

*This city is headed for a disaster of biblical proportions. What do you mean, "biblical"?*

*What he means is Old Testament, Mr. Mayor, real wrath of God type stuff. Fire and brimstone coming down from the skies! Rivers and seas boiling! Forty years of darkness! Earthquakes, volcanoes. The dead rising from the grave! Human sacrifice, dogs and cats living together. Mass hysteria!*

..... Ghostbusters

## Senate Bill 165 – Why We Did It

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On March 24 by a resounding 95-3 vote, the Ohio House of Representatives approved Amended Substitute Senate Bill 165 (SSB165), legislation sponsored by Senate Pro Tempore Tom Niehaus (R-Richmond) revising Ohio oil and gas law. Later that same day, the Ohio Senate concurred with House amendments and sent the bill to Governor Strickland, who signed SSB165 into law on March 31. The legislation becomes effective law on July 1. Both the Senate floor vote last December and House vote were bipartisan, attracting floor speeches and co-sponsorships (including both the Senate and House committee chairs) from responsible members of the Republican and Democrat parties.

SSB 165 was two years in the making; the product of negotiations between key legislators, the Ohio Oil and Gas Association (OOGA), the Ohio Department of Natural Resources (ODNR) and authentic public advocates. The bill was introduced on September 1, 2009. It emerged from the House seven months and twelve difficult committee hearings later. This was not light lifting and no affair for the weak of heart. The SSB165 saga has successfully ended. Ohio lawmakers have implemented the most significant revision to Ohio oil and gas law since House Bill 501 in 1985 and perhaps the most comprehensive amendment to the Ohio Revised Code Chapter 1509 since it was created in 1965.

The Association advocated as a proponent of the legislation. The Northeast Ohio Gas Accountability Project (NEOGAP) opposed the bill. NEOGAP pinned their hopes on State Senator Tim Grendell's (R-Chesterland) Senate Bill 196, a proposal that equated to a de-facto ban on oil and gas development. That was a losing proposition.

Sincere advocates who engaged the process got results. The Ohio Environmental Council worked with legislators, the Department and OOGA on amendments that they felt mattered and they prevailed. The OEC endorsed SSB 165. And, an exchange of ideas between OOGA and the Cuyahoga County Mayors and City Managers Association led to the mayors issuing a statement in support for SSB 165. Numerous amendatory concessions were achieved by legislators of both parties who genuinely worked to improve the bill. Following introduction, ODNR Director Sean Logan argued for "breathing room" setbacks in urban areas and for mandatory pooled properties. He achieved them through two different amendatory episodes.

Issues intrinsic to SSB 165 mirror the national debate over oil and gas development. At the core is whether it is in the public interest that regulatory policy appropriately manages associated risks or should such risks simply be eliminated. Similarly, opponents to oil and gas development first attack the long-standing principle that state-based regulation, firmly grounded in the evolution of sound regulatory policy applied by experts, is the preferred regulatory model.



A recent case before the Franklin County Court of Common Pleas regarding the City of Monroe Falls' objection to an oil and gas drilling permit describes well the issues. Deciding on behalf of the permit application, the judge wrote that the city's argument opposing drilling was based on the view, " that *no drilling is the only reasonable drilling that it would accept. Zero risk is the level of risk it can tolerate. Unfortunately, neither position is supported by law.*" (original emphasis) This statement is the crucible of SSB165. It became NEOGAP's beast of burden. It is the principle our brethren are fighting for nearly everywhere that producers explore for reliable energy in the United States. It is the reason why OOGA engaged the battle with ferocity.

SSB 165 objectives were to address present-day health, safety and social issues related to oil and gas development; provide to the state regulatory agency the necessary funding to administrate the regulatory program based on realistic financial analysis; and ensure to rational citizens public faith and trust in the state regulatory program.

Clearly, issues driving the debate included the Bainbridge Incident in Geauga County; the extent of surface health and safety setbacks, a concept hopelessly entangled with well spacing requirements; mandatory pooling, the most esoteric issue; and an effort to return local control over oil and gas operations.

Setbacks and spacing became a significant discussion and subject to negotiation. Pooling was a battleground. The Association understood that we had an obligation to protect spacing laws and property rights. Thus, mandatory pooling was a constitutionally necessary principle which we could not fail to protect. Even so, we also supported measures designed to place throttles on access to the process. That's because we understood that unfortunately some were using mandatory pooling not so much as a legal principle to protect correlative rights but as a leasing tool.

During Senate debate, Texas Tech law professor Bruce Kramer, a national expert on the subject, provided expert testimony supporting the validity of pooling in states that impose spacing laws. His testimony turned into a fascinating debate with Senator Grendell over the constitutional basis supporting pooling. Senator Grendell argued that spacing was arbitrary and, therefore, pooling was not legal. He's wrong and in a rebuke of his ideas the Senate committee rejected his amendment to ban mandatory pooling by a bi-partisan 7-2 vote. When he regrouped the assault on the Senate floor he lost by 19-13 vote, mostly along party-lines. Ironically, if Grendell had held the day Ohio could have seen a return to town lot drilling. How's that for advancing homeowners' protections!

We knew that a day would come when we would have to revisit the urban drilling experience and upgrade changes effected by House Bill 278 five years earlier. But SSB 165 was much more. Along with funding, SSB 165 also delivered an Ohio response to contentious national issues. SSB 165 became a large and complex piece of legislation that other states began to notice.

SSB 165 puts Ohio at the forefront of oil and gas regulation. The legislation has at least 29 upgrades of law specifically tailored for urbanized areas. Substantive language takes on big issues including comprehensive standards on well construction; well condition monitoring (during both drilling and production phase); casing and cementing requirements; disclosure of well stimulation procedures and materials used; plugging of non-producing wells; and enhanced enforcement procedures.

None of that mattered to the well-haters or their apologists in the press. This attitude led to several Senate hearings that were a few clowns short of a circus. Frankly, these hearings were a testament to State Senator Tim Schaffer's endurance and patience, who, as committee chair,



was admirably determined to provide opponents full access to the process. Some complaints were real and most ginned up. Examples include likening producers to Nazis killing Jews and equating oil and gas to rape or to slavery. Extreme statements linked wells and even drilling methods to strange diseases. They referred to the 1937 New London, Texas school explosion caused by tapping into a refinery's gas waste-stream as somehow related to unsafe oil and gas wells. A witness claimed that frac fluids were somehow mixed with roofing tar, causing scleroderma. She illustrated her point by submitting cartoons as testimony. It went on for hours. Such testimony went beyond the pale, demeaned the process, and stripped away NEOGAP's veneer of credibility.

The opponents raised any issue the World Wide Web could give them. A few examples were NORM, hydrogen sulfide, pits, fracturing, produced water, air, explosions (they really like that word), felonies and FHA loans. The critics advocated statewide oil and gas setback distances that ranged from 300, 330, 500, 1,000, 3,000 and even 6,000 feet. There seemed to be internal disagreement as to what was best and no analysis or hard data supporting the benefits and subsequent impacts on landowner property rights.

In the end, the Association understood that the public good (and our fate) relies on a healthy state-based regulatory program. Good public policy should provide a cogent response to concerns raised by reasonable people. The public good includes the balanced development of the states' oil and gas resources. Legislators concluded the same. They passed the bill.

Afterwards, NEOGAP's Kari Matsko vomited in the northeast Ohio press. Despite the process that occurred and even though 121 out of 130 Ohio General Assembly members voted to support SSB 165, Matsko (described as "sputtering in disgust") issued a 'press release' complaining that the majority of Senators and Representatives in both parties had essentially refused to do their job. Alas, the conceit of sole enlightenment!

Her insult is an affront to elected leaders and the voters. It is also bizarre behavior for someone who sent forward many to make spurious claims but failed to not even once appear as a witness to make her organization's case before the Assembly. That's because she couldn't. Later, like Robespierre, she berated legislators who failed to acknowledge the brilliance of her plan, going so far as to call out Speaker Buddish. That should play well downtown.

Matsko also relied on the weary ploy of complaining about the Association's political support. That free speech thing is so troublesome. Surely her collapse could not have been because of her bad ideas; the other side must have cheated. What rubbish! Matsko carped shock that to make headway she was encouraged to work with stakeholders. Demean her vision by engaging other viewpoints? Finally, teeth gnashing, Matsko moaned that the bill 'doesn't go far enough'. Running off a cliff – well, that's going too far.

State Senator Tim Grendell was confronted with the distasteful reality that his brand of narcissistic populism, while good for generating headlines, produced zero tangible gains. Grendell went down in flames. All that remains is his hope that a tragedy occurs, bitter bile to swallow in exchange for being extraneous.

Nothing is more dangerous than an idea when it's the only one you have. As if riding a mobius strip, the well-haters could arrive at no constructive solution to satisfy their wiles short of either the destruction of their platform or the industry they despise. Their platform took the bullet. NEOGAP was not a Hollywood Erin Brockovich movie come to life, as a Plain Dealer commentator fantasized. That's juvenile. They simply did not understand their issues.



Our opponents suffered from the singular conviction that oil and gas wells are uniformly bad – period. They took pains to say they didn't oppose oil and gas development. Yet their proposals, extreme statewide setbacks being the best example, were plainly shown to ban drilling and sterilize property rights. NEOGAP failed to advance any proposal that would ratchet forward protections while also being harmonious with reasonable development. Their claim of compatibility was a lie. Legislators figured this out. NEOGAP committed political suicide. In the end it was only the far left's sympathy that relegated them to the arena's nose-bleed seats. Credibility trumps rhetoric; nothing damages the truth more than stretching it.

A suburban newspaper reporter asked me if SSB 165 passage means people can "rest easy". That's a trick question. I responded by saying that well-haters will never rest easy. Their goal was to ban oil and gas and they failed. On the other hand, citizens who had reasonable concerns about having in place appropriate protections of health, safety and the environment and who also saw value in the orderly development of the state's oil and gas resources will have, because of SSB 165, good cause to have faith and trust in the state regulatory program.

Someday, some oil and gas operator will screw up. It happens with all enterprise. I was sometimes amazed at examples of how the actions of a few operators run opposite their economic interests. Or, for that matter, the interests of the industry they share with others. But, that's why we have laws and the regulatory code. Drunk driving is an egregious offense that kills people every day. Laws to stop it do not require cars to drive 1,000 feet apart. The General Assembly has studied the modern challenges to regulation of oil and gas development, updated Ohio law, and provided to the state agency the necessary tools to deal with those events when they occur. It is best to avoid this scrutiny.

The industry can expect to shoulder significant new regulatory demands to cover the load, including the costs of regulation. However, the vast numbers of Ohio producers are now part of a remarkable effort to proactively address the public's concerns, while also protecting a good working environment. These producers go about their business drilling and operating their wells in a manner that reflects the economic significance of their investment. They are good neighbors. They stay out of the newspapers. They're not worried about being dragged through the enforcement process. Due process protections are in place should the wheels of justice jump off the tracks.

That's why we supported SSB 165. We stepped up and it was the right thing to do. NEOGAP ridiculed the legislation because the industry was a proponent. Irrational people cannot fathom rational response. They're just left 'sputtering in disgust'. Rotten wood is hard to split.

For the rest of us – the vast majority of Ohioans and their elected representatives – we're moving on. We won the battle, yet the war continues.

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