

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5709

(As passed the House, May 25, 2000)

A bill to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts " by amending sections 61503b, 61503c, and 76111 (MCL 324.61503b, 324.61503c, and 324.76111) section 61503b as added by 1999 PA 246, section 61503c as added by 1999 PA 247, and section 324.76111 as added by 1995 PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 61503b. (1) A person who enters into a gas lease as a
2 lessee after ~~the effective date of this section~~ MARCH 28, 2000
3 shall not deduct from the lessor's royalty any portion of post-
4 production costs unless the lease explicitly allows for the
5 deduction of post production costs. If a lease explicitly pro-
6 vides for the deduction of post production costs, the lessee may
7 only deduct post production costs for the following items, unless
8 the lease explicitly and specifically provides for the deduction
9 of other items:

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1 (a) The reasonable costs of removal of carbon dioxide(CO2),
2 hydrogen sulfide (H2S), molecular nitrogen (N2), or other con-
3 stituents, except water, the removal of which will enhance the
4 value of the gas for the benefit of the lessor and lessee.

5 (b) Transportation costs after the point of entry into any
6 of the following:

7 (i) An independent, non affiliated, third-party-owned pipe-
8 line system.

9 (ii) A pipeline systemowned by a gas distribution company
10 or any subsidiary of thegas distribution company, which is regu-
11 lated by the Michiganpublic service commission.

12 (iii) An affiliated pipeline system, if the rates chargedby
13 the pipeline system have been approved by the Michiganpublic
14 service commission, or if the rates charged are reasonable,as
15 compared to independent pipeline systems, based on thepipeline
16 system's location, distance, cost of service, and otherpertinent
17 factors.

18 (2) A lesseeshall not charge postproduction costs incurred
19 on gas producedfrom 1 drilling unit, pooled or communitized
20 area, or unit areaagainst a lessor's royalty for gas produced
21 from another drillingunit, pooled or communitized area, or unit
22 area. As used in thissubsection, "unit area" means the forma-
23 tion or formations thatare unitized and surface acreage that is
24 a part of the unitizedlands, as described in either of the
25 following:

26 (a) The plan for unit operations that is thesubject of the
27 supervisor's order as provided in section61706.

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1 (b) An applicable agreement providing for unit operations.

2 (3) If a person who has entered into a gas lease as a lessee

3 prior to or after ~~the effective date of this section~~ MARCH 28,

4 2000 charges the lessor for any portion of post production costs,

5 the lessee shall notify the lessor in writing of the availability

6 of the following information and if the lessor requests in writ-

7 ing to receive this information, the lessee shall provide the

8 lessor, in writing, a specific itemized explanation of all post-

9 production costs to be assessed.

10 (4) A division order or other document that includes provi-

11 sions that stipulate how production proceeds are distributed,

12 received by the lessor from the lessee, shall not alter or define

13 the terms of a lease unless voluntarily and explicitly agreed to

14 by both parties in a signed document or documents in which the

15 parties expressly indicate their intention to amend the lease. A

16 lessee shall not precondition the payment of royalties upon the

17 lessor signing a division order or other document that stipulates

18 how production proceeds are distributed, except as provided in

19 this subsection. As a condition for the payment of royalties

20 under a lease other than a lease granted by the state of

21 Michigan, a lessee or other payee shall be entitled to receive a

22 signed division order from the payee containing only the follow-

23 ing provisions, unless other provisions have been voluntarily and

24 explicitly agreed to by both parties in a signed document or doc-

25 uments in which the parties expressly indicate their intention to

26 waive the provisions of this subsection:

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1 (a) The effective date of the division order.

2 (b) A description of the property from which the oil or gas
3 is being produced and the type of production.

4 (c) The fractional or decimal interest in production, or
5 both, claimed by the payee, the type of interest, the certifica-
6 tion of title to the share of production claimed, and, unless
7 otherwise agreed to by the parties, an agreement to notify the
8 pay or at least 1 month in advance of the effective date of any
9 change in the interest in production owned by the payee and an
10 agreement to indemnify the payor and reimburse the pay or for pay-
11 ments made if the payee does not have merchantable title to the
12 production sold.

13 (d) The authorization to suspend payment to the payee for
14 production until the resolution of any title dispute or adverse
15 claim asserted regarding the interest in production claimed by
16 the payee.

17 (e) The name, address, and taxpayer identification number of
18 the payee.

19 (f) A statement that the division order does not amend any
20 lease or operating agreement between the interest owner and the
21 lessee or operator or any other contracts for the purchase of oil
22 or gas.

23 Sec. 61503c. (1) Notwithstanding section 61522, a person
24 who knowingly violates section 61503a or 61503b is responsible
25 for the payment of a civil fine of not more than\$1,000.00. A
26 default in the payment of a civil fine or costs ordered under
27 this section or an installment of the fine or costs may be

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1 remedied by any means authorized under the revised judicature act
2 of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

3 (2) The attorney general or the lessor of a gas lease with
4 respect to his or her lease may bring an action in circuit court
5 for injunctive relief or damages, or both, against a person who
6 violates section 61503a or 61503b.

7 (3) If a person who has entered into a gas lease as a lessee
8 violates section 61503a or 61503b, each day the violation contin-
9 ues constitutes a separate offense only for 5 days; thereafter,
10 each day the violation continues does not constitute a separate
11 offense. If a person who has entered into a gas lease as a
12 lessee violates section 61503a or 61503b and such a violation
13 affects more than 1 lessor having an interest in the same well,
14 pooled unit, or unitized area, the violation as to all lessors
15 ~~shall constitute~~ CONSTITUTES only 1 offense.

16 (4) If a court finds that a lessee deducted post production
17 costs from a lessor's royalty contrary to section 61503b(1), the
18 lessor may recover as damages the amount of post production costs
19 deducted contrary to section 61503b(1) AND MAY ALSO RECOVER REA-
20 SONABLE ATTORNEY FEES INCURRED IN BRINGING THE ACTION UNLESS THE
21 LESSEE ENDEAVORED TO CURE THE ALLEGED VIOLATION PURSUANT TO SUB-
22 SECTION (5) PRIOR TO THE BRINGING OF THE ACTION. In addition, a
23 ~~party~~ LESSEE who prevails in litigation under this subsection
24 may recover reasonable attorney fees incurred in ~~bringing~~
25 DEFENDING an action under this subsection, if the court finds
26 that the position taken by the ~~nonprevailing party~~ LESSOR in
27 the litigation was frivolous.

1 (5) A person shall not bring an action under this section
 2 unless the person has first given the lessee written notice of
 3 the alleged violation of section 61503a or 61503b, with reason-
 4 ably comprehensive details, and allowed a period of at least 30
 5 days for the lessee to cure the alleged violation.

Sec. 76111. (1) ~~The~~ SUBJECT TO SUBSECTION (7). THE department OF ENVIRONMENTAL QUALITY shall establish Great Lakes bottomlands preserves by rule. A Great Lakes bottomlands preserve shall be established by emergency rule if it is determined by the department that this action is necessary to immediately protect an object or area of historical or recreational value.

(2) A Great Lakes bottomlands preserve may be established whenever a bottomlands area includes a single watercraft of significant historical value, includes 2 or more abandoned watercraft, or contains other features of archaeological, historical, recreational, geological, or environmental significance. Bottomlands areas containing few or no watercraft or other features directly related to the character of a preserve may be excluded from preserves.

(3) In establishing a Great Lakes bottomlands preserve, the department OF ENVIRONMENTAL QUALITY shall consider all of the following factors:

(a) Whether creating the preserve is necessary to protect either abandoned property possessing historical or recreational value, or significant underwater geological or environmental features.

(b) The extent of local public and private support for creation of the preserve.

(c) Whether a preserve development plan has been prepared by a state or local agency.

(d) The extent to which preserve support facilities such as roads, marinas, charter services, hotels, medical hyperbaric facilities, and rescue agencies have been developed in or are planned for the area.

(4) The department OF ENVIRONMENTAL QUALITY and the secretary of state shall not grant a permit to recover abandoned artifacts within a Great Lakes bottomlands preserve except for historical or scientific purposes or when the recovery will not adversely affect the historical, cultural, or recreational integrity of the preserve area as a whole.

(5) An individual Great Lakes bottomlands preserve shall not exceed 400 square miles in area. Great Lakes bottomlands preserves shall be limited in total area to not more than 10% of the Great Lakes bottomlands within this state. HOWEVER, THE LIMITATIONS PROVIDED IN THIS SUBSECTION DO NOT APPLY TO THE THUNDER BAY GREAT LAKES BOTTOMLAND PRESERVE ESTABLISHED IN SUBSECTION (7).

(6) Upon the approval of the committee, not more than 1 vessel associated with Great Lakes maritime history may be sunk intentionally within a Great Lakes bottomlands preserve. However, state money shall not be expended to purchase, transport, or sink the vessel.

(7) THE THUNDER BAY GREAT LAKES STATE BOTTOMLAND PRESERVE ESTABLISHED UNDER R 299.6001 OF THE MICHIGAN ADMINISTRATIVE CODE SHALL HAVE BOUNDARIES IDENTICAL WITH THOSE DESCRIBED IN 15 C.F.R. 922.190 FOR THE THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE. AS LONG AS THE THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE REMAINS A DESIGNATED NATIONAL MARINE SANCTUARY, THE RIGHT AND PRIVILEGE TO EXPLORE, SURVEY, EXCAVATE, AND REGULATE ABANDONED PROPERTY OF HISTORICAL OR RECREATIONAL VALUE FOUND UPON OR WITHIN THE LANDS OWNED BY OR UNDER CONTROL OF THE STATE WITHIN THOSE BOUNDARIES SHALL BE JOINTLY MANAGED AND REGULATED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION. HOWEVER, THIS SUBSECTION SHALL NOT BE CONSTRUED TO CONVEY ANY OWNERSHIP RIGHT OR INTEREST FROM THE STATE TO THE FEDERAL GOVERNMENT OF ABANDONED PROPERTY OF HISTORICAL OR RECREATIONAL VALUE FOUND UPON OR WITHIN THE LANDS OWNED BY OR UNDER CONTROL OF THE STATE.