SAUNDERS LAW LLC

An Oil & Gas, Environmental & Energy Law Practice

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The Effect of Pending Oil & Gas Legislation on Local Governments

Impact Fees and Municipal Regulation of Natural Gas Development Activities in Pennsylvania

--- Marcellus Summit 2011 ---
Penn Stater Conference Center
State College, PA
November 17, 2011

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This Presentation Addresses only the Impact Fee and Local Zoning Components of the House (HB 1950) and Senate (SB 1100) Legislation that Would Amend the Oil & Gas Act

Severance Tax or Impact Fee … or Neither?
The History

2009 and 2010 Legislative Sessions

(Gov. Rendell)

2 severance tax proposals make it to House floor and pass, but

Senate fails to act on either

Bring on the Corbett Administration (*and read his lips)*

No severance tax

No tax of any kind

But what about an impact fee?

Marcellus Shale Advisory Commission

July 2011

Report Recommended 94 Action Items
Including a severance tax or impact fee

Governor accepted all but 2

Governor's Impact Fee

Option for Each of 39 Marcellus/Utica Counties to Adopt a Per Well Drilling Fee to offset costs of Natural Gas Development

- Up to $40 M per well 1st year
- Decreasing to no more than $10 M after 4th year
- 75% of fee to local governments
- 25% to Commonwealth

SB 1100 (Scarnati R-Jefferson)

- Referred to ENVIRONMENTAL RESOURCES & ENERGY
- Reported as amended, June 14, 2011
- First consideration, June 14, 2011
- Re-referred to APPROPRIATIONS, June 30, 2011
- Re-reported as amended, October 26,2011
- Second consideration, Oct. 31, 2011
- Re-committed to APPROPRIATIONS, October 31, 2011
- Re-reported as amended, November 14, 2011
- Third consideration - **PASSAGE**, November 15, 2011 (29-22)

HB 1950 (Ellis R-Butler)

- Referred to FINANCE, November 1, 2011
- Reported as committed, November 2, 2011
- First consideration, November 2, 2011
- Laid on the table, November 2, 2011
- Removed from table, November 2, 2011
- Second consideration, with amendments, November 16, 2011
- Re-committed to APPROPRIATIONS, November 16, 2011
- Third consideration (Final Vote – Today????

Comparison of Fees

SB 1100

- Unconventional wells only
- Amends Title 58 - Oil &Gas Act
- Fixed Fee collected by **PUC**
- Annual base fee w/price adjustment factor:
- $50 M 1st year production
- $40 M 2nd year
- $30 M 3rd year
- $10 M 4th – 10th years
- $10 M 11th – 20th (END)

HB 1950

- Unconventional wells only
- Amends Title 58 - Oil &Gas Act
- Optional Fee set and collected by **County** per ordinance
- No adjustment factor
- **Up to** $40 M 1st year
- **Up to** $30 M 2nd year
- **Up to** $20 M 3rd year
- **Up to** $10 M 4th – 10th (END)

Comparison of Fee Distribution

SB 1100

- $2.5 MM for 2011 to Conservation Districts and $5 MM for 2012 to END
- $1.5 MM annually PA Fire Commsr
- Up to $1.5 MM Fish & Boat Comm

THE BALANCE:

- 55% to affected local govts
  - **36% to host counties**
  - **37% to host municipalities**
  - **27% to host and non-host municipalities in host counties**

HB 1950

- 75% to the county and its municipalities as follows:
  - **36% to county**
  - **37% to municipalities with wells based on a formula**
  - **27% to other municipalities**
- 25% to the Commonwealth:
  - 75% to PennDOT
  - 10.5% to DEP w/$ 10MM cap
  - 7.5% to PUC for administration
  - Balance to PEMA and DOH

Comparison of Fee Distribution

SB 1100

- 45% for "Statewide Initiatives"
  - 25% to Commonwealth Financing Authority
  - 25% to Highway and Bridge account
  - 25% for water and sewer projects
  - 5% to HSCA
  - 15% for "Environmental Initiatives"
  - 5% to DCED for dedicated LNG project or LNG conversion project (for 2011 – 2013)
  - After 2013 HSCA amount to 10%

SB 1100

Impact Fee Revenue Estimate

Calendar Year (Well Life)	Total Shale Impact Fee
2011 (Y1)	$ 94 MM
2012 (Y2)	$155 MM
2013 (Y3)	$213 MM
2014 (Y4)	$256 MM
2015 (Y5)	$295 MM

Issue of Local Regulation of Drilling Activities

Marcellus Shale Commission Recommendation:
Legislation to require uniform local regulation
so as not to impede gas development
in exchange for sharing an impact fee

Corbett Proposal:
"Supercede and Preempt"
All regulation of natural gas drilling activities
("as per the Oil & Gas Act")

Original Legislative Response

SB 1100

Two Options:

"Model" Ordinance Regulating Drilling to be Developed and Adopted as *quid pro quo* for sharing in drilling fee

or

Maintain individual zoning laws, but no impact fee money

HB 1950

The Corbett Proposal:

Local Regulation of Natural Gas Development Prohibited

Local Zoning (Round II) 11/15

SB 1100

Model Ordinance Out

Substitute "ACRE"*

Challenge Process

- Seek Review of Local Law from Attorney General to determine consistency with Oil & Gas Act
- No Impact fee if violation
- Possibility of attorneys fees to prevailing party

* *Agriculture, Communities and Rural Environment Act,* 3 Pa. C. S. sections 311 – 522 (2010)

HB 1950

The Corbett Proposal:

Local Regulation of Natural Gas Development Prohibited

(Status Quo)

Local Zoning (Round III) 11/15

SB 1100

"ACRE"
Challenge Process
(Status Quo)

HB 1950

Withdraw Complete
Preemption Language

Substitute ACRE "like" language
to Mirror Senate Bill

As of Last Evening*

House Disposed of Over 150 Proposed Amendments to **HB 1950**

Adopted 9 Amendments

Scheduled Today as a Voting Day to Consider **HB 1950**, as amended

**POST SCRIPT*

HOUSE PASSED HB 1950 DURING PRESENTATION

107 - 76

What's Next?

Significant Differences in House and Senate Bills Must be Resolved

House and Senate Republicans will Caucus to Draft One Bill with Majority Support and Move for Votes

Senate Adjourns for 2011 - December 14

House - December 20

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