



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1876

Introduced 2/10/2011, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

New Act

Creates the Dormant Mineral Interests Act. Provides a statement of public policy and definitions. Describes mineral interests to which the Act does not apply. Describes the process for and the limitations on the termination of an interest in a dormant mineral interest. Provides for the preservation of a mineral interest through a recorded notice process. Allows for late recording of a mineral interest by the mineral owner in specified circumstances. Describes the effect of a court termination of a mineral interest. Provides for the implementation of the Act, limitations on actions under the Act, and uniformity of application and construction of the Act. Contains a severability provision.

LRB097 05457 AJO 45516 b

1 AN ACT concerning mineral interests.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 0.1. Short title. This Act may be cited as the
5 Dormant Mineral Interests Act.

6 Section 1. Statement of policy.

7 (a) The public policy of this State is to enable and
8 encourage marketability of real property and to mitigate the
9 adverse effect of dormant mineral interests on the full use and
10 development of both surface estate and mineral interests in
11 real property.

12 (b) This Act shall be construed to effectuate its purpose
13 to provide a means for termination of dormant mineral interests
14 that impair marketability of real property.

15 Section 2. Definitions. As used in this Act:

16 "Mineral interest" means an interest in a mineral estate,
17 however created and regardless of form, whether absolute or
18 fractional, divided or undivided, corporeal or incorporeal,
19 including a fee simple or any lesser interest or any kind of
20 royalty, production payment, executive right, nonexecutive
21 right, leasehold, or lien, in minerals, regardless of
22 character.

1 "Minerals" includes gas, oil, coal, other gaseous, liquid,
2 and solid hydrocarbons, oil shale, cement material, sand and
3 gravel, road material, building stone, chemical substance,
4 gemstone, metallic, fissionable, and nonfissionable ores,
5 colloidal and other clay, steam and other geothermal resource,
6 and any other substance defined as a mineral by the law of this
7 State.

8 Section 3. Exclusions.

9 (a) This Act does not apply to:

10 (1) a mineral interest of the United States or an
11 Indian tribe, except to the extent permitted by federal
12 law; or

13 (2) a mineral interest of this State or an agency or
14 political subdivision of this State, except to the extent
15 permitted by State law other than this Act.

16 (b) This Act does not affect water rights.

17 Section 4. Termination of dormant mineral interest.

18 (a) The surface owner of real property subject to a mineral
19 interest may maintain an action to terminate a dormant mineral
20 interest. A mineral interest is dormant for the purpose of this
21 Act if the interest is unused within the meaning of subsection
22 (b) for a period of 20 or more years next preceding
23 commencement of the action and has not been preserved pursuant
24 to Section 5. The action must be in the nature of and requires

1 the same notice as is required in Section 5 of the Severed
2 Mineral Interest Act. The action may be maintained whether or
3 not the owner of the mineral interest or the owner's
4 whereabouts is known or unknown. Disability or lack of
5 knowledge of any kind on the part of any person does not
6 suspend the running of the 20-year period.

7 (b) For the purpose of this Section, any of the following
8 actions taken by or under authority of the owner of a mineral
9 interest in relation to any mineral that is part of the mineral
10 interest constitutes use of the entire mineral interest:

11 (1) Active mineral operations on or below the surface
12 of the real property or other property unitized or pooled
13 with the real property, including production, geophysical
14 exploration, exploratory or developmental drilling,
15 mining, exploitation, and development, but not including
16 injection of substances for purposes of disposal or
17 storage. Active mineral operations constitute use of any
18 mineral interest owned by any person in any mineral that is
19 the object of the operations.

20 (2) Payment of taxes on a separate assessment of the
21 mineral interest or of a transfer or severance tax relating
22 to the mineral interest.

23 (3) Recordation of an instrument that creates,
24 reserves, or otherwise evidences a claim to or the
25 continued existence of the mineral interest, including an
26 instrument that transfers, leases, or divides the

1 interest. Recordation of an instrument constitutes use of
2 (i) any recorded interest owned by any person in any
3 mineral that is the subject of the instrument, and (ii) any
4 recorded mineral interest in the property owned by any
5 party to the instrument.

6 (4) Recordation of a judgment or decree that makes
7 specific reference to the mineral interest.

8 (c) This Section applies notwithstanding any provision to
9 the contrary in the instrument that creates, reserves,
10 transfers, leases, divides, or otherwise evidences the claim to
11 or the continued existence of the mineral interest or in
12 another recorded document unless the instrument or other
13 recorded document provides an earlier termination date.

14 Section 5. Preservation of mineral interest by notice.

15 (a) An owner of a mineral interest may record at any time a
16 notice of intent to preserve the mineral interest or a part
17 thereof. The mineral interest is preserved in each county in
18 which the notice is recorded. A mineral interest is not dormant
19 if the notice is recorded within 20 years next preceding
20 commencement of the action to terminate the mineral interest or
21 pursuant to Section 6 after commencement of the action.

22 (b) The notice may be executed by an owner of the mineral
23 interest or by another person acting on behalf of the owner,
24 including an owner who is under a disability or unable to
25 assert a claim on the owner's own behalf or whose identity

1 cannot be established or is uncertain at the time of execution
2 of the notice. The notice may be executed by or on behalf of a
3 co-owner for the benefit of any or all co-owners or by or on
4 behalf of an owner for the benefit of any or all persons
5 claiming under the owner or persons under whom the owner
6 claims.

7 (c) The notice must contain the name of the owner of the
8 mineral interest or the co-owners or other persons for whom the
9 mineral interest is to be preserved or, if the identity of the
10 owner cannot be established or is uncertain, the name of the
11 class of which the owner is a member, and must identify the
12 mineral interest or part thereof to be preserved by one of the
13 following means:

14 (1) A reference to the location in the records of the
15 instrument that creates, reserves, or otherwise evidences
16 the interest or of the judgment or decree that confirms the
17 interest.

18 (2) A legal description of the mineral interest. If the
19 owner of a mineral interest claims the mineral interest
20 under an instrument that is not of record or claims under a
21 recorded instrument that does not specifically identify
22 that owner, a legal description is not effective to
23 preserve a mineral interest unless accompanied by a
24 reference to the name of the record owner under whom the
25 owner of the mineral interest claims. In such a case, the
26 record of the notice of intent to preserve the mineral

1 interest must be indexed under the name of the record owner
2 as well as under the name of the owner of the mineral
3 interest.

4 (3) A reference generally and without specificity to
5 any or all mineral interests of the owner in any real
6 property situated in the county. The reference is not
7 effective to preserve a particular mineral interest unless
8 there is, in the county, in the name of the person claiming
9 to be the owner of the interest, (i) a previously recorded
10 instrument that creates, reserves, or otherwise evidences
11 that interest or (ii) a judgment or decree that confirms
12 that interest.

13 Section 6. Late recording by mineral owner.

14 (a) In this Section, "litigation expenses" means costs and
15 expenses that the court determines are reasonably and
16 necessarily incurred in preparing for and prosecuting an
17 action, including reasonable attorney's fees.

18 (b) In an action to terminate a mineral interest pursuant
19 to this Act, the court shall permit the owner of the mineral
20 interest to record a late notice of intent to preserve the
21 mineral interest as a condition of dismissal of the action,
22 upon payment into court for the benefit of the surface owner of
23 the real property the litigation expenses attributable to the
24 mineral interest or portion thereof as to which the notice is
25 recorded.

1 (c) This Section does not apply in an action in which a
2 mineral interest has been unused within the meaning of Section
3 4(b) for a period of 40 or more years next preceding
4 commencement of the action.

5 Section 7. Effect of termination. A court order terminating
6 a mineral interest, when recorded, merges the terminated
7 mineral interest, including express and implied appurtenant
8 surface rights and obligations, with the surface estate in
9 shares proportionate to the ownership of the surface estate,
10 subject to existing liens for taxes or assessments.

11 Section 8. Savings and transitional provisions.

12 (a) Except as otherwise provided in this Section, this Act
13 applies to all mineral interests, whether created before, on,
14 or after its effective date.

15 (b) An action may not be maintained to terminate a mineral
16 interest pursuant to this Act until 2 years after the effective
17 date of the Act.

18 (c) This Act does not limit or affect any other procedure
19 provided by law for clearing an abandoned mineral interest from
20 title to real property.

21 (d) This Act does not affect the validity of the
22 termination of any mineral interest made pursuant to any
23 predecessor statute on dormant mineral interests.

1 Section 9. Uniformity of application and construction.
2 This Act shall be applied and construed to effectuate its
3 general purpose to make uniform the law with respect to the
4 subject of this Act among states enacting it.

5 Section 10. Severability clause. If any provision of this
6 Act or its application to any person or circumstance is held
7 invalid, the invalidity does not affect any other provision or
8 application of this Act that can be given effect without the
9 invalid provision or application, and to this end the
10 provisions of this Act are severable.