

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 208

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PROPERTY; PROVIDING FOR GEOLOGIC SEQUESTRATION OF
CARBON DIOXIDE AND OTHER GASES; DESCRIBING THE EFFECT OF
CONVEYANCE INSTRUMENTS ON OWNERSHIP RIGHTS OF PORE SPACE.

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

Section 1. CARBON SEQUESTRATION--OWNERSHIP AND CONVEYANCE
INSTRUMENTS.--

A. The legislature declares that geologic
sequestration of anthropogenic carbon dioxide is in the public
interest.

B. The ownership of pore space below the surface of
lands in this state is declared to be vested in the several
owners of the overlying surface, unless previously severed.
Any grant or reservation of the minerals in any lands in New
Mexico does not, unless otherwise specifically provided in the

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1 instrument of conveyance, vest in the party to whom the mineral
2 estate or part thereof is granted or reserved ownership of the
3 pore space underlying such lands, except for the right to use
4 the pore space as may be reasonably necessary to explore for
5 and produce the minerals pursuant to the common law of this
6 state.

7 C. Title to pore space may be severed from the
8 surface estate by grant, conveyance or otherwise, and title to
9 pore space may be severed by depth or geologic formation, but
10 no title instrument shall be construed as effecting a severance
11 of pore space ownership unless it expressly so provides. The
12 owner of a severed right or title to pore space shall have no
13 right to enter upon, or otherwise use, the surface of the land
14 unless the instrument of severance expressly so provides. An
15 instrument severing pore space ownership or conveying title to
16 severed pore space shall describe the pore space conveyed by
17 any means, including a subsurface geologic survey or a metes
18 and bounds description, that sufficiently identifies the
19 horizontal and vertical boundaries of the pore space conveyed;
20 provided that if the conveyance does not otherwise define the
21 vertical boundaries, the transfer shall be deemed to include
22 pore space at all depths beneath the surface area described.

23 D. This section shall govern the construction of
24 all instruments affecting title to pore space executed on or
25 after the effective date of this section and shall govern the

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1 construction of all such instruments executed prior to that
2 date except to the extent that a court determines that
3 construction of any preexisting instrument pursuant to this
4 subsection would deprive any person of vested property rights
5 existing immediately prior to the effective date of this
6 section.

7 E. Any public body and any personal representative,
8 guardian, receiver, trustee or other fiduciary shall be
9 authorized to grant the right to use pore space for geologic
10 sequestration of carbon dioxide or other gases in lands the
11 public body or fiduciary controls in the same manner as
12 provided by law for sale by the public body or fiduciary of
13 interests in land or, if the public body or fiduciary is not
14 authorized to sell the lands, in the same manner as authorized
15 by law for entering into agreements to grant an easement or
16 license for the use of the lands.

17 F. No provision of law, including a lawfully
18 adopted rule or ordinance, requiring notice to be given to an
19 owner of land, to a surface owner or to an owner of the mineral
20 estate shall be construed to require notice to persons holding
21 ownership interest only in underlying pore space unless the law
22 specifies that notice to such persons is required.

23 G. The provisions of this section are not intended
24 to change the common or statutory law of this state:

25 (1) with respect to the rights of the owners

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1 of any mineral estate to explore for and produce any minerals,
2 including the right of such owners to inject any substance into
3 pore space for the purpose of enhanced oil recovery or enhanced
4 gas recovery, or for disposal; or

5 (2) with respect to underground waters.

6 H. The provisions of this section shall not
7 diminish or invalidate rights to use subsurface pore space that
8 were acquired by contract or lease prior to this section's
9 effective date.

10 I. Carbon dioxide or other gases injected into any
11 reservoir shall remain the property and responsibility of the
12 person injecting the carbon dioxide or other gas, unless and
13 until transferred to and accepted by another person.

14 J. The owner or owners of pore space may convey fee
15 simple title to the pore space in any reservoir or part of a
16 reservoir to a storage operator or may grant an easement or
17 license for the use of the pore space in any reservoir for the
18 purpose of geologic sequestration of carbon dioxide or other
19 gases.

20 K. No person shall inject carbon dioxide or other
21 gases for the purpose of geologic sequestration into any
22 portion of a reservoir containing hydrocarbons recoverable in
23 paying quantities, as determined by the oil conservation
24 division of the energy, minerals and natural resources
25 department, without the consent of all owners, as defined

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1 pursuant to Section 70-2-33 NMSA 1978, of the hydrocarbons in
2 such portion of the reservoir, unless authorized by an
3 applicable unit agreement or unit operating agreement approved
4 by all such owners or prescribed by the oil conservation
5 division as provided in rules adopted by the oil conservation
6 commission.

7 L. Any conveyance of pore space in any reservoir or
8 part thereof and any easement, license or consent executed by
9 any pore space owner, surface owner or mineral owner or lessee
10 for the use of pore space in any reservoir or part thereof for
11 geologic sequestration of carbon dioxide or other gases shall,
12 unless otherwise agreed between the parties, preserve to the
13 person or persons granting such title, right or consent and to
14 their heirs, successors and assigns:

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

19 (2) all other rights or interests of such
20 owners in the surface, subsurface or minerals, including all
21 rights to explore for and produce minerals, that can be
22 exercised without interference with the integrity of the
23 reservoir or the geologic sequestration of carbon dioxide or
24 other gases therein.

25 M. Except as otherwise provided by federal law, no

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

9 N. No person shall inject carbon dioxide or other
10 gases into any underground source of drinking water for the
11 purpose of geologic sequestration, and no provision of this
12 section shall be construed as authorizing such injection.

13 O. This section shall not affect or limit any
14 enhanced oil recovery project or enhanced gas recovery project
15 now or hereafter permitted by the oil conservation division of
16 the energy, minerals and natural resources department, or by
17 the oil conservation commission, pursuant to the Oil and Gas
18 Act where the sole purpose of injection is enhanced recovery of
19 oil or gas, nor does it prohibit the use of anthropogenic
20 carbon dioxide in such projects.

21 P. 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, that has been:

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1 (a) captured from an industrial source
 2 and would otherwise have been released to the atmosphere;

3 (b) captured from combustion of fuels;
 4 or

5 (c) stripped, segregated or divided from
 6 any other fluid stream;

7 (2) "geologic sequestration" means the
 8 underground storage of carbon dioxide or other gases in a
 9 confinement zone suitable to provide permanent confinement of
 10 the carbon dioxide or other gases;

11 (3) "other gases" means any substance or
 12 combination of substances injected for sequestration or storage
 13 that is a gas at standard temperature and pressure, except
 14 "natural gas", as defined in Subsection B of Section 70-6-2
 15 NMSA 1978;

16 (4) "pore space" means all underground space,
 17 whether in caverns, fissures, pores, on the surface of
 18 formation rocks or otherwise, that may be used for injection or
 19 storage of fluids and gases;

20 (5) "reservoir" means any subsurface stratum,
 21 formation, aquifer, cavity or void, whether natural or
 22 artificially created, including any oil or gas reservoir,
 23 saline aquifer or coal seam, that may be used for injection and
 24 storage of carbon dioxide or other gases, but does not include
 25 any aquifer or part of any aquifer that is an underground

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1 source of drinking water;

2 (6) "storage operator" means any person duly
3 authorized to operate a facility for the geologic sequestration
4 of carbon dioxide or other gases; and

5 (7) "underground source of drinking water"
6 means any aquifer that is an underground source of drinking
7 water as now or hereafter defined by the United States
8 environmental protection agency pursuant to the federal Safe
9 Drinking Water Act of 1974.

10 Section 2. SEVERABILITY.--If any part or application of
11 this act is held invalid, the remainder or its application to
12 other situations or persons shall not be affected.

13 Section 3. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2009.