

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Ownership of subsurface pore space.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to property; specifying ownership of pore
2 space in strata underlying surfaces; specifying
3 applicability of act; specifying legislative intent; and
4 providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 34-1-152 is created to read:

9

10 **34-1-152. Ownership of pore space underlying**
11 **surfaces.**

12

13 (a) The ownership of all pore space in all strata
14 below the surface lands and waters of this state is

1 declared to be vested in the several owners of the surface
2 above the strata.

3

4 (b) A conveyance of the surface ownership of real
5 property shall be a conveyance of the pore space in all
6 strata below the surface of such real property unless the
7 ownership interest in such pore space previously has been
8 severed from the surface ownership or is explicitly
9 excluded in the conveyance. The ownership of pore space in
10 strata may be conveyed in the manner provided by law for
11 the transfer of mineral interests in real property. No
12 agreement conveying mineral or other interests underlying
13 the surface shall act to convey ownership of any pore space
14 in the stratum unless the agreement explicitly conveys that
15 ownership interest.

16

17 (c) No provision of law, including a lawfully adopted
18 rule or regulation, requiring notice to be given to a
19 surface owner, to an owner of the mineral interest, or to
20 both, shall be construed to require notice to persons
21 holding ownership interest in any pore space in the
22 underlying strata unless the law specifies notice to such
23 persons is required.

***** STAFF COMMENTS *****

Subsection (c) is included since numerous provisions require notice to surface owners, or notice to mineral interest owners, or sometimes both for various issues. Generally speaking it seems notice to a person owning the "pore space" wouldn't be needed, but in some instances, this might not be so; e.g., mine permits require notice to both interest owners and surface owners. The owner of the pore space might well have his interest affected by a mine permit being granted.

(d) As used in this section, the term "pore space" is defined to mean subsurface space of any size and whether vacant or filled which can be used as storage space for carbon dioxide or other substances injected into the space for storage.

***** STAFF COMMENTS *****

The definition of "pore space," above, was drafted by LSO at the request of the Committee. It is purposely broad since the pore space that might be transferred by a surface owner could be transferred many years before it is used as storage space and when existing technology does not even identify it as useable storage space. Further, the space may be transferred at a time when it still can be used for its producible mineral reserves.

***** STAFF COMMENTS *****

Paragraphs (e), (f) and (g), below, are included as requested by the Committee and reflect the amendments suggested by Senator Nicholas and modified by the Committee. No vote was taken on these amendments.

(e) Nothing in this section shall be construed to change or alter the common law as of the date of the

1 passage of this section as it relates to the rights
2 belonging to, or the dominance of, the mineral estate.

3
4 (f) All instruments which transfer the rights to pore
5 space under this section shall describe the scope of any
6 right to use the surface estate. The owner of any pore
7 space right shall have no right to use the surface estate
8 beyond that set out in a properly recorded instrument.

9
10 (g) Transfers of pore space rights made after the
11 effective date of this section are null and void at the
12 option of the owner of the surface estate if the transfer
13 instrument does not contain a specific description of the
14 location of the pore space. The validity of pore space
15 rights under this paragraph shall not affect the respective
16 liabilities of any party and such liabilities shall operate
17 in the same manner as if the pore space transfer were
18 valid.

19
20 ***** STAFF COMMENTS *****

21 **The following provisions were initially included**
22 **as the statutes were reviewed for related**
23 **provisions that might need to be amended. As of**
24 **this draft, they do not need to be, but that**
25 **might change with different policy decisions.**
26 **They've been retained for now for the committee's**
27 **consideration.**

28
29 **30-1-108. Locators' rights of possession and**
30 **enjoyment; "mineral boundaries" defined.**

31
32 The locators of all mining locations heretofore made,
33 or which shall hereafter be made, on any mineral vein, lode
34 or ledge, situated on the public domain, their heirs and
35 assigns, shall have the exclusive right of possession and
36 enjoyment of all the surface included within the lines of
37 their locations, and of all veins, lodes and ledges
38 throughout their entire depth, the top or apex of which
39 lies inside of surface lines extended downward vertically
40 although such veins, lodes, or ledges may so far depart
41 from a perpendicular in their course downward as to extend
42 outside the vertical side lines of such surface locations.
43 But their right of possession to such outside parts of such
44 veins or ledges shall be confined to such portions thereof
45 as lie between vertical planes drawn downward as above

1 described, through the end lines of their locations, so
2 continued in their own direction that such planes will
3 intersect such exterior parts of such veins or ledges. And
4 nothing in this section shall authorize a locator or
5 possessor of a vein or lode which extends in it downward
6 course beyond the vertical lines of his claim to enter upon
7 the surface of a claim owned or possessed by another.
8

9 **30-1-119. Protection of surface proprietors.**

10
11 Where a mining right exists in any case and is
12 separate from the ownership or right of occupancy to the
13 surface, such owner or rightful occupant of the said
14 surface may demand satisfactory security from the miner or
15 miners, and if such security is refused, such owner or
16 occupant of the surface may enjoin the miner or miners from
17 working such mine until such security is given. The order
18 for such injunction shall fix the amount of the bond
19 therefor.
20

21 **34-1-202. Creation; conveyance; acceptance and**
22 **duration.**

23
24 (e) This act shall not alter the law of Wyoming
25 regarding the primacy of the mineral estate and any
26 easement created hereunder shall not limit the right of a
27 mineral owner or his lessee to reasonable use of the
28 surface for the purpose of mineral exploration and
29 production unless the owners and lessees of the entire
30 mineral estate are a party to the conservation easement or
31 consent to the conservation easement.

32 ***** STAFF COMMENTS *****

33 **The subsection above is within the conservation**
34 **easement provisions. As written it does not**
35 **appear to apply to the severance of the right to**
36 **the "pore space" (i.e., it does not appear that**
37 **right is a mineral right) - the question then is**
38 **whether the same statement should be made**
39 **regarding development of a CO2 sequestration**
40 **right when it conflicts with a surface**
41 **conservation easement.**
42

1 **Section 3.** It is the intent of the legislature
2 to clarify the ownership of pore space underlying the
3 surface of the lands and waters of this state. All
4 conveyances of interests in real property on and after
5 the effective date of this act shall be subject to the
6 provisions of this act. All conveyances of real
7 property made prior to the effective date of this act
8 shall be construed in accordance with the provisions
9 of this act unless a person claiming an ownership
10 interest contrary to the provisions of this act
11 establishes such ownership by a preponderance of the
12 evidence in an action to establish ownership of such
13 interest.

14

15 **Section 4.** This act is effective July 1, 2008.

16

17 (END)