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November 5, 2020

Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

Representative Clay Schexnayder
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

**RE: SENATE CONCURENT RESOLUTION NO. 105 OF THE 2015 REGULAR
SESSION**

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to prescription of state mineral interests.

Sincerely,


Guy Holdridge
Director

cc: Senator Barrow Peacock

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov
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**LOUISIANA STATE LAW INSTITUTE
PRESCRIPTION COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SCR NO. 105 OF THE 2015 REGULAR SESSION**

Relative to the imprescriptibility of state mineral interests

Prepared for the
Louisiana Legislature on

November 5, 2020

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
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SENATE CONCURRENT RESOLUTION NO. 105

BY SENATORS GALLOT AND PEACOCK

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations regarding whether the Constitution of Louisiana should be amended to provide that mineral interests of the state, school boards, or levee districts should be subject to loss by prescription or other means, and that private purchasers of land belonging to the state, school boards, or levee districts should gain the ability to acquire the mineral interests in those lands upon prescription resulting from nonuse without interruption or other means.

WHEREAS, Article IX, Section 4, of the Constitution of Louisiana provides that lands and mineral interests of the state, a school board, or of a levee district shall not be lost by prescription except as authorized in certain exceptions; and

WHEREAS, mineral rights on property sold or otherwise transferred by these entities must be reserved to the entity; and

WHEREAS, private citizens or entities who purchase land from the state, a school board, or a levee district are therefore perpetually unable to acquire such mineral rights by prescription resulting from nonuse without interruption or other means, unlike transactions involving other property; and

WHEREAS, the Louisiana State Law Institute should study and report to the legislature its findings concerning whether the appropriate provisions of the Constitution of Louisiana should be revised to authorize mineral interests of the state, a school board, or a levee district to be subject to loss by prescription or other means and, if so, the wording of such revisions in the form of proposed legislation and appropriate text.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations regarding whether the Constitution of Louisiana should be amended to provide that mineral interests of the state, school boards, or levee districts should be subject to loss by

SCR NO. 105

ENROLLED

prescription or other means, and that private purchasers of land belonging to the state, school boards, or levee districts should gain the ability to acquire mineral interests in those lands upon prescription resulting from nonuse without interruption or other means.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

November 5, 2020

To: Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

Representative Clay Schexnayder
Speaker of the House of Representatives
P.O. Box 94062
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**REPORT TO THE LEGISLATURE IN RESPONSE TO SENATE
CONCURRENT RESOLUTION NO. 105 OF THE 2015 REGULAR SESSION**

Senate Concurrent Resolution No. 105 of the 2015 Regular Session urged and requested the Louisiana State Law Institute to “study and make recommendations regarding whether the Constitution of Louisiana should be amended to provide that mineral interests of the state, school boards, or levee districts should be subject to loss by prescription or other means, and that private purchasers of land belonging to the state, school boards, or levee districts should gain the ability to acquire the mineral interests in those lands upon prescription resulting from nonuse without interruption or other means.” Although no change is recommended to Louisiana law, the following report is a product of the study effort.

The Louisiana Constitution is clear in its statement that as a general matter mineral rights are reserved to the state in sales between the state and third parties. Moreover, the Louisiana Constitution also provides that the land and minerals of the state, a levee district, or the school board are not subject to prescription. In pertinent part, Article IX, Section 4 of the Constitution of Louisiana (1974) provides as follows:

Section 4. (A) Reservation of Mineral Rights. The mineral rights on property sold by the state shall be reserved, except when the owner or person having the right to redeem buys or redeems property sold or adjudicated to the state for taxes. The mineral rights on land, contiguous to and abutting navigable waterbottoms reclaimed by the state through the implementation and construction of coastal restoration projects shall be reserved, except when the state and the landowner having the right to reclaim or recover the land have agreed to the disposition of mineral rights, in accordance with the conditions and procedures provided by law.

(B) Prescription. Lands and mineral interests of the state, of a school board, or of a levee district shall not be lost by prescription except as authorized in Paragraph.¹ La. Const. Art. IX, Sec. 4 (1974).

The policy behind this constitutional provision seems to be one motivated by a financial desire on the part of the state to retain the valuable economic interest that mineral rights serve. The late Lee Hargrave has observed that “[i]t is of course true that an important interest of the state in regards to its lands, including beds of water bodies, is the revenue accruing from oil and gas production. This interest is reflected in article IX” of the Louisiana Constitution, which protects the state’s interest in these resources. Lee Hargrave, *“Statutory” and “Hortatory” Provisions of the Louisiana Constitution of 1974*, 43 La. L. Rev. 647 (1983).

Although the current constitutional provision was enacted as part of the 1974 constitutional revision, the same policy has existed in Louisiana for almost a century. The 1921 Constitution provided similarly:

[i]n all cases the mineral rights on any and all property sold by the State shall be reserved, except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the State for taxes.

La. Const. Art. IV, Sec. 2 (1921). Article 19, Section 16 of the 1921 Constitution of Louisiana provided that “[p]rescription shall not run against the State in any civil matter, unless otherwise provided in this Constitution or expressly by law.”² La. Const. Art. XIX, Sec. 16 (1921). Commentators have noted that the concept of imprescriptibility of mineral interests with respect to state-owned property is “not a new concept,” but that the 1974 Constitution expanded the concept to create “considerably more instances than in the past.” Luther McDougal III, *Louisiana Mineral Servitudes*, 61 Tul. L. Rev. 1097 (1987); *see also* Bret Adams et al., *Environmental and Natural Resource Provisions in State Constitutions*, 22 J. Land Resources & Env’tl. L. 73 (2002) (stating that “[s]ince 1921, Louisiana has reserved all mineral rights on property sold by the State, except those instances where individuals re-purchase, or redeem land sold to or adjudicated to the State for taxes.”). *See also* West Session Laws, 103rd Day Proceedings 2944 (Dec. 18, 1973).

¹ Section 4 also contains a Paragraph C, which states as follows:

(C) Exception. The legislature by act may direct the appropriate parish authority in Terrebonne Parish to transfer title and ownership as to certain lands near Bayou Dularge in Section 16 of Township 20 South, Range 16 East, which due to an error in the original governmental survey completed around 1838 until recently were thought to be within Section 9, to those persons who have possessed the property under good faith and just title for a minimum of ten years or to those who have acquired from them, reserving the mineral rights as just and sole compensation for the transfer. Consistent with the provisions of Article XIII, Section 3, the notice requirements of Article III, Section 13 are satisfied for an act passed as a companion to the act setting forth this Paragraph.

² The current Constitution also contains the same broad exemption of the applicability of prescription with respect to the State: “Prescription shall not run against the state in any civil matter, unless otherwise provided in this constitution or expressly by law.” La. Const. Art. XII, Sec. 13 (1974).

Louisiana courts have had many opportunities to apply both the previous 1921 and the current 1974 constitutional provisions regarding alienation or prescription of state-owned mineral interests. In *Lewis v. State*, 156 So. 2d 431 (La. 1963), the Louisiana Supreme Court found the provision of the 1921 Constitution prohibited alienation of state mineral interests to apply to a state land patent, despite the absence of an explicit reservation of mineral rights in the warrant. *Id.* Similarly, it also held that prescription was inapplicable and did not allow the grantee to obtain mineral rights on state land because “[t]he prescriptive statute must yield to the Constitution of 1921, which embodies the clearly stated public policy that mineral rights in all lands sold by the state must be reserved. The state cannot lose by prescription that which it cannot constitutionally alienate.” *Id.*

Moreover, under the 1921 Louisiana Constitution, “certain courts [have] held that although prescription did not run against the state it ran against state agencies.” A. N. Yiannopoulos, 2 La. Civ. L. Treatise, Property § 3:10 (5th ed. 2000). Other courts, however, found to the contrary and concluded that a levee board was “an arm of the executive branch of government for the purpose of carrying out a governmental function” and thus was “the ‘state’” for purposes of Article IV, Section 2 of the 1921 Constitution of Louisiana. *See Shell Oil Co. v. Board of Com'rs of Pontchartrain Levee Dist.*, 336 So. 2d 248 (La. App. 1 Cir. 1976).

Despite the divergent interpretations of the 1921 Constitution, the 1974 Constitution makes clear both land and mineral interests that belong to the “state,” “a school board,” or “a levee district” cannot be lost by prescription. La. Const. Art. IX, Sec. (4)(B) (1974). Although the original 1974 constitutional proposal created this imprescriptibility only with respect to the state, “floor amendments were adopted to include school boards and levee districts.” *See Hargrave, “Statutory” and “Hortatory,”* 43 La. L. Rev. 647. It has been observed that other governmental units, such as municipalities and police juries are not included and thus lands and mineral interests owned by those units in their private capacities are subject to prescription.³ *Id.*

Despite the broad applicability of Article IX, Section 4 of the Constitution of Louisiana, the Louisiana Supreme Court has confined it to its express terms and held that the inability of the state to convey mineral interests applies only to “sales” and not to a

³ Lands and mineral interests owned by governmental units in their public capacity would be imprescriptible by virtue of the inability of private persons to own public things under the Louisiana Civil Code. *See* A. N. Yiannopoulos, 2 La. Civ. L. Treatise, Property § 3:10 (5th ed. 2000) (“There is no constitutional provision declaring that public things belonging to a political subdivision of the state are imprescriptible. The imprescriptibility of such things is a consequence of their insusceptibility of private ownership under Article 450 of the Civil Code.”). The legislative history reveals that the ambit of Article IX, Section 4 received much discussion during the Constitutional Convention. In response to questions, the sponsor of the Section indicated that he “considered using the term ‘local governmental subdivisions’ in places of the terms ‘school boards’ but that he was concerned it might be too broad and include unintended entitles such as ‘special districts.’” *See* West Session Laws, 103rd Day Proceedings 2944 (Dec. 18, 1973).

compromise between the state and private party. In *American Lung Ass'n of Louisiana, Inc. v. State Mineral Board*, 507 So. 2d 184 (La. 1987), the Court declined to apply the constitutional provision to a suit by a donor to revoke a donation of land to the state in which the state agreed to settle the donor's suit by returning the land. The Court stated that "in this case there was a transaction or compromise, not a sale, nor an exchange of property, and that consequently La. Const. art. 9, § 4 does not affect the mineral interest in" the property. *Id.* See also *Plaquemines Parish Government v. Getty Oil Co.*, 673 So. 2d 1002 (La. 1996) (holding that the constitutional prohibition on alienating state mineral rights was inapplicable to a good faith compromise).

As a result of the above mandates in the Louisiana Constitution (as observed by the terms of Senate Concurrent Resolution No. 105), "private citizens or entities who purchase land from the state, a school board, or a levee district are ... perpetually unable to acquire such mineral rights by prescription ... or other means." Louisiana, however, is not alone in its constitutional prohibition on the state alienation of mineral interests. Several other states also maintain provisions prohibiting alienations of mineral interests in state property. See, e.g., Alaska Stat. § 38.05.125; Cal. Pub. Res. Code § 6401; Idaho Code § 47-701; Mont. Code § 77-2-304; N.Y. Cent. Code § 38-09-01 (requiring reservation of at least 50% of mineral interests in all state transferred lands); S.D. Codified Laws § 5-2-12; Utah Code Ann. § 65A-6-1; see also Timothy C. Dowd, *Oil and Gas Title Law – A Review of Fifth Common Problems – North Dakota*, 90 N.D. L. Rev. 289 (2014) ("Since June 28, 1960, in any transfer of original grant lands [in North Dakota], the state has reserved all minerals, including oil and gas."). And a number of states maintain general prohibitions on adverse possession of state lands. See, e.g., Paula R. Latovick, *Adverse Possession of Municipal Land: It's Time to Protect This Valuable Asset*, 31 U. Mich. J.L. Ref. 475 (1998) (stating that historically adverse possession has not run against federal and state governments). In fact, in a few states, "all land owned by cities and counties is expressly protected from adverse possession by statute," and other states grant limited protections for municipally owned land, such as land owned by municipalities in its public capacity. *Id.*

Moreover, the inability of private citizens to acquire ownership of state land or minerals does not take state-owned minerals out of commerce. Louisiana law contains detailed provisions for the leasing of state land to facilitate mineral transactions. "The State Mineral and Energy Board ... has authority to lease for the development and production of minerals, oil, gas, or alternative energy sources, any lands belonging to the state, or the title to which is in the public, including road beds, water bottoms, vacant state lands, and lands adjudicated to the state at tax sale." R.S. 30:124. "All proposals for mineral leases ... shall be submitted by application ... giving the description of the land, including a map, and submission of four hundred dollars, payable to the office of mineral resources." R.S. 30:125. "Upon receipt of an application [and] fee, the State Mineral and Energy Board may cause an inspection of the land to be made, including geophysical and geological surveys." R.S. 30:126. "After receiving the report of the inspection, the board may offer for lease all or part of the lands described in the application." *Id.* The Board must then publish a notice in the official journal and invite bids for leases on the land. *Id.* "The mineral board has authority to accept the bid most advantageous to the state and may

lease upon whatever terms it considers proper.” R.S. 30:127. *See generally* Nancy Saint-Paul, 4 Summers Oil and Gas § 50:22 (3d ed. 2015).

In conclusion, the rationale behind Article IX, Section 4 of the Constitution of Louisiana appears to be a financial one that was considered at the time of its adoption during the 1974 Constitutional Convention. Neither the rationale for the provision nor the relevant background circumstances seem to have changed significantly between that time and the present. The prohibition in Louisiana law against state alienation of mineral interests is also reflected in the laws of other states. State-owned minerals are kept in commerce by virtue of Louisiana’s mineral leasing statutes. In light of the above, no change is recommended either to existing legislation or to the Constitution of Louisiana regarding the inalienability or imprescriptibility of state mineral interests.