



March 10, 2015

ENGROSSED HOUSE BILL No. 1617

DIGEST OF HB 1617 (Updated March 9, 2015 11:06 am - DI 92)

Citations Affected: IC 32-23.

Synopsis: Mineral estates of unknown or missing owners. Establishes a procedure that allows a person that: (1) is engaged in the production or development of a mineral; and (2) owns or leases a property interest in an area within the boundaries of a proposed production unit established by spacing regulations of the division of oil and gas, which the person seeks to develop, or the mineral estate adjacent to, adjoining, or contiguous to the mineral interest of an unknown or missing owner of the mineral interest; to bring an action in court that allows the person to enter into a lease to produce and develop the mineral interest of the unknown or missing owner.

Effective: Upon passage.

Sullivan, Heaton, Moseley

(SENATE SPONSOR — MESSMER)

January 22, 2015, read first time and referred to Committee on Natural Resources.
February 10, 2015, amended, reported — Do Pass.
February 12, 2015, read second time, ordered engrossed. Engrossed.
February 16, 2015, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 24, 2015, read first time and referred to Committee on Natural Resources.
March 9, 2015, reported favorably — Do Pass.

EH 1617—LS 7277/DI 69



March 10, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1617

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-23-13 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 13. Mineral Estates of Unknown or Missing Owners**

5 **Sec. 1. As used in this chapter, "adjacent mineral producer"**
6 **means a person that:**

7 (1) **is engaged in the production, development, or future**
8 **development of at least one (1) mineral, including coal, oil,**
9 **gas, or another mineral in solid, liquid, or gaseous form; and**
10 (2) **owns or leases a property interest in:**

11 (A) **the mineral estate adjacent to, adjoining, or contiguous**
12 **to the mineral interest of an unknown or missing owner;**

13 (B) **a portion of the mineral estate adjacent to, adjoining,**
14 **or contiguous to the mineral interest of an unknown or**
15 **missing owner; or**

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- 1 (C) an area that the person seeks to develop that is within
2 the boundaries of a proposed production unit established
3 by spacing regulations of the division of oil and gas.
- 4 **Sec. 2. As used in this chapter, "mineral interest of an unknown
5 or missing owner" means:**
6 (1) the mineral estate in land; or
7 (2) any portion of the mineral estate in land;
8 that is owned by an unknown or missing owner.
- 9 **Sec. 3. (a) As used in this chapter, "unknown or missing owner"
10 means a person:**
11 (1) vested of record or by operation of IC 32-23-10 with a
12 property interest in:
13 (A) a mineral estate in land; or
14 (B) a portion of a mineral estate in land; and
15 (2) whose identity or location cannot be determined:
16 (A) from the records in the chain of title in the county in
17 which the land is located;
18 (B) by diligent inquiry in the vicinity of the record owner's
19 last known place of residence or location; and
20 (C) from a search of tax records in the county in which the
21 property is located.
22 (b) The term includes the person's heirs and devisees and
23 successors and assigns.
- 24 **Sec. 4. An adjacent mineral producer that:**
25 (1) brings an action under; and
26 (2) meets the requirements of;
27 this chapter may produce and develop all or part of a mineral
28 interest of an unknown or missing owner under a lease entered into
29 under this chapter.
- 30 **Sec. 5. An action brought under this chapter by an adjacent
31 mineral producer must be brought in the circuit court or superior
32 court of the county:**
33 (1) in which the land that contains the mineral interest of an
34 unknown or missing owner sought to be affected is entirely
35 located; or
36 (2) if the land is located in more than one (1) county:
37 (A) the county where the largest part of the land is located;
38 or
39 (B) if equal parts of the land are in multiple counties, in
40 any county that contains an equal part of the land.
- 41 **Sec. 6. (a) An adjacent mineral producer that brings an action
42 under this chapter must do the following:**



- 1 **(1) Name the following as respondents:**
 2 **(A) The last owners of record in the chain of title and all**
 3 **reasonably ascertainable heirs, devisees, successors, and**
 4 **assigns of the last owners of record.**
 5 **(B) If record title to the mineral interest of an unknown or**
 6 **missing owner has been severed of record from ownership**
 7 **of the overlying surface land, the record owner of the**
 8 **overlying surface land. Any person named in this**
 9 **subdivision must be sent notice of the action by certified**
 10 **mail.**
 11 **(2) File a verified petition with the court that sets forth the**
 12 **following:**
 13 **(A) A statement that specifies the mineral that the**
 14 **petitioner seeks to develop in the subject land.**
 15 **(B) The petitioner's request that a trustee be appointed to**
 16 **execute a lease granting the petitioner the right to produce**
 17 **and develop from the subject mineral interest of the**
 18 **unknown or missing owner a mineral of the type produced**
 19 **by the adjacent mineral producer.**
 20 **(C) The legal description of the mineral interest of the**
 21 **unknown or missing owner.**
 22 **(D) The interest of the petitioner in the land adjacent to,**
 23 **adjoining the subject land, or within the production unit**
 24 **established by the division of oil and gas.**
 25 **(E) The apparent interest of each respondent in the**
 26 **applicable mineral sought to be produced and developed**
 27 **within the subject land.**
 28 **(F) A verified statement that informs the court of the**
 29 **actions the petitioner has taken to identify and locate the**
 30 **unknown or missing owner or the owner's heirs, devisees,**
 31 **successors, and assigns.**
 32 **(b) The Indiana Rules of Trial Procedure govern an action**
 33 **under this chapter to make an unknown or missing person a**
 34 **respondent. Legal service on a respondent who is unknown or**
 35 **missing may be made by publication.**
 36 **(c) The court shall appoint a guardian ad litem for any**
 37 **respondent to the proceeding who is:**
 38 **(1) a ward of the state or a ward to another person; or**
 39 **(2) less than eighteen (18) years of age and is not represented**
 40 **by a parent.**
 41 **(d) If it appears to the court that a person who is not in being,**
 42 **but, upon coming into being, is or may be entitled to any interest**



1 in the land sought to be leased, the court shall appoint a guardian
 2 ad litem to appear for and represent the interest in the proceeding
 3 and to defend the proceeding on behalf of the person not in being.
 4 A judgment or order entered by the court in a proceeding under
 5 this chapter is effective against the person not in being.

6 Sec. 7. (a) The court shall receive evidence and hear testimony
 7 concerning:

8 (1) the matters in the adjacent mineral producer's petition;
 9 and

10 (2) the prevailing terms of similar mineral leases of the type
 11 sought by the petitioner obtained in the vicinity of the land in
 12 the petition, including the length of the lease term, bonus
 13 money, delay rentals, royalty rates, and other forms of lease
 14 payments.

15 (b) If the court determines that the material allegations of the
 16 petition are true and that there has been compliance with the
 17 required notice provisions, the court:

18 (1) shall enter an order determining the interest of each
 19 respondent in the mineral interest sought to be leased; and

20 (2) may:

21 (A) declare a trust in the mineral interest of the unknown
 22 or missing owner;

23 (B) appoint, without a bond, a trustee for the unknown or
 24 missing owner; and

25 (C) authorize the trustee to execute a valid mineral lease:

26 (i) with the adjacent mineral producer concerning the
 27 type of mineral developed by the adjacent mineral
 28 producer on the mineral interest of the unknown or
 29 missing owner; and

30 (ii) on terms and conditions approved by the court.

31 (c) The court's judgment appointing a trustee and authorizing
 32 the execution of a lease must specify the minimum terms that may
 33 be accepted by the trustee. The terms must be substantially
 34 consistent with the terms of other similar mineral leases obtained
 35 in the vicinity as determined by the court.

36 (d) The court shall determine a reasonable fee to be paid to the
 37 trustee. The trustee's fee, including reasonable attorney's fees and
 38 costs of the proceeding, shall be paid by the adjacent mineral
 39 producer petitioner. Any other court costs related to the
 40 proceedings under this chapter shall be paid by the petitioner.
 41 However, each party shall pay its costs associated with issues
 42 arising under section 8 of this chapter.



1 (e) If a trustee:

- 2 (1) dies or resigns; or
3 (2) refuses or is unable to act;

4 the court, upon the court's motion or the motion of the petitioner,
5 shall appoint a successor trustee.

6 Sec. 8. (a) In proceedings under this chapter, the court may do
7 the following:

- 8 (1) Investigate and determine questions of conflicting or
9 controverted titles.
10 (2) Remove invalid and inapplicable encumbrances from the
11 title to the subject land.
12 (3) Establish and confirm the title to the subject mineral
13 estate in land or the right to produce and develop the mineral
14 from any of the subject land.

15 (b) The court may authorize the execution of a lease under this
16 chapter before any matters under subsection (a) have been
17 determined.

18 Sec. 9. (a) The trustee shall do the following:

- 19 (1) Enter into negotiations with the adjacent mineral
20 producer petitioner.
21 (2) Execute a mineral lease in favor of the petitioner covering
22 the interest of the respondents that reflects the findings and
23 judgment of the court.
24 (3) Promptly prepare and file a report of the mineral lease
25 with the court that states the terms of the lease and the
26 payments received for the lease.
27 (4) Give notice of the report of the mineral lease to all parties
28 appearing of record.

29 (b) The court shall review the mineral lease under subsection (a)
30 to determine if the lease is in accordance with the court's findings
31 and judgment. If the court approves the mineral lease, the court
32 shall:

- 33 (1) issue an order confirming the lease; and
34 (2) issue an order terminating the trust.

35 (c) A lease created under this section continues after the
36 termination of the trust unless the lease expires by its own terms.

37 Sec. 10. (a) Any payment that is owed by the adjacent mineral
38 producer petitioner under a mineral lease executed with the trustee
39 shall be paid by the petitioner to the clerk of the court.

40 (b) A person that wishes to claim the funds described in
41 subsection (a) must file a verified claim with the court setting out
42 the interest of the claimant and the basis for the claim. A notice of



1 the filing of the claim shall be served on the adjacent mineral
 2 producer or the producer's successors or assigns and any record
 3 owner of the overlying surface land. The court shall determine any
 4 other persons who shall receive notice of the filing of the claim.

5 (c) The court:

6 (1) shall hear evidence and determine whether the claimant is
 7 entitled to the funds and issue an order to the clerk
 8 accordingly; and

9 (2) may determine whether future payments should be made
 10 by the petitioner directly to the claimant.

11 (d) If a successful claim is not made under this section for the
 12 funds within seven (7) years from the clerk's first receipt of any
 13 funds, the clerk shall distribute all the funds received and
 14 petitioner shall make any future payments as follows:

15 (1) If:

16 (A) record title to the mineral interest has been severed of
 17 record from ownership of the overlying surface land; and

18 (B) the identity and location of the record owner of the
 19 overlying surface land has been determined;

20 the clerk shall distribute the funds and the petitioner shall
 21 make any future payments to the record owner of the
 22 overlying surface land.

23 (2) If:

24 (A) record title to the mineral interest has been severed of
 25 record from ownership of the overlying surface land; and

26 (B) the identity and location of the record owner of the
 27 overlying surface land has not been determined;

28 the clerk shall distribute the funds and the petitioner shall
 29 make any future payments to the township trustee of the
 30 township in which the subject land is located. If the land is
 31 located in more than one (1) township, the distribution of
 32 funds shall be made to the township trustees based on the
 33 amount of land located in each township. The funds shall be
 34 used by the township trustee for township purposes,
 35 including, but not limited to, cemetery maintenance.

36 (3) If:

37 (A) record title to the mineral estate has not been severed
 38 of record from ownership of the overlying surface land;
 39 and

40 (B) the identity and location of the record owner of the
 41 overlying surface land has not been determined;

42 the clerk shall distribute the funds and the petitioner shall make



1 any future payments to the township trustee of the township in
2 which the subject land is located. If the land is located in more than
3 one (1) township, the distribution of funds shall be made to the
4 township trustees based on the amount of land located in each
5 township. The funds shall be used by the township trustees for
6 township purposes, including, but not limited to, cemetery
7 maintenance.

8 (e) Thirty (30) days before the record owner of the overlying
9 surface land may file a petition under subsection (a), the clerk of
10 the court shall notify the record owner of the overlying surface
11 land by certified mail that the owner may be entitled to file a
12 petition for the funds.

13 Sec. 11. (a) After the entry of the initial judgment authorizing
14 a lease under this chapter, all subsequent proceedings that concern
15 the land and the mineral interest involved in the initial litigation,
16 including:

- 17 (1) subsequent leasing proceedings;
- 18 (2) proceedings by the trustee requesting authority to execute
19 and deliver additional documents pertaining to a lease; and
- 20 (3) proceedings by a claimant of lease payments paid to the
21 clerk;

22 must be commenced in the same court as the proceedings for the
23 initial lease.

24 (b) The acting trustee at the time of any subsequent proceedings
25 under subsection (a) shall act as the trustee in the subsequent
26 proceedings. The court retains continuing jurisdiction over any
27 subsequent proceedings.

28 (c) After the entry of the initial judgment authorizing a lease
29 under this chapter, any record owner of the overlying surface land
30 must be notified by certified mail not less than thirty (30) days in
31 advance of all subsequent proceedings that concern the land and
32 the mineral interest involved in the initial litigation, including:

- 33 (1) subsequent leasing proceedings;
- 34 (2) proceedings by the trustee requesting authority to execute
35 and deliver additional documents pertaining to a lease; and
- 36 (3) proceedings by a claimant of lease payments paid to the
37 clerk.

38 Sec. 12. (a) The lease of a mineral interest and execution of any
39 lease under this chapter is binding concerning the interest in the
40 mineral and the right to produce and develop the mineral owned
41 by any respondent to the action in the same manner as if the
42 respondent personally had signed and delivered the lease.



1 **(b) The mineral lease is binding on the heirs, legatees, personal**
2 **representatives, successors, and assigns of the respondents.**
3 **(c) A person who may have a contingent or future interest in the**
4 **mineral interest of an unknown or missing owner is bound by the**
5 **judgment entered in the proceedings under this chapter.**
6 **Sec. 13. This chapter shall be construed so that any lease issued**
7 **under this chapter conveys marketable title.**
8 **Sec. 14. The remedies provided in this chapter are not exclusive**
9 **and do not prohibit the initiation of a petition for the integration**
10 **of oil and gas interest as provided in IC 14-37-9, including the**
11 **integration of interests of missing or unknown owners.**
12 **SECTION 2. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1617, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 7, delete "production or development" and insert **"production, development, or future development"**.

Page 1, line 11, delete "estate; or" and insert **"estate adjacent to, adjoining, or contiguous to the mineral interest of an unknown or missing owner;"**.

Page 1, line 12, delete ";".

Page 1, run in lines 12 through 13.

Page 1, line 14, delete "." and insert **"; or"**.

Page 1, between lines 14 and 15, begin a new line double block indented and insert:

"(C) an area that the person seeks to develop that is within the boundaries of a proposed production unit established by spacing regulations of the division of oil and gas."

Page 2, line 4, delete "owner of record or by" and insert **"owner."**

Page 2, delete line 5.

Page 2, line 14, delete "and".

Page 2, line 16, delete "location." and insert **"location; and**

(C) from a search of tax records in the county in which the property is located."

Page 3, line 3, after "land." insert **"Any person named in this subdivision must be sent notice of the action by certified mail."**

Page 3, line 15, delete "to or" and insert **"to, adjoining the subject land, or within the production unit established by the division of oil and gas."**

Page 3, delete line 16.

Page 5, line 36, delete "." and insert **"and any record owner of the overlying surface land."**

Page 6, line 4, delete "receipt of the funds," and insert **"first receipt of any funds,"**

Page 6, line 5, delete "the funds as follows:" and insert **"all the funds received and petitioner shall make any future payments as follows:"**

Page 6, line 11, after "funds" insert **"and the petitioner shall make any future payments"**.

Page 6, line 18, after "funds" insert **"and the petitioner shall make any future payments"**.



Page 6, line 23, delete "including" and insert "**including, but not limited to,**".

Page 6, between lines 24 and 25, begin a new line block indented and insert:

"(3) If:

(A) record title to the mineral estate has not been severed of record from ownership of the overlying surface land; and

(B) the identity and location of the record owner of the overlying surface land has not been determined;

the clerk shall distribute the funds and the petitioner shall make any future payments to the township trustee of the township in which the subject land is located. If the land is located in more than one (1) township, the distribution of funds shall be made to the township trustees based on the amount of land located in each township. The funds shall be used by the township trustees for township purposes, including, but not limited to, cemetery maintenance."

Page 6, delete lines 25 through 42.

Page 7, delete lines 1 through 8, begin a new paragraph and insert:

"(e) Thirty (30) days before the record owner of the overlying surface land may file a petition under subsection (a), the clerk of the court shall notify the record owner of the overlying surface land by certified mail that the owner may be entitled to file a petition for the funds."

Page 7, line 9, delete "12." and insert "11."

Page 7, between lines 23 and 24, begin a new paragraph and insert:

"(c) After the entry of the initial judgment authorizing a lease under this chapter, any record owner of the overlying surface land must be notified by certified mail not less than thirty (30) days in advance of all subsequent proceedings that concern the land and the mineral interest involved in the initial litigation, including:

(1) subsequent leasing proceedings;

(2) proceedings by the trustee requesting authority to execute and deliver additional documents pertaining to a lease; and

(3) proceedings by a claimant of lease payments paid to the clerk."

Page 7, line 24, delete "13." and insert "12."

Page 7, line 34, delete "14." and insert "13."



Page 7, between lines 35 and 36, begin a new paragraph and insert:
"Sec. 14. The remedies provided in this chapter are not exclusive and do not prohibit the initiation of a petition for the integration of oil and gas interest as provided in IC 14-37-9, including the integration of interests of missing or unknown owners."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1617 as introduced.)

EBERHART

Committee Vote: yeas 11, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred House Bill No. 1617, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB1617 as printed February 10, 2015.)

GLICK, Chairperson

Committee Vote: Yeas 6, Nays 0

