

Unofficial Draft Copy

As of: May 27, 2008 (10:52am)

LC4002

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act specifying ownership of pore space in strata underlying surfaces; affirming the dominance of the mineral estate; providing for a description of a pore space prior to a transfer; requiring the description to be filed with a county clerk; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Pore Space Ownership Act."

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 6] is to provide for the protection and compensation of surface owners of land underlaid with pore space that may be used for the storage of carbon dioxide or other substances and to affirm the dominance of mineral estates while allowing for the necessary development of pore space.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6] the following definitions apply:

(1) "Pore space" is defined to mean subsurface space of any size and whether vacant or filled that can be used as storage space for carbon dioxide, compressed air, or other substances

injected into the space for storage. It does not include a natural gas storage reservoir.

(2) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land.

NEW SECTION. **Section 4. Ownership of pore space.** The ownership of all pore space in all strata below the surface of this state is vested in the owner of the surface above the strata.

(2) A conveyance of the surface ownership of real property is a conveyance of the pore space in all strata below the surface of that real property, unless the ownership interest in that pore space previously has been severed from the surface ownership or is explicitly excluded in the conveyance.

(3) It is the property owner's right as established by 70-16-101 to convey pore space. An agreement conveying mineral or other interests underlying the surface may not convey ownership of any pore space in the stratum unless the agreement explicitly conveys that ownership interest.

(4) [Sections 1 through 6] do not alter, amend, diminish or invalidate rights to the storage use of subsurface pore space acquired by contract or lease prior to [the effective date of this act].

(5) [Sections 1 through 6] do not affect the respective liabilities of any party.

NEW SECTION. **Section 5. Dominance of mineral estate.** (1)

[Sections 1 through 6] may not be construed to change or alter common law in accordance with 1-1-108, as it relates to the rights belonging to, or the dominance of, the mineral estate, including but not limited to the right to mine, drill or recomplete a well, inject substances to facilitate production, or an enhanced recovery project as defined in 82-11-101 for the purposes of recovery of oil, gas or other minerals.

(2) If it is determined that an underground reservoir, natural or manmade, is depleted of oil or gas or abandoned by the mineral owner, it may be considered pore space in accordance with the provisions of [sections 1 through 6].

(3) All instruments transferring the rights to pore space under [sections 1 through 6] must describe the scope of any right to use the surface estate. The owner of any pore space right may not use the surface estate beyond the conditions established in a properly recorded instrument.

NEW SECTION. Section 6. Pore space description and requirements for transfer. (1) Transfers of pore space rights made after [the effective date of this act] are void at the option of the owner of the surface estate if the transfer instrument does not contain a specific description of the location of the pore space being transferred.

(2) The description must include but is not limited to:

(a) a detailed description of the subsurface stratum or strata involved in the transfer;

(b) a legal description of the boundaries of the surface

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lying over the transferred pore space; and

(c) a list of the existing lessees, rights, or interests on the property, including mineral interests and any other rights attached to the surface lying over the transferred pore space.

(3) The description required in this section must be reviewed by the county surveyor and a copy must be transmitted to and filed with the clerk of the county or counties where the transferred pore space is located.

NEW SECTION. **Section 7. {standard} Codification**

instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 1 through 6].

NEW SECTION. **Section 8. {standard} Effective date.** [This act] is effective July 1, 2009.

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