

2009 HOUSE NATURAL RESOURCES

HB 1170

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1170

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 1-16-2009

Recorder Job Number: 7139 & 7140

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter : Rep. Drovdal

Rep. Drovdal: The only people that can claim abandoned mineral right are surface owners.

We have had reports of people claiming minerals that are not surface owners. We felt the statement Any Person in Sect 38-18.1-06 was misleading. What this bill does is go to this section of law and change it from Any Person to the surface owner.

Chairman Porter : Questions

Rep. Clark: Rep. Drovdal does 38.18.1-06 actually let surface owner claim minerals that belong to somebody else?

Rep. Drovdal: It claims mineral owners that are abandoned and they can't find the original owner. They can't find who the original owner is.

Rep. Clark: Is that a lost mineral owner? What is the difference between abandoned and lost?

Rep. Drovdal: It is abandoned if they can't determine who the ownership is. As to lost minerals I'm not sure.

Chairman Porter : Further questions for Rep. Drovdal? Further testimony in support for HB 1170.

Ron Ness: ND Petroleum Council – We support this bill. The dormant mineral act instituted about 24 years ago has now come into play, what it said was after 20 years if there is no activity on the mineral estate and the mineral owners have not made claim to it essentially the surface owners can lay claim title to those minerals. Since that 20 year threshold came to be we have started a segment on both sides of that issue claiming stake to those minerals. There are some significant cost implied on rightful owners and on unrightful owners. This bill clarifys only surface owners.

Chairman Porter : Any questions for Mr. Ness? Further testimony in support?

Sandy Clark – Supports this bill. The process you have to follow is: 1) have to do a mineral report -- 2) the attorney places an ad in the paper. People sit around and read the papers and then put in a claim the minerals.

Chairman Porter : Questions Rep. Keith Kempenich – supports HB 1170 – needs clarification.

Chairman Porter : Questions for Re. Kempnich?

Johathan Alm – attorney with the Dept. of Human Services – Dept. is neutral. See Attachment #1. Questions

Chairman Porter : How is it done now? This process has been in place for 24 years how is the dept. doing their work now?

Mr. Alm -- The dept. could review the papers and go through that – we have had to ??? transfers before where an individual failed to take action to obtain property that was rightfully theirs and then became ineligible and to assist the medicade patient from becoming ineligible.

Chairman Porter : Further Questions for Mr. Alm?

Rep. Keiser: It says it **must** be provided in your amendment. What happens to the legal transactions if we adopted this and they failed to do this. Does that stop it?

Mr. Alm – It is a possibility that the mineral owners could have a right to challenge.

Chairman Porter : Mr. Alm you are asking for ALL notices to come through the dept., whether they are Medicaide patients or not. Who is going to sort through all of this?

Mr. Alm – We currently check the data bases, the same process will still appear under this situation.

Chairman Porter : Further questions - further testimony in support of HB 1170? Any opposition to HB 1170? We will close the hearing on HB 1170.

Chairman Porter : HB 1170

Rep. Clark: Is this anywhere in the state?

Chairman Porter : The county register of deeds is where those titles are kept. There is no state wide place that you could look to see. Everything happens at the county level.

Rep. Clark: They may not be keeping track either.

Chairman Porter : They keep track – this section of the law specifically goes toward those that are abandoned where there is a process that the surface owner can get them back if they can't find out who the owner is. There is still a process that has to be followed in order for the surface owner to reclaim these rights. Only the current surface owner that can use this process – no one else can use it to get unclaimed mineral. Rep. Hofstad

Rep. Hofstad: I'm wondering about the notice the amendment the human services ??? wondering why they want to single out the medacade – inaudible.

Rep. Drovdal: It is a major problem and this is an attempt to clairify it.

Chairman Porter : Rep. DeKray

Rep. DeKray: Vote to Do Pass

Chairman Porter : Rep. DeKray votes to Do Pass on HB 1170 -- 2nd from Rep. Hofstad discussion. Roll Call on a Do Pass

Total Yes 13 No 0 Absent 0 Carrier DeKrey Stand at ease.

Date: 1-16-2009
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1170

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ As Amended

Motion Made By DeKrey Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment DeKrey

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1170: Natural Resources Committee (Rep. Porter, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1170 was placed on the
Eleventh order on the calendar.

2009 SENATE NATURAL RESOURCES

HB 1170

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1170

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 13, 2009

Recorder Job Number: 10918

Committee Clerk Signature



Minutes:

Senator Lyson opens the hearing on HB 1170, relating to termination of mineral interest notices.

Ron Ness, North Dakota Petroleum Council, The intent of the bill is to clearly identify that the surface owner is the only party that can claim the mineral interest under the Dormant Minerals Act. I think the word "any" person on line 7 and the word "person" on line 20 may or may not have created some ambiguity. This bill certainly clarifies that.

Lynn Helms, Director of Department of Mineral Resources, in the definitions in this section of the code a person is defined as the surface owner. Not everyone referred to the definitions. This bill is an attempt to make it clear in the statute that the owner of the surface estate is the person or persons who can get the minerals under the Dormant Minerals Act.

Senator Hogue this is an amendment from one of my partners from my law firm who practices in this area. The objective is to make it clear if a person is going to make reasonable inquiry the record should be found in the County Recorder's office of the county where the mineral interest is located. Often times when a party is seeking to use this statute to terminate the mineral interests they run across this particular provision upon reasonable inquiry. Well what is reasonable inquiry? Having that level of uncertainty is not good when you are trying to do title

work. The amendment says in addition to publication requirements if there address shows up in the Recorder's office you will have to provide them with a notice through mailing. It makes it more clearly on what you have to do to give notice.

Lynn Helms this is a problem and I appreciate the clarifying language and I see this as beneficial.

Senator Lyson closed the hearing on HB 1170.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1170

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 13, 2009

Recorder Job Number: 10919

Committee Clerk Signature



Minutes:

Senator Lyson opens the discussion on HB 1170.

Senator Hogue I move to adopt the amendment.

Senator Pomeroy seconds the motion. Whose responsibility would it be to record?

Senator Hogue when the minerals are severed there is a recording that goes on. Now you have to try and locate these people to notify them that their minerals have lapsed. Their address should be in the recorder's office.

Senator Triplett What happens if the address recorded is long past forwarding by the post office, but the person is still in the community and you could find them in the phone book? By removing reasonable inquiry entirely are we making it too easy for someone to fail to notify?

Senator Hogue The laps of minerals statute act favors cancelation of these outstanding mineral interest that have been in the recorder's office for decades.

A voice vote was taken and the motion passed.

Senator Triplett moves a do pass on HB 1170.

Senator Schneider seconds the motion.

The committee discusses the issue of finding people with computers.

Roll call was taken and bill received a do pass as amended on a vote of 7 to 0.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1170

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11672

Committee Clerk Signature

Minutes: **Senator Lyson, Chairman**

Committee Work

Senator Hogue reports that they did a do pass on this bill then called it back from the floor.

He says HB1370 will deal with the issue that is contained in 1170. So thought was to kill this bill and incorporate the amendments that are attached in HB1170 into HB1370.

Senator Lyson mentions these bills were companion bills.

Senator Freborg motions to reconsider action on 1170.

Senator Erbele seconds

Verbal vote – all yes

Senator Hogue moves a do not pass

Senator Triplett seconds

Vote – 7 – 0

Senator Hogue will carry

UNOFFICIAL PROPOSED AMENDMENT TO HB 1170

- Proposed by Sen. Hogue -

Page 1, line 14, overstrike “or can be determined upon reasonable inquiry” and after “inquiry” insert “in the county recorder’s office of the county in which the mineral interest is located”

Renumber Accordingly

Date: March 13, 2009

Roll Call Vote #: #1 1170

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Amendment

Motion Made By Senator Hogue Seconded By Senator Pomeroy

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote on amendment only.

Date: March 13, 2009

Roll Call Vote #: #2 1170

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Amendment

Motion Made By Senator Triplett Seconded By Senator Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Senator Hogue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1170: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1170 was placed on the Sixth order on the calendar.

Page 1, line 14, overstrike "or can be determined upon reasonable inquiry" and insert immediately thereafter "in the office of the county recorder in the county in which the mineral interest is located"

Renumber accordingly

Date: 4/2/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Bill #: 1170

Recommendation by which we passed 1170

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Amendment

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*passed
voice vote*

Date: 4/2/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee

Bill #: 1170

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Amendment

Motion Made By Sen Hogue Seconded By Sen Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	✓		Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett	✓	
Senator Layton W. Freborg	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen. Hogue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1170: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1170 was placed on the Sixth order on the calendar.

Page 1, line 14, overstrike "or can be determined upon reasonable inquiry" and insert immediately thereafter "in the office of the county recorder in the county in which the mineral interest is located"

Renumber accordingly

2009 TESTIMONY

HB 1170

/

Testimony
House Bill Number 1170 – Department Of Human Services
House Natural Resources Committee
Representative Todd Porter, Chairman
January 16, 2007

Chairman Porter, members of the House Natural Resources Committee, I am Jonathan Alm, an attorney with the Department of Human Services. While the Department is neutral on House Bill 1170 as introduced, I request your favorable consideration of the proposed amendment which is attached.

The amendment is designed to accomplish goals in two areas. First, it could eliminate the possibility of a Medicaid recipient having a disqualifying transfer of assets and becoming ineligible from receiving Medicaid for a calculated period. Second, it would assist the Department in identifying and collecting assets subject to Medicaid estate recovery as required by federal Medicaid law.

1. Medicaid Eligibility

This amendment is to assist Medicaid applicants or recipients from potentially incurring a disqualifying transfer impacting their eligibility for Medicaid. A disqualifying transfer would occur if action, or inaction, causes the individual to not receive the mineral interest to which he or she is entitled. In some situations, the Medicaid recipient or the recipient's family is unaware of the mineral interests or is unaware that the surface owner has commenced an action under chapter 38-18.1. The Department, by receiving a notice, would be able to try and locate the Medicaid recipient to inform the recipient of the potential disqualifying transfer that may occur if no action is taken on the recipient's behalf to ensure that they remain the mineral interest owner.

2. Medicaid Estate Recovery

State Medicaid programs are required to engage in estate recovery. The state seeks to recover Medicaid benefits paid from the estate of the recipient or the estate of the recipient's spouse. This amendment will not increase the total estate recovery in the vast majority of cases in which there is a Medicaid claim. A portion of all Medicaid estate recoveries must be paid back to the federal government in proportion to the amount paid by the federal government into that State's Medicaid program. The remaining portion of all Medicaid estate recoveries is returned to the state.

The proposed amendment will merely ensure that the Department is notified that assets, against which the Department might have a claim, are available for recovery purposes. This amendment also could possibly reduce the potential personal liability for a personal representative of an estate who failed to dispose of all of the estate's property.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

PROPOSED AMENDMENT TO HOUSE BILL NO. 1170

Page 1, line 16, after "made" insert ". A copy of the notice must be provided to the department of human services within ten days after the first publication is made"

Renumber accordingly