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**SFA**

BILL ANALYSIS

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House Bill 4061 (Substitute H-3 as passed by the House)  
Sponsor: Representative William Bobier  
House Committee: Forestry and Mineral Rights  
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 3-3-98

## **CONTENT**

**The bill would amend Parts 503 and 2132 of the Natural Resources and Environmental Protection Act, which pertain to State land acquisition and sale, to require deeds to reserve coal, oil, gas, and other mineral rights upon the sale of State land that was in production. The bill also would add Part 610 to require the divestiture of severed oil and gas rights, to provide for the unification of surface and subsurface oil or gas ownership, and to establish a “Unified Property Rights Fund”.**

### Deeds

Under the bill, if the Department of Natural Resources (DNR) sold land, the deed by which the land was conveyed would have to reserve all mineral, coal, oil, and gas rights to the State only when the land was in production or was leased or permitted for production. The DNR would not reserve the rights to sand, gravel, clay, or nonmetallic minerals. Currently, the deed may reserve all mineral rights except rights to sand, gravel, clay, or nonmetallic minerals for any sales of land made by the DNR.

The bill also would add that when the DNR sold land that contained subsurface rights, it would have to include a deed restriction that would restrict the subsurface rights from becoming severed from surface rights in the future. Under the Act, the DNR has the power to provide that all deeds issued for lands along watercourses and streams must contain a clause reserving the right of the ingress and egress over and across the lands. The bill would retain this provision.

Under the Act, when surplus land is sold, it must be conveyed by quitclaim deed and is required to reserve all rights to coal, oil, gas, and other minerals, except sand and gravel, found on or within the land. The bill would delete the provision pertaining to the reservation of rights to coal, oil, gas, and other minerals.

### Part 610: Unified Surface and Subsurface Oil or Gas Ownership

Inventory. Under the bill, the DNR would have to complete an inventory of all land under its jurisdiction within three years after the bill’s effective date, and categorize the land as all land in which the DNR owned the following: the surface, oil, and gas rights; the surface rights but not the oil and gas rights; and the oil and gas rights, but not the surface rights.

Severed Oil and Gas Rights. The DNR would have to implement procedures that provided for the Department, after consultation with the Natural Resources Trust Fund Board and approval of the Natural Resources Commission, to divest itself of severed oil and gas rights and reunite the oil and

gas rights with the surface rights. The DNR would not be required to divest itself of oil and gas rights to land that was in production, was leased or permitted for production, or was determined by the DNR to have unusual environmental features of exceptional sensitivity that should be reserved and maintained in an undeveloped state.

When the DNR transferred oil and gas rights, it would have to include a deed restriction that would restrict the oil and gas rights from becoming severed from the surface rights in the future. (The term “severed oil and gas rights” would mean those subsurface oil and gas rights held by the DNR in land in which it did not own the surface rights.)

The DNR would have to divest itself of severed oil and gas rights on a county-by-county basis. It would have to prioritize counties in the order in which it intended to offer divestiture sales or transfers pursuant to the bill’s provision. Before divesting itself of severed oil and gas rights, the DNR would have to develop a plan for attaching a monetary value to the rights based on current market conditions. Further, the DNR could trade severed oil and gas rights for other land or rights in land if such a trade were in the State’s best interest. The DNR would have to transfer the oil and gas rights for the cost of processing the transaction, for land held by a local unit and for parcels of land smaller than five acres.

Sale or Transfer. In each county in which the DNR offered to sell or transfer severed oil and gas rights, the DNR would have to notify the owner of surface rights or the property taxpayer, of the opportunity to obtain the severed oil and gas rights. The notice would have to include an offer to sell the severed oil and gas rights to the surface owner at a designated price for a period of 90 days. (After the 90-day period, the surface owner or a subsequent surface owner could petition the DNR for sale of the severed oil and gas rights at a price the DNR found agreeable.) A landowner who desired to accept the DNR’s offer would have to provide a copy of a recorded deed showing the person’s ownership of the land. A transfer of severed oil and gas rights by the DNR to anyone other than the owner of the surface rights would be void. Further, a person who attempted to purchase oil and gas rights from the DNR who was not the surface owner would forfeit any money given to the DNR.

The DNR would have to complete the divestiture of the first two counties on its priority list within three years after the bill’s effective date.

All money received by the DNR for the sale or transfer of oil or gas rights would have to be forfeited to the State Treasurer for deposit into the Unified Property Rights Fund.

Unified Property Rights Fund. The bill would create the Unified Property Rights Fund in the State Treasury. The State Treasurer would have to receive funds generated from the sale of mineral rights as provided under the bill, and could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the Fund’s investments and credit its interest and earnings to the Fund. Money would remain in the Fund at the close of the fiscal year and would not lapse to the General Fund.

The DNR would have to spend money from the Fund, upon appropriation, only to purchase the severed oil and gas rights and other subsurface rights for property in which the State owned the surface rights but not the subsurface rights, or to pay for the DNR’s costs of administering Part 610 but not exceeding 15% of the amount of money received by the DNR through the sale of severed oil and gas rights. Further, if the balance of the Fund exceeded \$500,000 at the close of the State fiscal year, that portion of the Fund that exceeded \$500,000 would be deposited in the Michigan Natural Resources Trust Fund.

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government, depending on the value and amount of State mineral rights sold and non-State mineral rights purchased, and the administrative costs associated with these transactions. Since ongoing oil and gas production would not be affected, the bill would have no impact on current revenues to the State; however, the sale of inactive mineral rights could reduce future revenues by an indeterminate amount.

The Department of Natural Resources owns 2.1 million acres of severed mineral rights, with 600,000 leased or under production. The State also owns 700,000 acres of surface rights only. According to the DNR, the value of the inactive State-owned mineral rights and private mineral rights under State-owned lands cannot be determined since (with the exception of the Nordhouse Dunes court settlement) there has been no market in the State for the purchase of mineral rights. Therefore, the potential revenues to the State from the sale of 1.5 million acres of State-owned mineral rights, and the costs to purchase 700,000 acres of private mineral rights, are unknown at this time.

The Department estimates that the administrative cost to sell the inactive mineral rights properties would be between \$19 million and \$38 million (or \$13 to \$26 per acre). This range is based on whether Department personnel or contractors would be used to facilitate the sale transactions. To cover the administrative costs using 15% of the sales revenue, as specified in the bill, the mineral rights would need to be worth a minimum of \$85 and \$169 per acre.

The bill would not affect current State revenues, but could reduce future revenues by eliminating additional oil and gas leases on the inactive properties. This revenue loss cannot be determined since it is unknown how many of the State's inactive mineral rights properties are capable of generating revenue. For reference, 1995 oil and gas production of State-owned mineral rights generated an average rent and royalty payment of \$48 per acre, severance taxes of \$15 per acre, and oil and gas privilege fees of \$3 per acre, for a total of \$66 in average State revenue per acre.

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