



LOUISIANA STATE LAW INSTITUTE  
PAUL M. HEBERT LAW CENTER, ROOM W127  
UNIVERSITY STATION  
BATON ROUGE, LA 70803-1016

OFFICE OF  
THE DIRECTOR  
(225) 578-0200  
FAX: (225) 578-0211  
EMAIL: LAWINSTITUTE@LSLI.ORG

January 9, 2018

Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**RE: SENATE RESOLUTION NO. 159 OF 2017 REGULAR SESSION**

Dear Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature relative to the classification of mineral royalties for bankruptcy proceedings.

Sincerely,

A handwritten signature in blue ink that reads "William E. Crawford".

William E. Crawford  
Director

WEC/puc

Enclosure

cc: Senator R.L. "Bret" Allain, II

email cc: David R. Poynter Legislative Research Library  
[drplibary@legis.la.us](mailto:drplibary@legis.la.us)  
Secretary of State, Mr. Tom Schedler  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE  
MINERAL LAW COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO SR 159 OF THE 2017 REGULAR SESSION**

**Relative to the classification of mineral royalties for bankruptcy proceedings**

Prepared for the  
Louisiana Legislature on

**January 9, 2018**

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE  
MINERAL LAW COMMITTEE**

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Pamela Roman Mascari, Baton Rouge

Dian Tooley-Knoblett, New Orleans

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Patrick S. Ottinger, Reporter

Megan Joy Rials, Staff Attorney

SENATE RESOLUTION NO. 159

BY SENATOR ALLAIN

A RESOLUTION

To urge and request that the Louisiana State Law Institute study the classification of mineral royalties under Louisiana law for the purposes of bankruptcy proceedings.

WHEREAS, the legal classification of certain debts and monies owed has implications for priority of treatment of those debts and monies in bankruptcy proceedings; and

WHEREAS, Louisiana is unique in the United States in its classification of mineral royalties as "rent", and the reason for the classification is unclear; and

WHEREAS, pursuant to R.S. 30:127, mineral leases of state-owned property contain a provision permitting the state, at its option, to take in-kind the portion due it as royalty of any minerals produced and saved from leased premises; and

WHEREAS, certain mineral leases of privately owned property reserve to the lessor a fraction of the oil in-kind with the right to sell, dispose, or take it as he sees fit; and

WHEREAS, under federal bankruptcy law, the classification of a debt as "rent" affects the priority that the debt has compared to other competing claims and limits the remedies available to collect the debt; and

WHEREAS, this classification has led to mineral royalties owed to landowners in Louisiana being given no priority in bankruptcy proceedings.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby request that the Louisiana State Law Institute study the history and reasoning for the classification of mineral royalties as "rent" in La. R.S. 31:123, and consider whether the law should be revised to reflect that royalties are properly classified as the property of the landowner or mineral owner at the moment of severance, rather than rent or any other type of debt, and report its findings and recommendations for any changes to laws which would protect the rights of public and private landowners or mineral owners to the Louisiana Legislature no later than sixty days prior to the convening of the 2018 Regular Session.

**BE IT FURTHER RESOLVED** that during the study of these issues and prior to submitting any recommendations to the legislature, the Louisiana State Law Institute shall include in its research information from the following:

**(1) The State Mineral and Energy Board.**

**(2) The Louisiana Landowner's Association.**

**(3) Legal counsel with experience in bankruptcy matters involving oil and gas production company debtors.**

**(4) The Louisiana Midcontinent Oil and Gas Association.**

**BE IT FURTHER RESOLVED** that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute, the secretary of the Department of Natural Resources, the chairman of the Louisiana State Mineral and Energy Board, the executive director of the Louisiana Landowners Association, and the president of the Louisiana Midcontinent Oil and Gas Association.

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**PRESIDENT OF THE SENATE**

January 9, 2018

To: Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 9413  
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO SR NO. 159 OF THE 2017 REGULAR SESSION**

Senate Resolution No. 159 of the 2017 Regular Session urges and requests the Louisiana State Law Institute to “study the classification of mineral royalties under Louisiana law for the purposes of bankruptcy proceedings.” In fulfillment of this request, the Law Institute created the Mineral Law Committee, composed of mineral law practitioners and professors and placed under the direction of Mr. Patrick S. Ottinger, a practicing attorney and an Adjunct Professor of Mineral Law at the LSU Law Center, as Reporter.

Background information on the classification of mineral royalties and the effects of such classification for the purposes of bankruptcy proceedings is being compiled, as well as information on the history and reasoning for the classification of mineral royalties as “rent” in R.S. 31:123. Additionally, the Reporter has been conducting research for the Committee in anticipation of its first meeting. The Committee will consider these materials at its first meeting in February and will provide commentary regarding the historic classification of mineral royalties as “rent” and whether the law should be revised.

A final report will be submitted to the legislature once the Mineral Law Committee has reviewed these materials and received approval of its recommendations from the Council of the Law Institute.

Respectfully submitted,

Patrick S. Ottinger, Reporter  
Mineral Law Committee  
Louisiana State Law Institute