

10971

I N A S S E M B L Y

May 5, 2010

Introduced by M. of A. PARMENT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to specifying ownership of pore space in strata underlying the surface of land and water

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The environmental conservation law is amended by adding a  
2 new section 23-1309 to read as follows:

3 S 23-1309. OWNERSHIP OF PORE SPACE UNDERLYING SURFACES.

4 1. THE OWNERSHIP OF ALL PORE SPACE IN ALL STRATA BELOW THE SURFACE  
5 LANDS AND WATERS OF THIS STATE IS DECLARED TO BE VESTED IN THE SEVERAL  
6 OWNERS OF THE SURFACE ABOVE THE STRATA.

7 2. A CONVEYANCE OF THE SURFACE OWNERSHIP OF REAL PROPERTY SHALL BE A  
8 CONVEYANCE OF THE PORE SPACE IN ALL STRATA BELOW THE SURFACE OF SUCH  
9 REAL PROPERTY UNLESS THE OWNERSHIP INTEREST IN SUCH PORE SPACE PREVIOUS-  
10 LY HAS BEEN SEVERED FROM THE SURFACE OWNERSHIP OR IS EXPLICITLY EXCLUDED  
11 IN THE CONVEYANCE. THE OWNERSHIP OF PORE SPACE IN STRATA MAY BE CONVEYED  
12 IN THE MANNER PROVIDED BY LAW FOR THE TRANSFER OF INTERESTS IN REAL  
13 PROPERTY. NO AGREEMENT CONVEYING MINERAL OR OTHER INTERESTS UNDERLYING  
14 THE SURFACE SHALL ACT TO CONVEY OWNERSHIP OF ANY PORE SPACE IN THE STRA-  
15 TUM UNLESS THE AGREEMENT EXPLICITLY CONVEYS THAT OWNERSHIP INTEREST.

16 3. AS USED IN THIS SECTION, THE TERM "PORE SPACE" IS DEFINED TO MEAN  
17 SUBSURFACE SPACE OF ANY SIZE AND WHETHER VACANT OR FILLED WHICH CAN BE  
18 USED AS STORAGE SPACE FOR SUBSTANCES INJECTED INTO THE SPACE FOR STORAGE  
19 SEQUESTRATION.

20 4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CHANGE OR ALTER  
21 MINERAL RIGHTS WHICH EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS  
22 SECTION.

23 5. ALL INSTRUMENTS WHICH TRANSFER THE RIGHTS TO PORE SPACE UNDER THIS  
24 SECTION SHALL DESCRIBE THE SCOPE OF ANY RIGHT TO USE THE SURFACE ESTATE.  
25 THE OWNER OF ANY PORE SPACE RIGHT SHALL HAVE NO RIGHT TO USE THE SURFACE  
26 ESTATE BEYOND THAT SET OUT IN A PROPERLY RECORDED INSTRUMENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 6. TRANSFERS OF PORE SPACE RIGHTS MADE AFTER THE EFFECTIVE DATE OF  
2 THIS SECTION ARE NULL AND VOID AT THE OPTION OF THE OWNER OF THE SURFACE  
3 ESTATE IF THE TRANSFER INSTRUMENT DOES NOT CONTAIN A SPECIFIC  
4 DESCRIPTION OF THE LOCATION OF THE PORE SPACE. THE VALIDITY OF PORE  
5 SPACE RIGHTS UNDER THIS SUBDIVISION SHALL NOT AFFECT THE RESPECTIVE  
6 LIABILITIES OF ANY PARTY AND SUCH LIABILITIES SHALL OPERATE IN THE SAME  
7 MANNER AS IF THE PORE SPACE TRANSFER WERE VALID.

8 7. THIS SECTION SHALL NOT ALTER ANY LAW OF THE STATE REGARDING MINERAL  
9 RIGHTS AND ANY RIGHT CREATED HEREUNDER SHALL NOT LIMIT THE RIGHT OF A  
10 MINERAL OWNER OR HIS LESSEE TO ESTABLISH REASONABLE USE OF THE SURFACE  
11 FOR THE PURPOSE OF MINERAL EXPLORATION AND PRODUCTION.

12 S 2. This act shall take effect immediately.