



Ohio Legislative Service Commission

Bill Analysis

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S.B. 318

129th General Assembly
(As Introduced)

Sens. Cafaro, Brown, Schiavoni, Skindell

BILL SUMMARY

Deceptive oil and gas consumer transaction

- Applies the Consumer Sales Practices Act to lease agreements for the exploration for or development of oil and gas on residential property.
- Declares that a consumer transaction involving such a lease agreement is deceptive if the supplier has misrepresented the financial return that the consumer can expect from the lease, the supplier has misrepresented the prospect of a well producing oil or gas, or the supplier has made any other representations that are not accurate with regard to the lease.
- Authorizes the Attorney General to bring an action if there is reasonable cause to believe that a supplier has engaged or is engaging in such an act or practice.

Regulation of oil and gas wells and production operations

- Revises the authority of the Division of Oil and Gas Resources Management to regulate oil and gas wells and production operations in the state by stating that the Division has authority for that regulation rather than sole and exclusive authority.
- Prohibits a well from being drilled in an urbanized area unless the well will comply with the zoning requirements of the municipal corporation or of the township in which the well will be located.

Well location

- Prohibits a well from being drilled within 1,000 feet of an occupied dwelling unless the owner of land on which the dwelling is located has voluntarily entered into an

oil and gas lease agreement, and provides that in such a case a well cannot be drilled within 300 feet of an occupied dwelling.

Disclosure of chemicals used for well stimulation

- Requires the owner of a well to submit to the Chief of the Division of Oil and Gas Resources Management a complete list of all chemicals and other substances that will be used to stimulate the well at least ten days before commencing drilling of the well.

Mandatory pooling

- Eliminates mandatory pooling.

Water monitoring

- Requires the Chief to adopt rules that establish requirements governing both of the following:
 - Ground water monitoring by a board of health at the site and in the vicinity of an injection well; and
 - The monitoring and testing of underground or surface sources of drinking water located in the vicinity of a well, other than an injection well, to detect negative impacts to water quality that may affect public health or the environment.
- Requires a board of health to conduct ground water monitoring at the site and in the vicinity of an injection well and to report the results quarterly.
- Expands the uses of money in the Oil and Gas Well Fund by requiring money in the Fund to be used to provide financial assistance to boards of health for monitoring of ground water around an injection well and for the monitoring and testing of underground or surface sources of drinking water located in the vicinity of a well that is not an injection well.

Injection well surety bond

- Requires a person, before being issued an injection well permit, to execute and file with the Division a surety bond conditioned on compliance with the requirements established in the Oil and Gas Law and rules adopted under it governing the plugging and restoration of the well.

Oil and gas training program

- Requires the owner of a well who hires an individual who is a graduate of an oil and gas training program and an Ohio resident at the time of hiring to employ the individual for not less than three years beginning on the date on which the individual is hired.
- States that an oil and gas training program is a program that provides training in production operations and that is developed by a community or technical college in Ohio in collaboration with an association that represents the oil and gas industry.
- Qualifies an owner that trains employees of the owner for grants from the Casino Operator Settlement Fund if the owner certifies to the Chief that each such employee will be retained for at least three years from the date on which the employee is hired and at least 25% of the employees who are trained by the owner are Ohio residents.
- Appropriates \$10,000,000 in fiscal year 2013 to be used to support oil and gas training programs at community or technical colleges and to provide employee training grants to oil or gas well owners pursuant to the bill.

CONTENT AND OPERATION

Deceptive oil and gas consumer transaction

The bill applies the Consumer Sales Practices Act to lease agreements for the exploration for or development of oil and gas on residential property by declaring that a consumer transaction involving such a lease agreement is deceptive if any of the following occurs:

(1) The supplier has misrepresented the financial return that the consumer can expect from the lease;

(2) The supplier has misrepresented the prospect of a well producing oil or gas;
or

(3) The supplier has made any other representations that are not accurate with regard to the lease.¹

The bill authorizes the Attorney General to bring a class action under Civil Rule 23 on behalf of consumers who have engaged in consumer transactions in Ohio for damage caused by an act or practice described above if the Attorney General has

¹ R.C. 1345.02.

reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates the Consumer Sales Practices Act and that the action would be in the public interest.²

The bill defines all of the following for purposes of the bill's provisions concerning deceptive oil and gas-related consumer transactions:

(1) "Consumer" includes an individual who enters into a lease agreement as a lessor with a supplier for the exploration for or development of oil or gas on residential property owned by the individual;

(2) "Consumer transaction" includes a lease agreement for the exploration for or development of oil or gas on residential property;

(3) "Residential property" means a parcel of property to which all of the following apply:

(a) The personal residence of an individual is located on the property;

(b) That individual owns the property; and

(c) The primary purpose of the property is to provide a location for the personal residence of that individual.

(4) "Supplier" includes any person who negotiates and enters into a lease agreement as a lessee with an individual for the exploration for or development of oil or gas on the residential property owned by the individual.³

Regulation of oil and gas wells and production operations

The bill states that except as discussed below, the Division of Oil and Gas Resources Management has authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within Ohio, excepting only those activities regulated under federal laws for which oversight has been delegated to the Environmental Protection Agency and activities regulated under the isolated wetlands provisions of the Water Pollution Control Law. Current law instead vests in the Division sole and exclusive authority for that regulation. The bill eliminates current law that states that the regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation and that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the

² R.C. 1345.07(A)(3)(a).

³ R.C. 1345.01(A), (C), (D), and (M).

locating, drilling, well stimulation, completing, and operating of oil and gas wells within the state, including site construction and restoration, permitting related to those activities, and the disposal of wastes from those wells.⁴

The bill creates an exception to the Division's authority by stating that on and after the bill's effective date, a well cannot be drilled in an urbanized area unless the well will comply with the zoning requirements of the municipal corporation or of the township, as applicable, in which the well will be located.⁵ Under current law, an urbanized area is an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than 5,000 in the most recent census prior to the issuance of the permit for the well or production facilities.⁶ The bill retains an exception in current law to the Division's authority that states that the Division's authority does not affect the authority of the Director of Transportation and local authorities regarding oversized vehicles and municipal public streets, respectively, under specified conditions.⁷

Well location

The bill prohibits a well from being drilled within 1,000 feet of an occupied dwelling on and after the bill's effective date. However, a well may be drilled within 300 feet of an occupied dwelling if the owner of the land on which the dwelling is located voluntarily has entered into an oil and gas lease agreement.⁸

As a result of that prohibition, the bill eliminates current law that prohibits the surface location of a new well or a tank battery of a well from being within 150 feet of an occupied dwelling that is located in an urbanized area unless: (1) the owner of the land on which the occupied dwelling is located consents in writing to the surface location of the well or tank battery less than 150 feet from the dwelling, and (2) the Chief of the Division of Oil and Gas Resources Management approves the written consent of that owner.⁹

In addition, the bill eliminates current law that prohibits the surface location of a new well from being within 200 feet of an occupied dwelling that is located in an

⁴ R.C. 1509.02(A)(1).

⁵ R.C. 1509.02(A)(2).

⁶ R.C. 1509.01(Y), not in the bill.

⁷ R.C. 1509.02(A)(3).

⁸ R.C. 1509.021(A).

⁹ R.C. 1509.021(A).

urbanized area and that is located on land that has become part of the drilling unit of the well pursuant to a mandatory pooling order (see "**Mandatory pooling**," below) unless the owner of the land on which the occupied dwelling is located consents in writing to the surface location of the well at a distance that is less than 200 feet from the occupied dwelling. However, if the owner of the land on which the occupied dwelling is located provides such written consent, the surface location of the well cannot be within 100 feet of the occupied dwelling. The bill also eliminates applicable statutory procedures.¹⁰

Disclosure of chemicals used for well stimulation

The bill requires the owner of a well to submit to the Chief a complete list of all chemicals and other substances that will be used to stimulate the well not later than ten days before the owner commences drilling the well. The list must be submitted on a form or in a manner that is prescribed by the Chief.¹¹

Current law requires any person drilling in the state, within 60 days after the completion of drilling operations to the proposed total depth or after a determination that a well is a dry or lost hole, to file with the Division all wireline electric logs and an accurate well completion record. The well completion record must designate information such as the following: (1) the purpose for which the well was drilled, (2) the character, depth, and thickness of geological units encountered, (3) the dates that drilling was commenced and completed, (4) the lengths and sizes of casing and tubing used and recovered and data related to cementing, (5) the number of casing perforations and intervals of perforations, and (6) if applicable, the type and volume of fluid used to stimulate the well.¹²

Under current law, a well completion record must include, if applicable, the trade name and the total volume of all products, fluids, and substances and the supplier of each product, fluid, or substance used to stimulate the well. The owner must identify each additive used, provide a brief description of the purpose for which the additive is used, and include the maximum concentration of the additive used. In addition, the owner must include a list of all chemicals, not including any information that is designated as a trade secret, intentionally added to all products, fluids, or substances and include each chemical's corresponding Chemical Abstracts Service number and the maximum concentration of each chemical. Finally, if recycled fluid was used, the

¹⁰ R.C. 1509.021(C).

¹¹ R.C. 1509.19(B).

¹² R.C. 1509.10, not in the bill.

owner must designate on the well completion record the total volume of recycled fluid and the well or the centralized facility that is the source of the recycled fluid.¹³

Mandatory pooling

The bill eliminates mandatory pooling. Under current law, if a tract of land is of insufficient size or shape to meet the requirements for drilling a well on it as required in the Oil and Gas Law and the owner of mineral rights has been unable to form a drilling unit by agreement, on a just and equitable basis, the owner may submit an application to the Division of Oil and Gas Resources Management for a mandatory pooling order. In addition, current law establishes application requirements and procedures governing such an order, requirements and procedures concerning a nonparticipating owner and a nonparticipating owner's proportionate share, and other requirements and procedures concerning mandatory pooling.¹⁴ The bill repeals all of those provisions.

Water monitoring

Rules

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act that do both of the following:

(1) Establish requirements governing ground water monitoring by boards of health (see "**Boards of health**," below). The rules must include at least acceptable monitoring protocols to be used by boards of health in conducting ground water monitoring and procedures for the submission of the results of ground water monitoring to the Chief and the Director of Environmental Protection.

(2) Establish requirements governing the monitoring and testing of underground or surface sources of drinking water located in the vicinity of a well, other than an injection well, for which a permit has been issued under the Oil and Gas Law to detect negative impacts to water quality that may affect public health or the environment. The rules must authorize the Chief to enter into contracts with boards of health to conduct the required monitoring.¹⁵

¹³ R.C. 1509.10, not in the bill.

¹⁴ R.C. 1509.021, 1509.06, 1509.27, and 1509.29.

¹⁵ R.C. 1509.23(C).

Boards of health

The bill requires the board of health of a health district in which is located an injection well for which a permit has been issued under the Oil and Gas Law to conduct ground water monitoring at the site and in the vicinity of the injection well to detect negative impacts to ground water quality that may affect public health or the environment. The board must report the results of the ground water monitoring to the Chief and the Director of Environmental Protection each calendar quarter in accordance with rules adopted under the bill.¹⁶

Oil and Gas Well Fund

The bill expands the uses of money in the Oil and Gas Well Fund by requiring money in the Fund to be used to provide financial assistance to boards of health for the monitoring of ground water around an injection well and for the monitoring and testing of underground or surface sources of drinking water located in the vicinity of a well that is not an injection well to detect negative impacts to water quality that may affect public health or the environment (see above).¹⁷

Continuing law creates the Oil and Gas Well Fund in the state treasury. All money collected by the Chief from permit application fees, permit revision fees, forfeiture of bonds, fees for permits to plug and abandon a well, injection well permit fees, and brine transporter registration fees, 90% of the money received from severance taxes on oil and gas, and money from civil penalties for violations of certain provisions of the Oil and Gas Law and from criminal fines imposed for violations of certain provisions of that Law must be credited to the Fund. The Oil and Gas Well Fund is generally used by the Division of Oil and Gas Resources Management for purposes of administering the Oil and Gas Law and for other stated purposes.¹⁸

Injection well surety bond

Under the bill, before a person may be issued a permit for an injection well, a person must execute and file with the Division a surety bond conditioned on compliance with the requirements established in the Oil and Gas Law and rules adopted under it governing the plugging and restoration of the well for which the permit is issued. The bill requires the Chief to determine the amount of the bond.¹⁹

¹⁶ R.C. 1509.231.

¹⁷ R.C. 1509.02(C).

¹⁸ R.C. 1509.02.

¹⁹ R.C. 1509.22(D)(2).

Oil and gas training program

The bill requires the owner of a well who hires an individual who is a graduate of an oil and gas training program and an Ohio resident at the time of the hiring to employ the individual for at least three years beginning on the date on which the individual is hired by the owner. Under the bill, an oil and gas training program is a program that provides training in production operations and that is developed by a community or technical college in Ohio in collaboration with an association that represents the oil and gas industry.²⁰

Under the bill, an owner that trains employees of the owner regarding production operations qualifies for grants from the existing Casino Operator Fund (presumably the Casino Operator Settlement Fund) if both of the following apply:

(1) The owner certifies to the Chief that each such employee will be retained for not less than three years beginning on the date on which the employee is hired by the owner; and

(2) At least 25% of the employees who are trained by the owner are Ohio residents.²¹

The bill appropriates \$10,000,000 in fiscal year 2013 to be used to support oil and gas training programs at community or technical colleges and to provide employee training grants to oil or gas well owners pursuant to the bill.²²

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act to administer and enforce the bill's provisions concerning oil and gas training programs.²³

The existing Casino Operator Settlement Fund consists of any money paid to the state by casino operators in excess of any licenses or fees provided by the Casino Law or by the Ohio Constitution and in excess of any taxes levied by Ohio law. Moneys in the Fund may be used for activities related to workforce development, economic development, job creation, training, education, food banks, and expenses.²⁴

²⁰ R.C. 1509.80(A)(1) and (2).

²¹ R.C. 1509.80(B).

²² Section 3.

²³ R.C. 1509.80(C).

²⁴ R.C. 3772.34, not in the bill.

HISTORY

ACTION

DATE

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