

No. 1529

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1529

(By Mr. *Speaker, Mr. Albright, & Del. Swann*)  
[By request of the Executive.]



Passed ..... *March 8,* ..... 1986

In Effect ..... *Ninety Days From* ..... Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 1529**  
(By MR. SPEAKER, MR. ALBRIGHT, and DELEGATE SWANN)  
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AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-a, relating to leasing of mineral interests of unknown or missing owners and abandoning owners by order of a circuit court; appointment of a special commissioner to sell, execute and deliver mineral leases, and to execute and deliver deeds; notice to affected owners; terms and conditions of lease; investment and disbursements of lease proceeds; limitation of actions by affected mineral owners; and severability.

*Be it enacted by the Legislature of West Virginia:*

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve-a, to read as follows:

**ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.**

**§55-12A-1. Legislative intent.**

1 It is the intent of the Legislature, in empowering the

2 circuit courts of the state, as provided by this article,  
3 to facilitate development of coal, oil, gas, and other  
4 minerals, as part of the public policy of the state, by  
5 removing certain barriers to such development caused  
6 by interests in minerals owned by unknown or missing  
7 owners or by abandoning owners.

**§55-12A-2. Definitions.**

1 As used in this article, the following definitions shall  
2 apply:

3 (1) "Abandoning owner" means any person, vested  
4 with title to any interest in minerals, who is proved to  
5 have abandoned the interest, that is, to have relin-  
6 quished any right to possess or enjoy the interest with  
7 the expressed intention of terminating ownership of the  
8 interest, but without vesting the ownership in any other  
9 person.

10 (2) "Development of the minerals" or "mineral devel-  
11 opment" means (a) mining coal by any method, or (b)  
12 drilling for and producing oil or gas by conventional  
13 techniques, or by enhanced recovery by injection of  
14 fluids of any kind into the producing formation, or (c)  
15 utilization of a gas-bearing formation as an under-  
16 ground gas storage reservoir within the meaning of  
17 article seven, chapter twenty-two of this code, or (d)  
18 production of other minerals by any method.

19 (3) "Interest in minerals" means any interest, real or  
20 personal, in coal, oil, gas or any other mineral, for which  
21 interest the property taxes are not delinquent as of the  
22 date of the filing of a petition under this article.

23 (4) "Surface owner" means any person vested with  
24 any interest in fee in the surface estate overlying the  
25 particular minerals sought to be developed under this  
26 article. A surface owner's rights under this article shall  
27 be subject to any deed of trust or other security  
28 instrument, lien, surface lease, easement or other non-  
29 possessory interest in the surface owned by any other  
30 person; but such persons other than the surface owner  
31 shall have no right to notice and no standing to appear  
32 and be heard hereunder.

33 (5) "Unknown or missing owner" means any person,  
34 vested with title to any interest in minerals, whose  
35 present identity or location cannot be determined from  
36 the records of the clerk of the county commission, the  
37 sheriff, the assessor, and the clerk of the circuit court  
38 in the county in which the interest is located or by  
39 diligent inquiry in the vicinity of the owner's last known  
40 place of residence, and shall include such owner's heirs,  
41 successors and assigns not known to be alive.

**§55-12A-3. Jurisdiction of the circuit court.**

1 The circuit court of the county wherein the minerals  
2 sought to be leased, or the major portion thereof, are  
3 situated shall have jurisdiction of the proceedings  
4 authorized by this article.

**§55-12A-4. When court may appoint special commis-  
sioner; persons authorized to institute  
proceedings.**

1 (a) If the title to any mineral interest is vested in an  
2 unknown or missing owner or an abandoning owner and  
3 it is proved that the development of the minerals would  
4 be advantageous to a prudent owner, and if it appears  
5 that the development of the minerals furthers the public  
6 policy stated in section one of this article, the circuit  
7 court of the county having jurisdiction under section  
8 three of this article shall have the power to appoint a  
9 special commissioner and authorize the special commis-  
10 sioner to sell, execute and deliver a valid lease of the  
11 mineral interest on terms and conditions customary in  
12 the area for the mineral interest to be leased. The lease  
13 shall continue in full force and effect so long as there  
14 are operations under its terms unless the lease has  
15 previously expired by its own terms.

16 (b) A petition to the circuit court for the appointment  
17 of a special commissioner may be instituted by any  
18 person who is:

19 (1) Vested with an interest in fee in the surface estate  
20 overlying the particular minerals sought to be deve-  
21 loped; or

22 (2) Vested with an interest in fee in the particular

23 minerals sought to be developed; or

24 (3) The lessee or the assignee or successor to the  
25 lessee, under a valid and subsisting mineral lease, the  
26 lessor of which is a person entitled to file a petition by  
27 reason of subdivision (2) of this subsection.

**§55-12A-5. Persons to be joined as defendants; contents of  
verified petition; notice; guardian ad litem.**

1 (a) The person filing a petition under this article shall  
2 join as defendants to the action all unknown or missing  
3 owners or abandoning owners having record title to the  
4 particular minerals sought to be developed, and the  
5 unknown heirs, successors and assigns of all such  
6 owners not known to be alive. All persons not in being  
7 who might have some contingent or future interest  
8 therein, and all persons whether in being or not in  
9 being, having any interest, present, future or contingent,  
10 in the mineral interests sought to be leased, shall be  
11 fully bound by the proceedings hereunder.

12 (b) The petition shall be verified. It shall contain  
13 allegations of the facts showing (1) the entitlement of the  
14 petitioner to file the petition, (2) an identification of the  
15 defendants and the mineral interest of each as far as  
16 practical under the circumstances, (3) a description of  
17 the tract of land which is the subject of the petition, (4)  
18 the interest in the particular minerals sought to be  
19 developed, (5) the nature of the proposed development  
20 of the minerals, (6) the efforts to locate unknown or  
21 missing owners, if any, (7) the relinquishment by  
22 abandoning owners, if any, of any right to possess or  
23 enjoy their interest with the expressed intention of  
24 terminating ownership of the interest, but without  
25 vesting the ownership in any other person, (8) such other  
26 information known to the petitioner which might be  
27 helpful in identifying or locating the present owners  
28 thereof, and, as exhibits to the petition, (9) a certified  
29 copy of the most recent recorded instrument embracing  
30 the interest to be leased, (10) such additional instru-  
31 ments as are necessary to show the vesting of title to the  
32 minerals in the last record owner thereof, and (11) a  
33 certified copy of any competing lease or easement of

34 record, that is to say, a lease or easement from  
35 landowners who are not defendants, embracing all or  
36 part of the tract of land which is the subject of the  
37 petition, for any mineral development by the lessee or  
38 easement owner of record of the minerals sought by the  
39 petitor; and the petition may contain allegations of the  
40 facts showing that (12) mineral development would be  
41 advantageous to the defendants and would further the  
42 public policy stated in section one of this article; and the  
43 prayer shall be for the court to order the sale of a lease  
44 covering the subject mineral interest under section six  
45 of this article, and thereafter, in the case of any  
46 defendant or heir, successor or assign of any defendant  
47 who does not appear to claim ownership of the defend-  
48 ant's interest for seven years after the date of the lease,  
49 for the court to order a conveyance of the defendant's  
50 mineral interest under section seven of this article,  
51 subject to the lease, to the owner of the surface overlying  
52 the mineral interest.

53 (c) If personal service of process is possible, it shall  
54 be made as provided by the West Virginia rules of civil  
55 procedure. In addition, immediately upon the filing of  
56 the petition, the petitioner shall (1) publish a Class III  
57 legal advertisement in compliance with the provisions of  
58 article three, chapter fifty-nine of this code, and (2) no  
59 later than the first day of publication, file a lis pendens  
60 notice in the county clerk's office of the county wherein  
61 the mineral estate or the larger portion thereof lies.  
62 Both the advertisement and the lis pendens notice shall  
63 set forth (1) the names of the petitioner and the  
64 defendants, as they are known to be by the exercise of  
65 reasonable diligence by the petitioner, and their last  
66 known addresses, (2) the date and record data of the  
67 instrument or other conveyance which immediately  
68 created the mineral interest, (3) an adequate description  
69 of the land as contained therein, (4) the source of title  
70 of the last known owners of the mineral interests, and  
71 (5) a statement that the action is brought for the purpose  
72 of authorizing the execution and delivery of a valid and  
73 present mineral lease for development of the particular  
74 minerals described in the petition, and thereafter, in the  
75 case of any defendant or heir, successor or assign of any

76 defendant who does not appear to claim ownership of the  
77 defendant's interest within seven years after the date of  
78 the lease, for the court to order a conveyance of the  
79 defendant's mineral interest under section seven of this  
80 article, subject to the lease, to the owner of the surface  
81 overlying the mineral interest. In addition, the peti-  
82 tioner shall send notice by certified mail, return receipt  
83 requested, to the last known address, if there be such,  
84 of all named defendants. In addition, the court may in  
85 its discretion order advertisement elsewhere or by  
86 additional means if there is reason to believe that  
87 additional advertisement might result in identifying and  
88 locating the unknown or missing owners.

89 (d) The circuit court shall appoint a guardian ad litem  
90 for any unknown or missing owner or abandoning owner  
91 and their unknown heirs, successors and assigns not  
92 known to be alive. The compensation and expenses of the  
93 guardian ad litem shall be fixed by the court and paid  
94 by the petitioner under terms ordered by the court.

**§55-12A-6. Appointment of a special commissioner; sale  
of lease; special commissioner's report;  
when court not to authorize lease; invest-  
ment of lease proceeds; search for owner;  
period during which unknown or missing  
owner or abandoning owner may establish  
identity and title.**

1 (a) If upon presentation to the court of the petition,  
2 and the failure of the named defendants or their heirs,  
3 successors and assigns to answer the petition and deny  
4 material allegations in the complaint within the time to  
5 answer under the West Virginia rules of civil procedure,  
6 the court may accept the allegations of the verified  
7 petition, excluding allegations made upon information  
8 and belief, as prima facie proof of the facts alleged; and  
9 if it further appears to the court that (1) the petitioner  
10 has met the requirements for a lease under this article,  
11 including the evidentiary requirements of section five-  
12 b and the notice requirements of section five-c, (2) a  
13 diligent effort has been made to identify and locate the  
14 present unknown or missing owners and abandoning  
15 owners, and (3) the mineral development sought in the

16 petition would be advantageous to the defendants and  
17 would further the public policy stated in section one of  
18 this article, the court shall appoint a special commis-  
19 sioner therefor and authorize the special commissioner  
20 to sell, execute and deliver a valid lease covering the  
21 mineral interests in and underlying the lands for the  
22 particular mineral development sought in the petition:  
23 *Provided*, That no order authorizing the special  
24 commissioner to sell, execute or deliver a lease of said  
25 mineral interest, shall be entered sooner than six  
26 months following filing of the petition, and the court  
27 may in its discretion direct the petitioner to make  
28 further efforts to locate the missing or unknown owners  
29 or abandoning owners.

30 (b) Should the court appoint a special commissioner  
31 pursuant to subsection (a) of this section, the order of  
32 the court shall also (1) require the special commissioner  
33 to give a bond in favor of the owners of the mineral  
34 interest which is to be leased in a specified amount, (2)  
35 provide for all of the rental, royalty, and other provi-  
36 sions of the lease which the special commissioner is  
37 authorized to make, except for the initial monetary  
38 consideration for the sale of the lease, (3) specify  
39 whether the special commissioner's sale of the lease shall  
40 be public or private, (4) if the order provides for a public  
41 sale, determine the notice to be given, and (5) direct that  
42 the special commissioner be paid compensation and  
43 expenses, including the bond expense, as provided in  
44 section eight of this article in an amount agreed upon  
45 by the special commissioner and the petitioner; but if  
46 no agreement is made within thirty days after the  
47 special commissioner is appointed, then the court shall  
48 fix the compensation and expenses. The sale shall be for  
49 a monetary consideration payable on confirmation of  
50 sale. No appraisal shall be required.

51 (c) The special commissioner shall proceed in com-  
52 pliance with the provisions of the order to sell the lease  
53 authorized thereby; and if two or more persons offer to  
54 purchase the lease, the sale shall be made to the offeror  
55 whose offer is deemed most beneficial to the unknown  
56 or missing owner or abandoning owner, and most



57 consistent with the public policy stated in section one of  
58 this article. After making the sale, the special commis-  
59 sioner shall make a report thereof to the court. Upon  
60 filing the report, the court may hear evidence as to  
61 whether or not the sale price and the provisions of the  
62 lease are reasonable; and if the court is satisfied with  
63 the sale price and the provisions of the lease, the sale  
64 of the lease shall be confirmed by the court, whereupon  
65 the lease shall be executed, acknowledged and delivered  
66 by the special commissioner.

67 (d) The court shall not authorize a special commis-  
68 sioner's lease of the mineral interest of any owner whose  
69 identity and whereabouts is known, or can be ascer-  
70 tained by diligent inquiry, or is discovered as a result  
71 of the action brought hereunder, unless such owner is  
72 proved to be an abandoning owner who fails to answer  
73 the subject petition, notice having been given as  
74 provided in section five of this article.

75 (e) Any person purporting to be the unknown or  
76 missing owner or an abandoning owner, or any heir,  
77 successor or assign of an unknown or missing owner or  
78 abandoning owner, may appear as a matter of right at  
79 any time prior to the entry of judgment confirming the  
80 special commissioner's lease, for the purpose of estab-  
81 lishing his title to a mineral interest. If the appearing  
82 owner's claim is established to the satisfaction of the  
83 court, the court shall dismiss the action as to the  
84 appearing owner's interest at plaintiff's cost.

85 (f) The lessee shall promptly deliver the sale consid-  
86 eration and subsequent proceeds, if any, from the lease  
87 to the special receiver of the court, who shall hold and  
88 invest the same for the use and benefit of the unknown  
89 or missing owners or abandoning owners. The court,  
90 upon its own motion or upon motion of the special  
91 receiver, may at any time authorize the special receiver  
92 to expend an amount not to exceed ten percent of the  
93 funds collected by the special receiver for the purpose  
94 of instituting a search for the unknown or missing  
95 owners.

96 (g) Within seven years after the date of the special

97 commissioner's lease, any unknown or missing owner or  
98 abandoning owner of a mineral interest leased he-  
99 reunder may file a motion with the court to re-open the  
100 action, and may thereupon present such proof as the  
101 court may deem necessary to establish the movant's  
102 identity and title to the mineral interest or any part  
103 thereof. If the court finds that the identity and interest  
104 of the movant has been established, and that the movant  
105 has manifested a desire to obtain the benefits of the  
106 proceeds resulting from the lease, the court shall enter  
107 an order (1) documenting the movant's title, (2) assign-  
108 ing all future attributable proceeds to the movant and  
109 (3) directing the special receiver to pay over the funds  
110 then held attributable to the movant's interests. The  
111 circuit clerk of the court shall file and record a certified  
112 copy of the order with the clerk of the county commis-  
113 sion of each county wherein such land is; and from the  
114 time of recordation, the movant shall be deemed the  
115 owner of the mineral interest specified in the order.

**§55-12A-7. When special commissioner may convey title  
in mineral interest to surface owner; form  
of deed; payment to surface owner; final  
report of special commissioner.**

1 (a) (1) If an owner of any mineral interest leased  
2 under section six of this article remains unknown or  
3 missing, or does not disavow the abandonment, for a  
4 period of seven years from the date of the special  
5 commissioner's lease, the special receiver shall report  
6 the same to the court, whereupon the court shall enter  
7 an order naming those who then appear to be surface  
8 owners as additional parties and giving notice to them,  
9 pursuant to the West Virginia rules of civil procedure,  
10 of an opportunity to appear and present proof of  
11 ownership in fee of the surface estate. Upon a finding  
12 by the court of the present ownership in fee of the  
13 surface estate, the court shall (i) order the special  
14 commissioner to convey to the proven surface owner,  
15 subject to the special commissioner's lease, the mineral  
16 interest specified in the motion, by a deed substantially  
17 in the form specified in subsection (b) of this section and  
18 (ii) order the special receiver to pay to the surface owner

19 the funds which have accrued to the credit of the  
20 mineral interests specified in the motion to the date of  
21 his report after payment of all allowable fees, expenses  
22 and court costs, including special commissioner's fees  
23 paid or to be paid in amounts determined by the court.  
24 After the date of the special commissioner's deed, the  
25 surface owner grantee shall be entitled to receive all  
26 proceeds under the lease attributable to the mineral  
27 interests specified in the deed.

28 (2) If the boundaries of the mineral tract subject to  
29 the special commissioner's lease encompass two or more  
30 surface tracts, a separate deed shall be made for the  
31 mineral interest underlying each surface tract. If a  
32 surface tract is owned by more than one person, the deed  
33 respecting that surface tract shall convey the mineral  
34 interest according to the surface estate and interest of  
35 each surface owner.

36 (b) The special commissioner's deed may be made in  
37 the following form, or to the same effect:

38 This deed, made the \_\_\_\_\_ day of  
39 \_\_\_\_\_, 19\_\_\_\_, between  
40 \_\_\_\_\_, special commissioner, grantor,  
41 and \_\_\_\_\_, grantee,

42 Witnesseth, that whereas, grantor, in pursuance of the  
43 authority vested in him by an order of the circuit court  
44 of \_\_\_\_\_ county, West Virginia, entered on  
45 the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in civil  
46 action no. \_\_\_\_\_ therein pending, to convey the  
47 mineral interest more particularly described below to  
48 the grantee,

49 Now, therefore, this deed witnesseth: That grantor  
50 grants unto grantee, subject to the special commission-  
51 er's lease mentioned below, and further subject to all  
52 other liens and encumbrances of record, that certain  
53 mineral interest in \_\_\_\_\_ county, West  
54 Virginia, more particularly described in the cited order  
55 of the circuit court as follows: (here insert the descrip-  
56 tion in the order); and being (here specify "all" or "a  
57 portion") of the mineral interest described in that  
58 certain special commissioner's lease dated

59 \_\_\_\_\_, 19\_\_\_\_, of record in the office of the  
60 clerk of \_\_\_\_\_ county, in \_\_\_\_\_book  
61 \_\_\_\_\_, at page\_\_\_\_\_

62 Witness the following signature.

63

64

\_\_\_\_\_  
Special Commissioner

65 (c) Upon the delivery of the deed or deeds and the  
66 payment or payments as directed in subsection (a) of this  
67 section, the special commissioner shall make a final  
68 report to the court; and upon approval thereof, the court  
69 shall order the discharge of the special commissioner's  
70 bond.

71 (d) Prior to the delivery of the special commissioner's  
72 deed, no deed from a surface owner to another shall  
73 sever ownership of the surface as such from ownership  
74 of any benefits under this article. Any deed purporting  
75 to create such a severance shall be void.

**§55-12A-8. Petitioner's attorneys' fees, expenses and court costs.**

1 All of the petitioner's attorneys' fees, expenses and  
2 court costs incident to the original proceedings autho-  
3 rized under this article shall be paid by the lessee, if  
4 a lease is executed pursuant hereto, and by the peti-  
5 tioner if for any reason no lease is executed. After the  
6 date of the special commissioner's lease, all expenses and  
7 court costs shall be paid out of funds in the hands of the  
8 special receiver to the extent such funds are available.

**§55-12A-9. Limitation of action by unknown or missing owner or abandoning owner.**

1 After the expiration of seven years from the date of  
2 the special commissioner's lease, no action may be  
3 brought by any unknown or missing owner or abandon-  
4 ing owner or any heir, successor or assign thereof either  
5 to recover any past or future proceeds accrued or to be  
6 accrued from the lease herein authorized, or to recover  
7 any right, title or interest in and to the mineral interest  
8 subject to the lease.

**§55-12A-10. Severability.**

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1       If any part of this article is adjudged to be unconsti-  
2       tutional or invalid, such invalidation shall not affect the  
3       validity of the remaining parts of this article; and to this  
4       end, the provisions of this article are hereby declared  
5       to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Bruce O. Williams*  
-----  
Chairman Senate Committee

*Floyd Fullen*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Judd C. Wallis*  
-----  
Clerk of the Senate

*Donald J. Kopp*  
-----  
Clerk of the House of Delegates

*Don Tomko*  
-----  
President of the Senate

*Joseph P. Albright*  
-----  
Speaker of the House of Delegates

The within *approved* this the *26th*  
*March*  
day of \_\_\_\_\_, 1986.

*Andrew Shreve*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/21/86

Time 4:52 p.m.

RECEIVED

1986 MAR 23 PM 9 03

DEPARTMENT OF STATE  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 3/26/86