

2012

HOUSE BILL NO. \_\_\_\_\_

By Joint Committee on Energy and Environmental Policy

AN ACT concerning property; ownership of pore space.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) The ownership of all pore space in all strata below the surface lands and waters of this state is declared to be vested in the several owners of the surface above the strata.

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

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

(d) Nothing in this section shall be construed to change or alter the common law as of the effective date of this act, as it relates to the rights belonging to, or the dominance of, the mineral estate. For the purpose of determining the priority of subsurface uses between a severed mineral estate and pore space, the severed mineral estate is dominant regardless of whether ownership of the pore space is vested in the several owners of the surface or is owned separately

from the surface.

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

(f) Transfers of pore space rights made after the effective date of this act are null and 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. The description may include but is not limited to a subsurface geologic or seismic survey or a metes and bounds description of the surface lying over the transferred pore space. In the event a description of the surface is used, the transfer shall be deemed to include pore space at all depths underlying the described surface area unless specifically excluded. The validity of pore space rights under this subsection shall not affect the respective liabilities of any party and such liabilities shall operate in the same manner as if the pore space transfer were valid.

(g) Nothing in this section shall alter, amend, diminish or invalidate rights to the use of subsurface pore space that were acquired by contract or lease prior to the effective date of this act.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.