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SENATE BILL 145

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

INTRODUCED BY

Clinton D. Harden

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 ownership of all pore space of this state is vested in the several owners of the overlying surface, unless ownership of the pore space has been previously severed.

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:

(1) no title instrument shall be construed as effecting severance of pore space ownership unless the title instrument expressly provides for severance of pore space

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1 ownership or this section provides otherwise;

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

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

15 (4) notwithstanding the severance of any or  
16 all of the pore space from the surface estate and any  
17 provisions in the instrument of severance to the contrary, the  
18 severed pore space shall remain part of the surface estate for  
19 all matters relating to the mineral estate. The owner of the  
20 surface estate shall retain the exclusive right to manage and  
21 administer the surface and severed pore space for any  
22 permissible purpose pursuant to statutes or the common law of  
23 this state;

24 (5) any agreement or contract entered into by  
25 the owner of the surface estate pursuant to the rights

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1 described in this subsection shall be binding and enforceable  
2 against the owner of the severed pore space;

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

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

18 C. The provisions of this section do not:

19 (1) and are not intended to change the  
20 statutory or common law of this state as of the effective date  
21 of this section with respect to underground waters or:

22 (a) use of the pore space that is  
23 reasonably necessary for the exercise of the rights belonging  
24 to the mineral estate;

25 (b) the right of mineral owners or their

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1 lessees to inject any substance into the pore space as approved  
2 by the oil conservation division of the energy, minerals and  
3 natural resources department or pursuant to rules adopted  
4 pursuant to this section by or governing the oil conservation  
5 commission;

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

11 (d) all other rights or interests  
12 belonging to the mineral estate pursuant to statutes or the  
13 common law of this state;

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

17 (3) affect or limit any enhanced oil recovery  
18 project or enhanced gas recovery project now or hereafter  
19 permitted by the oil conservation division of the energy,  
20 minerals and natural resources department, or by the oil  
21 conservation commission, pursuant to the Oil and Gas Act, and  
22 it shall not prohibit the use of anthropogenic or naturally  
23 occurring carbon dioxide in such projects.

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

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

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

14 (b) all other rights or interests of  
15 such owners in the surface, subsurface or minerals, including  
16 all rights belonging to the mineral estate pursuant to the  
17 common law of this state;

18 (2) carbon dioxide injected into pore space  
19 shall remain the property and responsibility of the person  
20 owning it at the time of injection, unless and until  
21 transferred to and accepted by another person;

22 (3) except as otherwise provided by federal  
23 law, no owner of pore space and no person who conveys a right  
24 to pore space, directly or indirectly, to a storage operator,  
25 or grants an easement, license or consent for the use of any

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1 pore space for geologic sequestration, shall be liable for any  
2 effects of injecting carbon dioxide for geologic sequestration  
3 solely by virtue of their ownership of such interest or of  
4 their having granted such easement, license or consent; and

5 (4) no person shall inject carbon dioxide into  
6 any underground source of drinking water for the purpose of  
7 geologic sequestration, and no provision of this act shall be  
8 construed as authorizing such injection.

9 E. As used in this section:

10 (1) "carbon dioxide" means any anthropogenic  
11 carbon dioxide, including any gas mixture containing  
12 significant quantities of carbon dioxide, that is suitable for  
13 geologic sequestration;

14 (2) "geologic sequestration" means the  
15 underground storage of carbon dioxide in a geologic zone  
16 suitable to provide permanent confinement of the carbon  
17 dioxide;

18 (3) "person" means any individual, firm,  
19 corporation, partnership, limited liability company, joint  
20 venture, association, trust, unincorporated organization,  
21 government, including any agency, entity or subdivision  
22 thereof, or any other entity;

23 (4) "pore space" means all subsurface space  
24 that may be used for injection or storage of carbon dioxide,  
25 whether in caverns, fissures, pores, on the surface of

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1 formation rocks or otherwise;

2 (5) "reservoir" means any oil or gas  
3 reservoir, saline aquifer, coal seam or any natural or  
4 artificial subsurface stratum, formation, aquifer, cavity or  
5 void that may be used for injection and storage of carbon  
6 dioxide, but "reservoir" does not include any aquifer or part  
7 of any aquifer that is an underground source of drinking water;

8 (6) "storage operator" means any person duly  
9 authorized to operate a facility for geologic sequestration;  
10 and

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

16 Section 2. SEVERABILITY.--If any part or application of  
17 this act is held invalid, the remainder or its application to  
18 other situations, persons or government entities shall not be  
19 affected.

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