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Impact Fees, Pooling Make List of Marcellus Commission Recommendations

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Marcellus Shale Law and Policy Update

Adoption of impact fees, pooling of property and 94 other recommendations regarding natural-gas drilling in the Marcellus Shale were approved by Pennsylvania Gov. Tom Corbett's Marcellus Shale Advisory Commission during its final public meeting on July 15, 2011. Details of the Commission's recommendations are now available, as the group submitted its report to Governor Corbett on July 22.

A few details emerged in the meeting about impact fees, as members discussed what constitutes an impact from shale drilling. During the discussion, commission members approved an amendment to the recommendations that would allow fee revenues to "restore outdoor recreational opportunities."

The final report likewise supported pooling where a landowner without a lease agreement with a driller would be compensated for any natural gas taken from the property if the land is contiguous to others with lease agreements. Citing the supremacy of property rights, both Governor Corbett and Pennsylvania Senate President Joe Scarnati, R-Jefferson, oppose pooling.

Impact fees, pooling and most of the other recommendations will need the consent of the state General Assembly. The effect of the commission's report on debates in the state House and Senate surrounding the Marcellus Shale is unknown at this time. Debates are likely to begin soon after members return to Harrisburg in late September.

On at least one front, lawmakers did not wait for the commission's report to begin scrutiny of measures in the House that would impose local impact fees.

The House Finance Committee held a hearing on July 19 in Lycoming County to review the bills.

"We weren't really thinking about the report when we planned the hearings," said a House Republican caucus spokesperson. "The point of the hearing was to review the impact fee proposals already in the House."

House and Senate Republican leaders have said that the report from Governor Corbett's shale commission would have little, if any, effect on the fee legislation they consider. The governor said he did not want to see impact fee legislation before the commission released its findings. His position was one of the key reasons impact fee legislation was not approved with the budget at the end of June.

Senate Bill 1100, which cleared the state Senate Environmental Resources and Energy Committee in the spring, would place a flat fee on each well—a fee that would decrease as the well ages. Under the bill, the host local governments and state-level environmental funds would receive the funds. The bill awaits action in the Senate Appropriations Committee.

On the House side, a proposal gaining some early traction would send all the money raised through the fees—$50,000 per well the first year and lower each year after that—to the host counties, townships and boroughs. State-level environment programs would receive additional funding from the Oil and Gas Lease Fund, which is in turn funded by lease and royalty money from wells on state land.

"The balance in the Oil and Gas fund will explode once more wells are drilled," said a staffer with state Rep. Dave Reed, R-Indiana, who sponsored the legislation. "There will be more than enough there to fund the environmental programs."

Directing all the money to the local governments may deflect any opposition to raising taxes to benefit state-level programs.

An official with a natural-gas driller said that they are "OK" with a fee, provided it lessens as a well ages.

"The local impact falls off as the well ages because you just don't have the same level of activity," said the official who did not want to be identified. "If the impact falls off, the fee should as well."

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