

SENATE BILL NO. 394

June 10, 2025, Introduced by Senator CHERRY and referred to 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) "Confining zone" means a geological formation, group of
5 formations, or part of a formation that is capable of limiting
6 fluid movement above an injection zone.

7 (b) "Pore space" means the open space in a subsurface

1 geological formation that is capable of being used for the storing
2 of carbon dioxide or other substances. The open space includes an
3 easement to use the following:

4 (i) Any subsurface geological formation in which the open space
5 is located to contain and support the carbon dioxide or other
6 substances stored in the open space.

7 (ii) The confining zone.

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

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

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

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

27 (a) Either or both of the following:

28 (i) The subsurface geologic formation or formations in which
29 the pore space is located.

1 (ii) The depth of the pore space being conveyed or reserved.

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

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

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

10 (a) The rights belonging to, or the dominance of, the mineral
11 estate.

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

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

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

23 Enacting section 1. This act does not take effect unless all
24 of the following bills of the 103rd Legislature are enacted into
25 law:

26 (a) Senate Bill No. ____ (request no. S01283'25) or House Bill
27 No. ____ (request no. H01283'25).

28 (b) Senate Bill No. 395.