

**Opponent Testimony by Jack Shaner, OEC Deputy Director  
House Bill 133 (As Passed by the House)  
Ohio Senate Agriculture + Natural Resources Committee  
June 14, 2011**

Thank you for this opportunity to present Opponent Testimony on House Bill 133 (As Passed by the House), which proposes to create the Oil and Gas Leasing Commission to consider nominations for oil and natural gas extraction on state-owned and state-controlled lands, including Ohio's State Parks.

My name is Jack Shaner and I am Deputy Director for the Ohio Environmental Council. The OEC is a non-profit network of more than 100 local and state environmental-conservation groups and several thousand individual citizen members. Our mission is to secure clean air, land, and water for all who call Ohio home.

The OEC strongly opposes House Bill 133 (As Passed by the House). We simply believe that oil and gas extraction is unfit, unsafe, unsightly, unnecessary, and unwanted on Ohio's state parks and other state lands with significant ecological, natural, scenic, recreational, geological, or archeological features. (Please see our March 29, 2011 testimony on Senate Bill 108 before this committee or our testimony on House Bill 133, posted at our website.)

We do acknowledge and appreciate the fact that the House added several amendments to the original bill, including an important floor amendment to expressly protect State Nature Preserves from oil and gas development. We remain opposed, however, for two basic reasons:

1. The bill opens State Parks to oil and gas development.
2. The bill continues to advantage private interests to the disadvantage of the public interest.

Because the Committee plans to call the bill for a vote today, rather than recite once again the details of our opposition, I instead would like to focus on five separate areas of the bill that are unfairly tilted in favor of private interests to the great disadvantage of the public interest—fundamental flaws that give short shrift to accountability. (We shared these five areas of concern and draft amendment language to committee members and the DNR last Friday, June 10, 2011.)

**1. Accountability – Part 1 – Leasing Authority**

The Department of Natural Resources director is responsible for the management of Ohio's state parks. As such, the DNR—not the proposed Oil and Gas Development Commission—should have the final say over which individual state park lands (or other DNR lands) may ultimately be opened to drilling.

Further, the public should be able to hold its officials accountability for whatever costs or benefits accrue from oil and gas development on state parks. The most appropriate official is the DNR director, not a commission that includes industry representatives. DNR Director David Mustine, himself, asked for just such authority in his April 16, 2011 written testimony before the Ohio House Agriculture and Natural Resources Committee when the Director stated:

House Bill 133 creates a leasing board that essentially removes the Director of ODNR and our land-owning division chiefs from the process of leasing state lands for oil and gas exploration. . . . Following are some modifications we'd like to suggest if the legislature feels it is necessary to have a leasing board:

- **Land-owning agency has final leasing responsibility and approval;** revenue for leasing activities goes to the land-owning department.

Though the House did include nearly all of the amendments that Director Mustine requested, the House did not wrest away from the commission the power to lease Class 1 lands (those state lands that are owned or controlled by a state agency and which have no encumbrances or deed restrictions that limit the exploration or drilling for oil or gas). As stated in the bill:

Sec. 1509.73 (B) (6) If the commission approves a nomination for a parcel of land that is a class 1 property, the commission shall offer for lease each formation that is within the parcel of land. If the commission approves a nomination for a parcel of land that is a class 2 or class 4 property, the commission shall not offer for lease any formation that is within the parcel of land unless the state agency that owns or controls the parcel of land notifies the commission that a formation or formations that are within the parcel of land may be offered for lease.

The bill clearly continues to vest leasing authority over Class 1 lands with the proposed commission—not the DNR.

Requested correction: Limit the authority of the proposed Oil and Gas Leasing Commission to reviewing and recommending lease nominations. Vest the final authority to approve or deny any lease with the agency that owns or controls any state land that is nominated for a lease. Require the director of the agency that owns or controls any state land to state officially why he or she is approving or denying a lease.

## **2. Accountability – Part 2 – Environmental Review**

The expertise to evaluate the impacts from a proposed oil and gas development project resides in the DNR—not the proposed Oil and Gas Leasing Commission. That also is where the responsibility should reside. Director Mustine, himself, hinted at this when he told the House committee in his April 6, 2011 written testimony:

The DNR has the staff and required expertise to evaluate lands for exploration, as well as a process in place for leasing that we are in the process of evaluating and improving. This also ties into issues of cost effectiveness and efficient service.

Director Mustine deserves credit for recommending that the bill be amended to require a review of the four specified factors. But frankly, we have little faith the proposed Oil and Gas Leasing Commission will have the expertise let alone the interest to conduct a robust review of these factors. The authority to conduct this review on DNR lands should rest with the DNR—the agency that has the expertise for such reviews and the responsibility for the management of these state lands.

Requested correction: Vest the authority and responsibility to evaluate environmental, financial, geological, and visitor impacts of a proposed oil and gas development project on state lands with the DNR, not the proposed Oil and Gas Leasing Commission. Provide more legislative guidance for the evaluation, including by specifying that “environmental” shall include a review of any impacts to significant ecological, natural, scenic, aesthetic, recreational, geological, or archeological features.

### **3. Accountability – Part 3 – Public Notice and Public Comment**

Ohio’s state lands are held in trust for the 11 million people of Ohio. Incredibly, though, the bill provides no mechanism whatever for notification to the public that a parcel of state land has been nominated for an oil and gas lease and no mechanism for public comment. This is irresponsible, for reasons that should be self evident.

Requested correction: Expressly provide for public notice of and public comment on any proposed lease nomination. An excellent way to help facilitate this would be the posting of information on 1) the website of whatever state division holds a parcel of land nominated for a lease and 2) a sign (of adequate size, type, and location placement) to inform users and visitors of the land that it has been nominated for a lease and to share information about submitting comments on the proposed lease.

### **4. Accountability – Part 4 – Lease Terms**

The bill specifies that a standard industry lease shall be the starting point for any lease:

**Sec. 1509.74.** Not later than two hundred seventy days after the effective date of this section, the oil and gas leasing commission shall adopt rules in accordance with Chapter 119. of the Revised Code establishing all of the following:  
(F) A standard lease form that is consistent with the practices of the oil and natural gas industries and that contains at least a one-eighth landowner royalty, which standard lease form shall be used by a state agency for leases entered into under section 1509.73 of the Revised Code;

We believe it would be more appropriate for the Attorney General or the director of the Administrative Services Department to develop the standard lease form—not the proposed Oil and Gas Leasing Commission. We believe the A.G. or the DAS director are more accountable to the public and can be counted on to have the best interests of the public more uppermost in mind than will the proposed commission.

Requested Correction: Vest the authority to design the initial standard lease form with the State of Ohio, not the oil and gas industry.

## **5. Accountability – Part 5 – Public Benefit**

The bill's supporters have suggested that developing oil and gas reserves on Ohio's state lands will directly benefit the people of Ohio with increased energy production. Indeed, the bill even states:

**Sec. 1509.71.** (A) It is the policy of the state to provide access to and support the exploration for, development of, and production of oil and natural gas resources owned or controlled by the state in an effort to use the state's natural resources responsibly.

However, nowhere in the bill is there any express requirement that any oil and gas developed in Ohio shall be used in Ohio. If one of the intents of the bill is to develop and use the energy resources of Ohio's state lands for the benefit of the people of Ohio, then the bill should be amended to specify and assure that this happens.

Requested Correction: Require that any oil and gas developed on state lands must be offered for sale and utilized in Ohio, unless it is determined that it would be more beneficial to the people of Ohio to offer it for sale and use in another state. NOTE: The courts have excepted such activity from prohibitions on interstate commerce, recognizing the authority of states and other jurisdictions to act as a "market participant" of their own minerals.

## **Conclusion**

The Ohio Environmental Council remains firmly opposed to House Bill 133 (As Passed by the House) and will remain firmly opposed to this legislation as long as it proposes to open state parks to oil and gas exploration and development.

As such, some may dismiss our entire testimony. That, of course, is your prerogative.

Please remember, though that should House Bill 133 become law, what will count is not who supported or opposed the bill, but what its ultimate costs or benefits are to the people of Ohio.

We respectfully suggest that—at a minimum—these five areas of concern deserve more serious consideration and correction to provide the landholding public with a fair, responsive, and accountable administration of the bill. Thank you for considering our perspective.

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