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UNIFICATION OF MINERAL RIGHTS

House Bill 4061 as enrolled
Public Act 117 of 1998
Second Analysis (8-31-98)

Sponsor: Rep. William Bobier
House Committee: Forestry and Mineral Rights
Senate Committee: Economic Development, International Trade, and Regulatory Affairs

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. The bill would also establish new provisions for reserving mineral rights when state-owned land is sold (MCL 324.503 and 324.61001).

Reservation of Mineral Rights. Under the bill, the DNR would be required to implement procedures that would allow it -- after consultation with the Natural Resources Trust Fund Board and approval of the Natural Resource Commission -- to divest itself of severed oil and gas rights and reunite those rights with the surface rights. Also, when the DNR sold land that contained subsurface rights, a deed restriction would have to be included specifying that the mineral rights would revert to the state if a landowner severed them from the surface rights. 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. The bill would also delete the current requirement that mineral rights must be reserved when *surplus* land is sold.

Part 610. Part 610 would add provisions regarding unified surface and subsurface oil or gas ownership. The following are the major provisions of Part 610:

• Within four years after the bill's effective date, the DNR would be required to inventory, or contract to have inventoried, all land under its jurisdiction, and to categorize the land as follows: all land in which the

DNR owned both the surface and the oil and gas rights; all land in which the DNR owned only the surface rights; and all property in which the state held only the severed mineral rights.

• The DNR could divest itself of severed oil and gas rights on a county-by-county basis, and prioritize counties in the order in which it intended to offer divestiture sales or transfers.

• Prior to divesting severed oil and gas rights, the DNR would be required to develop a plan for attaching a monetary value to those rights, based upon current market conditions.

• The DNR could trade severed oil and gas rights for other land or for rights in land. If a parcel of land was less than five acres in size or was held by a local unit of government, oil and gas rights could be transferred for the cost of processing the transaction.

• In each county in which it offered severed mineral rights for sale, the DNR would be required to publish a notice in a newspaper of general circulation in that county and to provide the local taxing authority with notification of the proposed sale.

• A purchase price designated by the DNR would have to be valid for at least 90 days. After the 90-day period, a surface owner could petition the DNR to sell the severed mineral rights at a price agreeable to the department.

• If a person who was not the surface owner attempted to purchase such rights from the DNR, he or she would forfeit any money given to the department.

• All money received for the sale or transfer of oil or gas rights would be deposited into 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.

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■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.