

SENATE BILL NO. 1133

November 14, 2024, Introduced by Senator CHERRY and referred to the Committee on Energy and Environment.

A bill to establish the ownership of and conveyance rights associated with subsurface pore space.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "subsurface pore space
2 act".

3 Sec. 2. As used in this act:

4 (a) "Cap rock" means a separate geological formation with
5 relatively low porosity and permeability or relatively low open
6 pore space and that has the geological properties necessary to cap,
7 contain, or support substances in the open space of a receiving

1 geological formation or reservoir.

2 (b) "Pore space" means the open space in a subsurface
3 geological formation if both of the following criteria are met:

4 (i) The open space is proposed, authorized, used, or capable of
5 being used for the storing of carbon dioxide or other substances.

6 (ii) The open space includes an easement to use the following:

7 (A) Any subsurface geological formation in which the open
8 space is located to contain and support the carbon dioxide or other
9 substances stored in the open space.

10 (B) Cap rock.

11 Sec. 3. (1) The ownership of pore space in all strata
12 underlying the surface lands and waters in this state is vested in
13 the owner of the overlying surface of the real property, unless
14 severed from the surface estate as provided in this section.

15 (2) A conveyance of the ownership of the surface of real
16 property is a conveyance of the pore space in all strata below the
17 surface of that real property unless the ownership of the pore
18 space was previously severed from the ownership of the surface or
19 is expressly excluded from the conveyance. An agreement conveying
20 subsurface mineral or other interests does not convey the ownership
21 of any pore space in the stratum unless the agreement explicitly
22 conveys the ownership of pore space.

23 (3) Pore space may be severed from the fee simple surface
24 estate by conveyance, reservation, or lease. The conveyance,
25 reservation, or lease of pore space includes all pore space created
26 under the surface lands in the future, absent express language to
27 the contrary.

28 (4) An instrument that severs the rights to pore space from
29 the surface estate under this section shall describe the following:

1 (a) The subsurface geologic formation or formations in which
2 the pore space is located.

3 (b) The depth of the pore space being conveyed or reserved.

4 (c) The scope of any right to use the surface estate being
5 reserved by the owner of the pore space or conveyed along with the
6 pore space. The owner of any severed pore space has no right to use
7 the surface estate beyond that set forth in the instrument.

8 (5) Any expressly severed pore space interest can be
9 separately sold, purchased, leased, and otherwise conveyed.

10 Sec. 4. (1) This act does not limit, waive, or abrogate the
11 common law of this state related to any of the following:

12 (a) The rights belonging to, or the dominance of, the mineral
13 estate.

14 (b) The surface owner's right to use or lease any nonsevered
15 pore space rights for the storage of fluids or gases, subject to
16 the rights of the owners of any oil, gas, and other mineral rights
17 within the pore space to explore for and produce native minerals.

18 (c) The rights of an owner or lessee of mineral rights to
19 reasonable use of the surface for the purpose of mineral
20 exploration and production.

21 (2) This act does not alter, modify, or invalidate rights to
22 the use of pore space that were acquired by conveyance,
23 reservation, contract, lease, or eminent domain before the
24 effective date of this act.

25 Enacting section 1. This act does not take effect unless all
26 of the following bills of the 102nd Legislature are enacted into
27 law:

28 (a) Senate Bill No. 1131.

29

1 (b) Senate Bill No. 1132.