

DISCLOSE UNDER-SURFACE MINERALS

House Bill 4204 as passed by the House Second Analysis (9-2-98)

**Sponsor: Rep. Mary Schroer
Committee: Forestry and Mineral Rights**

THE APPARENT PROBLEM:

Under Michigan law, mineral rights are severable from other property rights. They can be sold at any time, or the property owner can choose to retain them when selling the property. For example, when the state sells or conveys property, it has been common practice to include language in the enabling statute specifying that the state reserves ownership over mineral rights on or under the property. As it happens, the state's practice in recent years has leaned more toward conveying mineral rights with the property, in which case the following language is inserted into the statute:

"The conveyance authorized by this act shall be by quitclaim deed approved by the attorney general and shall convey all rights held by the state to coal, oil, gas, and other minerals, excluding sand, gravel, clay, or other nonmetallic minerals found on or under the property conveyed."

The issue of mineral rights ownership has gained a lot of attention within the past few years. One of the best-known instances involved property on the Nordhouse Dunes, where a company that had obtained a mineral lease on a parcel of property sued the state over its right to drill for oil and gas. The state settled the case out of court for a large amount of money. Other lawsuits have been filed involving mineral rights owners who have asserted their right to drill under or near property that the state has designated as environmentally sensitive. And, although not as widely publicized as these cases, which involved large companies and the potential for lawsuits involving large sums of money, there have been many instances where the owner of a piece of property -- often on the site of a vacation home -- has been flabbergasted to find that someone else owns the mineral rights under its surface.

Frequently, in these situations, the purchaser is not only unaware that the mineral rights *have* been sold,

he or she is usually unaware that they *could* be sold. In fact, sometimes the construction of an oil rig is a property owner's first clue that another person owns the mineral rights under the land. And, although a title search is required when property is transferred from one owner to another as part of the process involved in obtaining a mortgage, this does not reveal a previous transfer of mineral rights. Moreover, in such cases, the courts have consistently ruled that a surface property owner's lack of knowledge is not deemed sufficient grounds to deny the rights of a mineral rights owner. Nor is an objection to having the land disturbed. Many believe that the public should receive better information on this issue, and it is proposed that the information be provided on the seller disclosure form that all sellers of residential property must provide to prospective buyers, and that a similar disclosure form be required for sales of vacant land.

THE CONTENT OF THE BILL:

The Seller Disclosure Act (MCL 565.957) specifies that all sellers of residential property must provide prospective buyers with a seller disclosure form; otherwise, a purchase agreement can be terminated. House Bill 4204 would extend the seller disclosure requirements of the act to require that a seller disclose information regarding any legal right held by another person, including the seller, to remove minerals or to receive royalties from them. The bill would also extend the seller disclosure requirements to include vacant land on which it is intended that one to four residential dwelling units will be constructed.

Residential Property. Currently, the seller disclosure form for residential dwelling units includes a question, under the "Other Items" category, which asks if the seller is aware of certain features of the property, such as encroachments, underground storage tanks, or farm operations in the vicinity. House Bill 4204 would add

to the list of questions to require that the seller disclose information regarding any legal right held by another person, including the seller, to remove minerals or to receive royalties from them. Under the bill, the question would be phrased as follows:

"9. Any legal right retained by the seller or held by any person or entity other than the seller to remove, or receive royalties from the removal of, coal, oil, natural gas, or other valuable minerals existing under the surface of the property?"

Vacant Land. House Bill 4204 would also extend the seller disclosure requirements of the act to include vacant land on which it is intended that one to four residential dwelling units will be constructed, whereas, currently, the seller disclosure requirements of the act apply only to the transfer of an interest in real estate consisting of not less than one or more than four residential dwelling units. Among other questions, the bill would require that the following questions be included:

"4. Any determination that the subject property constitutes a 'wetland' or dunes area, or in area of "Scenic Rivers Act"? (Note: Apparently, the question should read, ". . . or an area protected under the "Scenic Rivers Act.")

5. Any sale or transfer of development rights from property?"

Forms. The bill would also specify that a disclosure form printed before the bill's effective date that complied with the act, except for the changes that would be added by this bill, could be used and would be in compliance with the act until July 1, 1998. (Note: Since the bill reprints the language and format of the current required seller disclosure form, the bill contains several instances of phrases in all capital-letter format, as these are required to be printed on the form. Three sentences, appearing on page 3, lines 2-4, page 4, lines 22-24, and page 8, lines 13-16, are currently in the law and do not denote amendatory language.)

FISCAL IMPLICATIONS:

According to an analysis by the House Fiscal Agency, the bill would have no impact on state funds. (4-30-97)

ARGUMENTS:

For:

For most people, the purchase of a home is one of the more important events in life. However, the process can be overwhelming: much of it involves filling out or acknowledging unfamiliar forms, and the expenses can be significant. At such a time, many people pay little thought to such issues as ownership of the mineral rights under the surface of their property. Also, in Michigan, as in most of the country, ownership over the mineral rights on a parcel of property can be separated from ownership over the land itself, and this fact is often not disclosed when a buyer goes through the home buying process. Consequently, it is estimated that many property owners don't know whether they own the mineral rights beneath their property or not.

Public Act 91 of 1993 created the Seller Disclosure Act to require the sellers of residential property to make certain written disclosures. The provisions of the act were designed to eliminate unpleasant surprises for potential buyers -- especially inexperienced ones -- by requiring that sellers provide them with certain information on items included in the property, such as their condition; structural defects and hazardous materials on the property; easements; and other matters, including whether there are any area environmental concerns such as proximity to a landfill. However, currently, there is no provision on this form requiring the disclosure of mineral rights that may or may not have been sold.

While it is a buyer's responsibility to be aware of what he or she is purchasing, most people don't look for information regarding mineral rights -- either because it hasn't occurred to them that they may exist, or because they don't know these rights can be severed from the rest of the property. The bill would alert such buyers to the possibility that mineral rights might be entailed in their purchase. Moreover, the bill would grandfather in old forms that were printed before the bill's effective date, so that realtors could use these until new forms were printed.

For:

A major problem concerning subsurface mineral rights involves the purchase of vacant parcels of land. These parcels, often purchased for investment purposes or for vacation homes, are most often located in northern

Michigan, where large deposits of coal, oil, natural gas, or other valuable minerals exist under the surface of the land. It is the potential purchasers of these properties who need to be alerted to the value of subsurface mineral rights. The bill provides for a separate seller disclosure form for a seller of vacant land. A seller disclosure form for vacant land should be beneficial in other ways for prospective buyers. For example, under the "Other Items" category, question number 8 -- "Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.?" -- contains information that would be helpful to a prospective purchaser in search of property for a vacation home.

Against:

One concern that has been raised by real estate interests is that the seller disclosure form is already too long, and that the addition of another piece of information will result in prospective purchasers overlooking the reference to mineral rights.

Response:

The seller disclosure form is no longer and no more complicated than the other legal documents that accompany a real estate sale or a mortgage. In any case, most prospective purchasers have these forms examined by their attorneys.

POSITIONS:

The Department of Environmental Quality supports the bill. (9-1-98)

The Michigan Land Use Institute supports the bill. (9-1-98)

The Michigan Environmental Council supports the bill. (9-1-98)

The Michigan United Conservation Clubs (MUCC) supports the bill. (9-1-98)

The Michigan Municipal League has no position on the bill. (9-1-98)

The Michigan Association of Realtors opposes the bill. (9-2-98)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.