



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 422

131st General Assembly  
(As Introduced)

Reps. S. O'Brien and Patterson, M. O'Brien

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## BILL SUMMARY

### Injection wells

#### Prohibitions on the issuance of injection well permits

- Prohibits the Chief of the Division of Oil and Gas Resources Management from issuing an injection well permit if any of the following apply:
  - The proposed depth of the well is below Precambrian stratigraphy;
  - The proposed location of the well is in a 100-year floodplain; or
  - The proposed location of the well is within 20 kilometers of a known fault line.

#### Monitoring and reporting requirements

- Requires the Chief to adopt rules governing injection well permits that include all of the following requirements:
  - A requirement that an applicant for a permit submit to the Chief and to each local emergency responder a general description of the contents intended to be injected into the well;
  - A requirement that a permittee add a stable benign chemical tracer into the well;
  - A requirement that a permittee install a continuous real-time pressure measurement and monitoring device; and
  - A requirement that an applicant for a permit conduct seismic testing and submit results of the testing with the application for the permit.

## **Public notice and hearing requirements**

- Requires the Chief, after determining that an application for an injection well permit is complete, to post on the Division's website a notification that contains information regarding the application, including the time, date, and location of the hearing required under the bill.
- Further requires the Chief to provide notification of the time, date, and location of the hearing to specified individuals and entities including the board of county commissioners of the county in which the proposed injection well is to be located and each planning commission with jurisdiction in the area.
- Authorizes the specified individuals and entities that received notice of the hearing to submit written comments concerning the application.
- If the Chief receives a comment, requires the Chief to transmit a copy of the comment to the applicant for the injection well and post a copy on the Division's website.
- Requires an applicant for a permit for an injection well to publish a notice containing specified information in a newspaper of general circulation in the county in which the proposed well is to be located and in any local weekly news publication, if available.
- Requires the notice to be published at least once a week for four consecutive weeks.
- Authorizes any person to submit a written comment or an objection to the Chief regarding an application for an injection well permit.
- Requires the Chief to hold a public hearing in the township or municipal corporation in which a proposed injection well is to be located and requires the meeting to be held not later than 60 days after the applicant's fourth publication in a newspaper.
- Requires other specified persons and entities to receive notification of a brine injection well permit application based on their geographic proximity to the location of the proposed well.

## **Injection well fees**

- Eliminates the current maximum barrel restriction upon which existing injection well fees may be levied.



- Levies an additional 5¢ fee on each barrel of a substance delivered to an injection well to be injected into the well.
- Requires money received from the new fee to be deposited in the Injection Well Ground Water Monitoring Fund, which the bill creates.

### **Setback distances**

- Creates setback distance requirements specifically applicable to injection wells.

### **Assignment of lease agreements for purposes of placing an injection well**

- Requires the county recorder to record in the official records all leases and assignments of leases of real property for the purpose of placing an injection well.
- Declares that the assignment of a lease agreement for real property for the purpose of placing an injection well is void unless the lease agreement contains specified information.
- Requires a person who leases real property for the purpose of placing an injection well to notify the owner of the real property of an assignment of the lease not later than 30 days after assigning the lease.
- Requires each person who subsequently assigns the lease to notify the owner of the real property not later than 30 days after assigning the lease.
- Declares that a person's failure to notify the owner of real property in accordance with the above requirements invalidates the assignment of the lease.
- Specifies that the assignment of a lease of real property for the purpose of placing an injection well is void if the assignment is not recorded in the office of the county recorder, unless the owner of the real property provides written consent.
- Requires a person who leases real property for the purpose of placing an injection well who obtains written consent from the owner of the real property to provide a copy of that written consent to the county recorder.

### **Ground water monitoring**

- Requires the Chief to adopt rules establishing requirements for the installation of ground water monitoring wells and the monitoring of ground water quality and quantity prior to commencing the drilling of an injection well and during injection.
- Requires the rules adopted by the Chief to do all of the following:



--Require that ground water monitoring be capable of determining impacts resulting from the operation of the injection well;

--Establish requirements governing ground water assessment and corrective actions for impacts to ground water; and

--Require the owner of the injection well to submit a monitoring report to the Chief that contains specified information and is prepared by a qualified ground water scientist.

## **Brine transportation**

### **Road use and maintenance plan**

- Requires an applicant for a brine transportation registration certificate to include with the application a plan for road use and maintenance.
- Requires the applicant to also submit the plan to the county engineer of each applicable county.
- Authorizes a county engineer that receives a proposed road use and maintenance plan to make recommendations to the Chief regarding the plan.
- Authorizes the Chief to revise a road use and maintenance plan, as recommended by the county engineer, and requires the Chief to provide a copy of any revised plan to the applicant.
- Authorizes a registered transporter to apply to the Chief to update a road use and maintenance plan.
- Prohibits a registered transporter from knowingly failing to comply with a road use and maintenance plan.

### **Daily log, documentation, and daily report requirements**

- Requires a registered brine transporter to submit daily logs, required to be kept under current law, electronically to the Chief each day.
- Requires a registered transporter, when the transporter arrives at an injection well, to provide written documentation to the owner of the well of how many gallons of brine and other waste substances the transporter is carrying.
- Requires the owner of an injection well to submit a daily electronic report to the Chief stating how many gallons of brine and other waste substances were received from each registered transporter each day.



- Requires the Chief to review the daily report in conjunction with the daily log, and requires the Chief to begin an investigation if there is a pattern of discrepancy between the daily log and daily report.
- Requires the Chief to adopt rules governing daily reports, including rules establishing a definition of "pattern of discrepancy."

**Telemetric sensor and data**

- Requires a registered transporter to attach a telemetric sensor to all vessels, vehicles, railcars, and containers employed in transporting or disposing of brine.
- Requires a registered transporter to provide telemetric data upon the request of the Chief, within 30 days of receiving a request to do so.
- Prohibits a transporter from failing to comply with the above requirements.
- Requires the Chief to adopt rules establishing requirements and procedures governing the use of telemetric sensors.
- Establishes a criminal penalty for a violation of the telemetric sensor and data requirements described above.

**Civil and criminal penalties**

- Specifies that for purposes of imposing civil and criminal penalties for specified violations, each occurrence of violation is a separate offense.

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## CONTENT AND OPERATION

### Injection wells

#### Prohibitions on the issuance of injection well permits

The bill prohibits the Chief of the Division of Oil and Gas Resources Management from issuing a permit for the injection of brine or other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production if any of the following apply:

- (1) The proposed depth of the well is below Precambrian stratigraphy;
- (2) The proposed location of the well is in a 100-year floodplain; or
- (3) The proposed location of the well is within 20 kilometers of a known fault line.<sup>1</sup>

For purposes of this prohibition, a fault line is a fracture along which the blocks of the earth's crust on either side have moved relative to one another parallel to the fracture. Crust is the outermost layer of the earth, which is from ten to 65 kilometers in thickness.<sup>2</sup>

#### Monitoring and reporting requirements

The bill requires the Chief to adopt rules governing injection well permits that include all of the following requirements:

(1) A requirement that an applicant for a permit submit to the Chief and to each local emergency responder<sup>3</sup> a general description of the contents of the brine or other waste substances intended to be injected into the well specifying the chemical components and types of waste substances;

(2) A requirement that a permittee add a stable benign chemical tracer into the well in an amount and frequency determined by the Chief for purposes of determining if brine or other waste substances have migrated and if an impact to ground water has occurred as a result of the well's operation;

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<sup>1</sup> R.C. 1509.22(E).

<sup>2</sup> R.C. 1509.22(J)(1) and (2).

<sup>3</sup> The bill defines a local emergency responder as either a representative of a fire department, or the director or coordinator of a countywide emergency management agency. R.C. 1509.22(J)(3).



(3) A requirement that a permittee install a continuous real-time pressure measurement and monitoring device to monitor the pressure and quantity of brine and other waste substances injected into the well; and

(4) A requirement that an applicant for a permit conduct seismic testing and submit results of the testing with the application for the permit.<sup>4</sup>

### **Public notice and hearing requirements**

After determining that an application for an injection well permit is complete, the bill requires the Chief to post on the Division's website a notification that contains information regarding the application, including the time, date, and location of the hearing. The Chief also must provide notification of the time, date, and location of the hearing to specified individuals and entities, including all of the following:

(1) The board of county commissioners of the county in which the proposed injection well is to be located;

(2) The legislative authority of the municipal corporation or board of township trustees of the township in which the proposed well is to be located;

(3) Each private water company that has a well or a reservoir located within a two-mile radius of the proposed location of the well;

(4) The board of directors of each conservancy district with jurisdiction in the area in which the well is proposed to be located, if applicable;

(5) Each planning commission with jurisdiction in the area in which the well is proposed to be located; and

(6) Each state and federal legislator in whose legislative district the well is proposed to be located.<sup>5</sup>

The bill authorizes all individuals or entities that received notice of the hearing to submit to the Chief written comments concerning the application with respect to the effects of the operation of the proposed injection well on the environment within the individual's or entity's area of responsibility. The written comments must be submitted not later than 30 days after the individual's or entity's receipt of the notice. If the Chief

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<sup>4</sup> R.C. 1509.22(D)(1)(a), (e), (f), and (g).

<sup>5</sup> R.C. 1509.22(D)(3)(a)(i) to (vi).



receives comments, the Chief must transmit a copy of the comments to the applicant for the injection well and post a copy of the comments on the Division's website.<sup>6</sup>

Beginning in the week following the week in which the Chief posts notice of the hearing on the Division's website, the applicant must publish a notice in a newspaper of general circulation in the county in which the proposed well is to be located and, if available, in any local weekly news publication. The applicant must publish the notice at least once a week for four consecutive weeks. The font of the notice must be of a reasonable size, and the notice must include all of the following information:

- (1) The name of the applicant;
- (2) A statement that the applicant intends to drill an injection well;
- (3) A description of the location at which the proposed well will be drilled;
- (4) The permit application number;
- (5) The time, date, and location of the public hearing to be held by the Chief; and
- (6) The location where a copy of the permit application may be inspected.<sup>7</sup>

The bill authorizes any person to submit a written comment or objection to the Chief regarding an application for an injection well permit. The person must submit the comment or objection not later than 90 days after the date of the first newspaper publication of notice by the applicant for the permit, unless the Chief grants an extension.<sup>8</sup>

The Chief must hold a public hearing concerning the application in the township or municipal corporation in which the proposed injection well is to be located. The Chief must hold the hearing not later than 60 days after the applicant's fourth newspaper publication.<sup>9</sup>

### **Additional notification requirements for brine injection wells**

In addition to the individuals and entities set forth above that are required to receive notification of an injection well permit application, the bill requires other

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<sup>6</sup> R.C. 1509.22(D)(3)(a).

<sup>7</sup> R.C. 1509.22(D)(3)(c).

<sup>8</sup> R.C. 1509.22(D)(3)(d).

<sup>9</sup> R.C. 1509.22(D)(3)(b).





specified persons and entities to receive notification based on their geographic proximity to the location of a proposed brine injection well. The bill requires that an application for a brine injection well permit be evaluated based on an area of review that is calculated as the area circumscribed by a circle with the center point at the location of the well and having a ½ mile radius. However, if the area circumscribed by that circle with a radius of six miles includes land owned by a school district or political subdivision, the area of review must be calculated using the six mile radius rather than the ½ mile radius.

In accordance with these area of review requirements, the bill requires the permit applicant to provide notice of the application to all political subdivisions and landowners within that area, and to the state representative and senator in whose legislative district the well is located or proposed to be located. A person who wishes to comment on or make an objection to the application may do so as provided above.<sup>10</sup>

### **Injection well fees**

The bill makes changes to the fees levied on the owner of an injection well. First, the bill eliminates the current maximum barrel restriction upon which existing fees, assessed per barrel, may be levied. Under current law, the maximum number of barrels of a substance per injection well in a calendar year on which a fee may be levied is 500,000.<sup>11</sup>

Next, the bill levies an additional fee on the owner of an injection well. Under current law, the owner of an injection well must pay the following fees:

(1) 5¢ per barrel of each substance that is delivered to the well to be injected in the well when the substance is produced within the Division's regulatory district in which the well is located or within an adjoining district;

(2) 20¢ per barrel of each substance that is delivered to the well to be injected in the well when the substance is not produced within the Division's regulatory district or an adjoining district.

The bill levies an additional five cent per barrel fee on each substance that is delivered to an injection well to be injected into the well, irrespective of the regulatory district where the substance is produced.<sup>12</sup> Money received from the fee must be

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<sup>10</sup> R.C. 1509.228.

<sup>11</sup> R.C. 1509.22(I)(2).

<sup>12</sup> R.C. 1509.22(I)(2).



deposited in the Injection Well Ground Water Monitoring Fund, which the bill creates. The Fund must be used solely for purposes of ground water monitoring in accordance with the provisions of the bill.<sup>13</sup> If the money in the Injection Well Ground Water Monitoring Fund is insufficient to conduct the monitoring, the Chief may use money in the existing Oil and Gas Well Fund for that purpose.<sup>14</sup>

Finally, the bill eliminates provisions of law that set forth how fees must be calculated when the owner of a well receives substances for injection from within the Division's applicable regulatory district or an adjoining district and substances from outside of those districts.<sup>15</sup>

### **Setback distances**

The bill creates setback distance requirements specifically applicable to injection wells as follows:

(1) In an urbanized area, the surface location of a new injection well must not be within 2,000 feet of an occupied dwelling unless the owner of the land on which the occupied dwelling is located consents in writing and the Chief approves. However, the Chief cannot approve written consent when the location of the injection well will be within 1,500 feet of the occupied dwelling.

(2) In a nonurbanized area, the surface location of a new injection well must not be within 2,000 feet of an occupied dwelling or of a public building that may be used as a place of assembly, education, entertainment, lodging, trade, manufacture, repair, storage, or occupancy by the public. This provision does not apply to buildings or structures incidental to agricultural use of land, unless they are used as an occupied private dwelling or for retail trade.

(3) The location of a new injection well must not be within 2,000 feet of a stream, river, watercourse, water well, pond, lake, or other body of water. However, the Chief may authorize a new well to be located at a distance that is less than 2,000 feet from such a body of water if the Chief determines that the reduction in the distance is necessary to reduce impacts to the owner of the land on which the well is to be located or to protect public safety or the environment.

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<sup>13</sup> R.C. 1509.22(I)(3) and 1509.229(A).

<sup>14</sup> R.C. 1509.02 and 1509.229(A).

<sup>15</sup> R.C. 1509.22(I)(2).

(4) The surface location of a new injection well must not be within 2,000 feet of a railroad track or of the traveled portion of a public street, road, or highway.<sup>16</sup>

### **Assignment of lease agreements for purposes of placing an injection well**

The bill requires the county recorder to record in the official records all leases and assignments of leases of real property for the purpose of placing an injection well.<sup>17</sup> The bill then declares that the assignment of a lease agreement for real property for the purpose of placing an injection well is void unless the lease agreement contains both of the following:

(1) An express statement specifying whether the assignment is permissible under the lease agreement; and

(2) A provision requiring notification, as discussed below.

A person who leases real property for the purpose of placing an injection well must notify the owner of the real property of an assignment of the lease not later than 30 days after assigning the lease to another person. Thereafter, each person to whom such a lease is subsequently assigned must notify the owner of the real property not later than 30 days after assigning the lease to another person. The bill declares that a person's failure to notify the owner of real property in accordance with the above requirements renders the assignment of the lease void.

The bill also specifies that the assignment of a lease of real property for the purpose of placing an injection well is void if it is not recorded in the office of the county recorder, unless the owner of the real property provides written consent to the nonrecording of the assignment. In addition, the bill requires a person who leases real property for the purpose of placing an injection well who obtains written consent from the owner of the real property to provide a copy of that written consent to the county recorder.<sup>18</sup>

### **Ground water monitoring**

The bill requires the Chief to adopt rules establishing requirements for the installation of ground water monitoring wells and the monitoring of ground water

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<sup>16</sup> R.C. 1509.23.

<sup>17</sup> R.C. 317.08(A)(29).

<sup>18</sup> R.C. 5301.091.



quality and quantity prior to commencing the drilling of an injection well and during injection.<sup>19</sup>

The rules adopted by the Chief must do all of the following:

(1) Require that ground water monitoring be capable of determining impacts resulting from the operation of the injection well;

(2) Establish requirements governing ground water assessment and corrective actions for impacts to ground water; and

(3) Require the owner of the injection well to submit a monitoring report to the Chief that has been prepared by a qualified ground water scientist and contains all of the following:

--A determination of any impacts to ground water from the migration of contaminants from the injection well;

--A list of the contaminants from the injection well that may be causing contamination of ground water; and

--Recommendations for actions, if any, that should be taken to investigate or remediate the source of any ground water contamination.<sup>20</sup>

## **Brine transportation**

### **Road use and maintenance plan**

The bill requires an applicant for a brine transportation registration certificate to include with the application a plan for road use and maintenance, as prescribed by the Chief. The plan must describe the roads that the applicant intends to use and the actions the applicant intends to take to maintain those roads.<sup>21</sup>

The applicant must submit the plan to the county engineer of each applicable county. A county engineer that receives a proposed road use and maintenance plan may make recommendations to the Chief regarding the plan. The Chief may revise the

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<sup>19</sup> R.C. 1509.229(B).

<sup>20</sup> R.C. 1509.229(B).

<sup>21</sup> R.C. 1509.222(A)(2)(d).



road use and maintenance plan as recommended by the county engineer. If the Chief makes revisions, the Chief must provide a copy of the revised plan to the applicant.<sup>22</sup>

A registered transporter may apply to the Chief to update a road use and maintenance plan. The Chief must then approve, approve with revisions, or disapprove the update and notify the registered transporter. If the Chief approves an update with revisions, the Chief must submit a copy of the plan to the transporter.

The bill prohibits a registered transporter from knowingly failing to comply with the road use and maintenance plan.<sup>23</sup>

### **Daily log, documentation, and daily report requirements**

The bill requires a registered transporter to submit daily logs, required to be kept under current law, electronically to the Chief each day.<sup>24</sup> In addition, a registered transporter, when the transporter arrives at a well, must provide written documentation to the owner of the well of how many gallons of brine and other waste substances the transporter is carrying. The owner of an injection well must submit a daily electronic report to the Chief stating how many gallons of brine and other waste substances were received from each registered transporter each day. The bill requires the Chief to review the daily report in conjunction with the daily log, and to begin an investigation if there is a pattern of discrepancy between the daily log and daily report.<sup>25</sup>

The bill requires the Chief to adopt rules governing daily reports, including rules establishing all of the following:

- (1) Procedures and requirements governing the submission of daily reports;
- (2) A definition of "pattern of discrepancy"; and
- (3) Any other procedures and requirements necessary for the administration and enforcement of the bill's provisions governing daily reports.<sup>26</sup>

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<sup>22</sup> R.C. 1509.222(A)(5).

<sup>23</sup> R.C. 1509.222(E).

<sup>24</sup> R.C. 1509.223(C).

<sup>25</sup> R.C. 1509.223(G)(1), (2), and (3).

<sup>26</sup> R.C. 1509.223(G)(4)(a) through (c).



## Telemetric sensor and data

The bill requires a registered transporter to attach a telemetric sensor to all vessels, vehicles, railcars, and containers employed in transporting or disposing of brine. In addition, within 30 days of receiving a request from the Chief, a registered transporter must provide telemetric data for the time period and in the form requested by the Chief. The Chief must adopt rules establishing requirements and procedures governing the use of telemetric sensors.<sup>27</sup>

The bill prohibits a transporter from failing to comply with the above requirements. The penalty for recklessly failing to comply with the requirements is a fine of not less than \$100 nor more than \$1,000 for a first offense and a fine of not less than \$200 nor more than \$2,000 for each subsequent offense.<sup>28</sup>

## Civil and criminal penalties

For purposes of imposing civil and criminal penalties for certain violations, the bill specifies that each occurrence of a violation is a separate offense rather than each day of violation as in current law. The violations to which the bill applies this requirement include all of the following:

(1) A violation of the law requiring proper storage, recycling, treatment, processing, and disposal of brine;

(2) A violation of the provisions of the bill that requires a registered brine transporter to comply with the road use and maintenance plan submitted to the Chief; and

(3) A violation of requirements governing daily logs required to be kept by registered brine transporters.<sup>29</sup>

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## COMMENT

The bill contains one incorrect cross reference in R.C. 1509.02. The incorrect cross reference is to division (I)(2) of R.C. 1509.22.

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<sup>27</sup> R.C. 1509.223(E) and (F).

<sup>28</sup> R.C. 1509.223(E) and 1509.99(E).

<sup>29</sup> R.C. 1509.33(J) and 1509.99(H).



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## HISTORY

ACTION

DATE

Introduced

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