

SENATE BILL NO. 360

Introduced: 02/04/83

Referred to Committee on Taxation: 02/04/83

Hearing: 2/15/83

Report: 02/26/83, Do Not Pass. Report Adopted.

Motion to Reconsider Action: 3/1/83

Rereferred to Committee on Taxation: 3/1/83

Died in Committee.

1 *Senate* BILL NO. *360*
 2 INTRODUCED BY *Sen. Kelly Mark LANE*
 3 *Concomden John Graham*

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SURFACE OWNERS
 5 TO OBTAIN DORMANT AND UNCLAIMED SEVERED MINERAL INTERESTS;
 6 REQUIRING THE FILING AND ANNUAL REGISTRATION OF SEVERED
 7 MINERAL INTERESTS AND PAYMENT OF A FEE THEREFOR; PROVIDING
 8 FOR EXCEPTIONS TO THE REQUIREMENT FOR PAYMENT OF
 9 REGISTRATION FEES; PROVIDING FOR ADVERSE POSSESSION OF
 10 UNFILED AND UNREGISTERED MINERAL INTERESTS; ABOLISHING THE
 11 TAX ON THE RIGHT OF ENTRY; AMENDING SECTIONS 15-6-131,
 12 15-6-201, 15-8-111, 70-19-411, AND 70-28-109, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 NEW SECTION. Section 1. Severed mineral interests --
 16 legislative findings and declaration of purpose. (1) The
 17 legislature finds that the creation of severed mineral
 18 interests has been a frequent occurrence throughout the
 19 history of this state. The legislature further finds that
 20 because of the increasing frequency of the creation of
 21 severed mineral interests, the ownership of severed mineral
 22 interests throughout the state is becoming more obscured and
 23 fractionalized with the passage of time. This obscure and
 24 fractionalized ownership often makes it difficult to
 25 identify and locate the owners of severed mineral interests.

1 thus impairing the development of this state's mineral
 2 deposits in a period of increasing demand for the
 3 development of new mineral sources. The legislature further
 4 finds that the owners of severed mineral interests do not
 5 now contribute revenue to the costs of legal recognition of
 6 severed mineral interests or toward the general operating
 7 costs of government.

8 (2) The purpose of [sections 1 through 5] is to
 9 identify and clarify the ownership of severed mineral
 10 interests, to levy a fee on the privilege of maintaining a
 11 severed mineral interest separate from the surface
 12 interests, and to provide for vesting title to dormant and
 13 unclaimed mineral interests in the owner of the surface
 14 which overlies the mineral interests.

15 NEW SECTION. Section 2. Severed mineral interest to
 16 be filed and registered annually. (1) Any person claiming to
 17 own a severed mineral interest must file the interest, on a
 18 form provided by the county for that purpose, with the
 19 clerk and recorder of the county in which the land overlying
 20 the severed mineral interest claimed is situated. The form
 21 must be made available by the county clerk and recorder upon
 22 request and must include:

23 (a) the name and address of the owner of the severed
 24 mineral interest;

25 (b) the number of mineral acres owned in that county;

(c) a legal description of each mineral interest and the fractional ownership claimed in each parcel; and

(d) a description of the instrument, including the book and page of the index where the instrument may be located, by which the mineral interest was severed from the surface and the chain of title owners of the interest through which the person filing the form claims ownership.

(2) Except as provided in [section 3], every owner of a severed mineral interest, except the state of Montana, shall pay to the county clerk and recorder an annual registration fee of 25 cents per mineral acre, with a minimum annual fee of \$10, in each county in which a mineral interest is claimed. The annual fee must be paid on or before July 30 of each year.

(3) The county clerk and recorder shall keep a record of all fees paid and by whom paid. If the mineral interest has been filed, annual registration fees not paid are considered delinquent. The owner of a severed mineral interest may pay delinquent fees at any time.

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

NEW_SECTION. Section 3. Limitation on annual registration fees. Any person owning a mineral interest on October 1, 1983, who files that interest in accordance with

[section 2] before October 1, 1984, and at the time of filing pays a one-time fee of 50 cents per mineral acre, is forever exempt from payment of the annual registration fee. However, no one person may claim an exemption under this section for any interest in excess of 20,000 mineral acres in the entire state. If a person owns more than 20,000 mineral acres, he may choose the mineral acres to which the exemption will apply. The mineral acres exempted or to be exempted under this section must be designated by the owner of those acres on a form provided for that purpose by the department of revenue and filed with the clerk and recorder of the county in which the acres are located and with the department of revenue. An exemption claimed for any acreage exceeding that allowed by this section must be disallowed by the department, which shall inform the owner and the appropriate county clerk and recorder of such disallowance.

NEW_SECTION. Section 4. County not required to determine ownership of severed mineral interests -- filing by surface owner. A county is not required to conduct a title search to determine the owner of a severed mineral interest for any tract of land within the county. If no person has filed a severed mineral interest as required by [section 2] by October 1, 1983, or 5 years prior to the filing by the surface owner under [section 5], the surface owner may pay the annual registration fee for the past 5

years and must file a notice setting forth as much information concerning the chain of title and current ownership as a diligent title search and reasonably thorough search for lost or missing heirs or owners would produce. The search or searches may not be conducted at the expense of the county and may not be charged to the owner of the severed mineral interests.

NEW SECTION. Section 5. Adverse possession of a severed mineral interest. (1) Adverse possession of a severed mineral interest may be established by ownership, directly or through proper conveyance, of the surface overlying the mineral interest for 5 years continuously after October 1, 1983, if the owner of the severed mineral interest has not:

(a) filed the mineral interest pursuant to [section 2]; or

(b) paid the annual registration fee or registered the interest and acreage pursuant to [section 2 or 3] within the 5-year period and the surface owner has:

(i) filed the notice of severed mineral interest provided in [section 4]; and

(ii) paid the annual registration fee for the 5 years next preceding the filing of an action for adverse possession.

(2) Ownership of the surface is actual, feasible,

exclusive, hostile, and continuous possession of the severed mineral interest if the severed mineral interest has not been recorded pursuant to [section 2 or 3] or if the annual registration fee has been paid or registration statement pursuant to [section 2 or 3] has been filed by the surface owner rather than by the owner of the severed mineral interest.

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

(4) An action for quieting title to a severed mineral interest may be brought under the provisions of Title 70, chapter 23.

Section 6. Section 15-6-131, MCA, is amended to read:

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

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

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

(2) Class one property is taxed as follows:

~~(a) Property described in subsection (1)(a) is taxed~~

1 ~~at 100% of its market value as determined by the department~~
2 ~~of revenues~~

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

6 Section 7. Section 15-6-201, MCA, is amended to read:

7 "15-6-201. Exempt categories. (1) The following
8 categories of property are exempt from taxation:

9 (a) the property of:

10 (i) the United States, the state, counties, cities,
11 towns, school districts;

12 (ii) irrigation districts organized under the laws of
13 Montana and not operating for profit;

14 (iii) municipal corporations; and

15 (iv) public libraries;

16 (b) buildings, with land they occupy and furnishings
17 therein, owned by a church and used for actual religious
18 worship or for residences of the clergy, together with
19 adjacent land reasonably necessary for convenient use of
20 such buildings;

21 (c) property used exclusively for agricultural and
22 horticultural societies, for educational purposes, and for
23 hospitals;

24 (d) property that meets the following conditions:

25 (i) is owned and held by any association or

1 corporation organized under Title 35, chapter 2, 3, 20, or
2 21;

3 (ii) is devoted exclusively to use in connection with a
4 cemetery or cemeteries for which a permanent care and
5 improvement fund has been established as provided for in
6 Title 35, chapter 20, part 3; and

7 (iii) is not maintained and operated for private or
8 corporate profit;

9 (e) institutions of purely public charity;

10 (f) evidence of debt secured by mortgages of record
11 upon real or personal property in the state of Montana;

12 (g) public art galleries and public observatories not
13 used or held for private or corporate profit;

14 (h) all household goods and furniture, including but
15 not limited to clocks, musical instruments, sewing machines,
16 and wearing apparel of members of the family, used by the
17 owner for personal and domestic purposes or for furnishing
18 or equipping the family residence;

19 (i) a truck canopy cover or topper weighing less than
20 300 pounds and having no accommodations attached. Such
21 property is also exempt from the fee in lieu of tax.

22 (j) a bicycle, as defined in 61-1-123, used by the
23 owner for personal transportation purposes; and

24 (k) automobiles and trucks having a rated capacity of
25 three-quarters of a ton or less; and

~~(1) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another for the purpose of exploring, prospecting, or digging for oil, gas, coal, or minerals.~~

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

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

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

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

(b) The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

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

(4) The taxable value for all property in ~~subsection (1)(a) of 15-6-131 and~~ classes four through eleven is the

1 percentage of market value established for each class of
2 property in subsection (2)(a) of 15-6-131 and 15-6-134
3 through 15-6-141.

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

6 (a) Properties in subsection (1)(b) of 15-6-131, under
7 class one, are assessed at 100% of the annual net proceeds
8 after deducting the expenses specified and allowed by
9 15-23-503.

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

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

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

19 (a) ownership of the improvements is different from
20 ownership of the land;

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

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

23 (7) The taxable value of all property in subsection
24 (1)(b) of 15-6-131 and classes two and three is the
25 percentage of assessed value established in 15-6-131(2)(b),

1 15-6-132, and 15-6-133 for each class of property."

2 Section 9. Section 70-19-411, MCA, is amended to read:

3 "70-19-411. Occupancy and payment of taxes necessary
4 to prove adverse possession. (1) In no case shall any
5 adverse ~~possessions~~ possession be considered established
6 under this code unless it shall be shown that the land
7 has been occupied and claimed for a period of 5 years
8 continuously and the party or persons, their predecessors,
9 and grantors have during such period paid all the taxes,
10 state, county, or municipal, which ~~that~~ have been legally
11 levied and assessed upon said the land.

12 ~~(2) A claimant under (section 5) need not have paid~~
13 ~~taxes on the minerals to establish adverse possession of a~~
14 ~~severed mineral interest."~~

15 Section 10. Section 70-28-109, MCA, is amended to
16 read:

17 "70-28-109. Who bound by judgment. (1) Every person
18 made a defendant to such action by name and every unknown
19 claimant or possible claimant upon whom service has been
20 made by publication, in accordance with Rule 4, M.R.Civ.P.,
21 and who has not appeared in such action shall be bound by
22 the judgment or decree entered in such action, subject to
23 the right of any such defendants to apply for relief in any
24 manner provided by the statutes applicable to the case of a
25 defaulting defendant served only by publication.

1 (21) Within 60 days after service of notice to named
2 defendants or within 60 days after the first publication of
3 the summons with regard to persons served by publication or
4 within a reasonable period prior to final judgment as the
5 court may allow, a person owning or claiming a mineral
6 interest to which plaintiff has commenced a quiet title
7 action may appear and make himself a party to the action.
8 In order to defeat the action, the defendant need only
9 appear and present evidence of his ownership of the mineral
10 interest in question and evidence that the fees have been
11 paid or statement required by [section 2 or 3] has been
12 filed.

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

16 NEW SECTION. Section 11. Severability. If a part of
17 this act is invalid, all valid parts that are severable from
18 the invalid part remain in effect. If a part of this act is
19 invalid in one or more of its applications, the part remains
20 in effect in all valid applications that are severable from
21 the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 340-83

FISCAL NOTE

Form BD-15

n compliance with a written request received February 7, , 19 83 , there is hereby submitted a Fiscal Note
or Senate Bill 360 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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 OF PROPOSED LEGISLATION:

Senate Bill 360 allows surface owners to obtain dormant and unclaimed severed mineral interests; requires the filing and annual registration of severed mineral interests and payment of a fee therefore; provides for exceptions to the requirement for payment of registration fees; provides for adverse possession of unfiled and unregistered mineral interests; and abolishes the tax on the right of entry.

ASSUMPTIONS:

- 1) Approximately 2,428,000 acres are under reserve right-of-entry, as reported by county assessors for FY 82, and the assessed value of this property is approximately \$.66 per acre.
- 2) The proposed law requires "every owner of a severed mineral interest" to pay an annual registration fee. The number of owners of severed mineral interests is not known.
- 3) The average county levy is 220.58 mills.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
University System Levy		
Under Current Law	\$ 9,598	\$ 9,598
Under Proposed Law	-0-	-0-
Estimated Decrease	<u>\$ (9,598)</u>	<u>\$ (9,598)</u>
School Foundation Levy		
Under Current Law	\$ 63,988	\$ 63,988
Under Proposed Law	-0-	-0-
Estimated Decrease	<u>\$ (63,988)</u>	<u>\$ (63,988)</u>
TOTAL REVENUE		
Under Current Law	\$ 73,586	\$ 73,586
Under Proposed Law	-0-	-0-
Estimated Decrease	<u>\$ (73,586)</u>	<u>\$ (73,586)</u>

Continued
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-83

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

	<u>FY 84</u>	<u>FY 85</u>
Under Current Law	\$ 279,278	\$ 279,278
Under Proposed Law	Undetermined	Undetermined

COMMENT:

County revenue probably would increase, but the size of the increase cannot be determined.

FISCAL NOTE 12:S/2

SB 360