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UNIFICATION OF MINERAL RIGHTS

House Bill 4061 (Substitute H-2)
First Analysis (11-4-97)

Sponsor: Rep. William Bobier
Committee: Forestry and Mineral Rights

THE APPARENT PROBLEM:

For many years, the Department of Natural Resources (DNR) has followed a policy, when it sells or conveys a parcel of land, of reserving the mineral rights, which are the property rights associated with oil, gas, petroleum, or any other natural compound that can be removed using a mining process. The result is that the surface rights to the property are separated from the mineral rights, which are then referred to as "severed" mineral rights. Legally, the rights of the owner of a severed mineral right take precedence over those of the person who owns the property rights to the surface. That is, he or she has the authority to extract the minerals under the surface even if the owner of the surface rights does not want those minerals extracted. Consequently, problems sometimes arise: plans to develop minerals may not be compatible with a surface owner's use of the property. Also, in some cases, the person who purchased the property is unaware that the mineral rights have been severed. In recent hearings before the House Forestry and Mineral Rights Committee in Gaylord, Michigan, for example, property owners told of coming home to find bulldozers ploughing through their land -- their first knowledge that the mineral rights were to be developed. The state currently owns 2.1 million acres of severed mineral rights. It leases these rights and receives royalty interests, which are deposited in the Natural Resources Trust Fund. However, many believe that the confusion that occurs from having different parties hold the surface rights and the mineral rights could be avoided if the state would divest itself of these and reunite them with the surface holdings.

THE CONTENT OF THE BILL:

House Bill 4061 would add a new part, Part 610 (MCL 324.61001), to the Natural Resources and Environmental Protection Act (NREPA), to specify how the state should divest itself of subsurface oil or gas interests and reunite the severed mineral rights with the surface holdings, and establish a Unified Property Rights Fund. The bill would also establish new provisions for reserving mineral rights when state-owned land is sold (MCL 324.503 and 324.2132).

Reservation of Mineral Rights. At present, the act specifies, among other things, that the Department of Natural Resources (DNR) may reserve all mineral, coal, oil, and gas rights, except for sand, gravel, clay, or other nonmetallic minerals, when it sells land. The bill would specify that the DNR would have to reserve all mineral, coal, oil, and gas rights only when the land was in production or was leased or permitted for production. The act also specifies that, when surplus land is sold, it must be conveyed by quitclaim deed and must reserve all mineral rights. The bill would delete this provision. Under House Bill 4061, sales of all reserved mineral rights to such lands would be subject to DNR terms and conditions and the provisions specified under Part 610 of the act.

Part 610. Part 610 would add provisions regarding unified surface and subsurface ownership of mineral rights. The following are the major provisions of Part 610:

• The DNR would be required to inventory and list all property in which the state owned only the surface rights and all property upon which the state held only the severed mineral rights, place a value on the mineral rights, based on the most recent average state lease auction price, and -- within two years of the effective date of the bill -- divest itself of them, when possible, and reunite them with the surface holdings.

• Land that the DNR determined had unusual environmental features of exceptional sensitivity would not have to be sold, but would be maintained in an undeveloped state. In addition, the state would not have to divest itself of mineral rights on land that was in production, land on which it had reserved ingress and egress along rivers and streams, or land on which it held nonmetallic mineral rights.

• The DNR would be required to offer to sell its mineral rights, at a designated price, held for 90 days, to the owners of surface rights for which the state held severed mineral rights beneath that property, and to maintain a file of all responses from these offers. After the 90-day

period, a surface owner could petition the DNR to attach a monetary value.

• The state would be required to transfer by quitclaim deed its mineral rights in property to the surface land owner without cost in situations where the state had removed oil or gas from state-owned land and the severed mineral rights no longer had a commercial value.

• The DNR would be required sell mineral rights to a local unit of government for a nominal, below fair market value, in situations where the state owned the mineral rights but the local unit owned the surface rights.

Deed Restrictions. The bill would specify that the department could only sell severed mineral rights to the surface owner. The deed would have to include a restriction specifying that the mineral rights could not be severed from the surface rights in the future. Furthermore, when the department sold land, a deed restriction providing that the subsurface rights could not be severed from the surface rights in the future would have to be included.

Unified Property Rights Fund. The fund would receive money from funds that were generated from the sale of mineral rights, as provided under the bill, but could also receive money or other assets from any source. Money would remain in the fund at the close of the fiscal year and would not lapse to the general fund. It would be expended, upon appropriation, only for one or more of the following purposes and in the following order of priority:

• To purchase severed mineral rights for property in which the state owned the surface rights but not the mineral rights.

• To pay for the costs associated with the sale to local units of government of mineral rights in property in situations where the state owned the mineral rights but the local unit owned the surface rights.

• If the balance of the fund exceeded $500,000 in any fiscal year, that portion of the fund that exceeded $500,000 would be deposited in the Michigan Natural Resources Trust Fund.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency (HFA), the bill would result in increased costs to the state, and an indeterminate decrease in state revenues. For fiscal year 1996-97, royalty revenues from the development of mineral rights totaled $36.6 million. Of these revenues, 35 percent, or $12 million, came from severed mineral rights. Under the bill, the state would have to divest itself of severed mineral rights, except in instances where the land was in production or where the land was environmentally sensitive. Some of these revenues, which are currently deposited in the Natural Resources Trust Fund, would be lost when this occurred. (10-28-97)

ARGUMENTS:

For:

Many landowners don't own the mineral rights on their property. This presents problems when the owner of the mineral rights interferes with the surface owner's plans regarding the land. There may be mature trees on the land, or the surface owner may have developed a long-range management plan for the property, for example. Situations involving severed mineral rights have also resulted in enormous costs for the state in situations where the owner of the mineral rights intends to drill for oil or gas, and the state has refused to grant a permit for drilling, on the grounds that the land -- owned by the state -- is environmentally sensitive. One recent lawsuit involving circumstances such as these resulted in the state having to pay more than $90 million in compensation to the mineral rights owner.

Against:

The provisions of the bill would erode the state's ability to purchase public lands and to maintain state parks. At present, 2.1 million acres of the state's 5.9 million acres of mineral rights are "severed" mineral rights on property for which it has sold the surface rights. The state usually leases these mineral rights. In fact, the Department of Natural Resources (DNR) administers state land sales each year. The DNR receives a one-eighth royalty interest from oil and gas wells on leases made prior to 1981, and a one-sixth royalty interest on leases made after 1981. The proceeds, which amounted to $36.6 million, or $12 million for severed mineral rights, for the 1996-97 fiscal year, are deposited in the Michigan Natural Resources Trust Fund (MNRTF). In addition, Public Act 179 of 1994, as part of the "State Park Initiative" to provide the parks with a stable source of funding, specifies that $10 million, or up to 50 percent of the total revenues deposited in the MNRTF each year, must be deposited in the Michigan State Parks Endowment Fund.

POSITIONS:

The Michigan Oil and Gas Association (MOGA) supports the concept of the state divesting itself of its severed mineral rights. (10-29-97)

The Michigan Land Use Institute supports the bill. (10-28-97)

The Michigan Townships Association supports the bill. (10-29-97)

The Michigan Environmental Council opposes the bill. (10-29-97)

The Department of Natural Resources opposes the bill. (10-28-97)

The Michigan United Conservation Clubs (MUCC) opposes the bill. (10-28-97)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.