As Introduced

133rd General Assembly
Regular Session
2019-2020

H. B. No. 100

Representative Cera
Cosponsor: Representative Patterson

A BILL

To amend section 5301.56 of the Revised Code to revise the requirements governing abandoned mineral rights.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5301.56 of the Revised Code be amended to read as follows:

Sec. 5301.56. (A) As used in this section:

(1) "Holder" means the record holder of a mineral interest, and any person successor or assignee of record who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(3) "Mineral interest" means a fee interest in at least one mineral regardless of how the interest is created and of the
form of the interest, which may be absolute or fractional or divided or undivided.

(4) "Mineral" means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth.

(5) "Owner of the surface of the lands subject to the interest" includes the owner's successors and assignees.

(6) "Public record" means any document pertaining to a mineral interest filed or recorded with the auditor, recorder, and all courts situated within each county in which the lands subject to the mineral interest are located.

(B) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned, extinguished, and voided, and vested in the owner of the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:

(1) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned, extinguished, and voided, and vest in the owner of the surface of the lands subject to the interest.

(2) The mineral interest is held by the United States,
this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

(a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(c) The mineral interest has been used in underground gas storage operations by the holder.

(d) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county.
in which the lands are located.

(e) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(f) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

(C)(1) A claim to preserve a mineral interest from being deemed abandoned, extinguished, and voided under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be recorded in accordance with division (H) of this section and sections 317.18 to 317.20 and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section 5301.52 of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest.

(2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves only the rights of all holders of a mineral interest in the same lands the holder who files the claim.

(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those
of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D)(1) A mineral interest may be preserved indefinitely from being deemed abandoned, extinguished, and voided under division (B) of this section by the occurrence of any of the circumstances described in division (B)(3) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(2) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 of the Revised Code.

(E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

(1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned, extinguished, and voided. If service of notice, after the owner conducts a search of public records to locate the holder, the owner cannot be completed to any holder attempt or complete notice via certified mail, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned, extinguished, and voided. The owner shall publish the notice at least once a week for three successive weeks in a newspaper of general
circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2) At least thirty, but not later than sixty days after the date on which the last notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

(F) The notice required under division (E)(1) of this section shall contain all of the following:

(1) The name of each applicable holder and the holder's successors and assignees, as applicable;

(2) A description of the surface of the land that is subject to the mineral interest. The description shall include the volume and page number of the recorded deed or other recorded instrument under which the owner of the surface of the lands claims title or otherwise satisfies the requirements established in division (A)(3) of section 5301.52 of the Revised Code.

(3) A description of the mineral interest to be abandoned, extinguished, and voided. The description shall include the volume and page number of the recorded instrument on which the mineral interest is based.

(4) A statement attesting that nothing specified in division (B)(3) of this section has occurred within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section;
(5) A statement of the intent of the owner of the surface
of the lands subject to the mineral interest to file in the
office of the county recorder an affidavit of abandonment at
least thirty, but not later than sixty days after the date on
which notice is served or published, as applicable.

(G) An affidavit of abandonment shall contain all of the
following:

(1) A statement that the person filing the affidavit is
the owner of the surface of the lands subject to the interest;

(2) The volume and page number of the recorded instrument
on which the mineral interest is based;

(3) A statement that the mineral interest has been
abandoned, extinguished, and voided pursuant to division (B) of
this section;

(4) A recitation of the facts constituting the abandonment;

(5) A statement that notice was served on each holder or
each holder’s successors or assignees by certified mail or
published by publication in accordance with division (E) of this
section.

(H)(1) If a holder or a holder’s successors or assignees
claim that the mineral interest that is the subject of a
notice under division (E) of this section has not been
abandoned, extinguished, and voided, the holder or the holder’s
successors or assignees, not later than sixty days after the
last date on which the notice was served or published, as
applicable, shall file an affidavit in the office of the county
recorder of each county where the land that is subject to the
mineral interest is located one of the following:
(a) A claim to preserve the mineral interest in accordance with division (C) of this section;

(b) An affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section.

The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

(2) If a holder or a holder's successors or assignees who claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned, extinguished, and voided fails to file a claim to preserve the mineral interest, files such a claim more than sixty days after the date on which the notice was served or published under division (E) of this section, fails to file an affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section, or files such an affidavit more than sixty days after the date on which the notice was served or published under that division, the owner of the surface of the lands subject to the interest who is seeking to have the interest deemed abandoned, extinguished, and voided, and vested in the owner shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located a notice of failure to file. The notice shall contain all of the following:

(a) A statement that the person filing the notice is the
owner of the surface of the lands subject to the mineral interest;

(b) A description of the surface of the land that is subject to the mineral interest;

(c) The statement: "This mineral interest is abandoned, extinguished, and voided pursuant to an affidavit of abandonment recorded in volume ...., page ....."

Immediately after the notice of failure to file a mineral interest is recorded, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or assignees against the owner of the surface of the lands formerly subject to the interest. However, the abandonment, extinguishment, and voiding, and vesting of a mineral interest pursuant to divisions (E) to (I) of this section is only shall be effective as to the property of the owner that filed the affidavit of abandonment under division (E) of this section.

(3)(a) Filing an affidavit under division (H)(1) of this section that identifies an event described in division (B)(3) of this section does not preclude a surface owner from taking legal action in a court of competent jurisdiction to determine the validity of the statements made by the holder in the affidavit.

(b) If the court finds that the affidavit is not valid or finds that the event described in the affidavit did not occur or did not occur within the twenty years immediately preceding the
date on which the notice was served or published under division (E) of this section, the surface owner of the lands subject to the interest shall file a notice in the office of the county recorder of each county where the land that is subject to the mineral interest is located. The notice shall contain all of the following:

   (i) A statement that the person filing the notice is the owner of the surface of the lands subject to the mineral interest;

   (ii) A description of the surface of the land that is subject to the mineral interest;

   (iii) A statement specifying that the court has determined that the affidavit filed under division (H)(1) of this section is not valid, that the event described in the affidavit did not occur, or that the event described in the affidavit did not occur within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section;

   (iv) The statement: "This mineral interest is abandoned, extinguished, and voided pursuant to an affidavit of abandonment recorded in volume ...., page ....."

   (c) Immediately after the notice is recorded, the mineral interest vests in the surface owner of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder against the owner of the surface of the lands formerly subject to the interest. However,
the abandonment, extinguishment, and voiding, and vesting of a
mineral interest pursuant to divisions (E) to (I) of this
section is only effective as to the property of the owner that
filed the affidavit of abandonment under division (E) of this
section.

(I) For purposes of a recording under this section, a
county recorder shall charge the fee established under section
317.32 of the Revised Code.

Section 2. That existing section 5301.56 of the Revised
Code is hereby repealed.