relating to the geologic storage of carbon dioxide, giving the industrial
3 commission regulatory authority over geologic storage, giving the state ultimate custody
4 of stored carbon dioxide, providing for penalties, establishing special funds and
5 providing for continuing appropriations, and repealing section 38-08-24 of the North
6 Dakota Century Code relating to priorities in permitting carbon dioxide geologic storage
7 projects:

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **Section 1.** Chapter 38-20 of the North Dakota Century Code is created and
10 enacted as follows:

11 **38-20-01. Policy.** It is in the public interest to promote the geologic storage
12 of carbon dioxide. Doing so will benefit the state and the global environment by
13 reducing greenhouse gas emissions. Doing so will help ensure the viability of the
14 state's coal and power industries, to the economic benefit of North Dakota and its
15 citizens. Further, geologic storage of carbon dioxide, a potentially valuable commodity,
16 may allow for its ready availability if needed for commercial, industrial, or other uses,
17 including enhanced recovery of oil, gas, and other minerals. Geologic storage,
18 however, to be practical and effective requires cooperative use of surface and
19 subsurface property interests and the collaboration of property owners. Getting consent

1 from all owners may not be feasible, requiring procedures that promote—in a manner
2 fair to all interests—cooperative management, thereby ensuring the maximum use of
3 natural resources.

4 **38-20-02. Definitions.** As used in this chapter, unless the context requires
5 otherwise:

- 6 1. “Carbon dioxide” means carbon dioxide produced by anthropogenic
7 sources that is of such purity and quality that it will not compromise the
8 safety of geologic storage and will not compromise those properties of a
9 storage reservoir that allow the reservoir to effectively enclose and contain
10 a stored gas.
- 11 2. “Commission” means the industrial commission.
- 12 3. “Geologic storage” means the permanent or short-term underground
13 storage of carbon dioxide in a storage reservoir.
- 14 4. “Permit” means a permit issued by the commission allowing a person to
15 operate a storage facility.
- 16 5. “Pore space” means a cavity or void, whether natural or artificially created,
17 in a subsurface sedimentary stratum.
- 18 6. “Reservoir” means any subsurface sedimentary stratum, formation,
19 aquifer, cavity, or void, whether natural or artificially created, including oil
20 and gas reservoirs, saline formations, and coal seams suitable for or
21 capable of being made suitable for injecting and storing carbon dioxide.
- 22 7. “Storage facility” means the reservoir, underground equipment, and
23 surface facilities and equipment used or proposed to be used in a geologic

1 storage operation. It does not include pipelines used to transport carbon
2 dioxide to the storage facility.

3 8. "Storage operator" means a person holding or applying for a permit.

4 9. "Storage reservoir" means a reservoir proposed, authorized, or used for
5 storing carbon dioxide.

6 **38-20-03. Commission authority.** The commission has authority:

7 1. Over all persons and property necessary to administer and enforce this
8 chapter and its objectives.

9 2. To regulate activities relating to a storage facility, including construction,
10 operation, and closure.

11 3. To enter, at a reasonable time and manner, a storage facility to inspect
12 equipment and facilities; to observe, monitor, and investigate operations;
13 and to inspect records required to be maintained at the facility.

14 4. To require that storage operators provide assurance, including bonds, that
15 money is available to fulfill their duties.

16 5. To exercise continuing jurisdiction over storage operators and storage
17 facilities, including the authority, after notice and hearing, to amend
18 provisions in a permit and to revoke a permit.

19 6. To dissolve or change the boundaries of any commission-established oil
20 or gas field or unit that is within or near a storage reservoir's boundaries.

21 7. To grant, for good cause, exceptions to this chapter's requirements and
22 implementing rules.

1 **38-20-04. Permit required – Permit transfer.** Geologic storage is allowed if
2 permitted by the commission. A permit may be transferred if the commission consents.

3 **38-20-05. Permit applications, fees, costs, and priorities.**

4 1. Anyone applying for a permit shall:

5 a. Comply with application requirements set by the commission.

6 b. Pay a fee in an amount set by the commission. The amount of the
7 fee must be set by rule and must be based on the commission’s
8 anticipated cost of processing the application. The fee must be
9 deposited in the carbon dioxide storage administrative fund.

10 c. Pay to the commission the costs it incurs in publishing notices for
11 hearings and holding hearings on permit applications.

12 2. In processing permit applications the commission shall give priority to
13 storage operators who intend to store carbon dioxide produced in North
14 Dakota.

15 **38-20-06. Permit hearing – Hearing notice.**

16 1. The commission must hold a public hearing before issuing a permit.

17 2. Notice of the hearing must be published for two consecutive weeks in the
18 official newspaper of the county or counties where the storage reservoir is
19 proposed to be located, and in any other newspaper the commission
20 requires. Publication deadlines must comply with commission
21 requirements.

- 1 3. Notice of the hearing must be given to each mineral lessee, mineral
2 owner, and pore space owner within the storage reservoir and within one-
3 half mile of the storage reservoir's boundaries.
- 4 4. Notice of the hearing must be given to each surface owner of land
5 overlying the storage reservoir and within one-half mile of the reservoir's
6 boundaries.
- 7 5. Notice of the hearing must be given to any additional persons that the
8 commission requires.
- 9 6. Service of hearing notices required by this section must conform to
10 "personal service" provisions in Rule 4 of the North Dakota Rules of Civil
11 Procedure.
- 12 7. Hearing notices required by this section must comply with deadlines set by
13 the commission.
- 14 8. Hearing notices required by this section must contain the information the
15 commission requires.

16 **38-20-07. Permit consultation.** Before issuing a permit the commission shall
17 consult with the North Dakota department of health.

18 **38-20-08. Permit requirements.** Before issuing a permit the commission shall
19 find:

- 20 1. That the storage operator has complied with all requirements set by the
21 commission.
- 22 2. That the storage facility is suitable and feasible for carbon dioxide injection
23 and storage.

- 1 3. That the carbon dioxide to be stored is of a quality that allows it to be
2 safely and efficiently stored in the storage reservoir.
- 3 4. That the storage operator has made a good faith effort to get the consent
4 of all persons who own the storage reservoir's pore space.
- 5 5. That the storage operator has obtained the consent of persons who own
6 at least sixty percent of the storage reservoir's pore space.
- 7 6. Whether the storage facility contains commercially valuable minerals and
8 if it does a permit may be issued only if the commission is satisfied that
9 the interests of the mineral owners will not be adversely affected or have
10 been addressed in an arrangement entered into by the mineral owners
11 and the storage operator.
- 12 7. That the proposed storage facility will not adversely effect surface waters
13 or formations containing fresh water.
- 14 8. That carbon dioxide will not escape from the storage reservoir.
- 15 9. That substances that compromise the objectives of this chapter or the
16 integrity of a storage reservoir will not enter a storage reservoir.
- 17 10. That the storage facility will not endanger human health nor unduly
18 endanger the environment.
- 19 11. That the storage facility is in the public interest.
- 20 12. That the horizontal and vertical boundaries of the storage reservoir are
21 defined. These boundaries shall include buffer areas to ensure that the
22 storage facility is operated safely and as contemplated.

1 13. That the storage operator will establish monitoring facilities and protocols
2 to assess the location and migration of carbon dioxide injected for storage
3 and to ensure compliance with all permit, statutory, and administrative
4 requirements.

5 14. That all nonconsenting pore space owners are or will be equitably
6 compensated.

7 **38-20-09. Permit provisions.** The commission has authority to include in a
8 permit or order all things necessary to carry out this chapter’s objectives and to protect
9 and adjust the respective rights and obligations of persons affected by geologic storage.

10 **38-20-10. Amalgamating property interests.** If a storage operator does not
11 get the consent of all persons who own the storage reservoir’s pore space, the
12 commission may require that the pore space owned by nonconsenting owners be
13 included in a storage facility and subject to geologic storage.

14 **38-20-11. Certificate.** When the commission issues a permit it shall also issue
15 a certificate stating that the permit has been issued, describing the area covered, and
16 containing other information the commission deems appropriate. The commission shall
17 file a copy of the certificate with the county recorder in the county or counties where the
18 storage facility is located.

19 **38-20-12. Environmental protection - Reservoir integrity.**

20 1. The commission shall take action to ensure that a storage facility does not
21 cause pollution or create a nuisance. For the purposes of this provision
22 and in applying other laws, carbon dioxide stored, and which remains in

1 storage under a commission permit, is not a pollutant nor does it constitute
2 a nuisance.

3 2. The commission's authority in subsection one does not limit the
4 jurisdiction held by the North Dakota department of health. And nothing
5 else in this chapter limits the jurisdiction held by the North Dakota
6 department of health.

7 3. The commission shall take action to ensure that substances that
8 compromise the objectives of this chapter or the integrity of a storage
9 reservoir do not enter a storage reservoir.

10 4. The commission shall take action to ensure that carbon dioxide does not
11 escape from a storage facility.

12 **38-20-13. Preservation of rights.** Nothing in this chapter nor the issuing of a
13 permit:

14 1. Will prejudice the rights of property owners within a storage facility to
15 exercise rights that have not been committed to a storage facility.

16 2. Will prevent a mineral owner or mineral lessee from drilling through or
17 near a storage reservoir to explore for and develop minerals, provided the
18 drilling, production, and related activities comply with commission
19 requirements that preserve the storage facility's integrity and protect this
20 chapter's objectives.

21 **38-20-14. Fees - Carbon dioxide administrative fund.**

22 1. Storage operators shall pay the commission a fee on each ton of carbon
23 dioxide injected for storage. The fee must be in the amount set by

1 commission rule. The amount must be based on the commission's
2 anticipated expenses that it will incur in regulating storage facilities during
3 their construction, operational, and pre-closure phases.

- 4 2, The fee must be deposited into the carbon dioxide storage facility
5 administrative fund, which is hereby created. This fund must be
6 maintained as a special fund and all money in it is appropriated and may
7 be used only for defraying the commission's expenses in processing
8 permit applications; regulating storage facilities during their construction,
9 operational, and pre-closure phases; and making storage amount
10 determinations under section 38-20-23. The commission, however,
11 through a cooperative agreement with another state agency, may use the
12 fund to compensate the cooperating agency for expenses the cooperating
13 agency incurs in carrying out regulatory responsibilities it may have over a
14 storage facility. Interest earned by the fund must be deposited into the
15 fund.

16 **38-20-15. Fees - Carbon dioxide trust fund.**

- 17 1. Storage operators shall pay the commission a fee on each ton of carbon
18 dioxide injected for storage. The fee must be in the amount set by
19 commission rule. The amount must be based on the commission's
20 anticipated expenses associated with the long-term monitoring and
21 management of a closed storage facility.
- 22 2. The fee must be deposited into the carbon dioxide storage facility trust
23 fund, which is hereby created. This fund must be maintained as a special

1 fund and all money in it is appropriated and may be used only for
2 defraying expenses the commission incurs in long-term monitoring and
3 management of a closed storage facility. The commission, however,
4 through a cooperative agreement with another state agency, may use the
5 fund to compensate the cooperating agency for expenses the cooperating
6 agency incurs in carrying out regulatory responsibilities it may have over a
7 storage facility. Interest earned by the fund must be deposited into the
8 fund.

- 9 3. The industrial commission shall file with the director of the legislative
10 council a report discussing whether the amount in the carbon dioxide
11 storage facility trust fund and fees being paid into it are sufficient to satisfy
12 the fund's objectives. The first report is due in December of 2014 and
13 subsequent reports are due every four years thereafter.

14 **38-20-16. Title to carbon dioxide.** The storage operator has title to the carbon
15 dioxide injected into and stored in a storage reservoir, and holds title until the
16 commission issues a certificate of project completion. While the storage operator holds
17 title, the operator is liable for any damage the carbon dioxide may cause, including
18 damage caused by carbon dioxide that escapes from the storage facility.

19 **38-20-17. Certificate of project completion - Release – Transfer of title and**
20 **custody.**

- 21 1. After carbon dioxide injections into a reservoir end and upon application
22 by the storage operator, the commission shall consider issuing a
23 certificate of project completion.

- 1 2. The certificate may only be issued after public notice and hearing. The
2 commission shall establish notice requirements for this hearing.
- 3 3. The certificate may only be issued after the commission has consulted
4 with the North Dakota department of health.
- 5 4. The certificate may not be issued until at least ten years after carbon
6 dioxide injections end.
- 7 5. The certificate may only be issued if the storage operator:
 - 8 a. Is in full compliance with all laws governing the storage facility.
 - 9 b. Shows that it has addressed all pending claims regarding the
10 storage facility's operation.
 - 11 c. Shows that the storage reservoir is reasonably expected to retain
12 the carbon dioxide stored in it.
 - 13 d. Shows that the carbon dioxide in the storage reservoir has become
14 stable. Stored carbon dioxide is stable if it is essentially stationary
15 or, if it is migrating or may migrate, that any migration will be
16 unlikely to cross the storage reservoir boundary.
 - 17 e. Shows that all wells, equipment, and facilities to be used in the
18 post-closure period are in good condition and retain mechanical
19 integrity.
 - 20 f. Shows that it has plugged wells, removed equipment and facilities,
21 and completed reclamation work as required by the commission.
- 22 6. Once a certificate is issued:

- 1 a. Title to the storage facility and to the stored carbon dioxide transfers,
2 without payment of any compensation, to the state.
- 3 b. Title acquired by the state includes all rights and interests in, and all
4 responsibilities associated with, the stored carbon dioxide.
- 5 c. The storage operator and all persons who generated any injected
6 carbon dioxide are released from all regulatory requirements
7 associated with the storage facility.
- 8 d. Any bonds posted by the storage operator must be released.
- 9 e. Monitoring and managing the storage facility is the state's
10 responsibility to be overseen by the commission until such time as
11 the federal government assumes responsibility for the long-term
12 monitoring and management of storage facilities.

13 **38-20-18. Penalties.**

- 14 1. Any person who violates a provision of this chapter or a commission rule
15 or order, is subject to a civil penalty imposed by the commission or a court
16 not to exceed twelve thousand five hundred dollars for each offense, and
17 each day's violation is a separate offense. Paying the penalty does not
18 make legal an illegal act nor relieve a person on whom the penalty is
19 imposed from correcting the violation or from liability for damages caused
20 by the violation.
- 21 2. In determining the amount of the penalty, the commission shall consider:

- 1 a. The nature of the violation, including its circumstances and gravity,
2 and the hazard or potential hazard to the public's or a private
3 person's health, safety, and economic welfare.
- 4 b. The economic or environmental harm caused by the violation.
- 5 c. The economic value or other advantage gained by the person
6 committing the violation.
- 7 d. The history of previous violations.
- 8 e. The amount necessary to deter future violations.
- 9 f. Efforts to correct the violation.
- 10 g. Other matters justice requires.

11 **38-20-19. Enhanced recovery projects.**

- 12 1. This chapter does not apply to applications filed with the commission
13 proposing to use carbon dioxide for an enhanced oil or gas recovery
14 project, rather such applications will be processed under Chapter 38-08.
- 15 2. The commission may allow an enhanced oil or gas recovery project to be
16 converted to a storage facility. In considering whether to approve a
17 conversion, and upon conversion, the provisions of this chapter and its
18 implementing rules apply, but if during the conversion process unique
19 circumstances arise, the commission, to better ensure that the chapter's
20 objectives are fulfilled, may waive such provisions and may impose
21 additional ones.

22 **38-20-20. Cooperative agreements and contracts.**

1 1. The commission may enter into agreements with other governments,
2 government entities, and state agencies for the purpose of carrying out
3 this chapter's objectives.

4 2. The commission may enter into contracts with private persons to assist it
5 in carrying out this chapter's objectives. Unless the circumstances require
6 otherwise, the commission shall, in entering such contracts, follow the
7 process set out in section 38-08-04.4. If an emergency exists the
8 commission may enter contracts without public notice and without
9 competitive bidding.

10 **38-20-21. Trust, monopolies, restraint of trade.** Cooperative operation of a
11 storage facility permitted by the commission does not violate North Dakota statutes
12 relating to trusts, monopolies, or restraint of trade.

13 **38-20-22. Participation of public interests.** The entity or official controlling
14 state interests or the interests of political subdivisions are authorized to consent to and
15 participate in a geologic storage project.

16 **38-20-23. Determining storage amounts - Carbon credits - Fee.**

17 1. The commission, under procedures and criteria it may adopt, shall
18 determine the amount of injected carbon dioxide stored in a reservoir that
19 has been or is being used for an enhanced oil or gas recovery project.
20 The commission may also make such a determination for carbon dioxide
21 stored under this chapter.

1 2. The purpose for determining storage amounts is to facilitate using the
2 stored carbon dioxide for such matters as carbon credits, allowances,
3 trading, emissions allocations, and offsets, and for other similar purposes.

4 3. The commission may charge a reasonable fee to the person requesting a
5 storage determination. The fee must be set by rule.

6 4. Fees the commission receives for storage determinations must be
7 deposited into the carbon dioxide storage facility administrative fund.

8 **Section 2. Repeal.** Section 38-08-24 of the North Dakota Century Code is
9 repealed.