



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 578**

132nd General Assembly  
(As Introduced)

**Reps.** Holmes, O'Brien, Patterson, Riedel

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### **BILL SUMMARY**

- Increases the setback distances under the Oil and Gas Law that apply to new injection wells, including required setback distances from an occupied dwelling in an urbanized area, occupied structures in a nonurbanized area, bodies of water, railroads, and public roads.
  - Requires a portion of the fees levied on substances disposed of in an injection well to be paid to the municipal corporation or township in which the well is located.
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### **CONTENT AND OPERATION**

#### **Injection well regulation under the Oil and Gas Law**

##### **Background**

The Oil and Gas Law establishes setback distance requirements that apply to wells, including injection wells. Injection wells, known as class II injection wells, are regulated by the Division of Oil and Gas Resources Management<sup>1</sup> and are used to place waste fluid underground into deep geologic formations for disposal or for secondary oil recovery. The fluids primarily consist of oil-field brine.<sup>2</sup> Setback requirements refer to restricted areas within a certain distance of a specified object or location where a person is prohibited from locating an injection well. For example, a person is prohibited from

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<sup>1</sup> In the Department of Natural Resources.

<sup>2</sup> <http://oilandgas.ohiodnr.gov/regulatory-sections/underground-injection-control>. Accessed June 5, 2018.

locating a well within 50 feet of a railroad track or of the traveled portion of a public street, road, or highway.<sup>3</sup>

### **New setback distances for injection wells**

The bill alters certain setback requirements for injection wells as illustrated in the table below:<sup>4</sup>

<b>Setback category</b>	<b>Current law</b>	<b>H.B. 578</b>
<b>Occupied dwelling in an urbanized area<sup>5</sup></b>	An injection well cannot be located within 150 ft. of an occupied dwelling. However, both of the following apply: (1) The owner of the land on which the dwelling is located may consent in writing to a distance of less than 150 feet; and (2) The Chief of the Division of Oil and Gas Resources Management cannot approve the consent if the well will be located within 100 feet of the dwelling.	Increases the setback to 300 ft. and specifies that the Chief cannot approve the owner's consent if the injection well will be located within 225 feet of the dwelling.
<b>Structures in nonurbanized areas</b>	An injection well cannot be located within 100 ft. of an occupied private 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.	Increases the setback to 300 ft.

<sup>3</sup> See R.C. 1509.021, not in the bill.

<sup>4</sup> R.C. 1509.023(A) to (D); R.C. 1509.021(A), (H), (L), and (M), not in the bill.

<sup>5</sup> An urbanized area is an area where a well or production facilities of a well are located in a municipal corporation or in a township that has an unincorporated population of more than 5,000 in the most recent federal census. R.C. 1509.01(Y), not in the bill.



Setback category	Current law	H.B. 578
<b>Stream, river, watercourse, water well, pond, lake, or other body of water</b>	An injection well cannot be located within 50 feet. However, the Chief may allow a lower setback if the Chief determines that the reduction is necessary to reduce impacts to the owner of land on which the well is to be located or to protect public safety or the environment.	Increases the setback to 300 ft. Retains the authority of the Chief to allow a lower setback to reduce impacts to the owner of land on which the well is to be located or to protect public safety or the environment.
<b>Railroad or public road</b>	An injection well cannot be located within 50 feet of a railroad track or road.	Increases the setback to 300 ft.

### **Injection well fees**

Under current law, the owner of an injection well is required to pay fees to the Division of Oil and Gas Resources Management as follows:

- 5¢ per barrel of each substance that is delivered to the well for injection when the substance is produced within the Division regulatory district in which the well is located or within an adjoining district;
- 20¢ per barrel of each substance that is delivered to the well for injection when the substance is not produced within the Division regulatory district in which the well is located or within an adjoining district (see **COMMENT**).<sup>6</sup>

The Chief must deposit the money collected from the fees into the existing Oil and Gas Well Fund, which is used for a variety of purposes, including administering the Oil and Gas Law. Under the bill, the owner of the well must instead pay 37.5% of the 20¢ per barrel fee directly to the treasurer of the municipal corporation or township in which the injection well is located. The owner must forward the remaining 62.5% of the fee to the Chief.<sup>7</sup>

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### **COMMENT**

It is possible that current law, by levying a higher fee on out-of-state substances, violates the federal Commerce Clause. The U.S. Constitution grants Congress the

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<sup>6</sup> R.C. 1509.22(H)(1) .

<sup>7</sup> R.C. 1509.22(H)(3), (4), and (5) and 1509.02(B).

exclusive power to regulate interstate commerce (the Commerce Clause).<sup>8</sup> The U.S. Supreme Court has held that the Commerce Clause limits the scope of state regulation by denying states the power to **unjustifiably discriminate against, or burden the flow of, articles of commerce.**

To decide whether a state law has violated the Commerce Clause, a court must first determine **if the law either (1) regulates commerce evenhandedly – with only incidental effects on interstate commerce – or (2) discriminates against interstate commerce.** "Discrimination" means differential treatment of in-state and out-of-state economic interests, where the former is benefited over the latter. If a restriction on commerce is discriminatory, it is *per se* invalid.<sup>9</sup>

As indicated above, current law establishes a two-tier injection well disposal fee on the disposal of waste from oil and gas operations. The lower fee (5¢ per barrel) applies to substances produced within the same Division of Oil and Gas Resources Management District as the injection well. The higher tier (20¢ per barrel) applies to substances produced outside of that district, including out-of-state. Because current law levies a higher fee on waste substances produced out-of-state than on substances produced in Ohio, a court may find that it discriminates against out-of-state economic interests in violation of the Commerce Clause.

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## HISTORY

ACTION	DATE
Introduced	03-28-18

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<sup>8</sup> U.S. Const., art. I, § 8, cl. 3.

<sup>9</sup> *Oregon Waste Sys. v. Department of Env'tl. Quality*, 511 U.S. 93, 98-99 (1994).

