

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 445 Session of  
2011

INTRODUCED BY YAW, SOLOBAY, FONTANA AND BREWSTER,  
FEBRUARY 7, 2011

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 7, 2011

AN ACT

1 Providing for abandonment of mineral rights in real property,  
2 for the recording by surface owners of title to mineral  
3 rights in their real property after 21 years of nonuse by the  
4 subsurface owner; and establishing a right of action to  
5 settle title to mineral rights.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Title to  
10 Dormant Rights Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Mineral." Any valuable inert or lifeless substance formed  
16 or deposited in its present position exclusively through natural  
17 forces and which is found either in or beneath the soil of the  
18 earth or in the rocks beneath the soil, including natural gas.

19 "Mineral rights." The right of a person to take minerals or

1 receive a royalty from the removal of minerals from real  
2 property, regardless of whether the person is the surface owner.

3 "Nonuse." With respect to minerals in real property, the  
4 absence of all of the following:

5 (1) The issuance of a permit to drill a well for  
6 minerals in the real property issued by the Department of  
7 Environmental Protection as to mineral rights for the real  
8 property.

9 (2) The actual production or withdrawal of minerals from  
10 the real property.

11 (3) The underground storage of minerals in the real  
12 property.

13 "Subsurface owner." A person who owns or claims to own the  
14 rights to extract minerals from beneath the surface of real  
15 property owned by another person.

16 "Surface owner." A person who owns the rights to real  
17 property above the surface.

18 Section 3. Abandonment of mineral rights which have not been  
19 acquired by a separate deed.

20 (a) General rule.--Mineral rights in real property shall be  
21 deemed abandoned after a period of 21 years of nonuse of the  
22 mineral rights by a subsurface owner, unless the subsurface  
23 owner shall, within three years of the effective date of this  
24 section or within 21 years from the nonuse, whichever is later,  
25 record a claim of interest that complies with subsection (b).

26 (b) Claim of interest.--A claim of interest must be filed in  
27 the office of recorder of deeds in the county where the real  
28 property is situate. The claim of interest shall be verified and  
29 contain the following:

30 (1) A description of the land and the nature of the

1 mineral rights claimed.

2 (2) The name and address of the subsurface owner and a  
3 specific reference to the source of acquisition.

4 (3) A statement that by recording the claim, the  
5 subsurface owner seeks to preserve the mineral rights and not  
6 to abandon the mineral rights in the real property.

7 (c) Underground storage of minerals.--A subsurface owner who  
8 uses real property for underground storage of minerals in an  
9 underground storage pool or field may preserve the mineral  
10 rights by recording a single claim of interest that defines the  
11 boundaries of and the formations included in the underground  
12 storage field or pool within which the mineral rights are  
13 located, without describing each separate mineral interest  
14 claimed in the underground storage field or pool by the  
15 subsurface owner.

16 (d) Effect of recorded claim of interest.--

17 (1) A claim of interest recorded in compliance with this  
18 section shall operate as a matter of law to preserve the  
19 mineral rights included in the claim of interest from  
20 abandonment under this act for a period of 21 years after the  
21 date of recording.

22 (2) After the twenty-one-year period in paragraph (1)  
23 expires, the mineral interests shall be deemed abandoned if,  
24 during the twenty-one-year period, there has been nonuse or  
25 no sales agreement, lease, mortgage or transfer of the  
26 mineral rights has been recorded in the office of recorder of  
27 deeds in the county where the real property is situate.

28 (3) In the absence of prior abandonment, mineral rights  
29 of a subsurface owner may be preserved indefinitely from  
30 abandonment under this act by filing claims of interest as

provided in this act or other acts evidencing use of the mineral rights within each twenty-one-year period.

Section 4. Right of surface owner to record claim.

(a) Surface owners.--

(1) A surface owner who acquires or claims to have acquired title to any mineral rights in real property by a twenty-one-year period of nonuse of the mineral rights by a subsurface owner may file, in the Office of Recorder of Deeds of the county where the real property is situate, a written statement of the surface owner's claim.

(2) Paragraph (1) shall not apply to mineral rights in real property for which a claim of interest has been recorded in compliance with section 3.

(b) Form of written statement.--The written statement authorized to be recorded under subsection (a) shall be sworn to and substantially in the following form:

I, (the name of the party claimant) of , in the county of and State of , do hereby affirm and declare that I have acquired title in fee to mineral rights, by a twenty-one-year period of nonuse by a subsurface owner of the mineral rights, to the following described land, situate in , in the county of , and State of Pennsylvania, viz: (Here insert a full and complete description of the land claimed, by metes and bounds, or other sufficient designation). Use of the mineral rights on the land by a subsurface owner commenced on or about the day of , , and continued until a period of nonuse commenced about the day of , , (or, where the possession of the mineral rights is tacked on to that of others who have preceded the existing subsurface

owner, it should be stated as follows: Use of the mineral rights was made upon the lands by on or about the day of , , who continued until about the day of , , and was succeeded therein by , who continued until about the day of , , and was succeeded therein by the existing subsurface owner, who continued until a period of nonuse of the mineral rights commenced about the day of , ). At the time the use of the mineral rights commenced (naming some person or persons in the line of the existing paper or legal title, as nearly as may be the real subsurface owner of the lands at the time of the use), was the subsurface owner or reputed subsurface owner of the mineral rights to the land, and I claim adversely to the subsurface owner (or them). Witness my hand, this day of , .

(Signed)

#### Section 5. Filing of statement of claim.

After a statement of claim under section 4 is filed in the recorder's office of the proper county, the recorder of deeds shall record and index the statement of claim as though it were a deed or conveyance from the person named therein as the subsurface owner or reputed subsurface owner at the time of the twenty-one-year period of nonuse ceases, as grantor, to the claimant or claimants, as grantees; and when so entered for record and indexed it shall be constructive notice of the claim.

#### Section 6. Action to settle title to mineral rights.

(a) Right of action.--A person who files a statement of claim under section 4 may bring an action to settle title to the mineral rights for the real property identified in the statement

1 of claim.

2 (b) Venue.--The action may be brought only in the county in  
3 which the real property is located.

4 (c) Commencement of action.--The action must be commenced by  
5 filing with the prothonotary:

6 (1) a complaint describing the real property; or

7 (2) an agreement for an amicable action.

8 (d) Public notice.--

9 (1) After an action has been commenced under subsection  
10 (c), the court shall order the claimant to publish notice of  
11 the action in a newspaper of general circulation in the  
12 county twice in a period of 60 days.

13 (2) The claimant shall certify to the court that the  
14 publication under paragraph (1) has occurred prior to a  
15 hearing or trial in the action.

16 (e) Form of judgment or order.--

17 (1) The court shall grant appropriate relief:

18 (i) on affidavit that a complaint containing a  
19 notice to defend has been served and that the defendant  
20 has not filed an answer; or

21 (ii) after a hearing or trial on the pleadings or  
22 merits.

23 (2) After granting relief to the plaintiff, the court:

24 (i) shall order that the defendant be forever barred  
25 from asserting any right, lien, title or interest in the  
26 mineral rights of the real property inconsistent with the  
27 interest or claim of the plaintiff specified in the  
28 complaint, unless the defendant takes such action as the  
29 order directs within 30 days after issuance of the order.

30 If the action is not taken within the 30-day period, the

1           prothonotary on praecipe of the plaintiff shall enter  
2           final judgment; and

3           (ii) shall enter any other order necessary for the  
4           granting of proper relief.

5       (f) Trial without jury.--There shall be no right to a trial  
6 by jury for an action brought under this section.

7 Section 7. Effect of statement of claim.

8       Unless a statement of claim is made and recorded under this  
9 act and a judgment or order is issued in favor of the surface  
10 owner as provided under section 6, no title to mineral rights in  
11 real property by a 21-year period of nonuse by a subsurface  
12 owner shall avail against any purchaser, mortgagee or judgment  
13 creditor for value, without notice, his heirs and assigns,  
14 except the claimant who is in possession of the real property at  
15 the time of the purchase.

16 Section 8. Construction.

17       Nothing in this act shall be construed to give any title to  
18 any mineral rights or real property by a claim of title adverse  
19 to that of the Commonwealth, and no claim of title adverse to  
20 the Commonwealth shall be made or recorded under the provisions  
21 of this act.

22 Section 20. Effective date.

23       This act shall take effect in 60 days.