

SUBJECT: Receivership for absent owner of undivided mineral interest

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 9 ayes — Bosse, Janek, Alvarado, Dutton, Goodman, Hope, Nixon, Smithee, Zbranek

0 nays

WITNESSES: For — William Stevens, West Central Oil and Gas Association; Ed Patton

Against — None

DIGEST: CSHB 3582 would amend the Civil Practice and Remedies Code to allow a district court to appoint a receiver for the royalty interest owned by an absent or nonresident defendant in an action brought by a person claiming or owning an undivided mineral interest or leasehold interest in land, if the action had one or more defendants who claimed or owned an undivided royalty interest in the property.

The absent owner would have to be a person whose residence or identity was unknown, or who was a nonresident, and who had not paid taxes on the interest or rendered the interest for taxes during the five years preceding the action to appoint a receiver.

The plaintiff attempting to have a receiver appointed would have to show a diligent but unsuccessful effort to locate the absent owner and to show that substantial damages or injury would occur unless a receiver was appointed.

Notice of the proceeding would have to be served by publication as provided in the Texas Rules of Civil Procedure. The court could appoint as a receiver the county judge, county clerk, or any other resident of the county in which the land was located. That person would not have to post bond, nor would the person asking for a receivership.

The receiver would continue until the absent owner or that owner's heirs, assigns, or representatives appeared in court to claim the owner's interest.

Upon the court's order, the receiver would have to ratify a mineral lease or a pooling agreement or enter into a unitization agreement authorized by the Texas Railroad Commission. The authorization to pool or unitize or the pooling agreement could not exceed 160 acres for oil and gas or 640 acres for gas wells, plus a 10 percent tolerance. Any money due for the execution of an agreement would have to be deposited with the clerk of the court in which the case was pending before the receiver executed the agreement. The court would have to apply the money to any costs accruing in the case and retain the remainder for the owner of the royalty interest.

CSHB 3582 would be cumulative of other laws relating to the removal of a cloud from title or appointment of a receiver. Also, the notice provisions of the bill would control over conflicts with the Texas Rules of Civil Procedure. The bill would prohibit the Texas Supreme Court from adopting or amending rules conflicting with the notice provisions.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS  
SAY:**

Transactions involving undivided mineral interests are often problematic because it can be hard to find all the people who own interest in the property. For example, a particular property may have been subdivided and inherited several times over a number of years, resulting in hundreds of owners of a particular piece of land with a mineral interest. When the absent owner or owners cannot be located, the uncertainty of their participation makes it very difficult to lease, pool, or unitize the mineral interest.

Using current technology, oil exploration has become a more exact science, and it is becoming easier to tell exactly where to drill to maximize production from a particular field. If that spot happens to be on multiple leases, those leases must be pooled to maximize production for all mineral leaseholders.

For example, if four fields with four equal owners were pooled, the resulting interests in the pooled fields would be divided equally, resulting in a 6.25 percent share for each owner of any minerals extracted. However, if one of the royalty owners could not be located to agree to the pooling agreement, that owner still would be entitled to a 25 percent share of all minerals extracted. The operator of that lease would have to reserve an additional 18.75 percent of the royalties for that absent owner. This lack of clear

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ownership often can make it uneconomical to agree to a pooling agreement and thus can make it difficult to produce that field.

			Absent owner

Rather than allow the interests of all owners to suffer because of the inability to find one or more absentee owners, CSHB 3582 would allow the appointment of a receiver to look after the interests of that absent owner, while allowing transactions on that mineral interest to proceed. Pooling or unitization of a tract often is essential to allow that tract to be productive.

The bill would limit situations in which a receiver could be appointed, as well as the interest to which a receivership could be applied, to ensure that the law would be used only in circumstances when it was absolutely necessary to appoint a receiver for an absent owner. The diligence that the remaining interest owners would have to undertake to find and notify the absent owner would ensure that this receivership would not be entered into lightly.

**OPPONENTS SAY:**

Established oil and gas law allows the drilling of interests of absent owners, but only when their interest in the lease is not diluted by a pooling or unitization agreement. This legislation would represent a major shift away from that doctrine and would allow the remaining owners to override the interests of the absent owner.

**NOTES:**

The committee substitute removed from the original bill a statement that the purpose of the legislation is to encourage the exploration and development of mineral resources.