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Chance for Marcellus Shale Legislation Approval in Pennsylvania Before Year's End

By Lou Crocco On November 29, 2011

The Pennsylvania House and Senate approved separate versions of legislation to strengthen environmental rules surrounding drilling in the Marcellus Shale, and to impose a per-well impact fee to fund local infrastructure. The state Senate approved its version of the bill on November 15; the state House approved its version on November 17.

Legislative sources say that a proposal could be agreed to before the end of the year, but differences in the versions still need to be ironed out among both chambers and Pennsylvania Governor Corbett's office.

"We'll have a better idea when the legislative leaders sit down with the governor's office on what they can and can't live with," said one legislative source. "But approval before the end of the year is a real possibility."

If lawmakers reach a compromise, the bill will move in the six legislative days left before the end of the calendar year—December 5, 6 and 7 and December 12, 13 and 14.

The key areas of discussion will be over the amount of the impact fees and the authority of local governments on their zoning ordinances. Many drillers, the governor's office and some in the state General Assembly prefer preemption of local zoning ordinances to prevent governments from using their zoning laws to ban drilling. The Senate version, however, allows local governments to maintain their zoning ordinances, but would give the drillers and landowners the right to appeal to the Pennsylvania Attorney General if they believe the zoning is being used exclusively to block drilling.

"It's a compromise," another legislative source said. "Not all local governments are happy and not all drillers, but the Senate felt it couldn't move the bill any other way."

On the impact-fee side, the Senate bill contains a provision that would increase the amount of the fee if the market price for natural gas rises above certain pre-set increments. The governor's office opposes any adjustment to the fee based on the price of gas.

Overall, the Senate bill would impose a sliding fee of \$50,000 per well in the first year of production, with a \$10,000 reduction each subsequent year.

The Senate estimates that the fee proposal would raise \$94 million from wells that were producing gas this year—a figure that would rise to \$155 million next year and \$255 million by 2014. Over the next five years, the fee would yield more than \$1 billion.

Approximately 55 percent of the fees generated would be given to counties and municipalities in the Marcellus Shale region; and 45 percent of the fees would go to statewide infrastructure projects, environmental programs and other projects related to natural gas production.

The House bill would place a \$40,000 fee on the wells in operation. It would drop to \$30,000 for the second year, \$20,000 for the third year and \$10,000 for the fourth through tenth years.

The bill would direct 75 percent of the money from the impact fee to local counties and municipalities. The state would receive the remaining 25 percent of the impact-fee revenue for transportation improvements, emergency response and other purposes.

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