



Eric Vendel

Bill Analysis
Legislative Service Commission

S.B. 193

126th General Assembly
(As Introduced)

Sens. Armbruster, Cates, Mumper, Spada

BILL SUMMARY

- Eliminates the authority of the Department of Administrative Services to lease certain state land for oil and gas drilling and the authority of the Directors of Mental Health, Rehabilitation and Correction, and Mental Retardation and Developmental Disabilities to enter into such leases, and instead creates the Oil, Gas, and Timber Leasing Board and grants the Board authority to enter into leases for the drilling for oil or gas or the harvesting of timber on state land.
- Establishes a procedure by which the Board may enter into a lease for oil or gas drilling or timber harvesting on land owned or under the control of a state agency.
- Creates the State Agency Capitol Improvement Endowment Fund, and requires the Fund's investment earnings to be used to pay capital costs of state agencies on whose behalf money has been contributed to the Fund by the Board.
- Creates the Oil, Gas, and Timber Leasing Board Administration Fund to be used to pay the Board's administrative expenses.
- States that its provisions do not apply to specified actions of certain divisions in the Department of Natural Resources that are authorized in existing law.

CONTENT AND OPERATION

Authority to enter into leases

Current law authorizes the Department of Administrative Services to lease to any person any tract of land owned by the state and under the control of the Department, or any part of such a tract, for the purpose of drilling for or the pooling of oil or gas. Such a lease must be granted for a period not exceeding 40 years. The Department has the full power to contract for, determine the conditions governing, and specify the amount that the state must receive for the purposes specified in the lease. (Sec. 123.01(A)(17).)

Current law also specifically authorizes the Directors of Mental Health, Rehabilitation and Correction, and Mental Retardation and Developmental Disabilities to lease, for oil and gas, any real estate owned by the state and placed under the supervision of their respective departments. Such leases must be entered into on terms and for a number of years, not exceeding 40, that will be in the best interest of the state. The leases must be prepared by the Attorney General and approved by the Governor. (Secs. 5119.40, 5120.12, and 5123.23, repealed by the bill.)

The bill eliminates all of the existing authority discussed above to enter into leases for the removal of oil and gas from state lands and instead generally authorizes the Oil, Gas, and Timber Leasing Board, which the bill creates (see "**Oil, Gas, and Timber Leasing Board**," below), to enter into leases for the drilling for oil or gas or the harvesting of timber on state land. It states that except as provided under the bill (see "**Exceptions**," below), the Board has exclusive authority to enter into leases for the drilling for oil or gas or the harvesting of timber on land that is owned or controlled by state agencies (sec. 1501.51(B)). The bill defines "state agency" to have the same meaning as in current law, that is, every organized body, office, or agency established by the laws of the state for the exercise of any function of state government (sec. 1501.51(A)).

However, the bill states that a lease entered into under current law with the Department of Administrative Services or the Director of Mental Health, Rehabilitation and Correction, or Mental Retardation and Developmental Disabilities as discussed above remains in effect until the term of the lease expires as provided in the lease (Section 3).

Oil, Gas, and Timber Leasing Board

The bill creates the Oil, Gas, and Timber Leasing Board consisting of the Chief of the Division of Forestry in the Department of Natural Resources, the

Chief of the Division of Mineral Resources Management in the Department, and the following three members appointed by the Governor:

- (1) A member representing the oil and gas industry;
- (2) A member representing the timber industry; and
- (3) A member representing a statewide environmental advocacy organization. (Sec. 1501.50(A).)

Terms of office of members appointed to the Board are for five years from the date of appointment. The bill establishes standard appointment procedures for those members. Three members constitute a quorum, and no action of the Board is valid unless it has the concurrence of at least three members. The Board must keep a record of its proceedings. The Chief of the Division of Forestry and the Chief of the Division of Mineral Resources Management must alternate as the chairperson of the Board on an annual basis, with the Chief of the Division of Forestry serving as chairperson in odd-numbered years and the Chief of the Division of Mineral Resources Management serving as chairperson in even-numbered years. (Sec. 1501.50(B).)

The Governor may remove an appointed member from the Board for inefficiency, malfeasance, misfeasance, or nonfeasance. Members of the Board cannot receive compensation, but must be reimbursed for their actual and necessary expenses incurred in the course of the performance of their duties as members of the Board. The Division of Forestry and the Division of Mineral Resources Management must provide staff assistance to the Board if requested. (Sec. 1501.50(B).)

Nominations

Under the bill, the Board must consider nominations from persons proposing to enter into leases with the state for the drilling for oil or gas or harvesting of timber on land that is owned or under the control of state agencies. A person submitting a nomination must submit it in the manner and form established in rules adopted under the bill and must include with the nomination the information required by those rules (see "Rules," below). (Sec. 1501.51(B).) However, the bill requires the Board to allow for the submission of nominations via the Internet (sec. 1501.51(G)).

Not later than 30 days after the receipt of a nomination, the Board must conduct a meeting for the purpose of considering the nomination. Not later than 60 days after the meeting, the Board must approve or disapprove the nomination. In making its decision, the Board must consider all of the following:

(1) The economic costs and benefits that would accrue to the state if the lease that is the subject of the nomination were approved;

(2) Whether the proposed drilling for oil or gas or harvesting of timber would be advantageous to the state agency that owns or controls the land on which the proposed drilling or harvesting would take place;

(3) Any objections to the nomination submitted to the Board by the state agency that owns or controls the land on which the proposed drilling or harvesting would take place; and

(4) Any other factors that the Board establishes in rules adopted under the bill. (Sec. 1501.51(C).)

In making its decision to approve or disapprove a nomination, the board must consult with the agency that owns or controls the land on which the proposed drilling for oil or gas or harvesting of timber would take place. Further, if the nomination involves a lease for the harvesting of timber, the Board must consult with officials from the Division of Forestry.

The Board must approve or deny a nomination not later than 90 days after the receipt of the nomination. Denial of a nomination must be based solely on the factors discussed above. Notice of the Board's decision must be sent by certified mail to the person that submitted the nomination. In denying a nomination, the Board may request the person that submitted it to amend the nomination and subsequently resubmit the nomination. Upon approving a nomination, the Board must draft terms and conditions of a lease agreement in accordance with rules adopted under the bill. (Sec. 1501.51(C).)

Bids

Each calendar quarter, the Board must proceed to advertise for bids for each lease that was the subject of a nomination approved during the previous calendar quarter. The advertisement must be published in a newspaper of general circulation in Franklin County and in each county in which the proposed drilling for oil or gas or harvesting of timber will take place. The advertisement must be published once a week for four consecutive weeks prior to the date that is fixed for the acceptance of bids. The notice must include the pertinent facts concerning the lease and must refer to the terms and conditions of the lease, which must be on file in the office of the Director of Natural Resources and open to public inspection. Financial statements or other documents that are considered by the Board to be of a confidential nature must be kept confidential and cannot be open to public inspection. (Sec. 1501.51(D).) In addition, the bill requires the Board to allow for the acceptance of lease bids via the Internet (sec. 1501.51(G)).

Bids must be sealed and opened at a date and time certain. The Board may enter into a lease with the person who submits the highest and best bid under the terms and conditions of the lease, taking into account the financial responsibility of the prospective lessee and the ability of the prospective lessee to perform its obligations under the lease. (Sec. 1501.51(E).)

All money received by the Board in payment for leases entered into under the bill must be paid by the Board into the state treasury to the credit of the State Agency Capital Improvement Endowment Fund, except money that is required to be credited to the Oil, Gas, and Timber Leasing Board Administration Fund as required in rules adopted under the bill. Both funds are created by the bill (see below). Money credited to the State Agency Capital Improvement Endowment Fund must be contributed on behalf of the state agency that owns or controls the land on which the drilling or harvesting takes place. (Sec. 1501.51(F).)

Rules

The bill requires the Oil, Gas, and Timber Leasing Board to adopt rules in accordance with the Administrative Procedure Act establishing all of the following:

- (1) The form of and the information to be included in nominations that are submitted under the bill;
- (2) Procedures for the submission of nominations to the Board;
- (3) Factors that the Board may consider when determining whether to approve or disapprove a nomination submitted under the bill;
- (4) Procedures and standards for establishing the terms and conditions of leases entered into under the bill;
- (5) A percentage of the proceeds of each lease agreement that must be credited to the Oil, Gas, and Timber Leasing Board Administration Fund for the purpose of providing funding for the Board's administrative expenses and actual and necessary expenses of the Board members;
- (6) Procedures and standards governing appeals of decisions of the board. The rules must prohibit the awarding of attorney's fees for persons pursuing an appeal of a decision of the Board; and
- (7) Any other procedures and requirements that the Board determines necessary to implement the bill. (Sec. 1501.52.)

Leases

A lease for the drilling for oil or gas or the harvesting of timber that is entered into under the bill and rules adopted under it must be conditioned on the lessee's satisfying all applicable state and federal laws and regulations. With respect to the drilling for oil or gas, the conditions must include a requirement that the lessee comply with the Oil and Gas Law and rules adopted under it. With respect to the harvesting of timber, the conditions must include a requirement that the lessee implement a forest management plan that is approved by the Division of Forestry under rules adopted under the Division of Forestry Law and use best management practices. The inability or failure of a lessee to satisfy any of the conditions does not constitute a taking of any property interest and does not qualify the lessee for just compensation. (Sec. 1501.53(A).) The bill adds that a lease entered into under the bill and rules adopted under it may be assigned by the lessee with the approval of the Oil, Gas, and Timber Leasing Board (sec. 1501.53(B)).

State Agency Capital Improvement Endowment Fund

The bill creates in the state treasury the State Agency Capital Improvement Endowment Fund consisting of money credited to it under the bill. Any investment proceeds earned on money in the Fund must be credited to it and used to pay capital costs of state agencies on whose behalf money has been contributed to the Fund by the Board. A state agency is entitled to a share of the investment earnings of the Fund in an amount that is equivalent to the proportionate share of contributions made on behalf of the state agency to the Fund. The General Assembly must appropriate money from the Fund for capital expenditures in accordance with the bill. (Sec. 131.50.)

Oil, Gas, and Timber Leasing Board Administration Fund

The bill also creates in the state treasury the Oil, Gas, and Timber Leasing Board Administration Fund consisting of a percentage of the money derived from leases as provided in rules adopted under the bill. Money in the Fund must be used by the Board to pay its administrative expenses and the actual and necessary expenses incurred by its members in the course of the performance of their duties. (Sec. 1501.54.)

Exceptions

The bill states that its provisions do not apply to any of the following:

(1) Easements or leases entered into by the Division of Forestry under the statute authorizing the Chief of the Division to sell timber from and grant mineral rights on the state forest lands and state forest nurseries;

(2) Permits and leases regarding the removal of minerals and other substances from and under the bed of Lake Erie that are authorized under the Division of Geological Survey Law;

(3) An agreement entered into by the Division of Mineral Resources Management under the Coal Surface Mining Law for the reclamation of certain unreclaimed land, or a contract entered into under that Law to provide grant funding for the reclamation of certain unreclaimed land, that includes payments to the state for timber;

(4) The giving away or sale of timber under the Canal Lands Law that has fallen or been removed for maintenance;

(5) The sale of timber or the sale, lease, or transfer of mineral rights by the Division of Wildlife under the Division of Wildlife Law; and

(6) The sale of timber by the Division of Parks and Recreation under the statute authorizing the Chief of the Division to dispose of standing timber that as a result of a natural occurrence may present a hazard or fallen timber. (Sec. 1501.55.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-04-05	p. 1466

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