ASSEMBLY, No. 3223

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Creates process for termination of dormant mineral interests.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the termination of mineral interests and amending and supplementing Title 46 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) As used in sections 1 through 6 of P.L. , c. (C.) (pending before the Legislature as this bill):

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

"Mineral" means gas, oil, coal, other gaseous, liquid and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, nonfissionable ores, colloidal and other clay, steam and other geothermal resources, or any other substance defined as a mineral by the law of the State.

2. (New section) a. The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purposes of P.L. , c. (C.) (pending before the Legislature as this bill) if the interest is unused within the meaning of subsection b. of this section for a period of 20 or more years and has not been preserved pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill). The action shall proceed in the same manner and pursuant to the same procedures as an action commenced pursuant to N.J.S.2A:62-1. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts are known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

b. For the purpose of P.L. , c. (C.) (pending before the Legislature as this bill), any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development related to mineral exploitation, but not including injection of

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations;

(2) payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest;

(3) recording an instrument that creates, reserves, or otherwise evidences a claim to, or the continued existence of, the mineral interest, including an instrument that transfers, leases, or divides the interest. Recording of an instrument constitutes use of (i) any recorded interest owned by any person in any mineral that is the subject of the instrument, and (ii) any recorded mineral interest in the property owned by any party to the instrument; and

(4) recording a judgment or decree that makes specific reference to the mineral interest.

c. This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to, or the continued existence of, the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

3. (New section) a. An owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a part thereof. The mineral interest is preserved in each county in which the notice is recorded. A mineral interest is not dormant if the notice is recorded within the 20 years preceding commencement of the action to terminate the mineral interest, or pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) after commencement of the action.

b. The notice may be executed by an owner of the mineral interest, or by another person with legal capacity to act for an owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf, or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

c. The notice shall contain the name of the owner of the mineral interest, or the co-owners or other persons for whom the mineral interest is to be preserved. If the identity of the owner cannot be established or is uncertain, the notice shall contain the name of the class of which the owner is a member, and identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest;

(2) A legal description of the mineral interest. If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or under a recorded instrument that does not specifically identify that owner, a legal description shall not be effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest shall be indexed under the name of the record owner as well as under the name of the owner of the mineral interest; or

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

4. (New section) a. In an action to terminate a mineral interest pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), the court shall permit the owner of the mineral interest to record a notice of intent to preserve the mineral interest outside of the time provided in section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), as a condition of dismissal of the action, upon payment to the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

b. This section shall not apply in an action in which a mineral interest has been unused within the meaning of subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) for a period of 40 or more years next preceding commencement of the action.

c. As used in this section, “litigation expenses” means the costs and expenses that a court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney’s fees.

5. (New section) A court order terminating a mineral interest, when recorded, merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

6. (New section) a. Except as otherwise provided in this section, P.L. , c. (C.) (pending before the Legislature as

this bill) applies to all mineral interests, whether created before, on, or after its effective date.

b. P.L. , c. (C.) (pending before the Legislature as this bill) shall not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

c. P.L. , c. (C.) (pending before the Legislature as this bill) shall not affect the validity of the termination of any mineral interest made pursuant to any law, or rule or regulation adopted pursuant thereto prior to the effective date of the act.

d. P.L. , c. (C.) (pending before the Legislature as this bill) shall not apply to a mineral interest owned by the United States, the State, or an agency or political subdivision thereof. P.L. , c. (C.) (pending before the Legislature as this bill) shall not affect water rights.

7. N.J.S.46:26A-2 is amended to read as follows:

46:26A-2. Documents affecting real property entitled to recording are:

a. deeds or other conveyances, releases, or declarations of trust of any interest;

b. powers of attorney for conveyance or release of any interest;

c. leases, or memoranda of leases, for life or a term not less than two years;

d. mortgages or other conveyances in the nature of a mortgage;

e. liens or encumbrances and releases of liens or encumbrances on any interest;

f. assignments, discharges, cancellations, or releases;

g. options and rights of first refusal;

h. certified copies of judgments, decrees and orders of courts of record;

i. reports of condemnation commissioners filed with the Superior Court; declarations of taking duly executed by executive officials of condemnors in accordance with section 17 of P.L.1971, c.361 (C.20:3-17);

j. notices of federal tax liens, liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.), and other federal liens, which any Act of Congress or regulation adopted pursuant to it provides for filing of notice in the recording office designated by a state, and certificates discharging such liens;

k. restrictions affecting the real property or its use;

l. notices of settlement as provided by this chapter;

m. maps as provided by this chapter;

n. condominium master deeds and unit deeds as defined by law;

o. cooperative master declarations and proprietary leases as defined by law;

p. any other document that affects title to any interest in real property in any way or contains any agreement in relation to real property, or grants any right or interest in real property or grants any lien on real property; **[**and**]**

q. any other document relating to real property that is directed to be recorded by any statute or court order ; and

r. a notice of intent to preserve a mineral interest, or a court order recognizing or terminating a mineral interest pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) .

(cf: P.L.2011, c.217, s.1)

8. Sections 2, 4, and 5 of this act shall take effect one year after the date of enactment, and the remainder of the act shall take effect immediately.

STATEMENT

This bill would create a process by which an owner of a surface estate may terminate a dormant mineral interest tied to their property.

The bill would define "mineral interest" as an interest in a mineral estate, however created or however fractional, including any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien in minerals. The bill would define "minerals" as gas, oil, coal, other gaseous, liquid and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, nonfissionable ores, colloidal and other clay, steam and other geothermal resources, or any other substance defined as a mineral by the law of the State.

The bill would allow the surface owner of real property subject to a mineral interest to maintain a quiet title action to terminate a dormant mineral interest. A mineral interest is dormant for the purposes of the bill if the interest is unused for a period of 20 or more years and has not been preserved. Use of a mineral interest would include: (1) active mineral operations on or below the surface of the real property; (2) payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest; (3) recording an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest; and (4) recording a judgment or decree that makes specific reference to the mineral interest.

The bill would permit owner of a mineral interest to record a document preserving the mineral interest by: (1) referencing the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest; (2) including a legal description of the mineral interest if the owner of a mineral

interest claims the mineral interest under an instrument that is of record or under a recorded instrument that identifies that owner. Otherwise, a legal description would not be effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner. In such a case, the record of the notice of intent to preserve the mineral interest must be indexed under the name of the record owner as well as under the name of the owner of the mineral interest; (3) referencing generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or otherwise evidences that interest or (ii) a judgment or decree that confirms that interest.

The holder of a mineral interest may record their interest after surface owner has initiated a suit to terminate the mineral rights but before the rights are terminated, and thereby preserve their mineral interest, provided that they pay the reasonable costs of litigation incurred by the surface owner. A recorded court order to quiet title shall merge all mineral interests with the interests of the surface owner.