



Amber Hardesty

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 288**

126th General Assembly  
(As Passed by the General Assembly)

**Reps. Wagoner, Combs, Cassell, Latta, Stewart, J., Hartnett, Garrison, Coley, Collier, DeGeeter, Distel, Dolan, Domenick, Flowers, Gibbs, Hood, Hughes, Martin, McGregor J., Reidelbach, Seitz, Willamowski**

**Sens. Schuler, Niehaus, Mumper**

**Effective date: \***

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### **ACT SUMMARY**

- Defines "mineral" and "mineral interest" for purposes of the mineral interests law, which specifies circumstances under which a mineral interest cannot be deemed abandoned, thereby precluding such an interest being vested in the owner of the surface land.
- Requires that, for any allowable vesting to occur, the landowner must notify the holder of the mineral interest and file an affidavit of abandonment as specified in the act.
- Authorizes the vesting of noncoal mineral interests where a mineral interest includes both coal and noncoal minerals.
- Adds to the circumstances under which vesting of a mineral interest in the landowner is prohibited because production activity has occurred on specified land pursuant to the mineral interest within the prior 20 years, by prohibiting the vesting of a mine, any portion of which is located beneath lands subject to a mineral interest or covered by a lease to which the mineral interest is subject.

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*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Defines the length of any such 20-year period as ending on the service or publication date of requisite surface landowner notification to the holder of a mineral interest that the landowner is acting to declare the interest abandoned.
- Specifies additional recording requirements for any claim to preserve a mineral interest.
- Requires the abandonment to be memorialized on a specified county record and provides that the mineral interest then becomes vested in the landowner, and the record of the mineral interest ceases to be public notice of the mineral interest.
- Applies the county recorder fee schedule to filings under the mineral interests law and requires affidavits of abandonment to be filed in the record of deeds.
- Separately, allows the chairperson of the Oil and Gas Commission to appoint temporary members to the Commission from the Technical Advisory Council on Oil and Gas if a Commission quorum cannot be obtained otherwise.

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## **CONTENT AND OPERATION**

### ***Vesting of abandoned mineral interests***

(R.C. 5301.56)

Ongoing law specifies that any mineral interest held by any person can be deemed abandoned and vested in the owner of the surface of the lands subject to that mineral interest except under certain circumstances. The act revises some of those circumstances and adds new, specified notification and affidavit requirements for allowable vesting to occur.

The act also adds definitions for "mineral" and "mineral interest." A "mineral interest" is any 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. "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. Under the act, "owner" includes the owner's successors and assignees. (R.C. 5301.56(A).)

**Circumstances that prohibit vesting**

Unchanged by the act is a prohibition against such vesting in a landowner if the United States, the State of Ohio, or any political subdivision, body politic, or U.S. or Ohio agency holds the mineral interest.

Modified by the act is a prohibition against vesting if the mineral interest consists of any right, title, estate, or interest in coal, or in any mining or other rights pertinent to or exercisable in connection with any right, title, estate, or interest in coal. Specifically, the act authorizes vesting of noncoal mineral interests where a mineral interest includes both coal and noncoal minerals. The act also removes a related provision of prior law that, by its terms, was rendered obsolete as outdated. (R.C. 5301.56(B)(1) and former (B)(2); and 5301.53, not in the act.)

Six additional circumstances that prohibit vesting under continuing law are contingent on them having happened within the *preceding* 20 years. The act specifies that this 20-year period is the 20 years immediately preceding the date on which the new holder notification is served or published as required by the act (see below) (R.C. 5301.56(B)(3)).

Of those six circumstances contingent on happening within the 20-year period, the act further changes only one.<sup>1</sup> Under ongoing law, vesting is prohibited if the holder<sup>2</sup> of the mineral interest has produced or withdrawn any

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<sup>1</sup> *The five other, 20-year circumstances that prohibit vesting are as follows: (1) the mineral interest has been the subject of a title transaction filed or recorded in the Office of the County Recorder of the county in which the lands are located, (2) the mineral interest has been used in underground gas storage operations by the holder, (3) a drilling or mining permit has been issued to the holder and 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 the Office of the County Recorder of the county in which the lands are located, (4) a claim to preserve the mineral interest has been filed in accordance with the mineral interests law, and (5) 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 (R.C. 5301.56(B)(3)(a) to (f)).*

<sup>2</sup> *Under continuing law, a "holder" is the record holder of a mineral interest, and any person who derives 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 (R.C. 5301.56(A)).*

minerals from (1) the lands subject to the mineral interest, (2) lands covered by a lease to which the mineral interest is subject, or (3) in the case of oil or gas, lands voluntarily or otherwise pooled, unitized, or included in oil or gas unit operations pursuant to continuing law, in which the mineral interest is participating and for which the pooling or unitizing instrument or order has been filed or recorded in the Office of the County Recorder of the county in which those lands are located. The act expands this prohibition by additionally prohibiting vesting in the case of a mine any portion of which is located beneath lands subject to the mineral interest or covered by a lease to which the mineral interest is subject and from which the holder of the mineral interest produced or withdrew minerals within the 20-year period (R.C. 5301.56(B)(3)(b)).

**Holder notification and affidavit of abandonment**

The act provides that, before a mineral interest can become vested in the owner of the surface of the lands subject to that interest, the owner must do two things: (1) notify the holder, or the holder's successors or assignees, of the owner's intent to declare the mineral interest abandoned and (2) file an affidavit of abandonment at least 30, but not later than 60, days after the date such notice is served or published.

**Holder notification.** The owner must serve the notice by certified mail, return receipt requested, to the last known address of each holder or holder's successors or assignees. If such service cannot be completed, the owner must publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land is located. (R.C. 5301.56(E)(1).)

The notification must contain all of the following: (1) the name of each holder or the holder's successors and assignees, as applicable, (2) a description of the surface of the land that is subject to the mineral interest, including the volume and page number of the recorded deed or of another recorded instrument that contains an accurate and full, specific description of all land affected by the notice, in which case the description in the notice may be the same as that contained in the recorded instrument, (3) a description of the mineral interest to be abandoned, including the volume and page number of the recorded instrument on which the mineral interest is based, (4) a statement attesting that none of the six circumstances that prohibit vesting has occurred within the 20 years immediately preceding the date on which the notice is served or published, (5) a statement of the intent of the owner of the surface of the lands subject to the mineral interest to file an affidavit of abandonment at least 30, but not later than 60, days after the date on which holder notification is served or published, as applicable (R.C. 5301.56(F); and R.C. 5301.52(A)(3), not in the act).

**Affidavit of abandonment.** The affidavit of abandonment must be filed 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, and must 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 mineral 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 pursuant to the act, (4) a recitation of the facts constituting the abandonment, and (5) a statement that holder notification was served or published as required by the act (R.C. 5301.56(E)(2) and (G)).

**Claim to preclude abandonment**

Continuing law details the authority of a holder to file a claim to preserve from abandonment a mineral interest for which holder notification is required. An appropriately filed claim itself preserves the holder's interest. The act specifies that the claim must be filed in the Office of the County Recorder of each county where the land that is subject to the mineral interest is located, and that it be filed not later than 60 days after the date on which holder notification was served or published. Alternatively, where applicable, the holder or the holder's successors or assignees must so file an affidavit identifying one of the six circumstances that prohibit vesting has occurred within the act's prescribed 20-year period. The holder or the holder's successors or assignees must provide notice of the filing of such a claim or affidavit to the person who served or published the holder notice required under the act. (R.C. 5301.56(C), (D), and (H)(1).)

**Vesting process**

The act further provides that, if a holder or a holder's successor or assignee fails to file such a claim or affidavit to preserve a mineral interest, or files the claim or affidavit more than 60 days after the holder notification is served or published, the landowner seeking abandonment and vesting must cause the county recorder of each applicable county to include the following memorial on the record on which the severed mineral interest is based: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....." (R.C. 5301.56(H)(2).) The act allows a county recorder who uses microfilm as provided under continuing law (R.C. 9.01, not in the act) to place the statement on the affidavit of abandonment instead of on the record on which the severed mineral interest is based, and to record the affidavit as provided under continuing county recorder record-keeping law (R.C. 317.08). (R.C. 5301.56(I).)

The act then provides that, immediately after the memorialization, the mineral interest becomes vested in the owner, and the record of the mineral interest expressly ceases to be notice to the public of the mineral interest or any rights under it. In addition under the act, the record cannot be received as

evidence against the owner in any Ohio court on behalf of the former holder or the former holder's successors or assignees. The abandonment and vesting of a mineral interest under the act is effective only as to the property of the owner that filed the affidavit of abandonment required by the act. (R.C. 5301.56(H).)

### **County recorder authority**

The act expressly authorizes a county recorder to apply the county recorder fee schedule (in R.C. 317.32, unchanged by the act) to filings under the act (R.C. 5301.56(I)). Further, it provides that affidavits filed under the mineral interests law must be filed in a county recorder's record of deeds (R.C. 317.08).

### **Oil and Gas Commission quorum**

(R.C. 1509.35 and 1509.38)

The Oil and Gas Commission is a five-member commission appointed by the Governor and responsible for deciding appeals of orders issued by the Chief of the Division of Mineral Resources Management in the Department of Natural Resources. By statute, the appointees must meet certain qualifications: each must qualify, respectively, as a representative of a major petroleum company, a representative of the public, a representative of independent petroleum operators, a person learned and experienced in oil and gas law, and a person learned and experienced in geology. Not more than three members can be of the same political party. The Commission members select the chairperson.

Under continuing law, three Commission members constitute a quorum. Formerly, no Commission action was valid unless it had the concurrence of at least three members. The act instead requires concurrence of a majority of the members voting on a particular action.

Additionally under the act, when the Commission chairperson determines that a quorum cannot be obtained to consider a matter because of vacancies or refusal of its members, he or she is authorized to contact the Technical Advisory Council on Oil and Gas and request a list of Council members who may serve as temporary Commission members. The Council must prepare the list immediately upon receiving the request. Using that list, the Commission chairperson may appoint temporary members, but only for the matter for which a quorum cannot be obtained. The number of temporary members cannot exceed that necessary to obtain the quorum. The professional qualifications and political party restrictions specified for Commission members do not apply to a temporary member. A temporary member is granted the same authority, rights, and obligations as a

Commission member, including the right to compensation and other expenses,<sup>3</sup> but those authority, rights, and obligations cease when the temporary member's service on the Commission ends.

Under continuing law, the Technical Advisory Council on Oil and Gas advises the Chief of the Division of Mineral Resources Management. The Council consists of eight members appointed by the Governor with the advice and consent of the Senate. Three members must be independent oil or gas producers, operators, or their representatives, operating and producing primarily in Ohio. Three other members must be oil or gas producers, operators, or their representatives having substantial oil and gas producing operations in Ohio and at least one other state. One member must represent the public, and one member must represent persons having landowners' royalty interests in oil and gas production. All members must be Ohio residents, and all members, except the members representing the public and persons having landowners' royalty interests, must have at least five years of practical or technical experience in oil or gas drilling and production. Not more than one member may represent any one company, producer, or operator.

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## HISTORY

ACTION	DATE
Introduced	06-01-05
Reported, H. Public Utilities and Energy	12-08-05
Passed House (92-1)	01-11-06
Reported, S. Energy & Public Utilities	02-22-06
Passed Senate (32-0)	03-01-06

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<sup>3</sup> *Each Commission member is paid a per diem determined by the Director of Administrative Services when actually engaged in the performance of work or necessary travel as a member. Additionally, each member is reimbursed for all travel, hotel, and other expenses necessarily incurred in the member's work.*

