



Rep. Naomi D. Jakobsson

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LRB097 15303 HLH 67736 a

1 AMENDMENT TO HOUSE BILL 4312

2 AMENDMENT NO. _____. Amend House Bill 4312 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Oil and Gas Act is amended by
5 changing Section 1 and by adding Section 29 as follows:

6 (225 ILCS 725/1) (from Ch. 96 1/2, par. 5401)

7 Sec. 1. Unless the context otherwise requires, the words
8 defined in this Section have the following meanings as used in
9 this Act.

10 "Person" means any natural person, corporation,
11 association, partnership, governmental agency or other legal
12 entity, receiver, trustee, guardian, executor, administrator,
13 fiduciary or representative of any kind.

14 "Oil" means natural crude oil or petroleum and other
15 hydrocarbons, regardless of gravity, which are produced at the
16 well in liquid form by ordinary production methods or by the

1 use of an oil and gas separator and which are not the result of
2 condensation of gas after it leaves the underground reservoir.

3 "Gas" means all natural gas, including casinghead gas, and
4 all other natural hydrocarbons not defined above as oil.

5 "Pool" means a natural, underground reservoir containing
6 in whole or in part, a natural accumulation of oil or gas, or
7 both. Each productive zone or stratum of a general structure,
8 which is completely separated from any other zone or stratum in
9 the structure, is deemed a separate "pool" as used herein.

10 "Field" means the same general surface area which is
11 underlaid or appears to be underlaid by one or more pools.

12 "Permit" means the Department's written authorization
13 allowing a well to be drilled, deepened, converted, or operated
14 by an owner.

15 "Permittee" means the owner holding or required to hold the
16 permit, and who is also responsible for paying assessments in
17 accordance with Section 19.7 of this Act and, where applicable,
18 executing and filing the bond associated with the well as
19 principal and who is responsible for compliance with all
20 statutory and regulatory requirements pertaining to the well.

21 When the right and responsibility for operating a well is
22 vested in a receiver or trustee appointed by a court of
23 competent jurisdiction, the permit shall be issued to the
24 receiver or trustee.

25 "Orphan Well" means a well for which: (1) no fee assessment
26 under Section 19.7 of this Act has been paid or no other bond

1 coverage has been provided for 2 consecutive years; (2) no oil
2 or gas has been produced from the well or from the lease or
3 unit on which the well is located for 2 consecutive years; and
4 (3) no permittee or owner can be identified or located by the
5 Department. Orphaned wells include wells that may have been
6 drilled for purposes other than those for which a permit is
7 required under this Act if the well is a conduit for oil or
8 salt water intrusions into fresh water zones or onto the
9 surface which may be caused by oil and gas operations.

10 "Owner" means the person who has the right to drill into
11 and produce from any pool, and to appropriate the production
12 either for the person or for the person and another, or others,
13 or solely for others, excluding the mineral owner's royalty if
14 the right to drill and produce has been granted under an oil
15 and gas lease. An owner may also be a person granted the right
16 to drill and operate an injection (Class II UIC) well
17 independent of the right to drill for and produce oil or gas.
18 When the right to drill, produce, and appropriate production is
19 held by more than one person, then all persons holding these
20 rights may designate the owner by a written operating agreement
21 or similar written agreement. In the absence of such an
22 agreement, and subject to the provisions of Sections 22.2 and
23 23.1 through 23.16 of this Act, the owner shall be the person
24 designated in writing by a majority in interest of the persons
25 holding these rights.

26 "Department" means the Department of Natural Resources.

1 "Director" means the Director of Natural Resources.

2 "Mining Board" means the State Mining Board in the
3 Department of Natural Resources, Office of Mines and Minerals.

4 "Mineral Owner's Royalty" means the share of oil and gas
5 production reserved in an oil and gas lease free of all costs
6 by an owner of the minerals whether denominated royalty or
7 overriding royalty.

8 "Waste" means "physical waste" as that term is generally
9 understood in the oil and gas industry, and further includes:

10 (1) the locating, drilling and producing of any oil or
11 gas well or wells drilled contrary to the valid order,
12 rules and regulations adopted by the Department under the
13 provisions of this Act.

14 (2) permitting the migration of oil, gas, or water from
15 the stratum in which it is found, into other strata,
16 thereby ultimately resulting in the loss of recoverable
17 oil, gas or both;

18 (3) the drowning with water of any stratum or part
19 thereof capable of producing oil or gas, except for
20 secondary recovery purposes;

21 (4) the unreasonable damage to underground, fresh or
22 mineral water supply, workable coal seams, or other mineral
23 deposits in the operations for the discovery, development,
24 production, or handling of oil and gas;

25 (5) the unnecessary or excessive surface loss or
26 destruction of oil or gas resulting from evaporation,

1 seepage, leakage or fire, especially such loss or
2 destruction incident to or resulting from the escape of gas
3 into the open air in excessive or unreasonable amounts,
4 provided, however, it shall not be unlawful for the
5 operator or owner of any well producing both oil and gas to
6 burn such gas in flares when such gas is, under the other
7 provisions of this Act, lawfully produced, and where there
8 is no market at the well for such escaping gas; and where
9 the same is used for the extraction of casinghead gas, it
10 shall not be unlawful for the operator of the plant after
11 the process of extraction is completed, to burn such
12 residue in flares when there is no market at such plant for
13 such residue gas;

14 (6) permitting unnecessary fire hazards;

15 (7) permitting unnecessary damage to or destruction of
16 the surface, soil, animal, fish or aquatic life or property
17 from oil or gas operations.

18 "Drilling Unit" means the surface area allocated by an
19 order or regulation of the Department to the drilling of a
20 single well for the production of oil or gas from an individual
21 pool.

22 "Enhanced Recovery Method" means any method used in an
23 effort to recover hydrocarbons from a pool by injection of
24 fluids, gases or other substances to maintain, restore or
25 augment natural reservoir energy, or by introducing immiscible
26 or miscible gases, chemicals, other substances or heat or by

1 in-situ combustion, or by any combination thereof.

2 "Well-Site Equipment" means any production-related
3 equipment or materials specific to the well, including motors,
4 pumps, pump jacks, tanks, tank batteries, separators,
5 compressors, casing, tubing, and rods.

6 "First purchaser" means any person who completes an initial
7 purchase of oil or gas from a well in Illinois.

8 "Interest owner" means a person who owns or possesses an
9 interest in the gross production of oil or gas produced from a
10 well in Illinois.

11 (Source: P.A. 89-243, eff. 8-4-95; 89-445, eff. 2-7-96.)

12 (225 ILCS 725/29 new)

13 Sec. 29. Oil and gas production tax.

14 (a) On and after January 1, 2013, in addition to any other
15 tax, fee, or levy imposed by the State or any unit of local
16 government in this State, a tax is levied upon the privilege of
17 producing oil and gas from the earth or water in this State for
18 sale, transport, storage, profit, or commercial use.

19 (b) The tax levied under this Section on gas shall be equal
20 to the greater of (i) 12% of the gross value of the gas at the
21 point of production or (ii) \$0.36 per 1,000 cubic feet of gas
22 produced. The tax levied under this Section on oil shall be
23 equal to the greater of (i) 12% of the gross value of the oil at
24 the point of production or (ii) \$2.88 per barrel of oil
25 produced.

1 (c) The amount of the tax payable each month under this
2 Section shall be due and payable on or before the 15th day of
3 the month immediately following the end of the month of
4 production.

5 The tax under this Section is imposed on interest owners in
6 the proportion of their respective beneficial interests in the
7 oil or gas at the time of severance. If the oil or gas is sold
8 in the same month that it is produced, the first purchaser of
9 the oil or gas shall collect the amount of the tax due from the
10 interest owners by deducting and withholding such amount from
11 any payments made for that oil or gas by the first purchaser to
12 the interest owner, and shall pay the tax imposed by this
13 Section. Money withheld by the first purchaser under this
14 subsection is held in trust for the use and benefit of the
15 State and may not be commingled with other funds of the first
16 purchaser. If the oil or gas is not sold in the same month that
17 it is produced, the interest owners shall pay the tax imposed
18 by this Section as if the oil or gas were sold that month.

19 In no event shall an interest owner be relieved of
20 responsibility for the tax until it has been paid. If the tax
21 is withheld by a first purchaser and that first purchaser fails
22 to make payment of the tax to the State as required herein,
23 then the interest owners shall be entitled to bring an action
24 against such purchaser to recover the amount of tax so withheld
25 together with penalties and interest that may have accrued by
26 failure to make such payment.

1 (d) The moneys collected from the taxes levied under this
2 Section shall be remitted to the Department of Revenue along
3 with a return provided by the Department of Revenue containing
4 any information the Department of Revenue may require. The
5 return shall be filed no later than the 15th day of the month
6 following the end of the month of production. The moneys
7 received by the Department of Revenue pursuant to this Section
8 shall be deposited into the General Revenue Fund.

9 (e) The Department of Revenue shall have a lien for the tax
10 herein imposed or any portion thereof, or for any penalty
11 provided for in this Section, upon all oil and gas produced in
12 this State, whether in possession of an interest owner,
13 producer, operator, storage operator, first purchaser, or
14 subsequent purchaser, to secure the payment of the tax required
15 under this Section.

16 (f) Any tax which is not paid when due shall bear interest
17 at the rate and in the manner specified in Sections 3-2 and 3-9
18 of the Uniform Penalty and Interest Act from the date when the
19 tax becomes past due until the tax is paid or a judgment is
20 obtained by the Department of Revenue. If the amount of the tax
21 computed by the Department of Revenue is greater than the
22 amount of the tax due under the return or returns as filed, or
23 if the tax or any part of the tax that is admitted to be due by
24 a return or returns, whether filed on time or not, is not paid,
25 then the Department of Revenue shall issue to the interest
26 owner a notice of tax liability for the amount of tax claimed

1 by the Department to be due together with a penalty in an
2 amount determined in accordance with Section 3-3 of the Uniform
3 Penalty and Interest Act. If the incorrectness of any return or
4 returns as determined by the Department is due to negligence or
5 fraud, that penalty shall be in an amount determined in
6 accordance with Section 3-5 or Section 3-6 of the Uniform
7 Penalty and Interest Act, as the case may be. If the notice of
8 tax liability is not based on a correction of the taxpayer's
9 return or returns, but is based on the taxpayer's failure to
10 pay all or a part of the tax admitted by his or her return or
11 returns (whether filed on time or not) to be due, such notice
12 of tax liability shall be prima facie correct and shall be
13 prima facie evidence of the correctness of the amount of tax
14 due, as shown therein.

15 (g) If any payment received by the Department under this
16 Section exceeds the taxpayer's liabilities under this Section,
17 the Department of Revenue shall, if requested by the taxpayer,
18 issue to the taxpayer a credit memorandum no later than 30 days
19 after the date of the request. If no such request is made, the
20 taxpayer may credit such excess payment against the payment of
21 any subsequent assessment under this Section, in accordance
22 with reasonable rules and regulations prescribed by the
23 Department of Revenue.

24 (h) Within 60 days after the issuance of a notice of tax
25 liability, the taxpayer may file with the Department of Revenue
26 a written protest against the proposed assessment in such form

1 as the Department of Revenue may by regulation prescribe,
2 setting forth the grounds on which such protest is based. If a
3 taxpayer timely files a protest, then the Department of Revenue
4 shall reconsider the proposed assessment and, if the taxpayer
5 has so requested, shall grant the taxpayer or his authorized
6 representative a hearing. Following that hearing, the
7 Department of Revenue shall issue a final assessment to the
8 taxpayer for the amount found to be due as a result of the
9 hearing.

10 If a protest to the notice of tax liability and a request
11 for a hearing thereon is not filed within 60 days after receipt
12 of the notice, that notice of tax liability shall become final
13 without the necessity of a final assessment being issued and
14 shall be deemed to be a final assessment.

15 (i) The Circuit Court of the county in which the well is
16 located shall have power to review all final administrative
17 decisions of the Department of Revenue in administering the
18 provisions of this Section. The provisions of the
19 Administrative Review Law, and the rules adopted pursuant
20 thereto, shall apply to and govern all proceedings for the
21 judicial review of final administrative decisions of the
22 Department hereunder. The term "administrative decision" is
23 defined as in Section 3-101 of the Code of Civil Procedure.

24 After the expiration of the period within which the person
25 assessed may file an action for judicial review under the
26 Administrative Review Law without such an action being filed, a

1 certified copy of the final assessment or revised final
2 assessment of the Department may be filed with the Circuit
3 Court of the county in which the well is located. The certified
4 copy of the final assessment or revised final assessment shall
5 be accompanied by a certification which recites facts that are
6 sufficient to show that the Department of Revenue complied with
7 the jurisdictional requirements of this Section in arriving at
8 its final assessment or its revised final assessment and that
9 the taxpayer had an opportunity for an administrative hearing
10 and for judicial review. If the court is satisfied that the
11 Department of Revenue complied with the jurisdictional
12 requirements of this Section in arriving at its final
13 assessment or its revised final assessment and that the
14 taxpayer had an opportunity for an administrative hearing and
15 for judicial review, the court shall render judgment in favor
16 of the Department of Revenue and against the taxpayer for the
17 amount shown to be due by the final assessment or the revised
18 final assessment, plus any interest that may be due, and such
19 judgment shall be entered in the judgment docket of the court.
20 Such judgment shall bear the same rate of interest and shall
21 have the same effect as other judgments. The judgment may be
22 enforced, and all laws applicable to sales for the enforcement
23 of a judgment shall be applicable to sales made under such
24 judgments. The Department of Revenue shall file the certified
25 copy of its assessment with the Circuit Court within 2 years
26 after such assessment becomes final, except when the taxpayer

1 consents in writing to an extension of the filing period, and
2 except that the time limitation period on the Department of
3 Revenue's right to file the certified copy of its assessment
4 with the Circuit Court shall not run during any period of time
5 in which the order of any court has the effect of enjoining or
6 restraining the Department of Revenue from filing such
7 certified copy of its assessment with the Circuit Court.

8 (j) Every interest owner, producer, operator, storage
9 operator, and first purchaser shall keep such records,
10 receipts, invoices and other pertinent books, documents,
11 memoranda and papers as the Department of Revenue shall
12 require, in such form as the Department of Revenue shall
13 require in order to administer and enforce this Section. The
14 Department of Revenue may adopt rules that establish
15 requirements, including record forms and formats, for records
16 required to be kept and maintained by taxpayers. For purposes
17 of this Section, "records" means all data maintained by the
18 taxpayer, including data on paper, microfilm, microfiche, or on
19 any type of machine-sensible data compilation. For the purpose
20 of administering and enforcing the provisions hereof, the
21 Department of Revenue, or any officer or employee of the
22 Department of Revenue designated, in writing, by the Director
23 thereof, may hold investigations and hearings concerning any
24 matters covered herein and may examine any relevant books,
25 papers, records, documents, or memoranda of any serviceman or
26 any taxable purchaser for use hereunder, and may require the

1 attendance of such person or any officer or employee of such
2 person, or of any person having knowledge of the facts, and may
3 take testimony and require proof for its information.

4 (k) The Department of Revenue is authorized to make,
5 promulgate, and enforce reasonable rules relating to the
6 administration and enforcement of this Section.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".