

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3003

2005 HOUSE NATURAL RESOURCES

HCR 3003

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3003

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 20, 2005

| Tape Number | Side A | Side B | Meter # |
|---|----------------------|--------------------|-------------------|
| 2 | x | | 530 - 1700 |
| (Note: The tape did | not record. There is | no taped record of | of this hearing.) |
| | | | |
| Committee Clerk Signature <i>Loren Bonnet</i> | | | |

Chr. Nelson: I will open the hearing on HCR 3003, (directing the Legislative Council to study taxation of severed mineral interests including the laws in other states and problems associated with severed mineral interests.) Roll was taken, Rep. Charging absent (at Senate Hearing). Bill was read aloud. Is there testimony in support of HCR 3003?

Rep. Rodney Froelich: Severed mineral interests are difficult and expensive to track I will give you an example. My father sold minerals to a man from Chicago who sold them to 30 others. There are no addresses; to lease is impossible. It encumbers abstracts, especially outdated abstracts. When notices are sent, you don't always get the return mail. Some individuals may be dead. ND has had statutory provisions for termination of unused severed mineral interests, but it's not certain whether it is accomplishing the intended purpose. This bill is asking for a study of taxation of several mineral interests, not just in ND, but also investigating the laws in other states and any problems associated with it. I would ask you to look at your abstracts. If you have severed mineral interests, you may have a nightmare. Some are over 50 years old, and people are

deceased. It's important to try and get the minerals back into the landowner's hands. In an example near (the reservation) this summer, a landowner agreed to sell land to the tribe, but when they discovered that there were no minerals, that they had been severed to the state, the tribe wouldn't buy the land. The state owns a lot of minerals from the 1930's, '40's, and '50's. Some have produced some badly encumbered abstracts.

Chr. Nelson: Are there questions for Mr. Froelich? Seeing none, thank you. Is there further testimony in support of HCR 3003?

Brian Kramer, ND Farm Bureau: Members have several policies dealing with severed mineral rights. It's upsetting how it affects them and their operations. Any improvement would be of help to landowners. We support HCR 3003.

Chr. Nelson: Are there questions for Brian? Seeing none, thank you, Brian. Is there further testimony in support of HCR 3003? Seeing none, I will take opposition to HCR 3003.

Brian Bjella, representing ND Landman's Assoc.: We oppose this bill. Our landmen research records, identify owners, and go get leases. We oppose for several reasons. If minerals were severed 50-plus years ago, there is no going back. These are property rights and the minerals now belong to others. Severed minerals are taxed when there is production. Non producing minerals are of little value. There were two attempts in the 1940's to place a tax on severed minerals and both were found unconstitutional. It is also an administrative burden for county commissioners to administrate. The issue was extensively studied during an interim Legislative Council study in 1981, but no proposals came about. Many mineral owners leave some tracks. There is no problem if they can't be found. Other laws like the Dormant Mineral Act and the Surface Act were used on several occasions. They are the best laws I've seen. About 1981, the

Dormant Mineral Law was found constitutional by the U.S. Supreme Court. Also, trust laws are available whereby a trustee could be appointed to lease the minerals for an absentee owner. Our position is that a study of taxation would be enormous. There are already good laws on the books.

Chr. Nelson: Mr. Bjella, is this a problem in other states? Are you aware of ways that severed mineral rights are dealt with? What do other states do?

Bjella: They mostly use the dormant mineral laws. ND passed one in 1985 and to my knowledge, it works.

Chr. Nelson: Are there further questions for Mr. Bjella? Seeing none, is there further testimony in support of HCR 3003?

Ron Ness, representing the American Petroleum Institute: I have studied this problem and concur with Mr. Bjella. I have dealt with the legislature in South Dakota and they see the ND Dormant Mineral Act as the answer.

Chr. Nelson: Are there questions for Mr. Ness? Thank you. Is there further testimony in opposition to HCR 3003?

Rep. Frank Wald: I served on this issue in an interim study in 1979. In 1923, an annual state tax of three cents on each severed mineral acre was levied. Then the Supreme Court declared it unconstitutional. In 1947, the Legislative Assembly again attempted to tax severed mineral acres and again it was found unconstitutional. In 1953, they attempted again, and it passed both houses. The governor vetoed the bill. (See attached 1981 document from the Judiciary "B" Committee.) This deals primarily with taxation. Minerals can't be severed without using due

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process. We made a sincere effort in the 1979-80 interim. We took the testimony of legal experts throughout the country. There is no way to tax severed minerals.

Chr. Nelson: Are there questions of Mr. Wald? Seeing none, thank you. Is there further testimony opposing HCR 3003? Seeing none, I will close the hearing on HCR 3003.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3003

House Natural Resources Committee

☐ Conference Committee

Hearing Date: January 20, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------------------|----------------|---------|
| (Note: There are no | taped minutes from | this hearing.) | |
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| Committee Clerk Signature <i>Karen Bonnet</i> | | | |

Chr. Nelson: We will now take up HCR 3003, discussed at hearing this morning. Roll, 1

Absent. What are the committee's wishes?

Rep. DeKrey: Motion for Do Not Pass.

Rep. Nottestad: Second

Chr. Nelson: A motion for Do Not Pass has been made and seconded. Is there discussion?

1981 was the last study on this issue, there is no change.

Rep. Johnson: Its not right to control mineral values by tax. How does one get a handle on it when minerals get passed to heirs? Some trust lands have lain for over 100 years, a lot of money has been spent to send out letters to which there is often no response. The situation should be studied and addressed.

Chr. Nelson: We often take the word of industry as to how well things are working. As the resolution is written, the taxing authority area had the most concern by the numbers of opposition. Is there further discussion?

Rep. Drovdal: There are procedures for abandoned minerals. I believe the state ends up with them. At least two bills are being introduced so we will continue to learn more.

Rep. Charging: I was absent this morning, could you reflect back on the testimony?

Rep. Johnson: Not in detail. They discussed how minerals and lands were passed down in families, often with many owners of different size acreages, people move or die, and how our state treats abandoned minerals as well as how it's handled in other states. ND has had provisions for termination of unused severed mineral interests when owners can't be found.

Rep. Drovdal: Trust lands or land in trust ...

Chr. Nelson: People often don't realize they have mineral rights. They may have been inherited or passed down but the family has moved away. The land owner has considerable expense trying to locate absent mineral owners.

Chr. Nelson: There was an example given of lands that an individual wanted to sell recently to the tribe but when the state would not release the mineral rights, the tribe wouldn't buy the land and the individual couldn't sell his land.

Rep. Charging: I understand, because the BIA has to address many of similar problems, water, hay property, etc., with numerous owners. A little piece of hay property may have over 100 owners. Was there any testimony in favor of this bill?

Chr. Nelson: Rep. Froelich and Brian Kramer of the ND Farm Bureau gave testimony. I have a suggestion on Line 19 of the resolution, "that Legislative Council study "taxation of." If we strike "taxation," that might resolve it. Since we have a **Do Not Pass** on the table, we need to defeat it. Are there further questions? Seeing none, I will ask the clerk to take a roll call vote.

VOTE 1: 6-Ayes; 7-Nays; 1-Absent; Carrier: Nelson; Vote Failed.

Chr. Nelson: The Do Not Pass motion failed, what is the committee's wishes?

Rep. Johnson: We could amend it and take out "taxation" in Line 19.

Rep. Solberg: Instead of "taxation of," add "issue" on Line 1.

Chr. Nelson: Do you mean on Line 1 and 19, strike "taxation of." Do you want "issue" added?

Rep. Solberg: No, just strike "taxation of" in both lines.

Rep. Johnson: I make a motion for Do Pass as Amended.

Rep. Solberg: Second.

Chr. Nelson: A motion has been made and seconded. I will take a voice vote. Carried. What are the committee's wishes?

Rep. Johnson: Do Pass As Amended.

Rep. Solberg: Second

Rep. DeKrey: It was a bad study, now it's worse. The author's intent was to study taxation. I would vote against this.

Rep. Drovdal: My area adamantly opposes it. I'd vote no, too.

Rep. Keiser: Rep. DeKrey, if they study the whole issue, they can still study taxation issues.

Chr. Nelson: Are there further comments? Seeing none, I'd ask the clerk to call a roll Call Vote for **Do Pass As Amended** on HCR 3003. With that I will close the hearing on HCR 3003.

VOTE 2: 8-Yeas; 5-Nays; 1-Absent; Carrier: Johnson

January 20, 2005

VRC
1/21/05

HOUSE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3003 **NAT. RES 1-21-0**

Page 1, line 1, remove "taxation of"

Page 1, line 19, remove "taxation of"

Renumber accordingly

Date: 1/20/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3003

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number :

Action Taken : Do Not Pass

Motion Made By : De Krey Seconded By : Nottestad

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|---------------------|-----|----|
| Chairman - Rep. Jon O. Nelson | | ✓ | Rep. Lyle Hanson | ✓ | |
| Vice Chairman - Todd Porter | | | Rep. Bob Hunsakor | | ✓ |
| Rep. Dawn Marie Charging | | ✓ | Rep. Scot Kelsh | | ✓ |
| Rep. Donald L. Clark | | ✓ | Rep. Dorvan Solberg | | ✓ |
| Rep. Duane DeKrey | ✓ | | | | |
| Rep. David Drovdal | ✓ | | | | |
| Rep. Dennis Johnson | | ✓ | | | |
| Rep. George J. Keiser | ✓ | | | | |
| Rep. Mike Norland | ✓ | | | | |
| Rep. Darrell D. Nottestad | ✓ | | | | |
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Total (Yes) 6 No 7

Absent 1

Floor Assignment Rep. Jon Nelson

If the vote is on an amendment, briefly indicate intent:

Date: 1/20/05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3003

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number : 53020.0101 Title .0200

Action Taken : No Pass as amended

Motion Made By : Johnson Seconded By : Solberg

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|--------|----|---------------------|-----|----|
| Chairman - Rep. Jon O. Nelson | ✓ | | Rep. Lyle Hanson | ✓ | |
| Vice Chairman - Todd Porter | Absent | | Rep. Bob Hunsakor | ✓ | |
| Rep. Dawn Marie Charging | ✓ | | Rep. Scot Kelsh | ✓ | |
| Rep. Donald L. Clark | ✓ | | Rep. Dorvan Solberg | ✓ | |
| Rep. Duane DeKrey | | ✓ | | | |
| Rep. David Drovdal | | ✓ | | | |
| Rep. Dennis Johnson | ✓ | | | | |
| Rep. George J. Keiser | | ✓ | | | |
| Rep. Mike Norland | | ✓ | | | |
| Rep. Darrell D. Nottestad | | ✓ | | | |
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Total (Yes) 8 No 5

Absent 1 - Porter

Floor Assignment Johnson

If the vote is on an amendment, briefly indicate intent:

Pg 1, Ln 19, strike "taxation of"
Pg 1, Ln 1, remove "taxation of"

REPORT OF STANDING COMMITTEE (410)
January 24, 2005 12:56 p.m.

Module No: HR-15-0916
Carrier: D. Johnson
Insert LC: 53020.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HCR 3003: Natural Resources Committee (Rep. Nelson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HCR 3003 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "taxation of"

Page 1, line 19, remove "taxation of"

Renumber accordingly

2005 TESTIMONY

HCR 3003

the state being ordered to pay attorney's fees under the Federal Civil Rights Act.

As an alternative to the committee proposal, the assistant attorneys general proposed establishing a special fund to defend state officers and employees for alleged negligence, wrongful acts, errors or omissions while acting in their official capacities or within the scope of employment.

The committee adopted the group proposal. The bill would establish a special fund administered by the Attorney General for the defense of claims against state officers and employees.

The Attorney General would have the option of providing a defense through a staff attorney, through outside legal counsel, or by asserting the state's right under any insurance policy which requires the insurance company to provide the defense.

The fund could be used to provide a defense, to pay reasonable attorney's fees, costs, attorney's fees awarded against the state official or employee, and other expenses necessarily incurred in the defense of a claim. The fund could not be used, however, for the payment of any money damages resulting from a judgment against the officer or employee. A statement is additionally included that the intent is not to waive the state's sovereign immunity in any manner. The fund would not be subject to cancellation under Section 54-44.1-11 at the close of a biennium.

State agencies would still be authorized to insure against claims against the state or any state officer or employee. If insurance were purchased, the purchaser would waive immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of the coverage.

Section 32-12.1-15 which presently authorizes an agency to purchase liability insurance for protection of the agency and any state employee, and which provides for the defense of any uninsured agency by the Attorney General would be repealed. This is done to remove the provisions relating to state officers and employees from the Political Subdivisions Liability Act.

Political Subdivision Proposal

The North Dakota Supreme Court in the Kitto v. Minot Park District decision held "that governmental bodies, other than the state government, are subject to suit for damages to individuals injured by the negligent or wrongful acts or omissions of their agents and employees."

The temporary Political Subdivision Liability Act passed in the 1975 Legislative Session as a result of the Kitto decision provided for bringing a claim against the political subdivision directly for injuries proximately caused by the negligence or wrongful act or omission of an employee within the scope of his employment or office and additionally made the political subdivision liable for any money damages. When the permanent law (Chapter 32-12.1, NDCC) was passed in 1977, Section 32-12.1-04 provided instead that the governing body is to defend any claim against an employee where the political subdivision could otherwise be held liable. Section 32-12.1-03 provides that each political subdivision shall be liable for money damages for injuries when the injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of employment or office. Section 32-12.1-04 additionally provides that a political subdivision shall indemnify an employee under such circumstances. An employee is personally liable for money damages when injuries are prox-

imately caused by the negligence, wrongful act, or omission of the employee outside the scope of employment or office.

Testimony received by the committee concerned the reluctance of individuals to serve on political subdivision boards or to work for political subdivisions because of the fear of being named in a lawsuit for money damages resulting from acts or omissions within the scope of employment or office, even though eventual indemnity for any money judgment under such circumstances would be available to the officer or employee.

The North Dakota Association of Counties and the North Dakota League of Cities jointly recommended a bill to the committee to alleviate those concerns. The bill was adopted by the committee and amends Section 32-12.1-04 of the North Dakota Century Code to provide that an action for injuries proximately caused by the alleged negligence, wrongful act, or omission of a political subdivision official or employee occurring within the scope of employment or office is to be brought only against the political subdivision. If there is any question concerning whether the alleged negligence, wrongful act, or omission occurred within the scope of employment or office, the officer or employee could then be named as a party to the action and that issue could be tried separately. A political subdivision would be required to defend the employee until the court determines the employee was acting outside the scope of employment or office.

Additionally, an officer or employee would not be personally liable for money damages for injuries caused by his negligence, wrongful act, or omission while acting within the scope of employment or office.

Present law which provides that an officer or employee may be personally liable for money damages when the injuries are proximately caused by his negligence, wrongful act, or omission while acting outside the scope of employment or office would be retained.

SEVERED MINERAL INTEREST STUDY

Background

The Legislative Assembly has attempted to deal with problems caused by the severance of the mineral interest from the surface estate interest in real property on several occasions. However, all efforts to devise a means whereby severed mineral estates could be dealt with have failed. The North Dakota statutes presently contain several sections of law relating to severed mineral interests.

Section 57-02-04 defines "real property" for the purpose of taxation to include the land itself and "all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, and quarries in and under the same."

Originating in 1907 and with only minor changes since, Section 57-02-24 of the North Dakota Century Code provides:

"The assessor shall list for taxation all coal and other minerals underlying any lands the ownership of which has been severed from the ownership of the overlying strata, and shall assess such coal and other minerals to the owner in the county in which the same actually lie."

Section 57-02-25 provides:

"The county auditor at the time of furnishing the assessors with books and blanks for their assessments, shall give each assessor an accurate description of any lands the title to the coal or minerals in which is not in the person holding the title or fee to the overlying strata or land. Such list shall describe

accurately the land in which such coal or mineral reservations lie, giving the name of the holder of the title to such land and of the holder of the reserved mineral rights thereunder. The said list also shall describe accurately, when known and when possible, the location of the coal or minerals lying in such land and shall disclose the name of the person in whom the title to such minerals is reserved as provided herein. The register of deeds shall furnish the county auditor with such information as is contained in his office and as will enable the said auditor to prepare the lists described in this section."

Section 57-24-30 provides that if any holder of the title to coal or minerals, reserved after a sale of the overlying strata or land, neglects or refuses to pay any taxes legally assessed and levied thereon, the title is to be sold in the manner provided by law for the sale of real property for delinquent taxes. The county auditor is to notify the owner of the surface concerning such sale. The surface owner then has the right to match the highest bid and purchase the severed mineral interest within 10 days after the tax sale. Procedurally, however, attempts to tax severed mineral interests have not worked in North Dakota.

An annual state tax of three cents on each severed mineral acre was levied under a 1923 Act. The revenue from the tax was to be paid into the state general fund. If any tax remained unpaid for three years after it became due, the State Auditor was to notify all persons who appeared to be the owners of the mineral interests upon which the taxes became delinquent. The owners were to be notified concerning the amount of the tax and that unless it was paid within 30 days from the date of notice, proceedings would be instituted to declare the title to the mineral interest forfeited to the state. The state would then obtain the absolute mineral interest in fee and the rights of the former owner would entirely cease and terminate.

The North Dakota Supreme Court held that the Act was an arbitrary application of the taxing power. The court held property taxes must be levied with regard to the property value to be uniform or based on some other characteristic of the property which justifies the classification. The court found it unreasonable to provide for a classification for tax purposes based upon the severance of the mineral interest from that of the surface interest.

The Legislative Assembly again attempted to enact constitutionally a tax upon severed mineral rights in 1947. The North Dakota Supreme Court termed the enactment an excise tax for the privilege of holding severed mineral rights in real property separate from the surface rights. Since the tax was applied to severed mineral interests that were undeveloped and created by express reservation only, the court held the tax was an improper classification and unconstitutional.

Another attempt to tax severed mineral interests was made by the 1953 Legislative Assembly. The bill passed both houses but was vetoed by the Governor.

A formal study of severed mineral interests was undertaken by the 1967-69 interim Finance and Taxation Committee which recommended adoption of an abandoned property act. Under the recommendation, severed mineral interests would be declared abandoned unless:

1. The mineral interests had been assessed for real property taxation purposes separate from the surface estate, and the taxes were not delinquent.
2. Within the last 30 years, part or all of the severed mineral interest had been conveyed, leased, mortgaged, devised, or had produced minerals in paying quantities.

3. An affidavit had been filed of record indicating that the owner wished to maintain his ownership in the interest. Each affidavit would be effective for 10 years.

The bill passed the Senate but was defeated in the House.

Other proposals relating to taxation, registration, or forfeiture of severed mineral interests have been introduced during each legislative session since 1969.

Testimony and Committee Activity

The committee reviewed two projects relating to the discovery of severed mineral interests — one conducted in Foster County by the Foster County Commission and one project in Stark County conducted through the Tax Department.

The Foster County project involved one person working three months in which time one-third of the mineral interests in the county were identified at a cost of \$1,200 to \$1,500. The Stark County project consisted of investigating two townships, one within 20 miles on either side of the railroad where the mineral rights remain relatively intact, and the other township being outside that limit. Based on the Stark County investigation, the Tax Department estimates the cost of a statewide project for identifying mineral interests would cost between \$3.6 million to \$4 million.

The committee reviewed past North Dakota proposals relating to severed mineral interest taxation and registration and reviewed other states' laws relating to the same areas. The committee also investigated the possibility of imposing a mineral transfer tax.

Three bill drafts were also considered by the committee during the interim. One proposal would have prohibited the severance of mineral right ownership from surface ownership in real property in the state after the effective date of the Act. The bill was withdrawn from consideration because it seemed it would unconstitutionally interfere with a person's right to contract and to transfer property.

A second proposal would have required every owner of a fee simple severed mineral interest to file the instrument of conveyance or reservation with the register of deeds in the county in which the mineral interest is located. Additionally, the owner would be required to file a notarized statement for record setting forth information concerning the severed mineral interest.

The notarized statement of ownership would be required to be filed for record by July 1, 1982, for interests created or acquired on or before the effective date of the Act and, for interests created or acquired after the effective date, the statement would be required to be filed within one year. A filing fee of 10 cents per severed mineral acre would be required from each person filing a notarized statement of ownership with a minimum filing fee of \$10. Failure to comply with the Act's requirements for three years would cause forfeiture of the mineral interest. When forfeiture of the interest was declared by the district court, the surface owner would be given first option to purchase for the amount of fees due.

The third bill draft was based on a 1977 legislative proposal and had similar recording and statement of ownership requirements. A filing fee of \$5 plus an additional 50 cent fee for registering the first section of land and a 25 cent fee for registering each additional section of land would have been required. The county would be authorized to sell the severed mineral interest for any delinquent taxes due after notice and a hearing. Money from the forfeiture sales would be deposited in the state general fund.

DUE
PROCESS

A person claiming ownership of the severed mineral interest after the interest was sold and the proceeds turned over to the state would have the right to recover the fair market value of the severed mineral interest if an action were commenced within six years after the forfeiture.

Although the concept of severed mineral interest registration, forfeiture, and taxation was supported by the North Dakota Association of Soil Conservation Districts and various individuals, the proposals were opposed by various county officials, the North Dakota Register of Deeds Association, the North Dakota Association of Counties, and various oil and coal industry representatives.

The North Dakota Association of Counties and the Register of Deeds Association believe such a proposal would be too costly, complicated, and time consuming for any benefits derived. It was also believed that the register of deeds would in effect have to pass judgment on the validity of documents recorded and filed with their offices and would require judicial determinations. It was also pointed out that a county usually spends more money in a forfeiture sale than can be recovered from the actual sale of the property.

Oil and coal industry representatives believe that the

only real purpose for such proposed legislation would be to tax the value of the severed mineral interests and it was asserted that it is impossible to determine the value of minerals without exploring into the ground.

Oil industry representatives additionally pointed out that the oil industry does not find identification of severed mineral interests to be a problem. They said such interests are mostly owned by individuals and not by corporations. One estimate was that only 20 percent of the severed mineral interests are owned by people in the oil profession and only two percent by the large corporations. It was said large corporations manage their developments through mineral interest leases rather than by mineral interest purchases.

Several committee members, however, testified that there is a general feeling among property owners that present property taxes unfairly reflect the value of sub-surface minerals which in many cases the surface owner does not control or own. It is believed that the tax is the same whether the mineral rights are owned or not, and despite the fact that land with mineral rights intact usually brings a higher selling price.

The committee voted down all three proposals relating to severed mineral interests and makes no recommendations for legislative action.