

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

As Engrossed: H3/12/07

A Bill

HOUSE BILL 1697

5 By: Representative Pickett
6 By: *Senator J. Taylor*
7

For An Act To Be Entitled

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

Subtitle

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

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

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

33 18-60-1001. Title.

34 This subchapter shall be known and may be cited as the "Dormant Mineral
35 Interest Act".
36



1 18-60-1002. Findings and purpose.

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

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

9
10 18-60-1003. Definitions.

11 As used in this subchapter:

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

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

21 (2) "Mineral" includes:

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

24 (B) Oil shale;

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

27 (D) A chemical substance;

28 (E) Gemstone;

29 (F) A metallic substance;

30 (G) Fissionable or nonfissionable ore;

31 (H) Colloidal or another clay;

32 (I) Steam or other geothermal resource; and

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

35
36 18-60-1004. Applicability.

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

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

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

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

8
9 18-60-1005. Termination of severed mineral interest.

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

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

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

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

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

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

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

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

34 (1)(A) An active mineral operation on or below the surface of
35 the real property or other property unitized or pooled with the real
36 property, including production, geophysical exploration, exploratory or

1 developmental drilling, mining, exploitation, and development, but not
2 including injection of a substance for the purpose of disposal or storage.

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

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

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

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

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

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

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

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

25
26 18-60-1006. Preservation of a severed mineral interest by notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3)(A) A reference generally and without specificity to any
2 severed mineral interest of the owner in any real property situated in the
3 county.

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

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

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

12
13 18-60-1007. Late recording by mineral owner.

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

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

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

30
31 18-60-1008. Effect of termination.

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

1
2 18-60-1009. Savings and transitional provisions.

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

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

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

12
13 SECTION 2. Arkansas Code § 26-26-1110 is amended to read as follows:

14 26-26-1110. Mineral rights.

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

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

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

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

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

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

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

1 land for nonpayment of taxes affect the title to the mineral rights.

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

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

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

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

15
16 SECTION 3. Arkansas Code § 26-35-607 is repealed.

17 ~~26-35-607. Cost of collecting tax.~~

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

22 ~~(b) As used in this section, the cost of collecting the ad valorem tax~~
23 ~~on mineral interests shall be the amount determined by the Director of the~~
24 ~~Assessment Coordination Division of the Department of Finance and~~
25 ~~Administration as being a reasonable amount for the cost of collection.~~

26
27 SECTION 4. Arkansas Code § 26-35-705 is amended to read as follows:

28 26-35-705. Mailing tax statements.

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

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

35
36 /s/ Pickett