

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1697

5 By: Representative Pickett
6
7

For An Act To Be Entitled

9 AN ACT TO PERMIT SURFACE OWNERS TO ACQUIRE
10 DORMANT SEVERED MINERAL RIGHTS; TO REPEAL THE
11 PROVISION ALLOWING THE ASSESSOR TO FOREGO
12 COLLECTION OF THE AD VALOREM TAX ON MINERAL
13 INTERESTS WHEN THE COST EXCEEDS THE TAX OWED; TO
14 PROVIDE GUIDELINES FOR ASSESSING MINERAL RIGHTS;
15 TO ALLOW ASSESSMENT OF AD VALOREM TAX ON SEVERED
16 MINERAL RIGHTS TO BE MADE AGAINST THE WORKING
17 INTERESTS OWNER; AND FOR OTHER PURPOSES.

Subtitle

19 TO PERMIT SURFACE OWNER TO ACQUIRE
20 DORMANT SEVERED MINERAL RIGHTS, TO
21 PROVIDE GUIDELINES FOR ASSESSING MINERAL
22 RIGHTS, AND TO ALLOW ASSESSMENT OF TAX
23 ON SEVERED MINERAL RIGHTS AGAINST THE
24 WORKING INTERESTS OWNER.
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27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code Title 18, Chapter 60 is amended to add an
31 additional subchapter to read as follows:

32 18-60-1001. Title.

33 This subchapter shall be known and may be cited as the "Dormant Mineral
34 Interest Act".

35
36 18-60-1002. Findings and purpose.



1 (a) The public policy of this state is to enable and encourage
2 marketability of real property and to mitigate the adverse effect of a
3 dormant mineral interest that impedes the development and use of both the
4 surface estate and the mineral interests in real property.

5 (b) This subchapter shall be construed to effectuate its purpose to
6 provide a means for termination of a dormant mineral interest that impairs
7 the marketability of real property.

8
9 18-60-1003. Definitions.

10 As used in this subchapter:

11 (1)(A) "Mineral interest" means the interest or right created by
12 an instrument transferring, either by grant, assignment, reservation, or
13 otherwise, an interest of any kind in a mineral estate, however created and
14 regardless of form, whether absolute or fractional, divided or undivided,
15 corporeal or incorporeal.

16 (B) "Mineral interest" includes a fee simple or any lesser
17 interest in a mineral, regardless of character, or any kind of royalty,
18 production payment, executive right, nonexecutive right, leasehold, or lien,
19 in a mineral, regardless of character; and

20 (2) "Mineral" includes:

21 (A) Gas, oil, coal, or another gaseous, liquid, or solid
22 hydrocarbon;

23 (B) Oil shale;

24 (C) Cement material, sand and gravel, road material, or
25 building stone;

26 (D) A chemical substance;

27 (E) Gemstone;

28 (F) A metallic substance;

29 (G) Fissionable or nonfissionable ore;

30 (H) Colloidal or another clay;

31 (I) Steam or other geothermal resource; and

32 (J) Any other substance defined as a mineral by a law of
33 this state.

34
35 18-60-1004. Applicability.

36 (a) This subchapter does not apply to a mineral interest of:

1 (1) The United States or a Native American tribe, except to the
2 extent permitted by federal law; or

3 (2) This state, an agency, or a political subdivision of this
4 state, except to the extent permitted by state law other than this
5 subchapter.

6 (b) This subchapter does not affect water rights.

7
8 18-60-1005. Termination of severed mineral interest.

9 (a)(1) The surface owner of real property subject to a severed mineral
10 interest may bring an action to terminate a severed mineral interest if the
11 severed mineral interest is dormant.

12 (2) A severed mineral interest is dormant for the purpose of
13 this subchapter if the severed mineral interest:

14 (A) Is unused within the meaning of subsection (b) of this
15 section for a continuous period of twenty (20) years or more immediately
16 preceding commencement of the action to terminate the severed mineral
17 interest; and

18 (B) Has not been preserved under § 18-60-1006.

19 (3)(A) The action to terminate the severed mineral interest
20 shall be brought as an action to quiet title under § 18-60-501 et seq.,
21 except that the three-year redemption period under § 18-60-510 does not
22 apply.

23 (B) The action to terminate the severed mineral interest
24 may be brought whether or not the owner of the severed mineral interest or
25 the owner's whereabouts is known or unknown.

26 (C) Disability or lack of knowledge of any kind on the
27 part of any person does not suspend the running of the twenty-year period
28 under subdivision (a)(2)(A) of this section.

29 (b) For the purpose of this section, any of the following actions
30 taken by or under authority of the owner of a severed mineral interest in
31 relation to any mineral that is part of the severed mineral interests
32 constitutes use of the entire severed mineral interests:

33 (1)(A) An active mineral operation on or below the surface of
34 the real property or other property unitized or pooled with the real
35 property, including production, geophysical exploration, exploratory or
36 developmental drilling, mining, exploitation, and development, but not

1 including injection of a substance for the purpose of disposal or storage.

2 (B) An active mineral operation constitutes use of any
 3 severed mineral interest owned by any person in any mineral that is the
 4 object of the active mineral operation;

5 (2) Payment of taxes on a separate assessment of the severed
 6 mineral interest or of a transfer or severance tax relating to the severed
 7 mineral interest;

8 (3)(A) Recordation of an instrument that creates, reserves, or
 9 otherwise evidences a claim to or the continued existence of the severed
 10 mineral interest, including an instrument that transfers, leases, or divides
 11 the severed mineral interest.

12 (B) Recordation of an instrument constitutes use of:

13 (i) Any recorded interest owned by any person in any
 14 mineral that is the subject of the instrument; and

15 (ii) Any recorded severed mineral interest in the
 16 property owned by any party to the instrument; or

17 (4) Recordation of a judgment or decree that makes specific
 18 reference to the severed mineral interest.

19 (c) This section applies notwithstanding any provision to the contrary
 20 in the instrument that creates, reserves, transfers, leases, divides, or
 21 otherwise evidences the claim to or the continued existence of the severed
 22 mineral interest or in another recorded document unless the instrument or
 23 other recorded document provides an earlier termination date.

24
 25 18-60-1006. Preservation of a severed mineral interest by notice.

26 (a)(1) An owner of a severed mineral interest may record at any time a
 27 notice of intent to preserve a severed mineral interest for all or part of
 28 the severed mineral interest.

29 (2) The severed mineral interest is preserved in each county in
 30 which the notice of intent to preserve a severed mineral interest is
 31 recorded.

32 (3) A severed mineral interest is not dormant if the notice of
 33 intent to preserve a severed mineral interest is recorded:

34 (A) Within twenty (20) years immediately preceding
 35 commencement of the action to terminate the severed mineral interest; or

36

1 (B) Under § 18-60-1007 after commencement of the action to
2 terminate the severed mineral interest.

3 (b)(1) The notice of intent to preserve a severed mineral interest may
4 be executed by an owner of the severed mineral interest or by another person
5 acting on behalf of the owner, including an owner who is under a disability
6 or is unable to assert a claim on the owner’s own behalf or whose identity
7 cannot be established or is uncertain at the time of execution of the notice
8 of intent to preserve a severed mineral interest.

9 (2) The notice of intent to preserve a severed mineral interest
10 may be executed by or on behalf of a co-owner for the benefit of any co-owner
11 or by or on behalf of an owner for the benefit of any person claiming under
12 the owner or a person under whom the owner claims.

13 (c) The notice of intent to preserve a severed mineral interest shall
14 contain the name of the owner of the severed mineral interest or the co-
15 owners or other persons for whom the severed mineral interest is to be
16 preserved or, if the identity of the owner cannot be established or is
17 uncertain, the name of the class of which the owner is a member, and shall
18 identify the severed mineral interest or part of the severed mineral interest
19 to be preserved by one (1) of the following means:

20 (1) A reference to the location in the county recorder’s records
21 of the instrument that creates, reserves, or otherwise evidences the severed
22 mineral interest or of the judgment or decree that confirms the severed
23 mineral interest;

24 (2)(A) A legal description of the severed mineral interest.

25 (B) If the owner of a severed mineral interest claims the
26 severed mineral interest under an instrument that is not of record or claims
27 under a recorded instrument that does not specifically identify that owner:

28 (i) A legal description is not effective to preserve
29 a severed mineral interest unless accompanied by a reference to the name of
30 the record owner under whom the owner of the severed mineral interest claims;
31 and

32 (ii) The record of the notice of intent to preserve
33 the severed mineral interest must be indexed under the name of the record
34 owner as well as under the name of the owner of the severed mineral interest;
35 or

36 (3)(A) A reference generally and without specificity to any

1 severed mineral interest of the owner in any real property situated in the
2 county.

3 (B) The reference described in subdivision (c)(3)(A) of
4 this section is not effective to preserve a particular severed mineral
5 interest unless there is, in the county, in the name of the person claiming
6 to be the owner of the severed mineral interest a:

7 (i) Previously recorded instrument that creates,
8 reserves, or otherwise evidences the severed mineral interest; or

9 (ii) Judgment or decree that confirms the severed
10 mineral interest.

11

12 18-60-1007. Late recording by mineral owner.

13 (a) As used in this section, "litigation expenses" means costs and
14 expenses that a court determines are reasonably and necessarily incurred in
15 preparing for and prosecuting or litigating an action, including a reasonable
16 attorney's fee.

17 (b) In an action under this subchapter to terminate a severed mineral
18 interest, the court shall permit the owner of the severed mineral interest to
19 record a late notice of intent to preserve the severed mineral interest as a
20 condition of dismissal of the action, upon payment into court for the benefit
21 of the surface owner of the real property the litigation expenses
22 attributable to the severed mineral interest or portion of the severed
23 mineral interest as to which the notice of intent to preserve the severed
24 mineral interest is recorded.

25 (c) This section does not apply in an action to terminate a severed
26 mineral interest in which a severed mineral interest has been unused within
27 the meaning of § 18-60-1005(b) for a continuous period of forty (40) years or
28 more immediately preceding commencement of the action.

29

30 18-60-1008. Effect of termination.

31 A court order terminating a severed mineral interest merges the
32 terminated severed mineral interest, including express and implied
33 appurtenant surface rights and obligations, with the surface estate in shares
34 proportionate to the ownership of the surface estate, subject to any existing
35 lien for taxes or an assessment.

36

18-60-1009. Savings and transitional provisions.

(a) Except as otherwise provided in this section, this subchapter applies to any severed mineral interest, whether created before, on, or after the effective date of this subchapter.

(b) An action may not be brought under this subchapter to terminate a severed mineral interest until two (2) years after the effective date of this subchapter.

(c) This subchapter does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

SECTION 2. Arkansas Code § 26-26-1110 is amended to read as follows:

26-26-1110. Mineral rights.

(a)(1)(A) When the mineral rights in any land shall, by conveyance or otherwise, be held by one (1) or more persons, and the fee simple in the land by one (1) or more other persons, it shall be the duty of the assessor when advised of the fact, either by personal notice or by recording of the deeds in the office of the recorder of the county, to assess the mineral rights in the lands separate from the general property therein.

(B) The amount of the assessment shall be based upon the value of the mineral rights under guidelines established by the Director of the Assessment Coordination Department.

(C) The guidelines established by the Director of the Assessment Coordination Department shall include at a minimum the value of the mineral rights:

(i) As a burden on the surface estate;

(ii) Inherent as an interest in real property;

(iii) Based upon future discoveries of a mineral deposit or an advance in technology that make it economically feasible to extract a mineral deposit previously considered difficult or impossible to reach;

(iv) The remoteness in time or probability of any mineral deposit being extracted;

(v) That are comparable to other parcels with a similar use, geographical characteristic, and geological potential; and

(vi) For the production of a mineral.

1 (D)(i) In order to facilitate administrative efficiency,
 2 one hundred percent (100%) of the value of the mineral rights may be assessed
 3 to the working interest owner when a mineral is leased and producing.

4 (ii) The working interest owner may deduct a
 5 proportional amount of the property tax equal to the royalty owner's
 6 percentage from payments to the royalty owner.

7 (iii) As used in subdivision (a)(1)(D) of this
 8 section, "working interest owner" means the person or legal entity that owns
 9 the right to extract the mineral.

10 (iv) The director shall promulgate rules to
 11 implement this subdivision (a)(1)(D).

12 (2) In such case a sale of the mineral rights for nonpayment of
 13 taxes shall not affect the title to the land itself, nor shall a sale of the
 14 land for nonpayment of taxes affect the title to the mineral rights.

15 (b) When any mineral rights assessed as set out in subsection (a) of
 16 this section become forfeited on account of nonpayment of taxes, they shall,
 17 in all things, be certified to and redeemed in the same manner as is provided
 18 for the certification and redemption of real estate upon which taxes duly
 19 assessed have not been paid.

20 (c) When dormant severed mineral rights or interests are merged with
 21 the surface estate pursuant to an action taken under the Dormant Mineral
 22 Interest Act, § 18-60-1001 et seq.:

23 (1) Any mineral rights assessed in subsection (a) of this
 24 section before the merger remain with the surface estate under § 18-60-1008;
 25 and

26 (2) Following the merger, the separate assessment of the mineral
 27 rights under subsection (a) of this section shall cease.

28
 29 SECTION 3. Arkansas Code § 26-35-607 is repealed.

30 ~~26-35-607. Cost of collecting tax.~~

31 ~~(a) If the cost of collecting the ad valorem tax on mineral interests~~
 32 ~~exceeds the annual tax on the mineral interest, then the tax shall not be~~
 33 ~~billed or collected and no tax shall be owed. However, the collector shall~~
 34 ~~record the amount of the tax for accounting purposes.~~

35 ~~(b) As used in this section, the cost of collecting the ad valorem tax~~
 36 ~~on mineral interests shall be the amount determined by the Director of the~~

1 ~~Assessment Coordination Division of the Department of Finance and~~
2 ~~Administration as being a reasonable amount for the cost of collection.~~

3
4 SECTION 4. Arkansas Code § 26-35-705 is amended to read as follows:
5 26-35-705. Mailing tax statements.

6 (a) No later than July 1 of each year, the sheriff or county collector
7 shall be required to mail statements of taxes due by any taxpayer to the
8 address provided by the taxpayer.

9 (b) In the event that the address of the taxpayer changes, the
10 taxpayer ~~has an obligation to~~ shall furnish the sheriff or county collector
11 the correct address within thirty (30) days.