

SENATE BILL 245

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Taxation.
January 25, 1979	Fiscal note requested.
January 31, 1979	Fiscal note returned.
March 22, 1979	Committee recommend bill, do not pass as amended (majority).

1 Senate BILL NO. 245  
2 INTRODUCED BY Sen. [Signature]

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE RECORDING  
5 AND ANNUAL REGISTRATION OF SEVERED MINERAL INTERESTS AND  
6 PAYMENT OF A FEE THEREFOR; PROVIDING FOR ADVERSE POSSESSION  
7 OF UNRECORDED AND UNREGISTERED MINERAL INTERESTS; REPEALING  
8 THE TAX ON THE RIGHT OF ENTRY; AMENDING SECTIONS 15-6-101,  
9 15-8-111, 70-19-411, AND 70-28-109, MCA; AND REPEALING  
10 SECTION 15-6-102, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Severed mineral interests --  
14 legislative findings and declaration of purpose. (1) The  
15 legislature finds that the creation of severed mineral  
16 interests has been a frequent occurrence throughout the  
17 history of this state. The legislature further finds that  
18 because of the increasing frequency of the creation of  
19 severed mineral interests the ownership of severed mineral  
20 interests throughout the state is becoming more obscure and  
21 fractionalized with the passage of time. This obscure and  
22 fractionalized ownership often makes it difficult to  
23 identify and locate the owners of severed mineral interests,  
24 thus impairing the development of this state's mineral  
25 deposits in a period of increasing demand for the

1 development of new mineral sources. The legislature further  
2 finds that the owners of severed mineral interests do not  
3 now contribute revenue to the costs of legal recognition of  
4 separate mineral interests or toward the general operating  
5 costs of government.

6 (2) The purpose of [this act] is to identify and  
7 clarify the ownership of severed mineral interests, to levy  
8 a fee on the privilege of maintaining a severed mineral  
9 interest separate from the surface interest, and provide for  
10 a method of vesting title to dormant and unclaimed mineral  
11 interests in the owner of the surface which overlies the  
12 mineral interests.

13 NEW SECTION. Section 2. Severed mineral interest to  
14 be recorded and registered annually. (1) Any instrument by  
15 which ownership of a mineral interest is claimed by other  
16 than the surface owner must be recorded with the county  
17 clerk of the county in which the land overlying the severed  
18 mineral interest claimed is situated.

19 (2) The owner of a severed mineral interest shall pay  
20 a recording fee of \$1 to the county clerk and shall  
21 thereafter pay to the county clerk an annual registration  
22 fee of 5 cents an acre or fraction of acre with a minimum  
23 annual fee of \$1 for each single description of contiguous  
24 land in which a mineral interest is claimed. The annual fee  
25 shall be paid on or before July 30 of each year. The annual

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1 fee need not be paid for the year in which the claim is  
2 first recorded.

3 (3) The county clerk shall keep a record of all fees  
4 paid and by whom paid. If the mineral interest has been  
5 recorded, annual registration fees not paid are considered  
6 delinquent. The owner of a severed mineral interest may pay  
7 delinquent fees at any time. The maximum payment required  
8 for delinquent fees is \$10 an acre for each single  
9 description of land in which a mineral interest is claimed.

10 (4) The recording and annual registration fees  
11 collected pursuant to this section must be deposited to the  
12 credit of the general fund of the county in which they were  
13 collected.

14 NEW SECTION. Section 3. Limitation on recording and  
15 annual registration fees. The fees for recording and annual  
16 registration of severed mineral interests are limited to  
17 one-half the amount required by [section 2] for a person who  
18 qualifies for the class fifteen property classification,  
19 except that in order to qualify under this section, the  
20 requirement that the property be a residence valued at  
21 \$35,000 or less does not apply.

22 NEW SECTION. Section 4. County to determine whether  
23 to perform title searches to discover ownership of severed  
24 mineral interests. If the county assessor determines that  
25 the cost of conducting a title search to determine the owner

1 of a severed mineral interest for any tract of land would  
2 exceed the amount of fees required to be paid to the county  
3 by the owner of the severed mineral interest, the assessor  
4 may, with the approval of the county commissioners, decline  
5 to conduct a title search.

6 NEW SECTION. Section 5. Adverse possession of a  
7 severed mineral interest. (1) Adverse possession of a  
8 severed mineral interest may be established by ownership of  
9 the surface overlying the mineral interest for 5 years  
10 continuously after July 1, 1979, if the owner of the severed  
11 mineral interest has not:

12 (a) recorded the mineral interest pursuant to [section  
13 2]; or

14 (b) paid the annual registration fee pursuant to  
15 [section 2] within the 5-year period and that fee has been  
16 paid annually by the surface owner.

17 (2) Ownership of the surface is actual, feasible-  
18 exclusive, hostile, and continuous possession of the severed  
19 mineral interest if the severed mineral interest has not  
20 been recorded pursuant to [section 2] or if the annual  
21 registration fee pursuant to [section 2] has been paid by  
22 the surface owner rather than by the owner of the severed  
23 mineral interest.

24 (3) The provisions of Title 70, chapter 19, part 4,  
25 apply to a claim of adverse possession of a severed mineral

1 interest.

2 (4) An action for quieting title to a severed mineral  
3 interest may be brought under the provisions of Title 70,  
4 chapter 28.

5 Section 6. Section 15-6-101, MCA, is amended to read:

6 "15-6-101. Property subject to taxation --  
7 classification. (1) All property in this state is subject to  
8 taxation, except as provided otherwise.

9 (2) For the purpose of taxation, the taxable property  
10 in the state shall be classified in accordance with ~~15-6-102~~  
11 15-6-103 through 15-6-121."

12 Section 7. Section 15-8-111, MCA, is amended to read:

13 "15-8-111. Assessment -- market value standard --  
14 exceptions. (1) All taxable property must be assessed at  
15 100% of its market value except as provided in subsection  
16 (5) of this section and in 15-7-111 through 15-7-114.

17 (2) Market value is the value at which property would  
18 change hands between a willing buyer and a willing seller,  
19 neither being under any compulsion to buy or to sell and  
20 both having reasonable knowledge of relevant facts.

21 (3) The department of revenue or its agents may not  
22 adopt a lower or different standard of value from market  
23 value in making the official assessment and appraisal of the  
24 value of property in ~~class one~~ and classes seven through  
25 eighteen. For purposes of taxation, assessed value is the

1 same as appraised value.

2 (4) The taxable value for all property in ~~class one~~  
3 and classes seven through eighteen is the percentage of  
4 market value established for each class of property in  
5 ~~15-6-102~~ and 15-6-108 through 15-6-119.

6 (5) The assessed value of properties in 15-6-103  
7 through 15-6-107 and 15-6-120 is as follows:

8 (a) Property in 15-6-106, under class five, is  
9 assessed at 100% of book value by the method established in  
10 15-6-106 and the sections cited therein.

11 (b) Properties in 15-6-103, under class two, are  
12 assessed at 100% of the annual net proceeds after deducting  
13 the expenses specified and allowed by 15-23-503.

14 (c) Properties in 15-6-104, 15-6-105, and 15-6-120,  
15 under classes three, four, and nineteen are assessed at 100%  
16 of the annual gross proceeds.

17 (d) Properties in 15-6-107, under class six, are  
18 assessed at 100% of the productive capacity of the lands  
19 when valued for agricultural purposes. All lands that meet  
20 the qualifications of 15-7-202 are valued as agricultural  
21 lands for tax purposes.

22 (6) Land and the improvements thereon are separately  
23 assessed when any of the following conditions occur:

24 (a) ownership of the improvements is different from  
25 ownership of the land;

1 (b) the taxpayer makes a written request; or

2 (c) the land is outside an incorporated city or town.

3 (7) The taxable value of all property in classes two  
4 through six is the percentage of assessed value established  
5 in 15-6-103 through 15-6-107 for each class of property."

6 Section 8. Section 70-19-411, MCA, is amended to read:

7 "70-19-411. Occupancy and payment of taxes necessary  
8 to prove adverse possession. (1) In no case shall ~~may~~  
9 ~~adverse possession~~ ~~possession~~ be considered established  
10 under this code unless it ~~shall be~~ ~~is~~ shown that the land  
11 has been occupied and claimed for a period of 5 year.  
12 continuously and the party or persons, their predecessors,  
13 and grantors have during such period paid all the taxes,  
14 state, county, or municipal, ~~which that~~ have been legally  
15 levied and assessed upon ~~and the~~ land.

16 (2) ~~A claimant under [section 3] need not have paid~~  
17 ~~taxes on the minerals to establish adverse possession of a~~  
18 ~~severed mineral interest."~~

19 Section 9. Section 70-28-109, MCA, is amended to read:

20 "70-28-109. Who bound by judgment. (1) Every person  
21 made a defendant to such action by name and every unknown  
22 claimant or possible claimant upon whom service has been  
23 made by publication, in accordance with Rule 4, M.R.Civ.P.,  
24 and who has not appeared in such action shall be bound by  
25 the judgment or decree entered in such action, subject to

1 the right of any such defendants to apply for relief in any  
2 manner provided by the statutes applicable to the case of a  
3 defaulting defendant served only by publication.

4 ~~(2) Within 60 days after the first publication of the~~  
5 ~~summons or within a reasonable period as the court may~~  
6 ~~allow, a person owning or claiming a mineral interest to~~  
7 ~~which plaintiff has commenced a quiet title action may~~  
8 ~~appear and make himself a party to the action. In order to~~  
9 ~~defeat the action, the defendant need only appear and~~  
10 ~~present evidence of his ownership of the mineral interest in~~  
11 ~~question and evidence that the fees required by [section 2~~  
12 ~~of this act] have been paid.~~

13 ~~(3) If the plaintiff has paid the fees required by~~  
14 ~~[section 2 of this act], the defendant must reimburse the~~  
15 ~~plaintiff for the fees paid plus interest at the rate of 10%~~  
16 ~~per year."~~

17 Section 10. Severability. If a part of this act is  
18 invalid, all valid parts that are severable from the invalid  
19 part remain in effect. If a part of this act is invalid in  
20 one or more of its applications, the part remains in effect  
21 in all valid applications that are severable from the  
22 invalid applications.

23 Section 11. Repealer. Section 15-6-102, MCA, is  
24 repealed.

-End-

## STATE OF MONTANA

REQUEST NO. 109-79

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 245 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

This bill requires the recording and annual registration of severed mineral interests and payment of a fee therefor; providing for adverse possession of unrecorded and unregistered mineral interests; repealing the tax on the right of entry.

ASSUMPTIONS

- 1) No accurate data exists on severed mineral interests, so no fiscal impact can be projected for revenues generated from the recording fee and annual registration fee. (See Technical Note)
- 2) The taxable value of rights of entry will range from \$1.0 M to \$1.2 M for FY80 and FY81.
- 3) A rural local government levy of 150 mills.
- 4) A university levy of 6 mills.

FISCAL IMPACT

	<u>FY 80</u>	<u>FY 81</u>
University Mill Levy (6 mills)		
under current law	\$6,000 to \$7,200	\$6,000 to \$7,200
under proposed law	0	0
Estimated Decrease	<u>(\$6,000 to \$7,200)</u>	<u>(\$6,000 to \$7,200)</u>

FUND INFORMATION

University Levy		
Estimated Decrease	<u>(\$6,000 to \$7,200)</u>	<u>(\$6,000 to \$7,200)</u>

EFFECT ON LOCAL GOVERNMENTS

The repeal of the tax on rights of entry will decrease revenues to local governments by \$150,000 to \$180,000 per year for FY80 and FY81.

TECHNICAL NOTE

Although no accurate estimate can be determined for the revenues from the fees of severed mineral interests, the revenues from the rights of entry may provide a lower bound of the revenues that could be anticipated from the fees on severed mineral interests.

*Richard L. Drayton*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/31/79

PREPARED BY DEPARTMENT OF REVENUE