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Zoning over Pooling for Drillers in Fall Legislative Session

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One of the key goals for drillers during the fall legislative session in Harrisburg is gaining approval of a measure preventing local governments from using zoning ordinances to shut them out, according to an official with a prominent driller in the Marcellus Shale. Pooling of land—where a landowner with no contract is paid the same lease and royalty rates as adjacent landowners with contracts—is of less importance.

"If we have to give up a lot this fall, at the very least we want something in return, and that is straightening out the local zoning ordinances," said the official who preferred not to be identified. "We'll take pooling if we can get it, but making it clear that local governments can't abuse their zoning laws to prevent drilling is number one."

The two issues will almost certainly be part of the discussion in what is expected to be a fall session dominated by shale legislation. The state Senate returned to session on September 19; the state House returned on September 26.

At the center of the debate are numerous measures imposing fees on drillers to reimburse local governments for road damage and the wear-and-tear on other infrastructure.

Pennsylvania Gov. Tom Corbett recently said that an impact fee would be included in upcoming legislation, implementing some of the recommendations offered by his Marcellus Shale Advisory Commission.

The governor said the funds from the impact fee would not go into the general state budget, but would be used "primarily to compensate communities where drilling is taking place for the damage to their roads and bridges from heavy truck traffic, and other negative impacts."

"The primary amount of money will go to the counties, and they will work with the municipalities," said Governor Corbett. "What comes to the state will be used for environmental cleanup."

Other expected legislative proposals include lengthening setbacks near streams and lakes, additional controls aimed at protecting public and private water systems, and increasing bonding requirements.

"A lot of changes could be done on a regulatory basis, but approving legislation can be much quicker than putting proposals through a regulatory process," said one business lobbyist.

The entire legislative agenda could be derailed if the parties cannot agree on how to divide the money from the impact fees, according to industry lobbyists. Legislative proposals range from all the funds going to local governments to a split between the local and environmental initiatives.

"Whatever the amount of the impact fee lawmakers agree on, the proceeds from it will be in the millions," one lobbyist said. "A percent here or there can make or break someone's day."

The agenda could also get derailed if the drillers do not obtain the protection they seek from what some say is a misuse of local zoning ordinances.

Range Resources, for example, recently filed an appeal to the zoning hearing board of South Fayette Township in Allegheny County. The company calls the township's drilling ordinance an "illegal" infraction against the company's business pursuits.

Range Resources says the ordinance enforces buffer zones around schools, hospitals and certain commercial areas that make drilling anywhere in the township virtually impossible.

The company says the ordinances violate a provision in the state's Municipalities Planning Code that requires all municipalities to "allow for reasonable development of minerals."

"What some local governments fail to remember is that they are creatures of the state, not autonomous government entities," said one lawyer connected to the appeal. "Their existence and how they operate is governed by state law."

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