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SFA**BILL ANALYSIS**

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House Bill 5118 (Substitute H-5 as passed by the House)
Sponsor: Representative Scott Shackleton
House Committee: Conservation and Outdoor Recreation
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 2-5-02

CONTENT

The bill would amend the Natural Resources and Environmental Protection Act to do the following:

- **Prohibit the Department of Natural Resources (DNR) from leasing land for drilling operations that would take oil or gas from the Great Lake bottomlands, unless the Legislature declared a State energy emergency.**
- **Prohibit such drilling operations unless they began before the bill's effective date.**
- **Prohibit the Department of Environmental Quality (DEQ) from issuing a permit for drilling an oil or gas well that would extend under the Great Lakes, unless the Legislature declared a State energy emergency.**

The bill would take effect on March 1, 2002.

Drilling Operations Lease

Beginning on the bill's effective date, and subject to provisions concerning a State energy emergency, the DNR would be prohibited from doing any of the following:

- Entering into a contract that would allow drilling operations for the taking of oil or gas from the lake bottomlands of the Great Lakes or connecting or connected bays, harbors, or waterways.
- Entering into a contract for the exploration of the Great Lakes bottomlands or connecting waterways that would allow drilling operations.
- Entering into a lease or deed of unpatented lands that would allow drilling operations for the taking of oil or gas or allow drilling for exploration purposes.

Currently, the DNR may enter into such a contract or lease if all drilling operations originate from locations above and inland of the ordinary high-water mark.

Under the bill, the DNR could enter into a lease or deed of unpatented lands that would permit drilling operations for the exploration or taking of oil or gas if the Legislature, by concurrent resolution adopted by a majority of the members elected to and serving in each house, declared there to be a State energy emergency. Before entering into a lease or deed under this provision, the DNR would have to do all of the following:

- Consult with the DEQ in evaluating prospective bottomland leases to determine whether there were appropriate options for development that would protect the environment.
- Consider coastal zone environmental inventories to identify sensitive environmental features and determine if acceptable development sites existed.

- Require the lease applicant to conduct an environmental impact assessment.
- Provide an opportunity for public input.

Also, if the DNR entered into a lease that would allow drilling operations to take place on State land, under these circumstances, the lease would have to prohibit any new infrastructure from being located in virgin or undisturbed areas.

Conducting Drilling Operations

The Act prohibits a person from conducting drilling operations for the removal of, or exploration for, oil or gas from under the beds of the Great Lakes or the connecting or connected bays, harbors, or waterways, unless all drilling operations originate from locations above and inland of the ordinary high-water mark and are conducted pursuant to the terms of a written lease obtained from the DNR. These drilling operations would be prohibited beginning on the bill's effective date, unless they had begun before that date. The bill specifies that it would not prohibit drilling operations for the removal of oil or gas if the operations had begun before the bill's effective date.

Permit for Drilling

Beginning on the bill's effective date, the Supervisor of Wells (i.e., the DEQ) could not issue a permit for drilling, or authorize the drilling of, an oil or gas well, including an exploratory well, that extended under the Great Lakes or the connecting or connected bays, harbors, or waterways. This prohibition would not apply if the Legislature, by concurrent resolution adopted by a majority of members elected to and serving in each house, declared there to be a State energy emergency.

If the Legislature declared an energy emergency and the Supervisor issued a permit or authorized drilling, the Supervisor would have to do all of the following:

- Require that all drilling operations originate from locations at least 1,500 feet above and inland of the ordinary high-water mark of the Great Lakes.
- Prohibit drilling equipment from being located in sensitive or unique areas.
- Require the permittee to use advanced but proven technology as determined by the DEQ.
- Require verification that the confining strata would adequately contain any fluids, if geologic units were to be relied upon for sealing a bore hole.
- Prohibit drilling muds accumulated in the drilling process from being disposed of at the drilling location.

Statement

The bill includes the following statement: "The Great Lakes are a binational public treasure and are held in trust by the Great Lakes states and provinces. Management of the water resources of the Great Lakes and the Great Lakes basin is subject to the jurisdiction, rights, and responsibilities of the Great Lakes states and provinces. Effective management of the water resources of the Great Lakes requires the in-basin exercise of such jurisdiction, rights, and responsibilities in the interest of all the people of the Great Lakes basin."

MCL 324.502 et al.

BACKGROUND

Before drilling an oil or gas well anywhere in Michigan, a person must 1) have title to the subsurface mineral rights through ownership or lease, and 2) obtain a permit from the

Department of Environmental Quality. If the oil or gas is located below State-owned land, the person must lease the mineral rights from the Department of Natural Resources. The State owns all bottomlands located within Michigan's boundaries and does not lease them. The DNR, however, may issue a nondevelopment lease that allows oil or gas reserves below the bottomlands to be tapped using "directional drilling". Also called slant drilling, directional drilling refers to the intentional drilling of a nonvertical well. This is done by initially drilling a vertical well and then angling it at a depth that depends on the relative position of the target. Michigan has issued nondevelopment leases for Great Lakes bottomland minerals since 1945.

Although off-shore drilling on the Great Lakes is prohibited by international agreements, it is up to each state or province whether to permit directional drilling. To date, only Michigan and Ontario allow directional drilling. The first well drilled in Michigan under the Great Lakes was drilled in 1979. Presently, directional drilling is permitted at 13 sites in this State, although only seven are producing. No permits have been issued since 1997.

In August 1997, Governor Engler requested the Michigan Environmental Science Board (MESB) to evaluate the safety of directional drilling under the Great Lakes. In particular, the board was asked to do the following: 1) evaluate the risk of directional drilling causing contamination of the waters (through release of hydrocarbons from the subsurface to the lake bottom) and shorelines of the Great Lakes; 2) evaluate the potential impacts of directionally drilled wells on competing uses of the Great Lakes waters and shoreline areas; and 3) review existing and potential permit conditions for adequacy in protecting the shoreline environment from adverse impacts.

The MESB issued its report in October 1997. In regard to its first directive, the board concluded, "...there is little or no risk of contamination to the Great Lakes bottom or waters through releases directly above the bottom hole portion of directionally drilled wells... There is, however, a small risk of contamination at the well head." Regarding the second directive, the MESB found, "...there exists a greater risk for potential impacts to the shoreline environments where the well head and its associated infrastructure are located than to the aquatic environment of the Great Lakes", but ecological risks could be minimized by identifying and prohibiting oil and gas development in highly sensitive or unique areas, using advanced but proven technology, and applying rigorous permit requirements. In response to its third directive, the board found that, while the State's oil and gas regulatory rules, policy, and lease agreements "...taken together provide considerable protection to the Great Lakes' aquatic and shoreline environments, most of the environmental conflicts could be more readily resolved and the... environments better protected if the lease agreement required an aggressive environmental impact assessment and stakeholder participation prior to the lease sale".

The board's report also contained specific recommendations to enhance the level of protection. These included streamlining the leasing and permitting process; compiling comprehensive coastal zone environmental inventories for Lake Michigan and Lake Huron; prohibiting the construction of new infrastructures and limiting oil and gas development to areas where existing infrastructures are available to minimize intrusions into virgin or undisturbed areas and prevent further intrusions into minimally disturbed areas; and storing residuals (e.g., brine and mud) only above ground and for short periods of time.

In response, the DEQ and DNR took several steps to implement the MESB's recommendations. In particular, the DEQ issued Supervisor of Wells Instruction 2-97, which requires a 1,500-foot setback from the shoreline for oil or gas wells directionally drilled beneath the Great Lakes, and for new storage and treatment equipment and access roads; requires wells and production equipment to be screened from view; prohibits wells, equipment, and access roads in sensitive coastal environments; and prohibits the use of excavated pits for the disposal of drill cuttings.

Early in 2001, DNR officials began discussing the possibility of expanding directional drilling. This led to several proposals in the Michigan Legislature and U.S. Congress. In June, the Michigan Senate proposed language in the DEQ and DNR budgets to allow directional drilling under specific conditions; this language was removed in the House of Representatives. At approximately the same time, U.S. Senator Stabenow introduced a proposal to prohibit additional wells under the Great Lakes until the Environmental Protection Agency or the National Academy of Sciences conducted a study and determined that directional drilling was environmentally safe. In addition, the U.S. House of Representatives passed a measure that would have prohibited the Army Corps of Engineers from issuing new permits for Great Lakes drilling (although such permits had not been issued for the existing wells in Michigan).

In September 2001, the Natural Resources Commission lifted its suspension of directional drilling under the Great Lakes, and the DNR began to prepare lease agreements. In October, the Michigan Senate passed Senate Resolution 112, urging the Department not to approve any leases until the Senate Great Lakes Conservation Task Force, chaired by Senator Sikkema, completed its goals and objectives. In its final report of January 2002, the Task Force makes several recommendations regarding directional drilling, including a recommendation that the State enact all of the MESB recommendations.

In November 2001, President Bush signed a Federal water and energy spending bill that prohibits the Federal government and states from issuing a permit or lease for new oil or gas drilling in or under the Great Lakes until September 2003. The legislation also requires the Army Corps of Engineers to study the environmental impact of oil and gas drilling activity in the Great Lakes.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate impact on revenues to the Michigan Natural Resources Trust Fund. The extent to which additional lease, bonus, and royalty revenue would be realized in the absence of the provisions of this bill and the Federal ban cannot be determined.

Fiscal Analyst: Pam Graham