

Act No. 441
Public Acts of 2000
Approved by the Governor
January 9, 2001
Filed with the Secretary of State
January 9, 2001
EFFECTIVE DATE: January 9, 2001

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Rep. DeVuyst

ENROLLED HOUSE BILL No. 5709

AN ACT 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 76111 as added by 1995 PA 58.

The People of the State of Michigan enact:

Sec. 61503b. (1) A person who enters into a gas lease as a lessee after March 28, 2000 shall not deduct from the lessor's royalty any portion of postproduction costs unless the lease explicitly allows for the deduction of postproduction costs. If a lease explicitly provides for the deduction of postproduction costs, the lessee may only deduct postproduction costs for the following items, unless the lease explicitly and specifically provides for the deduction of other items:

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

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

(i) An independent, nonaffiliated, third-party-owned pipeline system.

(ii) A pipeline system owned by a gas distribution company or any subsidiary of the gas distribution company, which is regulated by the Michigan public service commission.

(iii) An affiliated pipeline system, if the rates charged by the pipeline system have been approved by the Michigan public service commission, or if the rates charged are reasonable, as compared to independent pipeline systems, based on the pipeline system's location, distance, cost of service, and other pertinent factors.

(2) A lessee shall not charge postproduction costs incurred on gas produced from 1 drilling unit, pooled or communitized area, or unit area against a lessor's royalty for gas produced from another drilling unit, pooled or communitized area, or unit area. As used in this subsection, "unit area" means the formation or formations that are unitized and surface acreage that is a part of the unitized lands, as described in either of the following:

(a) The plan for unit operations that is the subject of the supervisor's order as provided in section 61706.

(b) An applicable agreement providing for unit operations.

(3) If a person who has entered into a gas lease as a lessee prior to or after March 28, 2000 charges the lessor for any portion of postproduction costs, the lessee shall notify the lessor in writing of the availability of the following

information and if the lessor requests in writing to receive this information, the lessee shall provide the lessor, in writing, a specific itemized explanation of all postproduction costs to be assessed.

(4) A division order or other document that includes provisions that stipulate how production proceeds are distributed, received by the lessor from the lessee, shall not alter or define the terms of a lease unless voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to amend the lease. A lessee shall not precondition the payment of royalties upon the lessor signing a division order or other document that stipulates how production proceeds are distributed, except as provided in this subsection. As a condition for the payment of royalties under a lease other than a lease granted by the state of Michigan, a lessee or other payor shall be entitled to receive a signed division order from the payee containing only the following provisions, unless other provisions have been voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to waive the provisions of this subsection:

(a) The effective date of the division order.

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

(c) The fractional or decimal interest in production, or both, claimed by the payee, the type of interest, the certification of title to the share of production claimed, and, unless otherwise agreed to by the parties, an agreement to notify the payor at least 1 month in advance of the effective date of any change in the interest in production owned by the payee and an agreement to indemnify the payor and reimburse the payor for payments made if the payee does not have merchantable title to the production sold.

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

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

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

Sec. 61503c. (1) Notwithstanding section 61522, a person who knowingly violates section 61503a or 61503b is responsible for the payment of a civil fine of not more than \$1,000.00. A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

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

(3) If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b, each day the violation continues constitutes a separate offense only for 5 days; thereafter, each day the violation continues does not constitute a separate offense. If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b and such a violation affects more than 1 lessor having an interest in the same well, pooled unit, or unitized area, the violation as to all lessors constitutes only 1 offense.

(4) If a court finds that a lessee deducted postproduction costs from a lessor's royalty contrary to section 61503b(1), the lessor may recover as damages the amount of postproduction costs deducted contrary to section 61503b(1) and may also recover reasonable attorney fees incurred in bringing the action unless the lessee endeavored to cure the alleged violation pursuant to subsection (5) prior to the bringing of the action. In addition, a lessee who prevails in litigation under this subsection may recover reasonable attorney fees incurred in defending an action under this subsection, if the court finds that the position taken by the lessor in the litigation was frivolous.

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

Sec. 76111. (1) 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.

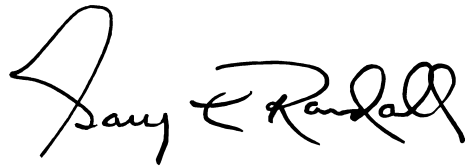
(4) The department of environmental quality and the secretary of state shall not grant a permit to recover abandoned artifacts within a Great Lakes bottomlands preserve except for historical or scientific purposes or when the recovery will not adversely affect the historical, cultural, or recreational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

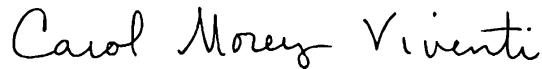
(6) Upon the approval of the committee, not more than 1 vessel associated with Great Lakes maritime history may be sunk intentionally within a Great Lakes bottomlands preserve. However, state money shall not be expended to purchase, transport, or sink the vessel.

(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.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.