



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB5889**

Introduced 2/16/2012, by Rep. David Reis

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Oil and Gas Leasing Act. Provides that the purpose of the Act is to clarify the rights of joint owners of oil and gas in this State, to promote and preserve the value of oil and gas reserves in the State, and to maximize the recovery of oil and gas through the orderly and efficient development of oil and gas reserves for the benefit of all joint owners in a fair and equitable manner. Provides definitions. Includes provisions concerning venue of an action seeking to impress a trust upon an oil and gas interest for the purpose of leasing and developing it, joint ownership of a freehold interest in an oil and gas estate, declaration of a trust in oil or gas land and the powers and duties of a trustee, court procedures, oil and gas leases, payments under an oil and gas lease, and construction of the Act. Effective immediately.

LRB097 19335 AJO 64584 b

1 AN ACT concerning oil and gas leasing.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Oil  
5 and Gas Leasing Act.

6 Section 5. Purpose. In recognition of the fact that an  
7 estate of a joint owner in oil and gas can be enjoyed only by  
8 producing, removing, and selling the products of the oil and  
9 gas, and that the producing, removal, and sale of oil and gas  
10 by one joint owner therefore constitutes the use and not the  
11 destruction of the common estate, the purpose of this Act is to  
12 clarify the rights of joint owners of oil and gas in this  
13 State, to promote and preserve the value of oil and gas  
14 reserves in the State, and to maximize the recovery of oil and  
15 gas through the orderly and efficient development of oil and  
16 gas reserves for the benefit of all joint owners in a fair and  
17 equitable manner.

18 Section 10. Definitions. As used in this Act:

19 "Joint owner" means a person or entity that is a joint  
20 tenant, a tenant in common, or a tenant by the entirety.

21 "Oil and gas owner" means a person or entity vested with a  
22 whole or undivided fee simple interest or other freehold

1 interest in the oil and gas estate, but "oil and gas owner"  
2 does not include a person or entity with a leasehold or any  
3 other lesser estate.

4 "Producing, removing, and selling" includes drilling  
5 operations, seismic operations, and such other actions upon the  
6 surface of the land reasonably necessary to explore, drill,  
7 develop, produce, transport, store, and market oil and gas.

8 Section 15. Venue. Proceedings under this Act must be  
9 brought in the circuit court of the county in which the oil and  
10 gas land sought to be affected, or the major portion of that  
11 land, is located.

12 Section 20. Joint owners; trusts.

13 (a) If the title to oil and gas is owned by joint tenants,  
14 tenants in common, or tenants by the entirety, whether the  
15 title is derived by purchase, legacy, or descent, any oil and  
16 gas owner vested with at least a one-half interest in the oil  
17 and gas under the land, or any oil and gas lessee of the oil and  
18 gas owner, upon proper petition, shall be authorized to produce  
19 and remove oil and gas from the land in the manner provided in  
20 this Act. This Act affects only an oil and gas owner, as  
21 defined in Section 10 of this Act, and does not affect the  
22 rights of a surface owner, except to the extent that the owner  
23 may also be an oil and gas owner.

24 (b) The circuit court of the county in which the oil and

1 gas land or the major portion of that land lies has the power  
2 to declare a trust in that land, appoint a trustee for all  
3 persons owning an interest in the oil and gas who are not  
4 plaintiffs, and authorize the trustee to sell, execute, and  
5 deliver a valid oil and gas lease on that land on behalf of all  
6 of the defendants on terms and conditions approved by the  
7 circuit court for the purposes provided in this Act. The lease  
8 shall continue in full force and effect after the termination  
9 of the trust unless the lease has previously expired by its own  
10 terms.

11 Section 25. Proceedings for appointment of trustee.  
12 Proceedings for the appointment of a trustee may be instituted  
13 by any person or persons (i) vested in fee simple with at least  
14 an undivided one-half interest in the oil and gas sought to be  
15 developed or (ii) vested with a valid and subsisting oil and  
16 gas lease, the lessor of which is a person defined in item (i).

17 Section 30. Procedure.

18 (a) A person seeking to impress a trust upon an oil and gas  
19 interest for the purpose of leasing and developing it shall  
20 join as a defendant any person, other than the plaintiff,  
21 having a legal interest in the oil and gas, including any  
22 mortgagee thereof. A party not in being who might have some  
23 contingent or future interest in the oil and gas and all  
24 persons, whether in being or not in being, having any interest,

1 whether present, future, or contingent, in the oil and gas  
2 interest sought to be leased shall be fully bound by the  
3 proceedings.

4 (b) A verified petition shall be filed specifically setting  
5 forth the following:

6 (1) The request of the plaintiff that a trustee be  
7 appointed to execute a lease granting the plaintiff the  
8 right to produce, remove, and sell oil and gas from the  
9 subject land.

10 (2) The legal description of the land.

11 (3) The interest of the plaintiff in the oil and gas  
12 underlying the land.

13 (4) The apparent interest of the defendant in the oil  
14 and gas underlying the land.

15 (5) That the plaintiff is willing to purchase a mineral  
16 lease covering the interest of the defendant and that the  
17 existence of this unleased mineral interest is detrimental  
18 to and impairs the enjoyment of the interest of the  
19 plaintiff.

20 (c) If in any action there are persons who would be unknown  
21 parties as defined in Section 2-413 of the Code of Civil  
22 Procedure, those persons may be made defendants to the action  
23 in the same manner and with the same effect as provided in the  
24 Code of Civil Procedure. The defendant shall be given notice of  
25 the pendency of the action by publication as provided in the  
26 Code of Civil Procedure.

1           (d) The court shall appoint a guardian ad litem for any  
2 party to the proceeding who is a ward and is not represented by  
3 a guardian.

4           (e) If it appears that any person not in being, upon coming  
5 into being, is or may become or may claim to be entitled to any  
6 interest in the property sought to be leased, the court shall  
7 appoint a guardian ad litem to appear for and represent the  
8 interest in the proceeding and to defend the proceeding on  
9 behalf of the person not in being, and any judgment or order  
10 rendered in the proceeding is as effectual for all purposes as  
11 though the person were in being and were a party to the  
12 proceeding.

13           (f) The court shall take evidence and hear testimony as to  
14 the matters set forth in the petition. The court shall  
15 determine the prevailing terms of similar oil and gas leases  
16 obtained in the vicinity of the land described in the petition,  
17 including, but not limited to, length of primary term, bonus  
18 moneys, delay rentals, royalty rates, and other forms of lease  
19 payments. If, upon taking evidence and hearing testimony, it  
20 appears that the material allegations of the petition are true  
21 and that there has been compliance with the notice provisions  
22 of this Act, the court shall enter an order determining the  
23 interest of each defendant in the oil and gas sought to be  
24 leased. The court shall also appoint a trustee for the purpose  
25 of executing in favor of the plaintiff an oil and gas lease  
26 covering the interest of any defendant. The judgment appointing

1 the trustee and authorizing the execution of the lease shall  
2 specify the minimum terms which may be accepted by the trustee.  
3 Those terms shall be substantially consistent with the terms of  
4 other similar oil and gas leases obtained in the vicinity as  
5 determined by the court. The terms of the oil and gas lease  
6 shall also be substantially consistent with the terms of other  
7 existing leases, if any, covering the remaining oil and gas  
8 interests in the land described in the petition. All of the  
9 land to be covered by the oil and gas lease shall be  
10 contiguous. To the extent that any of the land described in the  
11 petition is not contiguous to other land in the petition, that  
12 land shall be the subject of a separate oil and gas lease. The  
13 court shall determine a reasonable fee to be paid to the  
14 trustee, and that fee, together with the reasonable attorney's  
15 fees and costs of the proceeding incurred by the trustee, shall  
16 be paid by the plaintiff.

17 (g) In the event that a defendant owns an interest in the  
18 surface of the land described in the complaint, the court shall  
19 also hear evidence and make an adjudication as to the terms and  
20 conditions of surface use by the lessee and as to the rights of  
21 the defendant surface owner to compensation with respect to  
22 such surface use, which shall be substantially consistent with  
23 the terms of other leases in the vicinity as to compensation  
24 for surface use and other terms calculated to protect the  
25 surface of the land.

26 (h) The plaintiff shall forthwith furnish the court with a

1 report of proceedings of the evidence received and testimony  
2 taken at the hearing on the petition, and the report of  
3 proceedings shall be filed and made a part of the case record.

4 (i) In any action under this Act, the court may investigate  
5 and determine all questions of conflicting or controverted  
6 titles, remove clouds from the title to the oil and gas, and  
7 establish and confirm the title to the oil and gas or the right  
8 to mine and remove oil and gas from any of the land.

9 (j) An action filed under this Act may be joined with an  
10 action under the Severed Mineral Interest Act.

11 Section 35. Oil and gas lease; report by trustee. The  
12 trustee shall enter into negotiations with the plaintiff and  
13 shall execute an oil and gas lease in favor of the plaintiff  
14 covering the interest of the defendant. The terms of the oil  
15 and gas lease shall be in accordance with the findings and  
16 judgment of the court. The trustee shall forthwith prepare and  
17 file a report of the sale of the oil and gas lease stating the  
18 terms of the lease and the payments received for the lease and  
19 give notice to all parties appearing of record. If the court  
20 finds that the sale was in accordance with its judgment, the  
21 sale shall be confirmed by court order and the court shall  
22 order the trust terminated and the trustee and his or her bond  
23 discharged.

24 Section 40. Payment. All moneys due to the defendant under



1 the lease executed by the trustee shall be paid by the  
2 plaintiff directly to the defendant.

3 Section 45. Binding effect of lease. The sale of and  
4 execution of any oil and gas lease under this Act is binding in  
5 all respects as to all of the interest in the oil and gas and  
6 the right to mine and remove the oil and gas owned by the  
7 defendant to the action in the same manner as if the defendant  
8 had personally signed and delivered the lease. The lease shall  
9 be binding upon the heirs, legatees, personal representatives,  
10 successors, and assigns of the defendant.

11 Section 50. Incapacity of trustee; subsequent proceedings.

12 (a) In the event of the death or resignation of the trustee  
13 or the refusal or inability of the trustee to act, the court,  
14 upon its own motion or upon the motion of the plaintiff, shall  
15 appoint a successor trustee.

16 (b) After the entry of the initial judgment authorizing a  
17 lease, all subsequent proceedings pertaining to the land and  
18 the oil and gas interest involved in the initial litigation,  
19 including subsequent leasing proceedings or proceedings by the  
20 trustee requesting authority to execute and deliver additional  
21 documents pertaining to a oil and gas lease, shall be commenced  
22 and prosecuted in the same case as the proceedings for the  
23 initial lease. The acting trustee at the time of any subsequent  
24 proceedings shall act as the trustee in those proceedings. The

1 court shall retain continuing authority and jurisdiction to  
2 conduct the subsequent proceedings.

3 Section 55. Costs. All court costs incident to the  
4 proceedings authorized under this Act shall be paid by the  
5 plaintiff.

6 Section 60. Construction. This Act shall be liberally  
7 construed so that any lease issued under this Act conveys  
8 merchantable title.

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.