House
Legislative
Analysis
Section

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SETBACKS FOR OIL AND GAS WELLS

House Bill 5627 as enrolled
Public Act 303 of 1998
Second Analysis (9-11-98)

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

THE APPARENT PROBLEM:

Michigan is experiencing an increase in oil and gas exploration and development, not only in rural areas, but in areas such as the Lake Michigan shoreline and southeast Michigan. As a result, citizens are becoming increasingly concerned over issues such as environmental consequences and land use conflicts. For example, the Department of Environmental Quality (DEQ) recently issued a permit that would allow drilling to search for oil and gas reserves in an area within the Farmington Hills city limits. Specifically, the company would set up operations just north of Eight Mile Road, between I-275 and Haggerty Road. The area is 500 feet from an eight-lane highway and approximately 1,000 feet from a residential subdivision.

Although the proposed wells comply with state oil and gas well regulations, which specify that there must be a distance of 300 feet between such operations and residential areas, and with local zoning ordinance requirements, which specify a distance of 500 feet, the development would be located in a heavily populated area, and a number of citizens protested. Consequently, the city passed a resolution specifying that it opposes having oil and gas wells in heavily populated areas (the resolution also specified that the city would support legislation that would restrict drilling operations by requiring safe setback requirements). Legislation has been introduced to allow drilling to be restricted in highly populated areas by extending the distance, or setback, between oil and gas wells and residential areas.

THE CONTENT OF THE BILL:

House Bill 5627 would add a new section to Part 615 of the Natural Resources and Environmental Protection Act (NREPA), which regulates oil and gas wells, to extend, from 300 to 450 feet, the allowable distance between oil or gas wells and residential areas. The bill would delete the current definition of "person" under Part 615, which would have the effect of granting governmental entities the right to drill wells and to have legal standing in contested court cases. The bill would also prohibit the pooling of state-owned properties unless the development of private oil and gas mineral resources would be prohibited. In addition, the bill would require that the Department of Environmental Quality (DEQ) provide information on permit applications to cities, villages, and townships with populations of 70,000 or more.

Permits. Currently, the act specifies that a permit must be obtained before an oil or gas well may be drilled. Under the bill, this requirement would be extended to include the *operation* of oil or gas wells. The bill would also prohibit the supervisor of wells from issuing a permit or authorizing drilling for an oil or gas well if the well was located within 450 feet of a residential building, and the residential building was located in a city or township with a population of 70,000 or more. However, the supervisor could grant a waiver from these provisions if the clerk of the city, village, or township in which the proposed well was located had been notified of the permit application and either of the following conditions were met:

• The property owner gave written consent.

• The supervisor determined, after a public hearing, that the proposed well location would not cause waste, and there was no reasonable alternative that would allow the oil and gas rights holder to develop the oil and gas. (Note: currently, under the NREPA, "waste," as that term is generally understood in the oil business, is defined as either "underground waste" or "surface waste." Surface waste includes, among other things, unnecessary damage to or destruction of the surface; soils; animal, fish, or aquatic life; property; or other environmental values resulting from oil and gas operations. House Bill 5627 would extend the definition of "waste" to include the "unnecessary endangerment of public health, safety, or welfare resulting from oil and gas operations").

Supervisor of Wells. Currently, under Part 615 of the NREPA, the supervisor of wells is required to conduct certain activities to prevent waste and environmental pollution, such as promulgating and enforcing rules, issuing orders, and collecting data. House Bill 5627 would add to the list of activities to permit the supervisor to do the following:

• Require the immediate suspension of drilling or other well operations if a threat to the public health or safety existed.

•Require an applicant for a well drilling and operating permit to file a complete accurate written application on a Department of Environmental Quality (DEQ) form.

• Require that safety signs be posted and fences, gates, or other safety measures installed if a threat to public health, safety, or property occurred.

• Prevent nuisance noise or odor during oil and gas explorations.

The bill would also require that the supervisor make certain information regarding permit applications -- such as name and address of applicant, location of proposed well, and whether hydrogen sulfide gas was expected -- available at least once a week when requested to do so. This information would also have to be provided to the county in which the proposed oil or gas well was to be located, and to the city, village, or township, if the entity had a population of 70,000 or more. In addition, a city, village, township, or county in which a proposed well was located could provide written comments and recommendations pertaining to a drilling and operating permit application for the supervisor's consideration when reviewing it.

Pooling of State-Owned Properties. The bill would specify that the supervisor of wells could not require the pooling of state-owned properties, as currently provided under the act, if the state provided for the orderly development of its hydrocarbon resources through an oil and gas leasing program, and the supervisor determined that the owner of each tract would recover and receive his or her "just and equitable" share of the hydrocarbon resources in a pool.

Exceptions. The provisions of the bill would not apply to a well used to inject, withdraw, and observe the storage of natural gas.

MCL 324.61501 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no impact on state funds. (4-28-98)

ARGUMENTS:

For:

The bill would restrict drilling in residential areas and has been introduced in response to concerns over oil and gas drilling in one particularly heavily populated residential area within the Farmington Hills city limits. When residents of this area learned that oil and gas development was scheduled to take place, a public outcry arose. The Department of Environmental Quality (DEQ) had issued a permit for two forty-acre drilling units just north of Eight Mile Road, between I-275 and Haggerty Road. The permittee, an oil and gas exploration company, planned to search for oil and gas reserves in the Niagaran Reef Shelf, some 3,000 to 4,000 feet below ground, and was prepared to erect two slant wells, within 20 feet of each other. The proposed development complied with state law. In fact, the development also complied with the requirements of local zoning ordinances. However, citizens were concerned about health and safety issues involving hydrogen sulphide fumes, and alarmed that

property values would be lowered. Moreover, they were angered that there would be no opportunity for public comment.

In Farmington Hills, the city zoning ordinance specifies that there must be a distance of 500 feet between oil and gas facilities and residential areas. The city *could* amend the ordinance to increase the setback provision. However, it cannot enact an ordinance that would affect the oil and gas company in this particular situation, since restrictions of zoning ordinances cannot be retroactive (*Adams* v. *Kalamazoo Ice & Fuel Co. [1928] 222 NW 86, 245 Mich. 261*). Lacking an alternative, it did not approve the oil and gas company's request to establish its operations, and the company is now suing the city. The provisions of the bill would limit the opportunities for such lawsuits somewhat by increasing the required setback to 450 feet.

Response:

Michigan has approximately 500 cities and villages, the vast majority of which are small communities with populations of less than 60,000. Moreover, only two townships out of 1,242 have populations greater than 60,000. Therefore, the bill's requirement that the setback for oil and gas wells apply to cities and townships with populations of 70,000 or more would limit the effectiveness of the bill.

Against:

The laws concerning the regulation of oil and gas wells are confusing and lack uniformity. For example, oil and gas wells are generally regulated by state law, under the provisions of the Natural Resources and Environmental Protection Act (NREPA), and Part 3 of the DEQ rules (R323.301), regulating the spacing and location of oil and gas wells, specifies that there must be a 300-foot setback between wells and residential property, although the supervisor of wells may grant some exceptions. However, the various zoning laws that regulate municipalities would appear to permit deviations from this requirement. For example, although both the Township Zoning Act and the County Zoning Act specify that these entities may not regulate oil and gas wells, and that jurisdiction relative to wells is vested exclusively in the supervisor of wells, the City and Village Zoning Act does not contain this provision. Consequently, a few cities have enacted ordinances restricting drilling in certain areas. Unless the various zoning laws are amended to provide uniformity, the provisions of the bill will have little effect.

Against:

Increasing the required setback between oil and gas wells and residential areas could prevent some oil and gas exploration companies from developing their mineral rights. Some people maintain that such actions are "takings," an issue that has gained a lot of attention in recent years. One of the best-known instances involved property on the Nordhouse Dunes, where a company that had obtained a mineral lease on a parcel of property sued the state over its right to drill for oil and gas. The state settled the case out of court for a large amount of money. Other lawsuits have been filed involving mineral rights owners who have asserted their right to drill under or near property that the state has designated as environmentally sensitive.

Some maintain that the provisions of the bill would usurp local zoning authority by prohibiting drilling even in situations where the development was supported by a local unit of government. To prevent this from occurring, it is argued that the supervisor of wells should be *required* to grant an exception to the setback requirements if the drilling company proves that a shorter setback would still be protective of the public health and safety, and the company informed the local governmental units of its intention. (The current language of the bill does not require such exceptions but gives discretion to the supervisor of wells.)

Some also maintain that oil and gas drilling laws are already adequate, and, if an oil and gas company goes through the many "hoops" required to obtain a permit to drill, then its application should be approved. Currently, oil and gas wells are regulated by state law, under the provisions of the Natural Resources and Environmental Protection Act (NREPA), which, when recodified under the provisions of Public Act 451 of 1994, also established current oil and gas regulations. Industry representatives point out that these regulations were adopted after careful consideration by scientists, the environmental community, and the Department of Environmental Quality (DEQ), and that their effectiveness has yet to be evaluated.

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.