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133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Hoagland

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SUMMARY

- Levies a flat 15¢ per barrel fee on the injection of brine at an injection well that an injection well owner must pay to the Division of Oil and Gas Resources Management, rather than the current 5¢ or 20¢ per barrel fee (which depends on where the brine is generated).
- Eliminates the annual 500,000 barrel cap on which the existing fees may be levied per injection well.
- Authorizes a municipal corporation or township to adopt a resolution or ordinance levying an additional 5¢ per barrel fee on brine delivered to an injection well for injection.
- Requires the owner of an injection well to pay that fee to the relevant municipal corporation or township.
- Applies existing civil and criminal penalties to any failure to pay the new fees established by the bill.
- Eliminates the authority of the Chief of the Division to authorize the injection of brine by rule without requiring an injection well permit.
- Requires the Chief to publish notice of an application for an injection well permit and provide notice by certified mail to certain entities, including all real property owners located within a one-mile radius of the proposed location of the injection well.
- Prohibits the Chief from issuing an injection well permit unless 50% of the real property owners located within a one-mile radius of the proposed location of the injection well consent in writing to the injection well.
- Specifies that a property owner's failure to provide consent does not constitute consent.

- Requires the Chief to publish notice when an injection well permit is issued and to re-notify all entities required to be notified of the injection well application.

DETAILED ANALYSIS

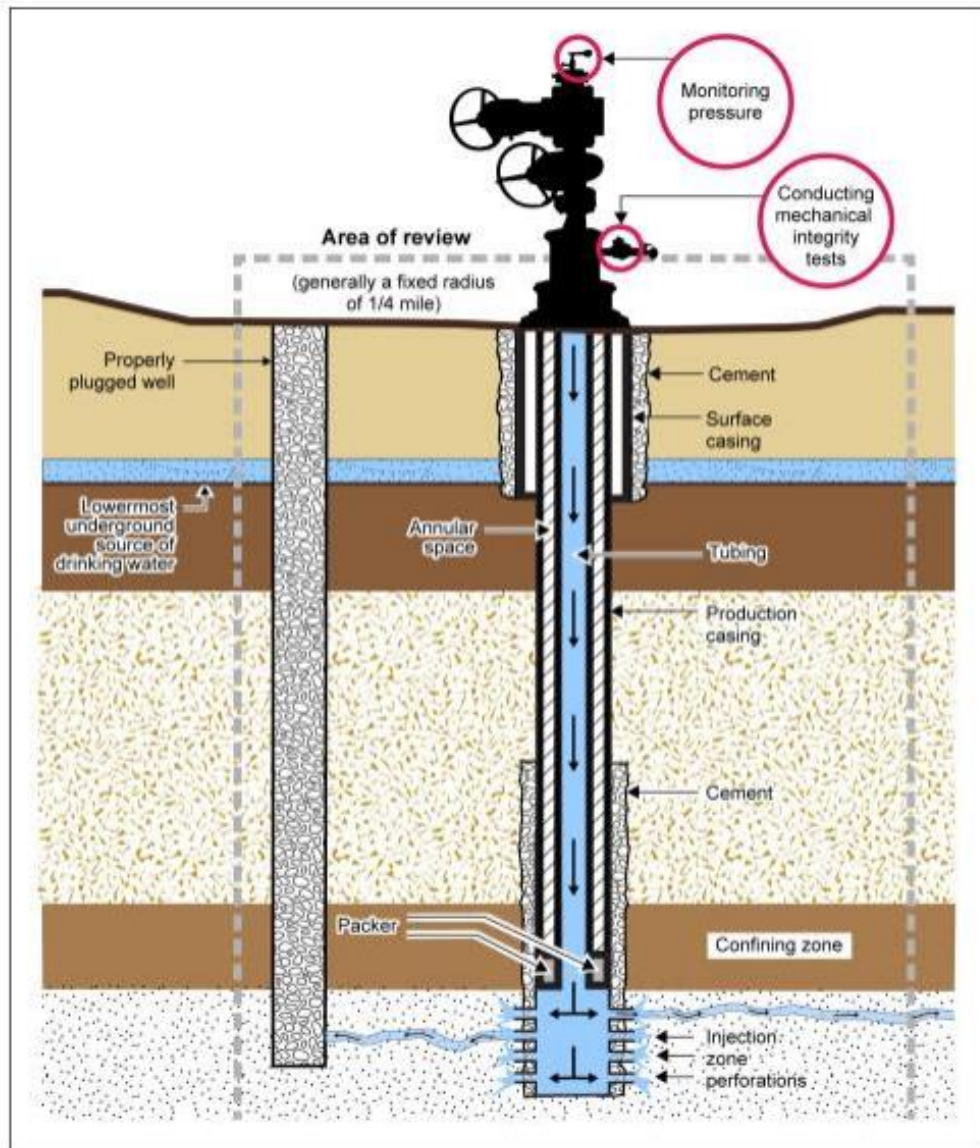
Background

An injection well is a type of well that is drilled into rock formations for the disposal of oil-field waste and waste water that is used or produced during hydraulic fracturing. This waste water is often referred to as brine. Brine includes all saline water that results from, or is produced in connection with, an oil or gas well.¹ A person seeking to drill a new injection well generally must obtain both a permit to drill a well and an additional permit from the Chief of the Division of Oil and Gas Resources Management² to dispose of the brine in an injection well (injection well permit).³ Figure 1.1 below illustrates an injection well.

¹ R.C. 1509.01(U), not in the bill.

² The Division is housed within the Department of Natural Resources. See R.C. Chapter 1509.

³ See R.C. 1509.22.

Figure 1.1: Injection well

Sources: GAO analysis of EPA and Ohio's information. | GAO-14-555

4

Injection well fees

The bill alters the injection well fees that an injection well owner must pay to the Division of Oil and Gas Resources Management by assessing a flat 15¢ per barrel fee on each

⁴ United States Government Accountability Office, "EPA Program to Protect Underground Sources from Injection of Fluids Associated with Oil and Gas Needs Improvement" Report to Congressional Requesters, p.26, available at: <https://www.gao.gov/assets/670/664499.pdf> (2014).

barrel of waste substances (brine) injected.⁵ Under current law, a 5¢ or 20¢ injection well fee is assessed, depending on where the brine is generated, as follows:

- 5¢ per barrel when the brine is produced within the Division of Oil and Gas Resources Management regulatory district in which the well is located or within an adjoining district;
- 20¢ per barrel when the brine is **not** produced within the Division regulatory district in which the well is located or within an adjoining district. (This fee also applies to brine produced out of state.)⁶

The map in Figure 1.2 below illustrates the four Division regulatory districts.

Figure 1.2: Regulatory district map



7

Because current law levies a higher fee on brine produced out of state than on brine produced in Ohio, a court might find it is discriminatory against out-of-state economic interests and violative of the Commerce Clause of the United States Constitution.⁸ However, because the

⁵ R.C. 1509.22(H).

⁶ R.C. 1509.22(H).

⁷ Ohio EPA, "Ohio's Regulations: A Guide for Operators Drilling Shale Oil and Gas Wells" (October 2017), p.11, available at: <https://epa.ohio.gov/Portals/0/general%20pdfs/OhioRegsShaleGasWellDrilling.pdf>.

⁸ See Sub. S.B. 165 of the 128th General Assembly Legislative Service Commission Final Analysis COMMENT, p.59-60, (2010), available at: <https://www.lsc.ohio.gov/documents/gaDocuments/analyses128/10-sb165-128.pdf>.

bill instead assesses a **flat** 15¢ fee, regardless of where the waste was generated, the bill eliminates this potential constitutional concern.

Fee cap elimination

The current injection well fees are capped at a maximum of 500,000 barrels in each calendar year per injection well. Thus, any amounts injected above that amount are not subject to the fees. The bill eliminates this cap.⁹

Local fees

The bill authorizes a municipal corporation or township to adopt a resolution or ordinance levying a 5¢ per barrel fee on brine delivered to an injection well for injection. The owner of the injection well must pay the fee to the municipal corporation or township that levies it. The purpose of this fee is to defray the added costs to the municipal corporation or township for maintaining roads and other public facilities and providing emergency and other public services. Money received from the fee by the treasurer or other officer of the municipal corporation must be paid into the general fund of the municipal corporation. Money received by the fiscal officer of the township must be paid into the general fund of the township.¹⁰

Penalties

The bill applies existing civil and criminal penalties to any failure to pay the new injection well fees as shown in the table below.

Current law	The bill
<p>Failure to pay the 5¢ and 20¢ fees to the Division is punishable by:</p> <ul style="list-style-type: none"> ▪ A civil penalty of not more than \$10,000;¹¹ ▪ A criminal penalty of a fine of not less than \$100 nor more than \$1,000 for a first offense; for each subsequent offense a fine not less than \$200 nor more than \$2,000.¹² 	<p>Applies the existing civil and criminal penalties to both of the following:</p> <ul style="list-style-type: none"> ▪ Failure to pay the new 15¢ fee to the Division;¹³ ▪ Failure to pay any 5¢ fee levied by a municipal corporation or township.¹⁴

⁹ R.C. 1509.22(H).

¹⁰ R.C. 1509.22(I) (The bill incorrectly includes unnecessary cross reference changes to section 1509.02 of the Revised Code. A corrective amendment has been drafted to remove this section and to re-letter this division from (E) to (I)).

¹¹ R.C. 1509.33(A), not in the bill.

¹² R.C. 1509.99(A), not in the bill.

¹³ R.C. 1509.22(H).

¹⁴ R.C. 1509.22(I) (A corrective amendment has been drafted to re-letter this division from (E) to (I)).

Notice and publication requirements

The bill establishes new notice and publication requirements applicable to the application for and issuance of a permit for a new injection well. In so doing, the bill eliminates the authority of the Chief to authorize injection by rule, without the need for a permit. Thus, the bill prevents bypassing the new notice and publication requirements described below.¹⁵

The bill requires the Chief to publish notice of an injection well permit application for a 30-day period following the receipt of the application. The notice must be published in a newspaper of general circulation in the area where the injection well is proposed to be located. The Chief also must provide notice of the application by certified mail to all of the following:

- The Department of Transportation;
- The board of county commissioners of each county in which the injection well is proposed to be located;
- The legislative authority of each municipal corporation and township within one mile of the proposed location of the injection well; and
- Each owner of real property located within a one-mile radius of the proposed location of the injection well.¹⁶

Within 30 days after receipt of the written notice, each owner of real property who received the notice must respond to the Chief in writing as to whether or not the real property owner consents to the proposed location of the injection well. If less than 50% of the real property owners located within a one-mile radius of the proposed location of the injection well consent, the Chief must deny the permit application. The bill specifies that the failure of any real property owner to respond to the Chief is not consent.¹⁷

The bill requires the Chief to do both of the following after issuing an injection well permit:

- Publish notice of the issuance of the permit in a newspaper of general circulation in the area where the well will be located for a 30-day period;
- Notify all the entities that were required to be notified of the injection well application of the issuance of the permit.¹⁸

¹⁵ R.C. 1509.22(D)(1).

¹⁶ R.C. 1509.22(D)(3)(a).

¹⁷ R.C. 1509.22(D)(3)(b).

¹⁸ R.C. 1509.22(D)(4).

HISTORY

Action	Date
Introduced	07-09-20
