

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 145

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO PROPERTY; PROVIDING FOR OWNERSHIP AND CONVEYANCE OF  
PORE SPACE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. OWNERSHIP AND CONVEYANCE OF PORE SPACE.--

A. The pore space is a constituent element of the surface estate. If ownership of the pore space cannot be determined from the deeds or severance instruments relating to the property by a review of applicable statutory and common law, it is presumed that the owner of the surface estate owns the pore space.

B. Title to pore space may be severed from the surface estate by grant, conveyance or otherwise and severed by depth or geologic formation subject to the following provisions:

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underscored material = new  
[bracketed material] = delete

1 (1) no title instrument shall be construed as  
2 effecting severance of pore space ownership unless the title  
3 instrument expressly provides for severance of pore space  
4 ownership or this section provides otherwise;

5 (2) an instrument severing pore space  
6 ownership or conveying title to severed pore space shall  
7 describe the pore space conveyed by any means, including a  
8 subsurface geologic survey or a metes and bounds description,  
9 that sufficiently identifies the horizontal and vertical  
10 boundaries of the pore space conveyed. If the instrument does  
11 not define the vertical boundaries, the transfer shall be  
12 deemed to include pore space at all depths beneath the surface  
13 areas described;

14 (3) the owner of a severed right or title to  
15 pore space shall have no right to enter upon or otherwise use  
16 the surface of the land unless the instrument of severance  
17 expressly so provides;

18 (4) notwithstanding any provision of an  
19 agreement severing an interest in the pore space underlying a  
20 surface estate from that surface estate, no severance of the  
21 pore space shall diminish or interfere with the rights of a  
22 previously severed mineral estate, such rights having been  
23 granted by statute, common law, contract, conveyance or  
24 document retaining a severed mineral interest;

25 (5) no grant of easement or access by the

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1 owner or lessee of the severed pore space shall be required for  
2 surface access or access in conjunction with:

3 (a) an exercise of the rights acquired  
4 pursuant to a mineral lease or deed; or

5 (b) the installation, use, repair or  
6 removal of buried pipelines, flowlines, gathering lines,  
7 powerlines or similar utility lines;

8 (6) no provision of statute, rule or ordinance  
9 requiring notice to be given to an owner of land, to a surface  
10 owner or to an owner of the mineral estate shall be construed  
11 to require notice to a person holding ownership interest only  
12 in underlying pore space unless a statute specifies that notice  
13 to such person is required; and

14 (7) subject to such use of the pore space as  
15 is reasonably necessary for the exercise of the rights  
16 belonging to the mineral estate, this section shall govern  
17 construction of all instruments affecting title to pore space  
18 executed on or after the effective date of this section and  
19 executed prior to that date except to the extent that a court  
20 determines that construction of any preexisting instrument  
21 would deprive any person of an existing property right that  
22 existed prior to the effective date of this section.

23 C. The provisions of this section do not:

24 (1) and are not intended to change the  
25 statutory or common law of this state as of the effective date

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1 of this section with respect to underground waters or:

2 (a) the dominance of the mineral estate,  
3 including use of the pore space that is reasonably necessary  
4 for the exercise of the rights belonging to the mineral estate;

5 (b) the right to inject any substance  
6 into the pore space as approved by the oil conservation  
7 division of the energy, minerals and natural resources  
8 department or pursuant to rules adopted pursuant to this  
9 section by or governing the oil conservation commission;

10 (c) the right to drill through the pore  
11 space or reservoir in such manner as shall comply with  
12 applicable laws, rules and ordinances, including laws and rules  
13 established for the protection of the reservoir or fluids  
14 contained therein; or

15 (d) all other rights or interests  
16 belonging to the mineral estate pursuant to statutes or the  
17 common law of this state;

18 (2) diminish or invalidate the rights to use  
19 subsurface pore space that were acquired by contract or lease  
20 prior to the effective date of this section; and

21 (3) affect or limit any enhanced oil recovery  
22 project or enhanced gas recovery project now or hereafter  
23 permitted by the oil conservation division of the energy,  
24 minerals and natural resources department, or by the oil  
25 conservation commission, pursuant to the Oil and Gas Act, and

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1 it shall not prohibit the use of anthropogenic or naturally  
2 occurring carbon dioxide in such projects.

3 D. Pore space use for geologic sequestration shall  
4 be subject to the following provisions:

5 (1) any conveyance of pore space in any  
6 reservoir or part thereof and any easement, license or consent  
7 executed by any pore space owner, surface owner or mineral  
8 owner or lessee for the use of pore space in any reservoir or  
9 part thereof for geologic sequestration shall, unless otherwise  
10 agreed between the parties, preserve to the person granting  
11 such title, right or consent and to their heirs, successors and  
12 assigns:

13 (a) the right to drill through the  
14 reservoir in such manner as shall comply with applicable laws,  
15 rules and ordinances, including laws and rules established for  
16 the protection of the reservoir or fluids contained therein;  
17 and

18 (b) all other rights or interests of  
19 such owners in the surface, subsurface or minerals, including  
20 all rights belonging to the mineral estate pursuant to the  
21 common law of this state;

22 (2) carbon dioxide injected into pore space  
23 shall remain the property and responsibility of the person  
24 owning it at the time of injection, unless and until  
25 transferred to and accepted by another person;

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1 (3) except as otherwise provided by federal  
2 law, no owner of pore space and no person who conveys a right  
3 to pore space, directly or indirectly, to a storage operator,  
4 or grants an easement, license or consent for the use of any  
5 pore space for geologic sequestration, shall be liable for any  
6 effects of injecting carbon dioxide for geologic sequestration  
7 solely by virtue of their ownership of such interest or of  
8 their having granted such easement, license or consent;

9 (4) no person shall inject carbon dioxide into  
10 any underground source of drinking water for the purpose of  
11 geologic sequestration, and no provision of this act shall be  
12 construed as authorizing such injection;

13 (5) no person shall inject carbon dioxide for  
14 the purpose of geologic sequestration without a permit issued  
15 under the underground injection control provisions of the  
16 federal Safe Drinking Water Act of 1974, as amended; and

17 (6) an application for any permit under  
18 Paragraph (5) of this subsection shall contain evidence that  
19 the applicant has acquired all property rights necessary for  
20 the purpose of geologic sequestration.

21 E. As used in this section:

22 (1) "carbon dioxide" means any anthropogenic  
23 carbon dioxide, including any gas mixture containing  
24 significant quantities of carbon dioxide, that is suitable for  
25 geologic sequestration;

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1 (2) "geologic sequestration" means the  
2 underground storage of carbon dioxide in a geologic zone  
3 suitable to provide permanent confinement of the carbon  
4 dioxide;

5 (3) "person" means any individual, firm,  
6 corporation, partnership, limited liability company, joint  
7 venture, association, trust, unincorporated organization,  
8 government, including any agency, entity or subdivision  
9 thereof, or any other entity;

10 (4) "pore space" means all subsurface space  
11 that may be used for injection or storage of carbon dioxide and  
12 other fluids, whether in caverns, fissures or pores, on the  
13 surface of formation rocks or otherwise;

14 (5) "reservoir" means any depleted oil or gas  
15 reservoir, saline aquifer, coal seam or any natural or  
16 artificial subsurface stratum, formation, aquifer, cavity or  
17 void that may be used for injection and storage of carbon  
18 dioxide, but "reservoir" does not include any aquifer or part  
19 of any aquifer that is an underground source of drinking water;

20 (6) "storage operator" means any person duly  
21 authorized to operate a facility for geologic sequestration;  
22 and

23 (7) "underground source of drinking water"  
24 means any aquifer that is an underground source of drinking  
25 water as now or hereafter defined by the United States

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1 environmental protection agency pursuant to the federal Safe  
2 Drinking Water Act of 1974.

3 Section 2. SEVERABILITY.--If any part or application of  
4 this act is held invalid, the remainder or its application to  
5 other situations, persons or government entities shall not be  
6 affected.

7 Section 3. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is December 31, 2010.