Ohio Legislative Service Commission

Bill Analysis

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S.B. 108

129th General Assembly
(As Introduced)

Sens. Jordan, Faber

BILL SUMMARY

- Creates the Oil and Gas Leasing Board, and declares that the Board has exclusive authority to lease any portion of land that is owned or controlled by a state agency, including a state university, for the purpose of the exploration for, development of, and production of oil and natural gas resources.
- Repeals certain existing authority for state agencies to enter into oil and natural gas leases.
- Establishes a procedure by which certain persons may submit lease nominations to the Board, and requires the Board to approve or disapprove a nomination based on specified factors.
- Establishes procedures to be used by the Board governing the advertising for bids for, and the entering into of, a lease for the extraction of oil and gas from state land.
- Requires the Board to adopt rules governing the oil and gas leasing program.
- Establishes the State Land Royalty Fund to which proceeds from leases are required to be credited, and requires that money in the Fund be used to pay capital and operating expenses of state agencies whose land is leased for oil and gas extraction.
- Establishes the Oil and Gas Leasing Board Administration Fund consisting of a percentage of the money derived from oil and gas leases entered into under the bill, and requires the Fund to be used to pay the Board's administrative expenses and to pay certain expenses of Board members.
- Requires appeals of Board decisions to be made to the existing Oil and Gas Commission.

CONTENT AND OPERATION

Oil and Gas Leasing Board

The bill creates the Oil and Gas Leasing Board to oversee the leasing of state property for the purpose of developing oil and natural gas resources on state lands.[1] It repeals the authority that currently exists for certain state agencies and state universities (see "**Definitions**" below) to enter into oil and natural gas leases (see "**Background**"). However, it provides that a lease of any lands that are owned or controlled by one of those state agencies or a state university for the purpose of exploring for, developing, and producing oil or natural gas that was entered into prior to the effective date of the bill remains in effect until the term of the lease expires as provided for in the lease.[2]

Membership and organization

The Board consists of the Chief of the Division of Mineral Resources Management and the Chief of the Division of Geological Survey in the Department of Natural Resources and the following three members appointed by the Governor:

(1) Two members recommended by a statewide organization representing the oil and gas industry; and

(2) One member representing a statewide environmental advocacy organization.

The bill provides for staggered five-year terms for the Governor's appointees and includes standard procedures governing their appointment, the filling of vacancies, and removal of appointees.

The Chief of the Division of Mineral Resources Management is the chairperson. 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. Members of the Board serve without compensation, but must be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the Board. The Division of Mineral Resources Management must provide technical and staff assistance to the Board upon request.[3]

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[1] R.C. 1509.70(B).

[2] Section 3.

[3] R.C. 1509.70(B) to (G).

Authority; lease nominations

The bill states that the Oil and Gas Leasing Board has exclusive authority to lease any parcel of land that is owned or controlled by a state agency, which for the bill's purposes includes a state university, for the purpose of the exploration for, development of, and production of oil and natural gas resources.[4] Leases entered into by the Board must be awarded pursuant to a nomination and competitive bid process established by the bill (see below). A person that is an owner (see "**Definitions**" below) and is interested in leasing a formation (see "**Definitions**" below) within a parcel of land that is owned or controlled by a state agency for the purpose of exploring for, developing, and producing oil or natural gas may submit a lease nomination identifying the parcel of land.[5]

The nomination must be in the manner and form, and include the information, that are required by rules adopted by the Board under the bill (see "**Rules**," below). Not later than 30 days after the receipt of a nomination of a parcel of land, the Board must conduct a meeting for the purpose of determining whether to enter into a lease for a formation within the parcel of land that is identified in the nomination. The Board must approve or disapprove the nomination not later than 60 days after the meeting. In making its decision, the Board must consider all of the following:

(1) The economic benefits, including the potential income from an oil or natural gas operation, that would result if the lease of a formation that is the subject of the nomination were approved;

(2) Whether the proposed oil or gas operation is compatible with the current uses of the parcel of land that is the subject of the nomination;

(3) Any objections to the nomination that are submitted to the Board by the state agency that owns or controls the land on which the proposed oil or natural gas operation would take place; and

(4) Any other factors that the Board may establish in rules adopted under the bill.

Prior to making its decision to approve or disapprove a nomination, the Board must notify the agency that owns or controls the land on which the oil or gas operation would take place.

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[4] R.C. 1509.71(B).

[5] R.C. 1509.71(B).

The Board must approve or deny a nomination not later than 90 days after the receipt of the nomination. Notice of the decision of the Board must be sent by certified mail to the person that submitted the nomination. If the Board approves a nomination, it must divide the parcel of land that is the subject of the approved nomination into smaller-sized parcels when appropriate in accordance with rules adopted under the bill. Additionally, if the Board approves a nomination, it must offer for lease each formation that is within a parcel of land.[6]

Lease procedures

Each calendar quarter, the Board must advertise for bids for a lease for a formation within a parcel of land that was the subject of a nomination approved during the previous calendar quarter. The advertisement must be published on a web site that is maintained by the Board and in a newspaper of general circulation in Franklin County and a newspaper of general circulation in each county in which the parcel of land is located. The advertisement must be published once a week for four consecutive weeks prior to the date that is established by the Board for the submission of bids. The notice must include the following information:

(1) The procedure for the submission of a bid to enter into a lease for a formation within a parcel of land;

(2) A statement that a person may submit a bid for only one formation within the parcel of land;

(3) A statement that a standard lease form that is consistent with the practices of the oil and natural gas industries will be used for the lease;

(4) Instructions for obtaining a copy of the standard lease form that will be used;

(5) A statement, if applicable, that special terms and conditions apply to the lease because of specific conditions related to the parcel of land and, if they do, instructions for obtaining a copy of them; and

(6) Any other information that is determined to be pertinent by the Board.[7]

To encourage the submission of bids for leases and the responsible and reasonable development of the state's natural resources, the Board must maintain the

[6] R.C. 1509.71(C).

[7] R.C. 1509.71(D).

confidentiality of, and must not disclose, information contained in a lease bid that is submitted under the bill.[8]

Lease bids must be unsealed and opened on the date designated by the Board, but not later than 15 days after the deadline established by the Board for the submission of bids for each lease regarding a particular parcel of land. Not later than 30 days after unsealing and opening the bids, the Board must enter into a lease for each formation within that parcel of land. The lease must be entered into with the person who submits the highest and best bid related to each formation within that parcel of land, taking into account the financial responsibility of the prospective lessee and the ability of the prospective lessee to perform its obligations under the lease. However, the Board cannot lease more than one formation within a particular parcel of land to the same person.[9]

Rules

Under the bill, the Oil and Gas Leasing Board must adopt rules in accordance with the Administrative Procedure Act that establish all of the following:

(1) The form of and the information to be included in nominations that are submitted to the Board under the bill;

(2) Procedures for the submission of nominations;

(3) Factors that may be considered by the Board when determining whether to approve or disapprove a nomination;

(4) Procedures and factors that the Board must use when determining whether to divide a parcel of land that is the subject of an approved nomination into smaller-sized parcels in order to manage the land properly and to maximize the number of leases for a particular parcel of land;

(5) A standard lease form that is consistent with the practices of the oil and natural gas industries and that contains a landowner royalty of one-eighth;

(6) The factors to be considered by the Board when determining whether special lease terms and conditions may be required for a particular parcel of land because of specific conditions related to that parcel of land and to the development of any oil or natural gas from the parcel;

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[8] R.C. 1509.71(E).

[9] R.C. 1509.71(F).

(7) A percentage of the proceeds of each lease agreement that must be credited to the Oil and Gas Leasing Board Administration Fund created by the bill (see "**Use of proceeds from leases; Oil and Gas Leasing Board Administration Fund**," below); and

(8) Any other procedures and requirements that are necessary to implement the bill.[10]

Use of proceeds from leases

State Land Royalty Fund

The bill requires that except as otherwise provided in the bill (see "**Oil and Gas Leasing Board Administration Fund**," below), all money that is received by the Oil and Gas Leasing Board in payment for a lease entered into under the bill must be paid by the Board into the state treasury to the credit of the State Land Royalty Fund created by the bill.[11] Money from a lease must be contributed on behalf of the state agency that owns or controls the parcel of land on which the drilling for oil or natural gas takes place.[12] Any investment earnings of the Fund must be credited to the Fund.[13]

Money in the Fund must be used to pay capital and operating costs of those state agencies on whose behalf money has been contributed by the Board to the Fund. A state agency is entitled to receive the amount contributed on its behalf under the bill and 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 agency.[14]

Oil and Gas Leasing Board Administration Fund

The bill also creates in the state treasury the Oil and Gas Leasing Board Administration Fund consisting of a percentage of the money derived from leases as provided in rules adopted under the bill (see above). Money in the Fund must be used by the Oil and Gas Leasing Board to pay its administrative expenses and to pay the

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[10] R.C. 1509.72.

[11] R.C. 131.50(A) and 1509.71(G).

[12] R.C. 1509.71(G).

[13] R.C. 131.50(A).

[14] R.C. 131.50(B).

actual and necessary expenses incurred by Board members in the performance of their duties.[15]

Appeals

Under the bill, if a nomination to lease a parcel of land is disapproved by the Oil and Gas Leasing Board, the person that submitted the nomination may appeal the Board's disapproval to the Oil and Gas Commission for an order reversing the disapproval. The requirements and procedures established in existing law that apply to an appeal of an order of the Chief of the Division of Mineral Resources Management apply to appeals filed under the bill.[16]

Declaration of state policy

The bill declares that it is the policy of the state to provide access to and support the exploration for, development of, and production of oil and natural gas resources owned or controlled by the state in an effort to stabilize energy prices for Ohio citizens and to use the state's natural resources responsibly.[17]

Definitions

For the bill's purposes, "formation" means any of the following:

(1) The distance from the surface of the land to the top of the Onondaga limestone;

(2) The distance from the top of the Onondaga limestone to the bottom of the Queenston formation;

(3) The distance from the bottom of the Queenston formation to the top of the Black River limestone; or

(4) The distance from the top of the Black River limestone to the basement rock.[18]

The Oil and Gas Law defines "owner" to mean the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a

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[15] R.C. 1509.73.

[16] R.C. 1509.74.

[17] R.C. 1509.70(A).

[18] R.C. 1509.71(A)(2).

person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under that Law.[19]

The bill defines "state agency" to mean every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.[20]

"State university or college" means each of the state universities identified the State Universities Law and the Northeastern Ohio Universities College of Medicine and includes its board of trustees.[21]

Background

Under current law, there is no centralized state governmental body that oversees the leasing of state lands for the development of oil and natural gas resources. Instead, several agencies and the board of trustees of a state university have authority to lease state lands for that purpose. The Department of Administrative Services has authority 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.[22] The Director of Natural Resources has authority to issue permits and enter into leases to remove minerals from and under the bed of Lake Erie, and the Chief of the Division of Wildlife in the Department of Natural Resources, with the approval of the Director, has authority to enter into oil and gas leases on lands owned and controlled by the Division.[23] In addition, the Director of Mental Health, the Director of Rehabilitation and Correction, and the Director of Mental Retardation and Developmental Disabilities have authority to enter into oil and gas leases on lands controlled by their respective agencies.[24] Finally, the board of trustees of a state university may enter into contracts for the removal of oil or gas from land under the supervision of the board.[25]

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[19] R.C. 1509.01, not in the bill.

[20] R.C. 1509.71(A)(1), by reference to R.C. 1.60.

[21] R.C. 1509.71(A)(1)(b), by reference to R.C. 3345.12.

[22] R.C. 123.01.

[23] R.C. 1505.07 and 1531.06.

[24] R.C. 5119.40, 5120.12, and 5123.23, repealed.

[25] R.C. 3345.181.

HISTORY

ACTION	DATE
Introduced	03-08-11

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