

"Forced pooling" legislation for gas industry planned in Pennsylvania

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Landowners without gas leases could be compelled to allow companies to drill in the Marcellus Shale beneath their land under a procedure outlined in legislation proposed by two members of the state House of Representatives.

The "Conservation Pooling Act," sponsored by state representatives Marc Gergely, D-35, Allegheny County, and Garth Everett, R-84, Lycoming County, which has not yet been introduced, would establish how gas companies form orderly units of land for developing the gas from the shale - a priority issue for the growing Marcellus Shale industry in the state.

According to a draft of the legislation circulated by lawmakers who have been asked to co-sponsor it, the act would create a state office to oversee pooling as well as a procedure for compensating holdout landowners while keeping them from blocking development of the gas from leased properties around them, a concept known as "forced pooling."

The industry wants the state to develop what they prefer to call a "fair pooling" statute because they say it allows for the most efficient and complete extraction of the gas while minimizing the surface impacts that could come with an unnecessary proliferation of wells.

The bill requires an operator to have leases to drill on 75 percent of the land in a proposed unit before applying for a pooling order. Such a demand for a super majority means the bill is "not designed to allow (gas companies) just to force large parcels to do something that they do not want to do," Mr. Everett said.

"Fair pooling" ensures that gas development is "not a crazy quilt," Marcellus Shale Coalition President Kathryn Klaber said. "It's a very deliberate patchwork."

Opponents of forced pooling, including the 31 environmental and outdoor organizations that recently sent a letter to all state legislators urging them to reject the concept, call it a kind of eminent domain, "but instead of using private property for the public good, it takes private property for private gain."

"They talk about it in terms of conservation, but what they are talking about is conserving the gas, not the land or the environment," said Myron Arnowitt, the Pennsylvania director of Clean Water Action and the lead signatory on the letter.

"Just because it's the most efficient system for the gas industry, doesn't mean that it has the least impact on the environment. We would argue that full extraction will cause more environmental damage."

Mr. Everett said the legislation is meant to address both forced pooling and voluntary pooling, which routinely happens on leased properties under the discretion of the company developing a gas well.

"We don't have any statutory guidance on how units get established, what the rules are that the industry has to follow, what rights individuals have," he said. "I see it as an opportunity for both the industry and for my constituents to define how this is going to work."

Mr. Everett said his participation in the bill was inspired by concerns voiced by smaller landowners in his district who want to lease their gas rights but fear they will be skipped over by companies developing only large parcels of land. They also fear that companies will drill nearby and send fractures in the shale beneath their property, siphoning off their gas.

The legislation, will "make a lot of my small landowners that are out there in the middle of this development a lot more confident that their gas is not going to get stolen."

The draft of the bill, which Mr. Everett said was "put together predominantly by folks from the industry" and is "just a starting point" for legislation, defines a standard drilling unit as 640 acres, establishes a notification and hearing procedure for objectors, sets a royalty of 12.5 percent for the gas produced, and protects an unleased landowner from having any surface impacts from the drilling.

It also offers three choices to unleased landowners who will be forced to join the pool: They can accept the terms of the lease offered to others in the pool; pay their share of the costs of developing the well up front and share in any profits; or share in the profits of the well after a penalty worth 400 percent of their share of the costs is deducted from their payments.

The last option includes a "risk avoidance" fee common in other states with forced pooling statutes, but at a higher rate than many of those states.

The Interstate Oil and Gas Compact Commission, a multi-state agency that encourages the efficient extraction of gas, suggests a penalty not exceed 300 percent in a model conservation act it developed in 2004.

Ms. Klaber said member companies of her organization "have given input when asked" in the development of the Conservation Pooling Act, but she did not want to comment specifically on the proposed legislation because she was not sure if she had seen its most updated version.

She said the Marcellus Shale industry in the state has not found another state's pooling statute that stands out as a model for what they would like to see in Pennsylvania. One of the most important provisions in defining a statute in the commonwealth is for there to be "fair treatment of all parties involved," she said.

"Fair pooling means that anybody who has either entered into a contract or does have the mineral resources needs to feel that they are coming out of the agreement made whole."

Ross Pifer, director of the Agricultural Law Resource and Reference Center at Penn State University's Dickinson School of Law, said a forced pooling statute could affect the current leasing market in which companies must bargain with landowners if they want to secure gas leases.

Some landowners do not want to lease their land ever, while others might not want to lease their land right now,

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"Depending on what legislation would get passed, I think it would change some of the practices of the gas companies," he said, "because they may not have as much of an incentive to sweeten the pot to get some of these landowners involved."

Any pooling legislation will also have to address the fact that the interests of individuals and the state might be at odds, he said.

"If our policy is to extract the gas in the most efficient way possible, then we want to establish procedures that all of the gas can be extracted," he said. "But that can conflict with somebody's individual property interests in determining if they want to participate or determining the terms of their participation.

"That's the conflict that the General Assembly is going to have to deal with," he added. "How do you balance those two interests?"

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