



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Okey and Fedor, Antonio, Carney, Driehaus, Foley, Garland, Gerberry, Goyal, R. Hagan, Heard, Letson, Lundy, Murray, Phillips, Williams, Yuko

BILL SUMMARY

Oil and gas leases for wells deeper than top of Marcellus shale

- Establishes minimum contents of and requirements governing an oil and gas lease that is necessary for the formation of a drilling unit in which is or will be located a well that will have a depth at or below the top of the Marcellus shale formation, including requirements concerning ground water testing.
- Requires the minimum rate of a royalty interest for a well that will have a depth at or below the top of the Marcellus shale formation to be at least 15% of the gross revenue from the sale of oil, liquid natural gas, dry gas, and their constituents.

Disclosure of fracturing fluids

- Requires an owner of an oil or gas well who elects to stimulate the well to submit to the Chief of the Division of Oil and Gas Resources Management a complete listing of all chemicals and other substances that will be used in the stimulation.

Notification of water diminution or contamination

- Requires the owner of a well that has a depth at or below the top of the Marcellus shale formation to notify in writing all owners of property of any diminution to or contamination of their drinking water supply as a result of the activities of the well owner.

Surface and lateral line location of wells deeper than top of Marcellus shale

- Prohibits the surface location of a new well that is not located in an urbanized area and that will have a depth at or below the top of the Marcellus shale formation from being within 750 feet from the property line of a parcel of land that is not in the drilling unit of the well.
- Prohibits any portion of a lateral line of a well that has a depth at or below the top of the Marcellus shale formation from being within 750 feet from the property line of a parcel of land that is not in the drilling unit of the well.

Maximum acreage of drilling units of wells deeper than top of Marcellus shale

- Prohibits the maximum acreage of a drilling unit for a well that has a depth at or below the top of the Marcellus shale formation from exceeding 1,280 acres, and requires such a drilling unit to be compact and composed of contiguous land.

Land professionals (landmen)

- Defines "land professional" for purposes of the Oil and Gas Law as a person engaged primarily in any of the following:
 - Negotiating the acquisition or divestiture of mineral rights regarding the extraction of oil or gas;
 - Negotiating business agreements that provide for the exploration for or development of oil or gas; or
 - Securing the pooling of interests in oil or gas.
- Prohibits a person from operating as a land professional in Ohio unless the person first registers with and obtains a registration certificate from the Chief.
- Requires the Chief to publish on the Division's web site the name of and other relevant information concerning each registered land professional.
- Requires the Chief to adopt rules establishing procedures and requirements governing the registration of land professionals, including registration forms and fees.
- Requires a registered land professional to provide to a prospective lessor or prospective seller of mineral rights or interests a copy of either the oil and gas lease disclosure form or the mineral purchase disclosure form created by the bill, and

requires a land professional to explain thoroughly each item on the applicable disclosure form.

- Requires a land professional to obtain the initials and signature of a prospective lessor or prospective seller as an acknowledgement that each item on the applicable disclosure form was explained.

Ground water testing for wells deeper than top of Marcellus Shale

- For purposes of ground water testing that is required in an oil and gas lease for a well that is deeper than the top of the Marcellus shale, prohibits a person, other than the Department of Natural Resources or a board of health, from testing ground water unless the person first registers with and obtains a registration certificate from the Chief.
- Requires the Chief to publish on the Division's web site the name of and other relevant information concerning each person registered to conduct ground water testing.
- Requires the Chief to adopt rules establishing procedures and requirements governing the registration of persons who conduct ground water testing, including registration forms and fees and minimum qualifications.

CONTENT AND OPERATION

Oil and gas leases for wells deeper than top of Marcellus shale

Required terms

The bill requires that on and after its effective date, an oil or gas lease that is necessary for the formation of a drilling unit in which is or will be located a well that will have a depth at or below the depth of the top of the Marcellus shale formation must include at a minimum all of the following:

(1) A requirement that the lessee provide written notice to the lessor immediately after the recording of a declared pooled unit in the office of the applicable county recorder that the property or mineral rights, as applicable, that are the subject of the lease are a part of a drilling unit;

(2) A requirement that ground water testing be conducted prior to commencement of the drilling of the well and after stimulation of the well. The ground water testing must be conducted by the Department of Natural Resources, the board of health of the health district in which the proposed well or well is to be or is located, or a

person who has received a registration certificate from the Chief of the Division of Oil and Gas Resources Management in the Department under the bill (see "**Ground water testing for wells deeper than top of Marcellus shale**," below). In addition, the person who conducts the ground water testing must provide written results of the testing to the lessor and to the Chief. The lessee must pay the costs of the ground water testing.

(3) A provision that holds the lessor harmless against any claims, losses, including, but not limited to, court costs and attorney fees reasonably incurred, or damages arising from the lessee's actions or operations on the applicable property;

(4) A provision that allows the lessor annually to request a written audit of the lessee's production. The audit must be conducted by an auditor who is independent of the lessee. The lessee must pay the costs of the audit.

(5) A provision that allows the lessor of the property on which the surface facilities of a well will be or are located to receive a lump sum payment in lieu of free gas to the house or other dwelling that is located on the leased property. The amount of money to be paid in full cannot be less than \$3,000.

(6) A requirement that a lessee timely provide written notice to the lessor of the property on which the surface facilities of a well will be or are located of all serious injuries to or death of a person that occurred on the property and of any damage to the property resulting from the lessee's operations on the property; and

(7) A requirement that whenever the lessee assigns or otherwise transfers the lessee's interest of the oil or gas lease, the assignor or transferor notify in writing the lessor of the assignment or transfer not later than 30 days after the date of the assignment or transfer.¹

Execution requirements

The bill also requires that on and after its effective date and notwithstanding specified provisions in the Conveyances and Encumbrances Law pertaining to acknowledgement and recording requirements for leases less than three years, an oil or gas lease that is necessary for the formation of a drilling unit in which is or will be located a well that will have a depth at or below the depth of the top of the Marcellus

¹ R.C. 1509.081(A).

shale formation must be lawfully executed and properly recorded. In addition, the lease is valid only if it is signed by the lessor and lessee before a notary public.²

Currently, the Conveyances and Encumbrances Law establishes requirements for the proper execution of a lease, including acknowledgement and recording requirements. However, a provision in that Law states that the validity of a lease of lands for any term not exceeding three years is not affected by failure to comply with those requirements and that the Law does not require such a lease to be acknowledged or recorded.³

Minimum royalty

The bill states that on and after its effective date, the minimum rate of a royalty interest for a well that will have a depth at or below the depth of the top of the Marcellus shale formation cannot be less than 15% of the gross revenue from the sale of oil, liquid natural gas, dry gas, and their constituents for that well. In calculating the gross revenue, no costs or expenses may be deducted.⁴

Disclosure of fracturing fluids

Under the bill, an owner who elects to stimulate a well must submit to the Chief a complete listing of all of the chemicals and other substances that will be used in the stimulation of the well. The list must be submitted on a form or in a manner prescribed by the Chief.⁵

Notification of water diminution or contamination

Beginning on the bill's effective date, the owner of a well that has a depth at or below the depth of the top of the Marcellus shale must notify in writing all owners of property of any diminution to or contamination of their drinking water supply as a result of the activities of the well owner.⁶

² R.C. 1509.081(B).

³ R.C. Chapter 5301., specifically R.C. 5301.01 and 5301.08, not in the bill.

⁴ R.C. 1509.081(C).

⁵ R.C. 1509.19(B).

⁶ R.C. 1509.081(D).

Surface and lateral line location of wells deeper than top of Marcellus shale

The bill states that on and after its effective date, the surface location of a new well cannot be within 750 feet from the property line of a parcel of land that is not in the drilling unit of the well if the parcel of land is not located in an urbanized area and the well will have depth at or below the depth of the top of the Marcellus shale formation.⁷ 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.⁸

The bill also states that on and after its effective date, no portion of a lateral line of a well that has a depth at or below the depth of the top of the Marcellus shale formation can be within 750 feet from the property line of a parcel of land that is not in the drilling unit of the well.⁹

Maximum acreage of drilling units of wells deeper than top of Marcellus shale

The bill states that on and after its effective date, the maximum acreage of a drilling unit for a well that will have a depth at or below the depth of the top of the Marcellus shale cannot exceed 1,280 acres. In addition, the drilling unit must be compact and composed of contiguous land. The bill allows the Chief to adopt rules for the administration of the maximum acreage requirements.¹⁰

Land professionals (landmen)

Under the bill, a land professional is a person who is engaged primarily in any of the following activities:

- (1) Negotiating the acquisition or divestiture of mineral rights regarding the extraction of oil or gas, including wet gas;
- (2) Negotiating business agreements that provide for the exploration for or development of oil or gas, including wet gas; or
- (3) Securing the pooling of interests in oil or gas, including wet gas.

⁷ R.C. 1509.022(B).

⁸ R.C. 1509.01(Y).

⁹ R.C. 1509.022(C).

¹⁰ R.C. 1509.24(C).

A land professional includes a person colloquially known as a landman conducting the activities specified in items (1) to (3) above.¹¹

Registration

The bill prohibits any person from operating as a land professional in Ohio unless the person first registers with and obtains a registration certificate from the Chief. A registration certificate is valid for one year from the date of issuance and may be renewed annually.¹²

The bill requires the Chief to publish on the Division's web site the name of and other relevant information concerning each registered land professional.¹³

Rules

Under the bill, the Chief must adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Establish a registration form for an initial registration and a form for the renewal of a registration for purposes of the bill. The rules must require each person registering or renewing a registration to identify the Ohio counties in which the person intends to operate as a land professional.

(2) Establish the amount of a fee for the issuance of an initial registration and a registration renewal. All fees collected must be credited to the existing Oil and Gas Well Fund.¹⁴ 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 specified purposes.¹⁵

(3) Provide for the assignment of a registration number to each land professional who is issued a registration certificate; and

(4) Establish any other requirements and procedures that are necessary to implement the bill's provisions governing land professionals.¹⁶

¹¹ R.C. 1509.311(A).

¹² R.C. 1509.311(B).

¹³ R.C. 1509.311(D).

¹⁴ R.C. 1509.311(C)(2).

¹⁵ R.C. 1509.02, not in the bill.

¹⁶ R.C. 1509.311(C).

Disclosure responsibilities

Under the bill, a land professional must provide a copy of the applicable disclosure form created by the bill (see "**Forms**," below) to a prospective lessor or prospective seller when initially approaching the landowner when negotiating or securing oil or gas mineral rights or interests or agreements for the exploration for or development of oil or gas. The land professional must explain thoroughly each item on the applicable disclosure form. The land professional also must obtain on duplicate forms the initials of the prospective lessor or prospective seller, as applicable, for each item on the disclosure form at the appropriate location as an acknowledgement that the land professional explained each item. The land professional and the prospective lessor or seller, as applicable, each must sign and date each copy of the applicable disclosure form. The land professional must provide one copy of the initialed, signed, and dated disclosure form to the prospective lessor or prospective seller and may retain the other copy.¹⁷ The bill prohibits a land professional from failing to comply with those requirements.¹⁸

Forms

The bill creates an oil and gas lease disclosure form (see Appendix 1) and a mineral purchase disclosure form (see Appendix 2). A land professional must use the oil and gas lease disclosure form for negotiations with a prospective lessor and the mineral purchase disclosure form for negotiations with a prospective seller.¹⁹ In conducting the negotiations, a land professional must explain thoroughly each item in the applicable form as discussed above.

Under the bill, the Chief must post a copy of each form on the Division's web site. The posting of the forms must be in a format that can be downloaded or printed by a land professional.²⁰

Ground water testing for wells deeper than top of Marcellus shale

The bill prohibits a person from testing ground water that is required under the bill in an oil and gas lease for a well that is deeper than the top of the Marcellus shale formation (see above) unless the person first registers with and obtains a registration certificate from the Chief. However, the bill excludes from the prohibition the

¹⁷ R.C. 1509.311(E)(1).

¹⁸ R.C. 1509.311(E)(2).

¹⁹ R.C. 1509.311(F) and (G).

²⁰ R.C. 1509.311(H).

Department of Natural Resources and the board of health of a health district in which a proposed well or well is to be or is located. A registration certificate issued under the bill is valid for one year from the date of issuance and may be renewed annually.²¹

The bill requires the Chief to publish on the Division's web site the name of and other relevant information concerning each person registered to conduct ground water testing.²²

The Chief must adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Establish a registration form for an initial registration and a form for the renewal of a registration;

(2) Establish the amount of a fee for the issuance of an initial registration and a registration renewal. All registration and renewal fees must be credited to the existing Oil and Gas Well Fund.

(3) Establish minimum qualifications that a person must meet to test ground water as discussed above; and

(4) Establish any other requirements and procedures that are necessary to implement the bill's requirements concerning ground water testing.²³

HISTORY

ACTION	DATE
Introduced	03-27-12

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²¹ R.C. 1509.312(A).

²² R.C. 1509.312(C).

²³ R.C. 1509.312(B).

Appendix 1: Oil and gas lease disclosure form

Oil and Gas Lease Disclosure Form

I, _____ (printed name of registered land professional), on behalf of _____ (name, address, and telephone number of the entity for which the land professional is an agent or by which the land professional is employed), am here to negotiate a lease of your mineral rights for the purpose of removing the oil or gas that may be under your property.

As a part of the negotiation, I am required by state law to thoroughly explain all of the following:

(Landowner/Lessor: please initial each item below that was thoroughly explained by the land professional)

____ 1. I acknowledge that I have received a thorough explanation of the company, organization, or entity that the land professional represents, is an agent of, or is employed by.

____ 2. I acknowledge that I have received a thorough explanation of how oil and gas drilling works, including a description of the equipment used in oil and gas drilling and how hydraulic fracturing is used to remove oil and gas from the ground.

____ 3. I acknowledge that I have received a thorough explanation of how a company obtains the right to drill an oil or gas well under Ohio laws, which means an oil or gas drilling permit.

____ 4. I acknowledge that I have received a thorough explanation of the lease for oil or gas rights, including an explanation of how long the lease may last and the minimum royalty required under Ohio law.

____ 5. I acknowledge that I have received a thorough explanation of all of the parts of the lease for my oil or gas mineral rights that may make the lease last longer, including an explanation of the longest time that the oil and gas lease would last.

____ 6. I acknowledge that I have received a thorough explanation that I have a right to request a separate land-use contract to use my property to drill a well.

____ 7. I acknowledge that I have received a thorough explanation that I have a right to request a no surface use lease, which means a lease that would not allow a well to be drilled on my property.

____ 8. I acknowledge that I have received a thorough explanation that I have a right to put in the lease a requirement to prevent the use of my property for anything that is not removal of oil or gas. That requirement in the lease also would prevent the use of my property to store equipment, to store wastes from drilling or from the removal of oil or gas, to dispose of wastes from drilling or from the removal of oil or gas, and to prevent the drilling of an injection well on my property to dispose of wastes from drilling or wastes from the removal of oil or gas.

____ 9. I acknowledge that I have received a thorough explanation that I have a right to put in the lease a requirement to stop the lessee from free use of oil, gas, and water from my property. I also acknowledge that I have received a thorough explanation that I have a right to put in the lease a requirement that I must be paid for the lessee's use of oil, gas, or water from my property.

____ 10. I acknowledge that I have received a thorough explanation that I have a right to put in the lease a requirement that the lessee must give me a list of all of the chemicals and other substances that will be used in any hydraulic fracturing of the well for which my property will be a part of the drilling unit.

____ 11. I acknowledge that I have received a thorough explanation that I have the right to speak to or meet with an attorney before signing a lease for the oil or gas mineral rights from my property. I also acknowledge that I have received a thorough explanation that I may have an attorney read the lease before I sign the lease and provide advice to me about the lease for the oil or gas mineral rights that I own.

Signature of landowner/lessor

Date

Printed name of landowner/lessor

Signature of land professional

Date

Registration number of land professional"



Appendix 2: Mineral purchase disclosure form

Mineral Purchase Disclosure Form

I, _____ (printed name of registered land professional), on behalf of _____ (name, address, and telephone number of the entity for which the land professional is an agent or by which the land professional is employed), am here to negotiate a land-purchase contract for the purchase of your mineral rights, including the purchase of the oil or gas that may be under your property.

As a part of the negotiation, I am required by state law to thoroughly explain all of the following:

(Landowner/Seller: please initial each item below that was thoroughly explained by the land professional)

____ 1. I acknowledge that I have received a thorough explanation of the company, organization, or entity that the land professional represents, is an agent of, or is employed by.

____ 2. I acknowledge that I have received a thorough explanation that a purchase of mineral rights is not the same as a lease of mineral rights.

____ 3. I acknowledge that I have received a thorough explanation that a purchase is the sale of my mineral rights whether my mineral rights are leased or my mineral rights are not leased.

____ 4. I acknowledge that I have received a thorough explanation that a mineral rights purchase is a sale of property that requires a transfer of rights through a deed.

____ 5. I acknowledge that I have received a thorough explanation that if my mineral rights have been leased, then a purchase of my mineral rights is the sale of my rights to receive royalty payments or other payments under the lease of my mineral rights.

____ 6. I acknowledge that I have received a thorough explanation that if my mineral rights have not been leased, then a purchase is the sale of my mineral rights and the buyer of my mineral rights may lease the mineral rights to any other person.

____ 7. I acknowledge that I have received a thorough explanation that the sale of my mineral rights may limit my right to use and enjoy the surface of my property.

____ 8. I acknowledge that I have received a thorough explanation that the sale of my mineral rights may be for all minerals or only specific minerals.



____ 9. I acknowledge that I have received a thorough explanation that the sale of my mineral rights may be for all of my mineral rights or for a part of my mineral rights.

____ 10 I acknowledge that I have received a thorough explanation that the sale of my mineral rights may have tax consequences that may require tax advice before the sale of my mineral rights.

____ 11. I acknowledge that I have received a thorough explanation that I have the right to speak to or meet with an attorney before signing a land-purchase contract for the mineral rights from my property. I also acknowledge that I have received a thorough explanation that I may have an attorney read the contract before I sign the contract and provide advice to me about the contract to purchase the mineral rights that I own.

Signature of landowner/seller

Date

Printed name of landowner/seller

Signature of land professional

Date

Registration number of land professional"