

SENATE BILL NO. 395

2/12 Introduced
2/12 Referred to Taxation
2/13 Fiscal Note Requested
2/21 Fiscal Note Received
2/23 Hearing
3/18 Tabled in Committee

1 Senate BILL NO. 395
 2 INTRODUCED BY Sen. Harick

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 5 FILING AND RECORDING OF SEVERED MINERAL INTERESTS; PROVIDING
 6 FOR SURFACE OWNER ACQUISITION OF UNCLAIMED SEVERED MINERAL
 7 INTERESTS; AMENDING SECTIONS 70-19-411 AND 70-28-109, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

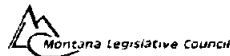
10 NEW SECTION. Section 1. Severed mineral interests --
 11 legislative findings and declaration of purpose. (1) The
 12 legislature finds that the creation of severed mineral
 13 interests has been a frequent occurrence throughout the
 14 history of this state. The legislature further finds that
 15 because of the increasing frequency of the creation of
 16 severed mineral interests, the ownership of severed mineral
 17 interests throughout the state is becoming more obscured and
 18 fractionalized with the passage of time. This obscure and
 19 fractionalized ownership often makes it difficult to
 20 identify and locate the owners of severed mineral interests,
 21 thus impairing the development of this state's mineral
 22 deposits in a period of increasing demand for the
 23 development of new mineral sources. The legislature further
 24 finds that the owners of severed mineral interests do not
 25 now contribute revenue to the costs of legal recognition of

1 severed mineral interests or toward the general operating
 2 costs of government.

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

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

- 18 (a) the name and address of the owner of the severed
- 19 mineral interest;
- 20 (b) the number of mineral acres owned in that county;
- 21 (c) a legal description of each mineral interest and
- 22 the fractional ownership claimed in each parcel; and
- 23 (d) a description of the instrument, including the
- 24 book and page of the index where the instrument may be
- 25 located, by which the mineral interest was severed from the



1 surface and the chain of title owners of the interest
2 through which the person filing the form claims ownership.

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

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

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

18 NEW SECTION. Section 3. Limitation on annual
19 registration fees. Any person owning a mineral interest on
20 October 1, 1985, who files that interest in accordance with
21 [section 2] before October 1, 1986, and at the time of
22 filing pays a one-time fee of 50 cents per mineral acre, is
23 forever exempt from payment of the annual registration fee.
24 However, no one person may claim an exemption under this
25 section for any interest in excess of 20,000 mineral acres

1 in the entire state. If a person owns more than 20,000
2 mineral acres, he may choose the mineral acres to which the
3 exemption will apply. The mineral acres exempted or to be
4 exempted under this section must be designated by the owner
5 of those acres on a form provided for that purpose by the
6 department of revenue and filed with the clerk and recorder
7 of the county in which the acres are located and with the
8 department of revenue. An exemption claimed for any acreage
9 exceeding that allowed by this section must be disallowed by
10 the department, which shall inform the owner and the
11 appropriate county clerk and recorder of such disallowance.

12 NEW SECTION. Section 4. County not required to
13 determine ownership of severed mineral interests -- filing
14 by surface owner. A county is not required to conduct a
15 title search to determine the owner of a severed mineral
16 interest for any tract of land within the county. If no
17 person has filed a severed mineral interest as required by
18 [section 2] by October 1, 1990, or 5 years prior to the
19 filing by the surface owner under [section 5], the surface
20 owner may pay the annual registration fee for the past 5
21 years and file a notice setting forth as much information
22 concerning the chain of title and current ownership as a
23 diligent title search and reasonably thorough search for
24 lost or missing heirs or owners would produce. The search or
25 searches may not be conducted at the expense of the county

1 and may not be charged to the owner of the severed mineral
2 interests.

3 NEW SECTION. Section 5. Adverse possession of a
4 severed mineral interest. (1) Adverse possession of a
5 severed mineral interest may be established by ownership,
6 directly or through proper conveyance, of the surface
7 overlying the mineral interest for 5 years continuously
8 after October 1, 1985, if:

9 (a) the owner of the severed mineral interest has not:

10 (i) filed the mineral interest pursuant to [section
11 2]; or

12 (ii) paid the annual registration fee or registered the
13 interest and acreage pursuant to [section 2 or 3] within the
14 5-year period; and

15 (b) the surface owner has:

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

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

21 (2) Ownership of the surface is actual, feasible,
22 exclusive, hostile, and continuous possession of the severed
23 mineral interest if the severed mineral interest has not
24 been recorded pursuant to [section 2 or 3] or if the annual
25 registration fee has been paid or registration statement

1 pursuant to [section 2 or 3] has been filed by the surface
2 owner rather than by the owner of the severed mineral
3 interest.

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

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

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

11 "70-19-411. Occupancy and payment of taxes necessary
12 to prove adverse possession. (1) In Except as provided in
13 subsection (2), in no case shall adverse possessions
14 possession be considered established under this code unless
15 it shall be shown that the land has been occupied and
16 claimed for a period of 5 years continuously and the party
17 or persons, their predecessors, and grantors have during
18 such period paid all the taxes, state, county, or municipal,
19 which have been legally levied and assessed upon said land.

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

23 Section 7. Section 70-28-109, MCA, is amended to read:

24 "70-28-109. Who bound by judgment. (1) Every person
25 made a defendant to such action by name and every unknown

1 claimant or possible claimant upon whom service has been
 2 made by publication, in accordance with Rule 4, M.R.Civ.P.,
 3 and who has not appeared in such action shall be bound by
 4 the judgment or decree entered in such action, subject to
 5 the right of any such defendants to apply for relief in any
 6 manner provided by the statutes applicable to the case of a
 7 defaulting defendant served only by publication.

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

20 (3) If the plaintiff has paid the fees required by
 21 [section 2], the defendant must reimburse the plaintiff for
 22 the fees paid plus interest at the rate of 10% per year."

23 NEW SECTION. Section 8. Severability. If a part of
 24 this act is invalid, all valid parts that are severable from
 25 the invalid part remain in effect. If a part of this act is

1 invalid in one or more of its applications, the part remains
 2 in effect in all valid applications that are severable from
 3 the invalid applications.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 432-85

Form BD-15

In compliance with a written request received February 18 19 85, there is hereby submitted a Fiscal Note for S.B. 395 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:

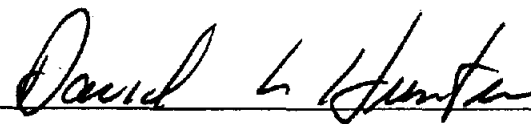
Senate Bill 395 is an act providing for the filing and recording of severed mineral interests and providing for surface owner acquisition of unclaimed severed mineral interests.

FISCAL IMPACT:

No fiscal impact expected on the state.

LOCAL IMPACT:

No fiscal impact if it is assumed legislation fees will cover additional administration costs of the county clerks.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 21, 1985

SB 395