

As Reported by the House Public Utilities and Energy Committee

126th General Assembly

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Sub. H. B. No. 288

**Representatives Wagoner, Combs, Cassell, Latta, Stewart, J., Hartnett,
Garrison**

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A B I L L

To amend sections 317.08, 1509.35, 1509.38, and 1
5301.56 of the Revised Code to revise the statute 2
governing the vesting of abandoned mineral rights 3
and to allow the chairperson of the Oil and Gas 4
Commission to appoint temporary members to the 5
Commission from the Technical Advisory Council on 6
Oil and Gas when a quorum of the Commission cannot 7
be obtained. 8

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

Section 1. That sections 317.08, 1509.35, 1509.38, and 9
5301.56 of the Revised Code be amended to read as follows: 10

Sec. 317.08. (A) Except as provided in divisions (C) and (D) 11
of this section, the county recorder shall keep six separate sets 12
of records as follows: 13

(1) A record of deeds, in which shall be recorded all deeds 14
and other instruments of writing for the absolute and 15
unconditional sale or conveyance of lands, tenements, and 16
hereditaments; all notices as provided in sections 5301.47 to 17
5301.56 of the Revised Code; all judgments or decrees in actions 18
brought under section 5303.01 of the Revised Code; all 19

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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)(e)(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 53
agreements entered into under division (A) of section 1521.26 of 54
the Revised Code; 55

(2) A record of mortgages, in which shall be recorded all of 56
the following: 57

(a) All mortgages, including amendments, supplements, 58
modifications, and extensions of mortgages, or other instruments 59
of writing by which lands, tenements, or hereditaments are or may 60
be mortgaged or otherwise conditionally sold, conveyed, affected, 61
or encumbered; 62

(b) All executory installment contracts for the sale of land 63
executed after September 29, 1961, that by their terms are not 64
required to be fully performed by one or more of the parties to 65
them within one year of the date of the contracts; 66

(c) All options to purchase real estate, including 67
supplements, modifications, and amendments of the options, but no 68
option of that nature shall be recorded if it does not state a 69
specific day and year of expiration of its validity; 70

(d) Any tax certificate sold under section 5721.33 of the 71
Revised Code, or memorandum of it, that is presented for filing of 72
record. 73

(3) A record of powers of attorney, including all memoranda 74
of trust, as described in division (A) of section 5301.255 of the 75
Revised Code, that do not describe specific real property; 76

(4) A record of plats, in which shall be recorded all plats 77
and maps of town lots, of the subdivision of town lots, and of 78
other divisions or surveys of lands, any center line survey of a 79
highway located within the county, the plat of which shall be 80
furnished by the director of transportation or county engineer, 81
and all drawings and amendments to drawings, as provided in 82
Chapter 5311. of the Revised Code; 83

(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 115
listed in division (A)(4) of this section. 116

(D) Except as provided in division (C) of this section, the 117
county recorder shall keep a separate set of records containing 118
all corrupt activity lien notices filed with the recorder pursuant 119
to section 2923.36 of the Revised Code and a separate set of 120
records containing all medicaid fraud lien notices filed with the 121
recorder pursuant to section 2933.75 of the Revised Code. 122

Sec. 1509.35. (A) There is hereby created an oil and gas 123
commission consisting of five members appointed by the governor. 124
Terms of office shall be for five years, commencing on the 125
fifteenth day of October and ending on the fourteenth day of 126
October, except that the terms of the first five members of the 127
board shall be for one, two, three, four, and five years, 128
respectively, as designated by the governor at the time of the 129
appointment. Each member shall hold office from the date of 130
appointment until the end of the term for which the member was 131
appointed. Any member appointed to fill a vacancy occurring prior 132
to the expiration of the term for which the member's predecessor 133
was appointed shall hold office for the remainder of such term. 134
Any member shall continue in office subsequent to the expiration 135
date of the member's term until a successor takes office, or until 136
a period of sixty days has elapsed, whichever occurs first. Each 137
vacancy occurring on the commission shall be filled by appointment 138
within sixty days after the vacancy occurs. One of the appointees 139
to the commission shall be a person who, by reason of the person's 140
previous vocation, employment, or affiliations, can be classed as 141
a representative of a major petroleum company. One of the 142
appointees to the commission shall be a person who, by reason of 143
the person's previous vocation, employment, or affiliations, can 144
be classed as a representative of the public. One of the 145

appointees to the commission shall be a person who, by reason of 146
the person's previous training and experience, can be classed as a 147
representative of independent petroleum operators. One of the 148
appointees to the commission shall be a person who, by reason of 149
the person's previous training and experience, can be classed as 150
one learned and experienced in oil and gas law. One of the 151
appointees to the commission shall be a person who, by reason of 152
the person's previous training and experience, can be classed as 153
one learned and experienced in geology. Not more than three 154
members shall be members of the same political party. This 155
division does not apply to temporary members appointed under 156
division (C) of this section. 157

(B) Three members constitute a quorum and no action of the 158
commission is valid unless it has the concurrence of at least 159
three members a majority of the members voting on that action. The 160
commission shall keep a record of its proceedings. 161

(C) If the chairperson of the commission determines that a 162
quorum cannot be obtained for the purpose of considering a matter 163
that will be before the commission because of vacancies or recusal 164
of its members, the chairperson may contact the technical advisory 165
council on oil and gas created in section 1509.38 of the Revised 166
Code and request a list of members of the council who may serve as 167
temporary members of the commission. Using the list provided by 168
the council, the chairperson may appoint temporary members to the 169
commission. The appointment of temporary members shall be for only 170
the matter for which a quorum cannot be obtained. The number of 171
temporary members appointed by the chairperson shall not exceed 172
the number that is necessary to obtain a quorum for the matter. A 173
temporary member of the commission has the same authority, rights, 174
and obligations as a member of the commission, including the right 175
to compensation and other expenses as provided in this section. 176
The authority, rights, and obligations of a temporary member cease 177

when the temporary member's service on the commission ends.

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(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.

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(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.

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

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

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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

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practical or technical experience in oil or gas drilling and 208
production. Not more than one member may represent any one 209
company, producer, or operator. 210

Terms of office shall be for three years, commencing on the 211
first day of February and ending on the thirty-first day of 212
January. Each member shall hold office from the date of 213
appointment until the end of the term for which the member was 214
appointed. A vacancy in the office of a member shall be filled by 215
the governor, with the advice and consent of the senate. Any 216
member appointed to fill a vacancy occurring prior to the 217
expiration of the term for which the member's predecessor was 218
appointed shall hold office for the remainder of that term. Any 219
member shall continue in office subsequent to the expiration date 220
of the member's term until the member's successor takes office, or 221
until a period of sixty days has elapsed, whichever occurs first. 222

The council shall select from among its members a 223
chairperson, a vice-chairperson, and a secretary. All members are 224
entitled to their actual and necessary expenses incurred in the 225
performance of their duties as members, payable from the 226
appropriations for the division. 227

The governor may remove any member for inefficiency, neglect 228
of duty, or malfeasance in office. 229

The council shall hold at least one regular meeting in each 230
quarter of a calendar year and shall keep a record of its 231
proceedings. Special meetings may be called by the chairperson and 232
shall be called by the chairperson upon receipt of a written 233
request signed by two or more members of the council. A written 234
notice of the time and place of each meeting shall be sent to each 235
member of the council. Five members constitute a quorum, and no 236
action of the council is valid unless five members concur. 237

The council, when requested by the chief of the division of 238

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 269
state from natural deposits on or in the earth. 270

(5) "Owner of the surface of the lands subject to the 271
interest" includes the owner's successors and assignees. 272

(B)~~(1)~~ Any mineral interest held by any person, other than 273
the owner of the surface of the lands subject to the interest, 274
shall be deemed abandoned and vested in the owner of the surface~~7~~ 275
~~if~~ of the lands subject to the interest if the requirements 276
established in division (E) of this section are satisfied and none 277
of the following applies: 278

~~(a)~~(1) The mineral interest is in coal, or in mining or other 279
rights pertinent to or exercisable in connection with an interest 280
in coal, as described in division (E) of section 5301.53 of the 281
Revised Code~~7~~. However, if a mineral interest includes both coal 282
and other minerals that are not coal, the mineral interests that 283
are not in coal may be deemed abandoned and vest in the owner of 284
the surface of the lands subject to the interest. 285

~~(b)~~(2) The mineral interest is held by the United States, 286
this state, or any political subdivision, body politic, or agency 287
of the United States or this state, as described in division (G) 288
of section 5301.53 of the Revised Code~~7~~. 289

~~(c)~~(3) Within the ~~preceding~~ twenty years immediately 290
preceding the date on which notice is served or published under 291
division (E) of this section, one or more of the following has 292
occurred: 293

~~(i)~~(a) The mineral interest has been the subject of a title 294
transaction that has been filed or recorded in the office of the 295
county recorder of the county in which the lands are located~~7~~. 296

~~(ii)~~(b) There has been actual production or withdrawal of 297
minerals by the holder from the lands, from lands covered by a 298

lease to which the mineral interest is subject, from a mine a 299
portion of which is located beneath the lands, or, in the case of 300
oil or gas, from lands pooled, unitized, or included in unit 301
operations, under sections 1509.26 to 1509.28 of the Revised Code, 302
in which the mineral interest is participating, provided that the 303
instrument or order creating or providing for the pooling or 304
unitization of oil or gas interests has been filed or recorded in 305
the office of the county recorder of the county in which the lands 306
that are subject to the pooling or unitization are located~~+~~. 307

~~(iii)~~(c) The mineral interest has been used in underground 308
gas storage operations by the holder~~+~~. 309

~~(iv)~~(d) A drilling or mining permit has been issued to the 310
holder, provided that an affidavit that states the name of the 311
permit holder, the permit number, the type of permit, and a legal 312
description of the lands affected by the permit has been filed or 313
recorded, in accordance with section 5301.252 of the Revised Code, 314
in the office of the county recorder of the county in which the 315
lands are located~~+~~. 316

~~(v)~~(e) A claim to preserve the mineral interest has been 317
filed in accordance with division (C) of this section~~+~~. 318

~~(vi)~~(f) In the case of a separated mineral interest, a 319
separately listed tax parcel number has been created for the 320
mineral interest in the county auditor's tax list and the county 321
treasurer's duplicate tax list in the county in which the lands 322
are located. 323

~~(2) A mineral interest shall not be deemed abandoned under 324
division (B)(1) of this section because none of the circumstances 325
described in that division apply, until three years from the 326
effective date of this section. 327~~

(C)(1) A claim to preserve a mineral interest from being 328
deemed abandoned under division (B)~~(1)~~ of this section may be 329

filed for record by its holder. Subject to division (C)(3) of this 330
section, the claim shall be filed and recorded in accordance with 331
division (H) of this section and sections 317.18 to 317.201 and 332
5301.52 of the Revised Code, and shall consist of a notice that 333
does all of the following: 334

(a) States the nature of the mineral interest claimed and any 335
recording information upon which the claim is based; 336

(b) Otherwise complies with section 5301.52 of the Revised 337
Code; 338

(c) States that the holder does not intend to abandon, but 339
instead to preserve, ~~his~~ the holder's rights in the mineral 340
interest. 341

(2) A claim that complies with division (C)(1) of this 342
section or, if applicable, divisions (C)(1) and (3) of this 343
section preserves the rights of all holders of a mineral interest 344
in the same lands. 345

(3) Any holder of an interest for use in underground gas 346
storage operations may preserve ~~his~~ the holder's interest, and 347
those of any lessor of the interest, by a single claim, that 348
defines the boundaries of the storage field or pool and its 349
formations, without describing each separate interest claimed. The 350
claim is prima-facie evidence of the use of each separate interest 351
in underground gas storage operations. 352

(D)(1) A mineral interest may be preserved indefinitely from 353
being deemed abandoned under division (B)~~(1)~~ of this section by 354
the occurrence of any of the circumstances described in division 355
(B)~~(1)~~~~(e)~~(3) of this section, including, but not limited to, 356
successive filings of claims to preserve mineral interests under 357
division (C) of this section. 358

(2) The filing of a claim to preserve a mineral interest 359
under division (C) of this section does not affect the right of a 360

lessor of an oil or gas lease to obtain its forfeiture under
section 5301.332 of the Revised Code.

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(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:

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(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.

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(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.

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

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

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(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

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<u>otherwise satisfies the requirements established in division</u>	392
<u>(A)(3) of section 5301.52 of the Revised Code.</u>	393
<u>(3) A description of the mineral interest to be abandoned.</u>	394
<u>The description shall include the volume and page number of the</u>	395
<u>recorded instrument on which the mineral interest is based.</u>	396
<u>(4) A statement attesting that nothing specified in division</u>	397
<u>(B)(3) of this section has occurred within the twenty years</u>	398
<u>immediately preceding the date on which notice is served or</u>	399
<u>published under division (E) of this section;</u>	400
<u>(5) A statement of the intent of the owner of the surface of</u>	401
<u>the lands subject to the mineral interest to file in the office of</u>	402
<u>the county recorder an affidavit of abandonment at least thirty,</u>	403
<u>but not later than sixty days after the date on which notice is</u>	404
<u>served or published, as applicable.</u>	405
<u>(G) An affidavit of abandonment shall contain all of the</u>	406
<u>following:</u>	407
<u>(1) A statement that the person filing the affidavit is the</u>	408
<u>owner of the surface of the lands subject to the interest;</u>	409
<u>(2) The volume and page number of the recorded instrument on</u>	410
<u>which the mineral interest is based;</u>	411
<u>(3) A statement that the mineral interest has been abandoned</u>	412
<u>pursuant to division (B) of this section;</u>	413
<u>(4) A recitation of the facts constituting the abandonment;</u>	414
<u>(5) A statement that notice was served on each holder or each</u>	415
<u>holder's successors or assignees or published in accordance with</u>	416
<u>division (E) of this section.</u>	417
<u>(H)(1) If a holder or a holder's successors or assignees</u>	418
<u>claim that the mineral interest that is the subject of a notice</u>	419
<u>under division (E) of this section has not been abandoned, the</u>	420
<u>holder or the holder's successors or assignees, not later than</u>	421

sixty days after the date on which the notice was served or 422
published, as applicable, shall file in the office of the county 423
recorder of each county where the land that is subject to the 424
mineral interest is located one of the following: 425

(a) A claim to preserve the mineral interest in accordance 426
with division (C) of this section; 427

(b) An affidavit that identifies an event described in 428
division (B)(3) of this section that has occurred within the 429
twenty years immediately preceding the date on which the notice 430
was served or published under division (E) of this section. 431

The holder or the holder's successors or assignees shall 432
notify the person who served or published the notice under 433
division (E) of this section of the filing under this division. 434

(2) If a holder or a holder's successors or assignees who 435
claim that the mineral interest that is the subject of a notice 436
under division (E) of this section has not been abandoned fails to 437
file a claim to preserve the mineral interest, files such a claim 438
more than sixty days after the date on which the notice was served 439
or published under division (E) of this section, fails to file an 440
affidavit that identifies an event described in division (B)(3) of 441
this section that has occurred within the twenty years immediately 442
preceding the date on which the notice was served or published 443
under division (E) of this section, or files such an affidavit 444
more than sixty days after the date on which the notice was served 445
or published under that division, the owner of the surface of the 446
lands subject to the interest who is seeking to have the interest 447
deemed abandoned and vested in the owner shall cause the county 448
recorder of each applicable county to memorialize the record on 449
which the severed mineral interest is based with the following: 450
"This mineral interest abandoned pursuant to affidavit of 451
abandonment recorded in volume , page" 452

Immediately after the county recorder memorializes the 453
record, the mineral interest shall vest in the owner of the 454
surface of the lands formerly subject to the interest, and the 455
record of the mineral interest shall cease to be notice to the 456
public of the existence of the mineral interest or of any rights 457
under it. In addition, the record shall not be received as 458
evidence in any court in this state on behalf of the former holder 459
or the former holder's successors or assignees against the owner 460
of the surface of the lands formerly subject to the interest. 461
However, the abandonment and vesting of a mineral interest 462
pursuant to divisions (E) to (I) of this section only shall be 463
effective as to the property of the owner that filed the affidavit 464
of abandonment under division (E) of this section. 465

(I) For purposes of a recording under this section, a county 466
recorder shall charge the fee established under section 317.32 of 467
the Revised Code. 468

A county recorder who uses microfilm as provided under 469
section 9.01 of the Revised Code may require the memorial "This 470
mineral interest abandoned pursuant to affidavit of abandonment 471
recorded in volume , page" to be located on the 472
affidavit of abandonment instead of the record on which the 473
severed mineral interest is based, and the affidavit may be 474
recorded under section 317.08 of the Revised Code. 475

Section 2. That existing sections 317.08, 1509.35, 1509.38, 476
and 5301.56 of the Revised Code are hereby repealed. 477