

Senate Bill 45

In The Senate

January 5, 1981	Introduced and referred to Committee on Judiciary.
January 19, 1981	Committee recommend bill do not pass.

1 SENATE BILL NO. 45
2 INTRODUCED BY TOWE

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; ABOLISHING
8 THE TAX ON THE RIGHT OF ENTRY; AMENDING SECTIONS 15-6-131,
9 15-8-111, 70-19-411, AND 70-28-109, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

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

18 (2) Every owner of a severed mineral interest, except
19 the state of Montana, shall pay a recording fee of \$1 to the
20 county clerk and shall thereafter pay to the county clerk an
21 annual registration fee of 5 cents an acre or fraction of
22 acre with a minimum annual fee of \$1 for each single
23 description of contiguous land in which a mineral interest
24 is claimed. The annual fee shall be paid on or before July
25 30 of each year. The annual fee need not be paid for the

1 year in which the claim is first recorded.

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

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

13 NEW SECTION. Section 3. Limitation on recording and
14 annual registration fees. The fees for recording and annual
15 registration of severed mineral interests are limited to
16 one-half the amount required by [section 2] for a person who
17 qualifies for that portion of the class four property
18 classification set forth in 15-6-134(1)(d), except that in
19 order to qualify under this section, the requirement that
20 the property be a residence valued at \$35,000 or less does
21 not apply.

22 NEW SECTION. Section 4. County to determine whether to
23 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, 1981, 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 15-6-131, MCA, is amended to read:

6 "15-6-131. Class one property -- description -- taxable
7 percentage. (1) Class one property includes:

8 (a) the right of entry that is a property right
9 reserved in land or received by mesne conveyance (exclusive
10 of leasehold interests), devise, or succession to enter land
11 whose surface title is held by another to explore, prospect,
12 or dig for oil, gas, coal, or minerals; and

13 (b) the annual net proceeds of all mines and mining
14 claims except coal and metal mines.

15 (2) Class one property is taxed as follows:

16 (a) Property described in subsection (1)(a) is ~~taxed at~~
17 ~~100% of its market value as determined by the department of~~
18 ~~revenue not to be taxed.~~

19 (b) Property described in subsection (1)(b) is taxed at
20 100% of its annual net proceeds after deducting the expenses
21 specified and allowed by 15-23-503."

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

23 15-8-111. Assessment -- market value standard --
24 exceptions. (1) All taxable property must be assessed at
25 100% of its market value except as provided in subsection

1 (5) of this section and in 15-7-111 through 15-7-114.

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

6 (3) The department of revenue or its agents may not
7 adopt a lower or different standard of value from market
8 value in making the official assessment and appraisal of the
9 value of property in ~~subsection (1)(a) of 15-6-131 and~~
10 ~~15-6-134 through 15-6-140.~~ For purposes of taxation,
11 assessed value is the same as appraised value.

12 (4) The taxable value for all property in ~~subsection~~
13 ~~(1)(a) of 15-6-131 and~~ classes four through ten ~~and~~
14 ~~twenty and class twenty-one~~ is the percentage of market
15 value established for each class of property in subsection
16 (2)(a) of 15-6-131 and 15-6-134 through 15-6-141 ~~and~~
17 ~~15-6-141~~.

18 (5) The assessed value of properties in subsection
19 (1)(b) of 15-6-131, 15-6-132, and 15-6-133 is as follows:

20 (a) Properties in subsection (1)(b) of 15-6-131, under
21 class one, are assessed at 100% of the annual net proceeds
22 after deducting the expenses specified and allowed by
23 15-23-503.

24 (b) Properties in 15-6-132 under class two are assessed
25 at 100% of the annual gross proceeds.

1 (c) Properties in 15-6-133, under class three, are
2 assessed at 100% of the productive capacity of the lands
3 when valued for agricultural purposes. All lands that meet
4 the qualifications of 15-7-202 are valued as agricultural
5 lands for tax purposes.

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

8 (a) ownership of the improvements is different from
9 ownership of the land;

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

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

12 (7) The taxable value of all property in subsection
13 (1)(b) of 15-6-131 and classes two and three is the
14 percentage of assessed value established in 15-6-131(2)(b),
15 15-6-132, and 15-6-133 ~~[and 15-6-120]~~ for each class of
16 property.*

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

18 "70-19-411. Occupancy and payment of taxes necessary to
19 prove adverse possession. (1) In no case ~~shall~~ ~~may~~ adverse
20 ~~possession~~ possession be considered established under this
21 code unless it ~~shall~~ ~~be~~ is shown that the land has been
22 occupied and claimed for a period of 5 years continuously
23 and the party or persons, their predecessors, and grantors
24 have during such period paid all the taxes, state, county,
25 or municipal, which ~~that~~ have been legally levied and

1 assessed upon ~~and~~ the land.

2 (2) A claimant under [section 5] need not have paid
3 taxes on the minerals to establish adverse possession of a
4 severed mineral interest."

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

6 "70-28-109. Who bound by judgment. (1) Every person
7 made a defendant to such action by name and every unknown
8 claimant or possible claimant upon whom service has been
9 made by publication, in accordance with Rule 4, M.R.Civ.P.,
10 and who has not appeared in such action shall be bound by
11 the judgment or decree entered in such action, subject to
12 the right of any such defendants to apply for relief in any
13 manner provided by the statutes applicable to the case of a
14 defaulting defendant served only by publication.

15 (2) Within 60 days after the first publication of the
16 summons or within a reasonable period as the court may
17 allow, a person owning or claiming a mineral interest to
18 which plaintiff has commenced a quiet title action may
19 appear and make himself a party to the action. In order to
20 defeat the action, the defendant need only appear and
21 present evidence of his ownership of the mineral interest in
22 question and evidence that the fees required by [section 2
23 of this act] have been paid.

24 (3) If the plaintiff has paid the fees required by
25 [section 2 of this act], the defendant must reimburse the

1 plaintiff for the fees paid plus interest at the rate of 10%
2 per year."

3 Section 10. Severability. If a part of this act is
4 invalid, all valid parts that are severable from the invalid
5 part remain in effect. If a part of this act is invalid in
6 one or more of its applications, the part remains in effect
7 in all valid applications that are severable from the
8 invalid applications.

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