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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 100  
133rd General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Cera

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### SUMMARY

- Creates a process for a surface land owner seeking to obtain abandoned mineral interests to institute a legal challenge regarding the validity of an affidavit filed by a mineral interest holder who wants to preserve their mineral interests.
- Creates a process for the mineral interest rights to vest in the surface land owner if a court finds that the affidavit filed by the mineral interest holder is not valid.
- Clarifies that a mineral interest holder cannot make a claim to preserve the mineral interest if that claim is not filed within the 20 years prior to the date that the surface owner notifies the holder that the mineral rights are abandoned.
- Narrows the classes of persons who may make a claim to preserve a mineral interest.
- Requires a surface land owner to comply with additional notice procedures when notifying a mineral interest holder of the surface owner's intent to declare the mineral interest abandoned.

### DETAILED ANALYSIS

#### Claim to abandoned mineral interest rights

##### Background

The Ohio Dormant Minerals Act establishes a process by which a person who owns the surface of a parcel of land ("surface owner") may reclaim an abandoned mineral interest underneath that land. Under the process, the surface owner must do the following:

1. Serve notice by certified mail to each mineral interest holder ("holder") that states the surface owner's intent to declare the mineral interest abandoned. If notice by certified mail cannot be completed, the surface owner must provide notice by publication; and
2. After serving notice, file an affidavit of abandonment with the county recorder that meets certain requirements.

In the affidavit of abandonment, the surface owner must include a statement that none of the following “savings events” have occurred within the 20 years immediately *preceding* the date on which notice is served or published:

1. The mineral interest has been the subject of a title transaction that has been filed or recorded with the county recorder;
2. There has been actual production or withdrawal of minerals by the holder;
3. The holder has used the mineral interest in underground gas storage;
4. The holder has been issued a drilling or mining permit;
5. The holder has properly filed a claim to preserve the mineral interest; or
6. 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.<sup>1</sup>

### **Steps to preserve a mineral interest by a holder**

To preserve the mineral interest, a holder, within 60 days *after* the notice by the surface owner was served or published, must do one of the following:

1. File a claim to preserve the mineral interest that states that the mineral interest holder does not intend to abandon the mineral interest.
  - This provision of current law is inconsistent with the requirement that the claim to preserve the mineral interest be filed within the 20 years immediately preceding the date on which notice is served or published (see savings event #5, above). For example, if a mineral rights holder receives notice from the surface owner and no savings events have occurred within the prior 50 years, the holder may nonetheless preserve the mineral interest by filing a claim to preserve, provided it is filed within 60 days *after* receiving the notice.<sup>2</sup>
2. File an affidavit attesting that one of the savings events that would preserve the holder's mineral interest rights has occurred within the 20 years immediately preceding the date on which the surface owner served or published notice.<sup>3</sup>

The holder must file the affidavit or claim in the office of the county recorder in each county where the land that is subject to the mineral interest is located.

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<sup>1</sup> R.C. 5301.56(B), (E), (F), and (G). Additionally, a surface owner may not obtain the mineral rights if (1) The mineral interest is held by the U.S., Ohio, or any political subdivision, body politic, or agency of the U.S. or Ohio, or (2) the mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal. (However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may vest in the surface owner.)

<sup>2</sup> R.C. 5301.56(C) and (H)(1)(a).

<sup>3</sup> R.C. 5301.56(H)(1)(b).

Once either the claim or affidavit is filed by the holder, the surface owner cannot proceed to file the affidavit of abandonment.<sup>4</sup> This is true even if the holder's affidavit contains incorrect information regarding the savings event that would preserve the holder's rights. (For example, the holder claims in the affidavit that the mineral interest has been the subject of a title transaction within 20 years, but in actuality, the transaction occurred 30 years prior.)

The bill creates a process for the surface owner to challenge the validity of the holder's affidavit in court. If the surface owner wins, the surface owner may proceed to file a notice with the county recorder stating that the mineral rights vest in the surface owner.

The bill also removes the option (option 1, above) for the holder to file a claim to preserve the mineral interest *after* receiving notice from the surface owner. By removing this option, the bill requires the holder to file an affidavit with the county recorder that attests that one of the six savings events listed above has occurred within the 20 years immediately preceding the notice date.<sup>5</sup>

### **Legal challenge to holder's affidavit**

As indicated above, the bill allows a surface owner to challenge the validity of a holder's affidavit.<sup>6</sup> The mineral rights vest in the surface owner if the court finds one of the following:

1. That the holder's affidavit is not valid;
2. That the savings event described in the holder's affidavit did not occur; or
3. That the savings event described in the holder's affidavit did not occur within the 20 years immediately preceding the date the surface owner served or published notice.

If the court makes one of those findings, the surface owner may proceed to file a notice with the county recorder. The notice must contain all of the following:

1. A statement that the person filing the notice is the owner of the surface lands subject to the mineral interest;
2. A description of the surface land that is subject to the mineral interest;
3. A statement specifying that the court has determined that the former mineral interest holder's affidavit is not valid, the savings event described did not occur, or that the event described did not occur within the 20-year period; and
4. The statement: "This mineral interest is abandoned, extinguished, and voided pursuant to an affidavit of abandonment recorded in volume . . . ., page . . . ."<sup>7</sup>

Immediately after the notice is recorded, the mineral rights vest in the surface owner.<sup>8</sup> Additionally, the bill adds that whenever a mineral interest is abandoned, the mineral interest is also extinguished and voided.<sup>9</sup>

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<sup>4</sup> R.C. 5301.56(H)(1).

<sup>5</sup> R.C. 5301.56(H)(1).

<sup>6</sup> R.C. 5301.56(H)(3)(a).

<sup>7</sup> R.C. 5301.56(H)(3)(b).

## Additional changes

### Mineral interest holder

The bill narrows the definition of “holder” of a mineral interest from any person who derives the person’s rights from, or has a common source with, the record holder of a mineral interest to any *successor or assignee of record* who derives rights from, or has a common source with, the record holder.<sup>10</sup>

### Claim to preserve a mineral interest from being abandoned

The bill limits whose mineral interests are preserved after a holder files a claim to preserve a mineral interest. Under current law, a properly filed claim preserves the rights of all holders of a mineral interest in the same lands. However, the bill specifies that only the holder who files the claim has their mineral rights preserved.<sup>11</sup>

### Notice of mineral interest abandonment to each holder

As stated above, before a mineral interest becomes vested in the surface owner, the surface owner must serve notice to each holder. The notice must be served at the last known address of each holder. If service of notice cannot be completed, the surface owner must publish notice in a newspaper of general circulation in each county in which the land that is subject to the interest is located.

The bill requires the surface owner, before publishing notice in a newspaper, to conduct a search of public records to locate the holder. If notice cannot be completed after the public records search, the surface owner must 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.<sup>12</sup>

For purposes of the bill, a public record is 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.<sup>13</sup>

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## HISTORY

Action	Date
Introduced	02-26-19

H0100-I-133/ec

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<sup>8</sup> R.C. 5301.56(H)(3)(c).

<sup>9</sup> R.C. 5301.56.

<sup>10</sup> R.C. 5301.56(A)(1).

<sup>11</sup> R.C. 5301.56(C)(2).

<sup>12</sup> R.C. 5301.56(E)(1).

<sup>13</sup> R.C. 5301.56(A)(6).