

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 320

(Delegate Beitzel)

Environmental Matters

Education, Health, and Environmental Affairs
and Judicial Proceedings

Maryland Dormant Mineral Interests Act

This bill codifies certain provisions of the Uniform Dormant Mineral Interests Act, which establishes the criteria by which a severed mineral interest in real estate becomes dormant, authorizes the owner of the surface estate to bring an action to terminate the mineral interest, specifies who may preserve a mineral interest and how it may be preserved, and governs the disposition of a terminated mineral interest. On petition, and where the owner of a mineral interest is missing or unknown, the bill authorizes the appropriate circuit court to place the interest in trust for a period of five years during which time the trustee may lease the minerals to the owner of the surface estate.

Fiscal Summary

State Effect: State tax revenues may increase to the extent that the bill allows mining activity to increase on previously unused mineral interests.

Local Effect: Potential increase in local government expenditures to the extent that additional caseloads in the circuit courts and local land records offices cannot be handled with existing resources. Potential increase in Garrett County tax revenue, to the extent that any additional natural gas is extracted in the county.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “mineral” and “mineral interest” broadly and inclusively, without regard to chemical or physical form, or the legal interest in

ownership of the mineral. The bill does not, however, apply to any mineral interest held by federal, State, or local agencies, or tribal interests. The stated purpose of the bill is to make uniform the law governing dormant mineral interests among the states. The bill does not affect any other provision of law for clearing an abandoned mineral interest, does not affect water rights, and does not extend a contractually defined mineral interest of less than 20 years.

Beginning October 1, 2011, an owner of a surface estate may bring an action in circuit court to terminate a dormant mineral interest. A mineral interest is defined as dormant if the interest is unused and notice was not recorded for a period of 20 years or more before the date the action is brought. Use of the mineral interest is evidenced by (1) active mining operations on or below the surface estate; (2) payment of taxes on the interest or on a transfer or severance of the interest; (3) recordation of an instrument that evidences a claim to any part of the mineral interest; and (4) recordation of a judgment referencing the mineral interest. Disposal or storage of substances into the mineral estate is not use of the mineral interest.

The bill specifies who may record notice of a mineral interest, governs the contents of the recording, and defines the various ways in which a mineral interest may be identified by the act of recordation. The bill also specifies that the action brought in circuit court must comply with the procedures of an action to quiet title under the Real Property Article, and that the action may be maintained, whether or not the owner is unknown or missing.

If a mineral interest is unused for less than 40 years, the bill authorizes the holder of a mineral interest to dismiss an action to terminate and preserve his or her interest with a late recording of notice. The court is required to dismiss the action to terminate if the party seeking dismissal pays the reasonable litigation costs of the party seeking termination of the dormant mineral interest.

If the owner of the mineral interest is unknown or missing, the trustee appointed must hold the interest in trust for five years, after which time, if the trust is not contested and the trustee is unable to locate the owner the trustee may file a petition to terminate the trust and convey the severed mineral interest to the surface owners. The bill requires several steps be taken before an owner may be considered unknown or missing: (1) the records of the appropriate county must be searched; and (2) a diligent inquiry must be made in the vicinity of the owner's last known place of residence.

Once a court order terminates a dormant mineral interest, the interest merges into the surface estate. In situations of co-ownership of the surface estate, the mineral interest is merged in shares proportionate to the co-ownership interests. After the trust is terminated and the mineral interest is conveyed and merged, the trustee must pay the balance of proceeds from the trust to the surface estate owners and close the trust account.

Current Law/Background: Ownership of title to real estate means ownership of the various estates incident to the land including the surface estate and one or more mineral estates. Each of these estates can be conveyed or reserved as separate estates through transfer (or reservation) of the deeds. Separation of deeds to estates in the same land is known in property law as “severance.” Each estate is represented by independent “titles in severalty.”

Ownership of a severed mineral estate carries most of the same rights and duties as that of surface ownership. Title can be conveyed, devised by will, passed through inheritance, and leased. However, because mineral estates are not used for dwelling purposes, but rather are predicated on commercial exploitation, there are important differences in the way the law treats mineral estates. In particular, the legal principles of “abandonment” and “nonuser” have developed to keep valuable mineral interests from becoming dormant and falling into permanent disuse. This disuse is economically harmful to mining industries but, without these principles, is legally sanctioned because a mineral interest traditionally is not extinguished or otherwise forfeited merely because it is not used.

Maryland law does not contain a general mineral reversion statute to ensure unused mineral interests revert to the State as is common among states with historically significant mining industries. However, several mining provisions in the Environment Article govern the abandonment of certain mineral interests, albeit for the purpose of protecting public health and the environment from the effect of mine waste leakage. Several states, including Pennsylvania, have codified provisions of the Uniform Dormant Mineral Interests Act.

Local Fiscal Effect: Garrett County advises that the bill may result in greater extraction of natural gas from the Marcellus Shale Formation, a potentially rich source of natural gas that has recently attracted the attention of the energy industry. To the extent that actions under the bill are successful in terminating dormant mineral interests in Garrett County, collection of natural gas severance tax revenue will increase. However, Garrett County also advises that the additional actions under the bill will increase the burden on the circuit court and on the land records office due to a surge in inquiries as to the status of mineral interests. The effect on the land records offices in Garrett and Allegany counties may be greater than it otherwise would be in previous years due to the effect of proposed fiscal 2010 budget reconciliation legislation, which transfers \$25 million from the Circuit Court Real Property Records Improvement Fund.

Additional Information

Prior Introductions: A similar bill, HB 748 of 2009, passed the House with amendments, but did not receive a hearing in the Senate. Its cross file, SB 775, received a hearing by the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: SB 288 (Senator Edwards) - Education, Health, and Environmental Affairs and Judicial Proceedings.

Information Source(s): Allegany and Garrett counties, Department of Natural Resources, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Maryland Energy Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2010
mam/lgc Revised - House Third Reader/Clarification - March 25, 2010

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510