

Committees:

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## JACK CERA

State Representative

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### Energy and Natural Resources Committee

State Rep. Jack Cera

Sponsor Testimony – HB 100

Chairman Vitale, Vice Chair Kick, Ranking Member Denson and members of the House Energy and Natural Resources Committee – Thank you for the opportunity to speak to you today on Ohio's Dormant Mineral Act.

In the early 1900's, Monroe County is said to have been the largest oil-producing county east of the Mississippi. There are wells drilled in the 1890's in Monroe County that are still producing. The landowners, who sold their land over the years, might reserve some or all of the oil and gas rights on the property, because of this production. These "severed mineral rights" made it very difficult for future landowners to lease their oil and gas rights, because these severed mineral interest owners died and nothing was done with that interest. Their heirs were often scattered across the US and knew nothing about the severed mineral interest that reserved by their great-grandfather.

The Ohio legislature has taken steps to allow Ohio landowners to re-unite their surface acreage with these old reserved, severed mineral interests. In 1961, Ohio passed the Marketable Title Act (MTA) part of which allowed surface owners to eliminate these severed mineral interests under certain circumstances, but the use of the MTA had its limits.

In 1989, Ohio passed the Dormant Mineral Act (DMA) to deal with some of those limitations. The 1989 DMA allowed Ohio landowners to have these old interests declared abandoned and did not require any type of notice to be given. It was similar to the Indiana DMA, which required no notice and considered constitutional by the US Supreme Court. (It was supported by the Ohio Farm Bureau, as can be seen by the attached 1988 letter to the Senate Judiciary Committee).

In 2006, the Ohio legislature amended the DMA and added a "notice" requirement, while keeping the "savings events" set forth in the 1989 DMA. These "savings events" being occurrences in the previous 20-year period that would keep the severed mineral interest from

being abandoned. One of these savings events being the filing of a claim to preserve the interest by any heir of the person who had made the reservation initially (maybe 100 years ago).

In the intervening years, attorneys would use both the 1989 DMA and the revised 2006 DMA when trying to help an Ohio landowner acquire the oil and gas rights under his property.

In June of 2016, the Ohio Supreme Court, in the case of Corban vs Chesapeake, rewrote both the 1989 DMA and the 2006 version. In that case, the Supreme Court held that after 2006, only the 2006 DMA could be used. They said that a landowner who had used the 1989 version, which was effective until June of 2006, was required to have filed a quiet title action in Court, despite the fact that the 1989 DMA contains no provision requiring a quiet title action. (Doing so would then have been impossible.) The Supreme Court created a rule that had to be followed before it even existed and it eliminated the 1989 DMA.

In that case, the Supreme Court interpreted the 2006 version in a way that, in fact, makes meaningless the "savings events" because all a reserved mineral interest holder has to do is file a preservation notice after receiving notice of abandonment and their interest is preserved. Even if none of the savings events had occurred in the 20-year period prior to the Notice of Abandonment, their interests were still considered preserved. The Supreme Court has therefore, misinterpreted the 2006 DMA and made it useless.

So we are left with the situation much as it was before 1989. No landowner can turn back the clock to file a quiet title action using the 1989 DMA, and the 2006 DMA, as interpreted in Corban vs Chesapeake, is rendered useless. Ohio landowners are now left with no meaningful way under the DMA to reunite with their surface these old, reserved severed mineral interests despite the efforts of the Ohio Legislature.

HB 100 is an effort to make the Legislature's intent clear. It lays the groundwork for reserved interests to no longer burden Ohio landowners and allows a more efficient way for them to develop these oil and gas rights under their property in the future.

Thank you for your time and consideration. I will be happy to answer any questions.



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February 5, 1988

Senator Paul Pfeifer, Chairman  
Senate Judiciary Committee  
State House  
Columbus, Ohio 43215

Dear Paul:

Your support for Senate Bill 223 would go a long way in solving some of the problems that farmers have in trying to clear land titles and resolve their differences with oil and gas producers and to reduce the problems that oil and gas producers have with misunderstandings when the surface owner doesn't own the mineral rights. It reduces the problems that title attorneys and others have when they have no way to provide a clear title and the mineral rights have been separated from the surface and not properly transferred to successors or heirs.

You will recall in testimony last week that Bill Taylor of the Natural Resources Committee of the Bar Association explained the need to have a way of clearing titles and the need to have a companion piece of legislation to go with the marketable titles act. A copy of Taylor's testimony was provided for you. Included was the fact that 15 states have a dormant mineral rights act including Michigan, Indiana, Illinois, Pennsylvania, Virginia, and Tennessee. All but Pennsylvania, Virginia and Tennessee have a marketable titles act. The amendments that were recommended by the Bar Association, we wholeheartedly support with the exception of the amendment that was proposed by Mr. Sider which would have included the lease hold interests. Therefore, we are recommending that the 5 amendments proposed by Mr. Taylor be incorporated in the Bill.

To outline what we are trying to do with this legislation:

- A. Return the mineral rights that have been separated from the surface either by reservation during the sale of a property or by outright purchase of mineral rights sometime in the past to the surface owner providing there has not been any activity and the mineral rights have remained dormant for 20 years;

- B. Any mineral right owner can preserve his right by:
1. Transferring the title of the mineral rights and recording such transfer in the County Recorder's Office;
  2. Having actual production or withdraw of minerals by the holder of the mineral rights;
  3. Being used in underground storage of gas by the holder;
  4. A drilling or mining permit being issued to the holder and recorded in the County Recorder's Office;
  5. A claim to preserve the mineral interest has been filed and recorded in the notice index that is in the Recorder's Office.

Any of the above will begin a new 20 year period at any time the transaction is recorded.

The 5 amendments that have been proposed by the Ohio Bar Association Natural Resources Committee are to make sure that the action taken by a person to preserve their interest is recorded in the Recorder's Office. This appropriate filing will permit anyone who traces a title to find that record and know the mineral rights are preserved by the mineral rights owner.

While the bill is not easily read, I hope that this summary clarifies any questions that you may have. In the event you have additional questions, please feel free to call either myself at 249-2414, Bill Taylor (614) 454-2591, or Bob Fletcher 221-6983.

We hope that at the next hearing held by the committee that the amendments could be adopted and the bill recommended for passage. Your help in doing this would be very much appreciated.

Sincerely,



Robert E. Bash  
Director of Public Affairs, Natural and  
Environmental Resources and Utilities

cc: Bill Taylor  
Bob Fletcher