House
Legislative
Analysis
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VENUE FOR ACTIONS ON POOLING OF MINERAL RIGHTS

House Bill 5316 as enrolled
Public Act 115 of 1998
Second Analysis (9-2-98)

Sponsor: Rep. Allen Lowe
House Committee: Forestry and Mineral Rights
Senate Committee: Economic Development, International Trade and Regulatory Affairs

THE APPARENT PROBLEM:

When a gas or oil company obtains leases from the mineral rights owners on parcels of land, it may then combine the parcels to form a "drilling unit," in which the mineral interests are pooled. Such a drilling unit must conform to certain standards: Part 615 of the Natural Resources and Environmental Protection Act (NREPA) defines it as the maximum area that may be efficiently and economically drained by one well; and the administrative rules promulgated by the Department of Environmental Quality (DEQ) for Part 615 (R 324.301 and R 324.302) have established a standard drilling unit as "a governmental surveyed quarter-quarter section of land," which is 40 acres, more or less, except that drilling units may be established by special spacing orders which can be smaller or larger than the basic 40-acre unit. Sometimes several parcels of land must be combined, or pooled, in order to establish the necessary acreage for a drilling unit. If these parcels belong to more than one owner, separate leases must be brought together in the pooling process to establish the unit.

However, property owners don't always agree to voluntarily pool their mineral rights. Some object to having their property disturbed; others may not agree to the conditions of the proposed lease. If the dissenting property owners (known as "holdouts") will not agree to voluntary leasing and pooling of their mineral rights, the oil and gas company may petition the supervisor of wells to require compulsory pooling of the unleased mineral interests within the boundary of the proposed drilling unit. In fact, since the act doesn't allow a drilling permit to be issued until an oil or gas company has obtained the rights to develop all of the minerals within the proposed drilling unit, compulsory pooling is a company's only option. A contested case hearing is then held in which the petitioner -- the oil and gas company -- submits evidence and testimony. Such hearings have traditionally been held in Lansing. Since the intent of the act is to ensure that those who want to develop their mineral rights aren't prevented from doing so, the company is usually successful in its petition, and a compulsory pooling order is issued. A dissenting property owner may participate in this hearing, and may also appeal the supervisor of wells' decision. The act specifies that the appeal must be filed with the director of the DEQ or in the Ingham County Circuit Court, which has exclusive jurisdiction over all suits brought against the department in matters arising out of the provisions of Part 615.

Compulsory pooling requests are often contested by surrounding property owners. However, some maintain that traveling to Lansing to participate in a contested case hearing or in an appeal constitutes an unfair burden on landowners affected by compulsory pooling who may have to travel some distance. Consequently, legislation has been introduced that would allow mineral rights owners to decide the venue of these court actions.

THE CONTENT OF THE BILL:

At present, Part 615 of the Natural Resources and Environmental Protection Act (NREPA), which

pertains to the supervisor of wells, permits the "pooling" of properties with regard to mineral rights. In this context, "pooling" refers to the practice of combining parcels of land to obtain a "drilling unit," which is the maximum area that may be drained by a single well. The act specifies that the Ingham County Circuit Court has jurisdiction over suits brought against the Department of Environmental Quality (DEQ), or an employee, by mineral rights owners. House Bill 5316 would amend the act to specify that an action involving the pooling of properties could be brought in that court, or in the circuit court in the county in which the oil or gas rights were located, and to require that a public hearing be held before an order could be issued pertaining to the pooling of properties. The bill would also provide certain alternatives for the owners of oil or gas rights who were subject to compulsory pooling.

Public Hearings. Currently, the act specifies that a public hearing must be held before a rule or order can be promulgated. The bill would require that a public hearing would also have to be held concerning the pooling of properties, or parts of properties. When the supervisor of wells provided notice of the hearing, he or she would also have to provide notice that the location of the hearing could be changed. Otherwise, the hearing would be held in the county in which the oil and gas rights were located if the majority of the property owners that were subject to being pooled filed a written request to have it held there.

Pooling. Under the bill, a suit brought against the supervisor regarding an order for the pooling of properties, or parts of properties, could be brought in the circuit court for the county in which the oil or gas rights were located, or in the Ingham County Circuit Court. Also, a majority of the oil or gas rights owners who were subject to pooling could petition to have an action removed from the Ingham County Circuit Court to the circuit court for the county in which the oil or gas rights were located. Alternatively, if all of the owners being pooled resided in a county other than the one in which the oil or gas rights were located, the action could be brought or removed to the circuit court for the county in which the owners resided. A petition for removal would have to be filed within 28 days after filing and service of the complaint in circuit court.

MCL 324.61501 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in an increased cost to the state for travel expenses incurred by Department of Environmental Quality personnel to hearings and appeals on compulsory pooling orders in various counties. Actual costs would depend on the location and the frequency of these hearings. (11-25-97)

ARGUMENTS:

For:

In recent months, property owners have complained in increasing numbers that oil and gas companies abuse the regulations concerning the ways in which mineral rights for oil and gas exploration and development are leased. Many feel that the oil and gas industry should be more accountable to its lease holders, and several pieces of legislation have been introduced recently to address the issue (see the HLAS analyses of House Bills 4061, 5261 and 5262, and 5317). One area of concern involves the venue for actions on the pooling of mineral rights: when the acreage needed to form a drilling unit has more than one owner, separate leases must be brought together in a "pooling" unit of combined parcels of land. However, if some of the property owners involved refuse to become a part of the drilling unit, the oil and gas company may then petition the "supervisor of wells" to require compulsory pooling. (The supervisor of wells, who is the director of the DEQ, has designated the chief of the department's Geological Survey Division as the assistant supervisor of wells, and given him the authority to enforce the provisions of Part 615 of the Natural Resources and Environmental Protection Act [NREPA], which regulates oil and gas wells.) Many property owners who are subject to a compulsory pooling motion must travel a long distance, and therefore lose a day's work or a day's farming, in order to participate in a contested case hearing regarding a compulsory pooling motion. Moreover, since the Ingham County Circuit Court has exclusive jurisdiction over all actions brought against the supervisor of wells, including appeals of compulsory pooling decisions, a property owner who appeals a compulsory pooling order must again travel to Lansing to participate. Many view this requirement as evidence that the law places an unfair burden on property owners.

Against:

The provisions of the bill would result in a waste of resources and in unnecessary costs to the state. Currently, all hearings concerning compulsory pooling actions are held before the assistant supervisor of wells in Lansing. Many contend that "centralizing" these issues in this way has assured consistency, so that both landowners and the oil and gas industry operate under one set of rules around the state. Under the provisions of the bill, however, the actions would be held in various county courts by judges who may, or may not, be familiar with the law. In addition, travel expenses would be incurred by DEQ personnel in the Geological Survey Division, which is located in the City of Lansing. In some actions, the time involved in traveling could be greater than the time involved in the hearings. Since the emphasis in state government in recent years has been on cutting costs and streamlining services, the provisions of the bill do not make sense.

Against:

The bill is unnecessary. In testimony before the House Forestry and Mineral Rights Committee, a spokesperson from the oil and gas industry pointed out that, under Public Act 178 of 1941 (MCL 319.103), a mineral rights owner may currently initiate a lawsuit in the county in which the lands are located. Specifically, the act specifies that the owners of a majority interest who desire to lease lands or oil and gas mineral rights " . . . may file a bill of complaint in the circuit court in chancery of the county in which such lands, or some part thereof, are located, to obtain a decree of the court authorizing them to explore, drill, mine, develop and operate said lands for oil and gas mining purposes . . . . "

Analyst: R. Young

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.