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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Stewart and Ginter

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CORRECTED VERSION*

SUMMARY

Oil and gas unit orders

- Authorizes an applicant for unit operation to include in the application a request for one or more of the following:
 - To have the hearing on the application be held remotely; and
 - To protect a trade secret, research, development, or commercial information from disclosure.
- Upon request, requires the Chief of the Division of Oil and Gas Resources Management to hold a hearing on the unit operation application remotely through electronic means.
- Requires the Chief to provide notice to all interest holders in a proposed unit before holding a hearing on a unit operation application.
- Requires the Chief to provide the notice by certified mail and by publication.
- Establishes specific time frames by which the Chief must hold a hearing on a proposed unit operation application (30 to 60 days after application) and issue a unit order (30 days after the hearing).
- Requires the Chief to include all of the following in a unit order:
 - A provision for carrying the cost of any nonoperating working interest owner under specified conditions;

* Includes a discussion of a provision regarding state owned mineral rights that was not included in the original version of the analysis.

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- A provision for up to a 12-month extension of the time when the unit operation must begin; and
- A provision entitling an unleased mineral owner to choose one of three specified options regarding that owner's mineral rights.
- Specifies that if an unleased mineral owner does not select one of the three specified options, the unleased mineral owner will be deemed to have chosen to lease the owner's mineral rights under terms specified in the bill.
- Prohibits the Chief from amending a unit order for either of the following:
 - A change in ownership when unit boundaries do not change; or
 - Operational changes in the unit.
- Prohibits the Chief from establishing any new guidelines to administer and implement the law governing unit operation other than by adopting administrative rules.
- Requires the Chief to issue an order for unit operation when any portion of the mineral rights owned by the State of Ohio are included in the unit, rather than only when those rights are owned by the Department of Transportation, as in current law.

DETAILED ANALYSIS

Oil and gas unit operations

Background

Unitization is the process by which a driller seeking to develop oil or gas resources applies to the Chief of the Division of Oil and Gas Resources Management for a unit order to obtain control over all the mineral rights underlying a large area of land. The goal of unitization is to create an area of consolidated mineral rights that is large enough and that best suits the shape of an underground oil or gas reservoir to make the most efficient use of those resources.

Ohio law allows the Chief to consider unitization on the Chief's own motion, or the owners of 65% (or more) of the land area overlying the oil and gas pool can apply to the Chief for a unitization order. This enables those who control a majority of the mineral rights to move forward with drilling, even if there are mineral rights owners who do not want to lease their rights or are unable to lease their rights.

The Chief must hold a public hearing to consider the need for the unit order. The Chief must issue a unit order if the Chief determines that the order is reasonably necessary to substantially increase the ultimate recovery of oil or gas, and that the value of the estimated additional recovery of the oil or gas exceeds the estimated costs. The unit order must specify an allocation of oil or gas to each tract of land being unitized that complies with an agreement reached between the various parties. If there is no agreement, the Chief considers information presented at the required hearing to determine how much production should be allocated to each tract.

A unit order is not effective until a plan for unit operations is approved in writing by a specified number of owners. Current law establishes the requirements for what must be included in the plan. For mineral owners who do not agree to a lease, the Chief determines the royalty interest, working interest, and risk penalty. Under current law, the terms of each unit order vary.¹

Unit order application and hearing requirements

The bill authorizes an applicant for unit operation to include in the application a request for either or both of the following:

1. To have the hearing on the application be held remotely (a remote hearing request); and
2. To protect a trade secret, research, development, or commercial information from disclosure (a protection request).

If an applicant makes a remote hearing request, the Chief must hold the hearing on the application electronically by teleconference, video conference, or any other similar electronic technology. These technologies may be utilized notwithstanding any specific requirements of the Public Meetings Law.

If the applicant makes a protection request, the Chief must exclude information in the request from the public record of the hearing, the information is prohibited from disclosure to the general public, and the Chief must order the information to be fully or partially protected in one of two ways:

1. Full protection: the information is fully protected and is prohibited from disclosure to any person other than the Chief;
2. Partial protection: the information is partially protected and can be disclosed by the Chief only to certain persons or classes of persons.²

The bill also requires the Chief to notify all interest holders in a proposed unit before holding a hearing on the application. The Chief must provide the notice by certified mail and by publishing notice of the hearing twice in a newspaper of general circulation in the county or counties in which the unit is proposed to be located.³ Current law does not include any specific notice requirements.

The bill requires the Chief to hold the hearing on unit operation between 30 and 60 days after the Chief's motion or the date on which the Chief received an application for unit operation. If the Chief issues a unit order, the Chief must do so within 30 days of the hearing.

¹ R.C. 1509.28.

² R.C. 1509.28(C)(2), (C)(3), (D)(3), and (D)(4).

³ R.C. 1509.28(D)(1).

Current law does not establish any specific timeframes regarding notice, the hearing, and the order for unit operations.⁴

Plan for unit operations

The bill alters the required elements of a plan for unit operations as set forth below.

Nonoperating working interest owners

The bill requires the plan to include a provision for carrying the cost of any nonoperating working interest owner who elects to be carried or fails to meet financial obligations under the unit order. Those costs are payable out of production on terms and conditions the Chief determines are just and reasonable. The terms and conditions must include a nonparticipation charge of not less than 300% of the amount carried, payable out of the nonoperating working interest owner's share of production.

Current law instead requires the Chief to include a provision, if necessary, to provide for the carrying or otherwise financing of any person who is unable to meet the person's financial obligations in connection with the unit. The Chief may allow a reasonable interest charge for that service.⁵

The bill defines several new terms for purposes of the bill's new plan requirements for nonoperating working interest owners as illustrated in the table below:⁶

Term	Meaning
Nonoperating working interest owner	A working interest owner who is not the operator of the unit.
Working interest owner	A person who owns a working interest and who is not an unleased mineral owner.
Working interest	An interest in oil or gas by virtue of a lease, operating agreement, fee title, or otherwise, including a carried interest, the owner of which, in the absence of a unit order, would have the right to drill and operate a well on one or more of the separately owned tracts comprising the unit and who is obligated to pay, either in cash or out of production, or otherwise, a portion of the unit expense.

⁴ R.C. 1509.28(D)(2) and (E).

⁵ R.C. 1509.28(F)(6).

⁶ R.C. 1509.28(A).

Time extensions

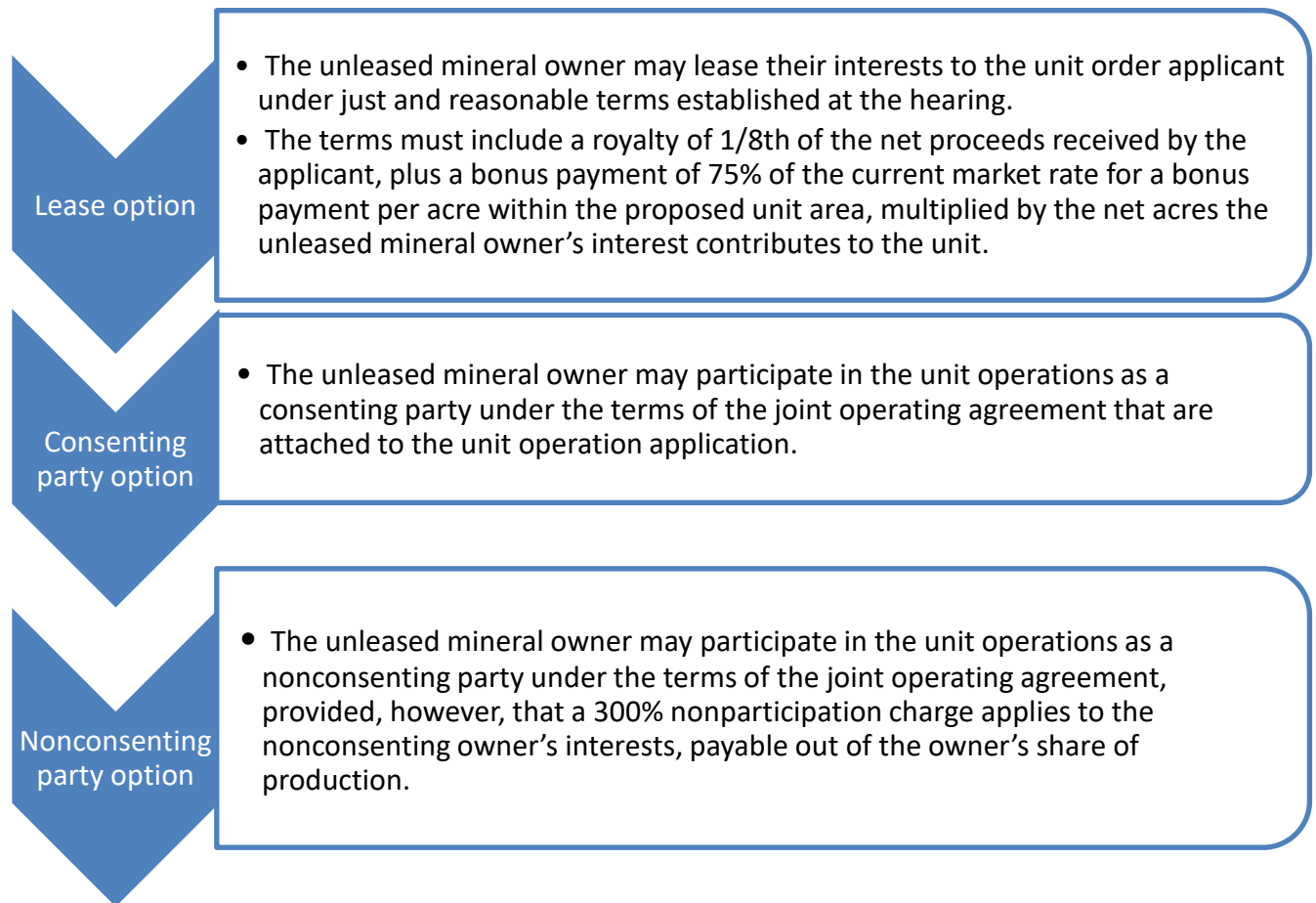
The bill requires the plan for unit operations to include a provision authorizing up to a 12-month extension of the time when the unit operation must begin. The plan must also specify the manner and circumstances under which an extension may be obtained without an additional hearing. Current law requires the plan to only include the time when the unit operations must begin and the circumstances under which they must end. It does not authorize any time extensions.⁷

Unleased mineral owners

If the unit order addresses the interest owned by an unleased mineral owner (an owner of a fee mineral interest that is free of a lease or other instrument conveying all or any portion of the working interest in those rights to another), the Chief must include a provision entitling that owner to choose one of three options regarding the owner's mineral rights. The unleased mineral owner must choose an option within 30 days after the Chief issues the unit order. If the unleased mineral owner does not select one of the three options by the 30-day deadline, the unleased mineral owner is deemed to have selected the lease option illustrated in the first chevron below.⁸ The three options that an unleased mineral owner may choose under the bill are as follows:

⁷ R.C. 1509.28(F)(8).

⁸ R.C. 1509.28(F)(9).



As listed in the order of appearance in the illustration above, the bill defines the following terms:⁹

Term	Meaning
Royalty	A share of production that is free from the costs of production.
Net proceeds	The proceeds received on the sale of production less any and all taxes and fees levied on or as a result of the production and less any and all post-production costs incurred between the wellhead and the point of sale.
Bonus payment	A payment for the execution of an oil and gas lease.

⁹ R.C. 1509.28(A).

Term	Meaning
Net acres	The pro rata undivided interest in oil and gas in a tract, expressed on an acreage basis and determined by multiplying an unleased mineral owner's percentage ownership interest in the oil and gas in a tract by the gross acreage of the tract.
Post-production costs	All costs and expenses incurred between the wellhead and the point of sale, including, without limitation, the costs of any treating, separating, dehydrating, processing, storing, gathering, transporting, compressing, and marketing.

Current law does not specify what actions an unleased mineral owner must take or by what date. Instead, it allows a person in this position to decide to participate in unit operations via a lease, to participate under the terms of the unit order, or to refuse to participate and to pay the reasonable interest charge determined by the Chief at the hearing on the unit operation application.¹⁰

Changes to unit orders

The bill revises how amendments to a unit order are made after it has been issued. Under current law, the Chief may amend the unit order by the Chief's order in the same manner and subject to the same conditions as an original unit order. The bill instead specifies that the Chief's amendment only need be made in the same manner as the original order, but is not subject to the same conditions. Further, the bill specifies that an amendment is not required for either of the following:

1. A change in the ownership interests included in the unit order when the unit boundaries do not change; or
2. Operational changes in the unit.

Under the bill, operational changes are adjustments, amendments, or changes to any oil and gas operations, including, but not limited to, changes related to permitting, pad construction, pad location, drilling, completions, production, and workovers, within the unit.¹¹

State owned mineral rights

The bill requires the Chief to issue an order for unit operation of a pool or a part of a pool that encompasses a unit area for which all or a portion of the mineral rights are owned by the state. Current law limits application of this provision to mineral rights owned by the Department of Transportation.¹²

¹⁰ R.C. 1509.28(F).

¹¹ R.C. 1509.28(H) and (A)(5).

¹² R.C. 1509.28(M).

Establishing new guidelines

The bill prohibits the Chief, beginning on the bill’s effective date, from establishing any new guidelines to administer and implement the law governing unit operation other than through the adoption of rules under the Administrative Procedure Act.¹³

HISTORY

Action	Date
Introduced	02-23-21

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¹³ R.C. 1509.28(O).