

# AN ACT

To amend sections 317.08, 1509.35, 1509.38, and 5301.56 of the Revised Code to revise the statute governing the vesting of abandoned mineral rights and to allow the chairperson of the Oil and Gas Commission to appoint temporary members to the Commission from the Technical Advisory Council on Oil and Gas when a quorum of the Commission cannot be obtained.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 317.08, 1509.35, 1509.38, and 5301.56 of the Revised Code be amended to read as follows:

Sec. 317.08. (A) Except as provided in divisions (C) and (D) of this section, the county recorder shall keep six separate sets of records as follows:

(1) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices as provided in sections 5301.47 to 5301.56 of the Revised Code; all judgments or decrees in actions brought under section 5303.01 of the Revised Code; all declarations and bylaws, and all amendments to declarations and bylaws, as provided in Chapter 5311. of the Revised Code; affidavits as provided in ~~section~~ sections 5301.252 and 5301.56 of the Revised Code; all certificates as provided in section 5311.17 of the Revised Code; all articles dedicating archaeological preserves accepted by the director of the Ohio historical society under section 149.52 of the Revised Code; all articles dedicating nature preserves accepted by the director of natural resources under section 1517.05 of the Revised Code; all agreements for the registration of lands as archaeological or historic landmarks under section 149.51 or 149.55 of the Revised Code; all conveyances of conservation easements and agricultural easements under section 5301.68 of the Revised Code; all instruments extinguishing agricultural easements under section 901.21 or 5301.691 of the Revised Code or pursuant to terms of such an easement granted to a

charitable organization under section 5301.68 of the Revised Code; all instruments or orders described in division (B)~~(1)(c)(ii)~~(2)(b) of section 5301.56 of the Revised Code; all no further action letters issued under section 122.654 or 3746.11 of the Revised Code; all covenants not to sue issued under section 3746.12 of the Revised Code, including all covenants not to sue issued pursuant to section 122.654 of the Revised Code; any restrictions on the use of property contained in a no further action letter issued under section 122.654 of the Revised Code, any restrictions on the use of property identified pursuant to division (C)(3)(a) of section 3746.10 of the Revised Code, and any restrictions on the use of property contained in a deed or other instrument as provided in division (E) or (F) of section 3737.882 of the Revised Code; any easement executed or granted under section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code; any environmental covenant entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code; all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that describe specific real property; and all agreements entered into under division (A) of section 1521.26 of the Revised Code;

(2) A record of mortgages, in which shall be recorded all of the following:

(a) All mortgages, including amendments, supplements, modifications, and extensions of mortgages, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered;

(b) All executory installment contracts for the sale of land executed after September 29, 1961, that by their terms are not required to be fully performed by one or more of the parties to them within one year of the date of the contracts;

(c) All options to purchase real estate, including supplements, modifications, and amendments of the options, but no option of that nature shall be recorded if it does not state a specific day and year of expiration of its validity;

(d) Any tax certificate sold under section 5721.33 of the Revised Code, or memorandum of it, that is presented for filing of record.

(3) A record of powers of attorney, including all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that do not describe specific real property;

(4) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision of town lots, and of other divisions or surveys of lands, any center line survey of a highway located within the county, the

plat of which shall be furnished by the director of transportation or county engineer, and all drawings and amendments to drawings, as provided in Chapter 5311. of the Revised Code;

(5) A record of leases, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments of leases and memoranda of leases;

(6) A record of declarations executed pursuant to section 2133.02 of the Revised Code and durable powers of attorney for health care executed pursuant to section 1337.12 of the Revised Code.

(B) All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, internal revenue tax liens and other liens in favor of the United States as described in division (A) of section 317.09 of the Revised Code, personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, broker's liens, and liens provided for in sections 1513.33, 1513.37, 3752.13, 5111.022, and 5311.18 of the Revised Code.

The recording of an option to purchase real estate, including any supplement, modification, and amendment of the option, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the option.

(C) In lieu of keeping the six separate sets of records required in divisions (A)(1) to (6) of this section and the records required in division (D) of this section, a county recorder may record all the instruments required to be recorded by this section in two separate sets of record books. One set shall be called the "official records" and shall contain the instruments listed in divisions (A)(1), (2), (3), (5), and (6) and (D) of this section. The second set of records shall contain the instruments listed in division (A)(4) of this section.

(D) Except as provided in division (C) of this section, the county recorder shall keep a separate set of records containing all corrupt activity lien notices filed with the recorder pursuant to section 2923.36 of the Revised Code and a separate set of records containing all medicaid fraud lien notices filed with the recorder pursuant to section 2933.75 of the Revised Code.

Sec. 1509.35. (A) There is hereby created an oil and gas commission consisting of five members appointed by the governor. Terms of office shall

be for five years, commencing on the fifteenth day of October and ending on the fourteenth day of October, except that the terms of the first five members of the board shall be for one, two, three, four, and five years, respectively, as designated by the governor at the time of the appointment. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of the member's term until a successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Each vacancy occurring on the commission shall be filled by appointment within sixty days after the vacancy occurs. One of the appointees to the commission shall be a person who, by reason of the person's previous vocation, employment, or affiliations, can be classed as a representative of a major petroleum company. One of the appointees to the commission shall be a person who, by reason of the person's previous vocation, employment, or affiliations, can be classed as a representative of the public. One of the appointees to the commission shall be a person who, by reason of the person's previous training and experience, can be classed as a representative of independent petroleum operators. One of the appointees to the commission shall be a person who, by reason of the person's previous training and experience, can be classed as one learned and experienced in oil and gas law. One of the appointees to the commission shall be a person who, by reason of the person's previous training and experience, can be classed as one learned and experienced in geology. Not more than three members shall be members of the same political party. This division does not apply to temporary members appointed under division (C) of this section.

(B) Three members constitute a quorum and no action of the commission is valid unless it has the concurrence of at least ~~three members~~ a majority of the members voting on that action. The commission shall keep a record of its proceedings.

(C) If the chairperson of the commission determines that a quorum cannot be obtained for the purpose of considering a matter that will be before the commission because of vacancies or recusal of its members, the chairperson may contact the technical advisory council on oil and gas created in section 1509.38 of the Revised Code and request a list of members of the council who may serve as temporary members of the commission. Using the list provided by the council, the chairperson may appoint temporary members to the commission. The appointment of

temporary members shall be for only the matter for which a quorum cannot be obtained. The number of temporary members appointed by the chairperson shall not exceed the number that is necessary to obtain a quorum for the matter. A temporary member of the commission has the same authority, rights, and obligations as a member of the commission, including the right to compensation and other expenses as provided in this section. The authority, rights, and obligations of a temporary member cease when the temporary member's service on the commission ends.

(D) Each member shall be paid an amount fixed pursuant to division (J) of section 124.15 of the Revised Code per diem when actually engaged in the performance of work as a member and when engaged in travel necessary in connection with such work. In addition to such compensation each member shall be reimbursed for all traveling, hotel, and other expenses necessarily incurred in the performance of work as a member.

(E) The commission shall select from among its members a chairperson, a vice-chairperson, and a secretary. These officers shall serve for terms of one year.

(F) The governor may remove any member of the commission from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance.

(G) The commission, in accordance with Chapter 119. of the Revised Code, shall adopt rules to govern its procedure.

Sec. 1509.38. There is hereby created in the division of mineral resources management a technical advisory council on oil and gas, which shall consist of eight members to be appointed by the governor with the advice and consent of the senate. Three members shall be independent oil or gas producers, operators, or their representatives, operating and producing primarily in this state, three members shall be oil or gas producers, operators, or their representatives having substantial oil and gas producing operations in this state and at least one other state, one member shall represent the public, and one member shall represent persons having landowners' royalty interests in oil and gas production. All members shall be residents of this state, and all members, except the members representing the public and persons having landowners' royalty interests, shall 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.

Terms of office shall be for three years, commencing on the first day of February and ending on the thirty-first day of January. Each member shall hold office from the date of appointment until the end of the term for which

the member was appointed. A vacancy in the office of a member shall be filled by the governor, with the advice and consent of the senate. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

The council shall select from among its members a chairperson, a vice-chairperson, and a secretary. All members are entitled to their actual and necessary expenses incurred in the performance of their duties as members, payable from the appropriations for the division.

The governor may remove any member for inefficiency, neglect of duty, or malfeasance in office.

The council shall hold at least one regular meeting in each quarter of a calendar year and shall keep a record of its proceedings. Special meetings may be called by the chairperson and shall be called by the chairperson upon receipt of a written request signed by two or more members of the council. A written notice of the time and place of each meeting shall be sent to each member of the council. Five members constitute a quorum, and no action of the council is valid unless five members concur.

The council, when requested by the chief of the division of mineral resources management, shall consult with and advise the chief and perform other duties that may be lawfully delegated to it by the chief. The council may participate in hearings held by the chief under this chapter and has powers of approval as provided in sections 1509.24 and 1509.25 of the Revised Code. The council shall conduct the activities required, and exercise the authority granted, under Chapter 1510. of the Revised Code.

The council, upon receiving a request from the chairperson of the oil and gas commission under division (C) of section 1509.35 of the Revised Code, immediately shall prepare and provide to the chairperson a list of its members who may serve as temporary members of the oil and gas commission as provided in that division.

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

(1) "Holder" means the record holder of a mineral interest, and any person who derives ~~his~~ 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.

~~(B)(4)~~ 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 and vested in the owner of the surface, ~~if 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:

~~(a)(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 and vest in the owner of the surface of the lands subject to the interest.~~

~~(b)(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;.

~~(c)(3)~~ Within the ~~preceding~~ 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:

~~(i)(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;.

~~(ii)(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;

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

~~(iv)~~(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;

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

~~(vi)~~(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.

~~(2) A mineral interest shall not be deemed abandoned under division (B)(1) of this section because none of the circumstances described in that division apply, until three years from the effective date of this section.~~

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B)~~(1)~~ of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with division (H) of this section and sections 317.18 to 317.201 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, his 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 the rights of all holders of a mineral interest in the same lands.

(3) Any holder of an interest for use in underground gas storage operations may preserve his 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 under division (B)~~(1)~~ of this section by the occurrence of

any of the circumstances described in division (B)~~(1)(e)~~(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. If service of notice cannot be completed to any holder, the owner shall 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 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 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 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. 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 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 or published 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, the holder or the holder's successors or assignees, not later than sixty days after the date on which the notice was served or published, as applicable, shall file 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 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 and vested in the owner shall cause the county recorder of each applicable county to memorialize the record on which the severed mineral interest is based with the following: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....."

Immediately after the county recorder memorializes the record, 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 and vesting of a mineral interest pursuant to divisions (E) to (I) of this section only shall be 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.

A county recorder who uses microfilm as provided under section 9.01 of the Revised Code may require the memorial "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....." to be located on the affidavit of abandonment instead of the record on which the severed mineral interest is based, and the affidavit may be recorded under section 317.08 of the Revised Code.

SECTION 2. That existing sections 317.08, 1509.35, 1509.38, and 5301.56 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_