

New Gas Drilling Legislation Being Introduced in House and Senate

by Sue Smith-Heavenrich

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On June 6 the Assembly passed legislation calling for a one year moratorium on hydraulic fracturing in New York. While the fracking moratorium may be the most visible piece of legislation, it is not the only one. Lawmakers in both houses are sponsoring a number of bills that seek to protect health, clarify home rule and establish guidelines on taxing properties near drilling units.

Some landowners are concerned that with increased drilling, they may end up paying higher property taxes based on the escalating prices of land purchased by speculators. Property tax assessments are based upon the value of the property as determined by sales of comparable properties in the area. If speculative money runs up the value of the land, residents may find the taxable value in their own property skyrocket.

To remedy that situation Senator Tom O'Mara is sponsoring legislation (S4857) that amends the Real Property Tax law. The bill states that tax assessors may only base their assessments on the "use value" of the property. So, actively farmed land could not be compared to farm property that has an operational gas well on it – even if the land in question is leased. Senator Tom Libous is co-sponsoring the proposed legislation.

O'Mara credits Assemblywoman Donna Lupardo with supplying language for the legislation. "It seemed like a reasonable idea to clarify that assessment shouldn't be done on speculation," he said.

At issue: a landowner, with property that may or may not contain undeveloped minerals, might choose never to extract those minerals. Without actually extracting the oil or gas, there is no way to determine the exact value of such property. Therefore, the property should be assessed solely on the current use of the land.

Of course, once there's a producing well on the property nothing would prohibit an assessment increase to reflect that use. This bill, if passed, would take pressure off landowners who feel pressured into signing leases to keep up with rising property taxes.

While O'Mara hasn't heard from any constituents about specific instances where property assessments were based on speculative gas earnings, he has heard general concern expressed by many people in Steuben and Tioga counties. The bill has been moving forward in the legislative process and O'Mara hopes to see it reach the floor for a vote sometime this week.

Assemblyman Robert K. Sweeney and Senator Tony Avella are sponsoring bills that would require the hazardous wastes produced from oil and natural gas activities to be treated in the same way as other hazardous wastes (A7013/ S4616).

Currently, note the sponsors, NY Department of Environmental Conservation (DEC) regulations exempt "drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy" from regulation as hazardous waste. The bills numerous co-sponsors have noted that waste resulting from the

exploration, development, extraction and production of crude oil and natural gas may be hazardous in many instances.

The proposed legislation would ensure that when waste from drilling and production operations meets the definition of hazardous waste, it be treated in a manner consistent with other hazardous wastes. The concern is that improperly treated hazardous waste could contaminate air, drinking water, soil, and food. “There is no compelling reason why waste produced from oil and natural gas activities that meets the definition of hazardous waste, should not be subject to the same laws regarding generation, transportation, treatment, storage and disposal as other hazardous wastes,” note the lawmakers in a memo attached to the bill.

Assemblywoman Barbara Lifton and Senator Suzi Openheimer, backed by many co-sponsors, have introduced bills (A3245/S3472) that would give more power to local communities under Home Rule. The purpose of this bill is to clarify the role of municipalities in governing oil, gas, and solution mining development within their jurisdiction.

Existing environmental conservation law prohibits municipalities from regulating oil and gas drilling, but allows them other powers of land use regulation, such as zoning. The problem, says Lifton, is a gray area that leaves local government officials confused: are town zoning ordinances preempted by state oil and gas regulations or do towns have the right to limit activities in zoned areas?

The bill would make it clear that local governments have the right to enact or enforce local laws and ordinances if those laws do not expressly regulate the oil, gas and solution mining industries regulated by state statute, regulation, or permit. Zoning, say the lawmakers, serves to regulate the location, construction and use of buildings and land within the town, not regulate drilling or mining operations.

The proposed law would clarify that current local zoning law, and local zoning laws enacted in the future, could dictate where oil, gas, and solution mining is a permissible use.

Lifton is also sponsoring another bill, A2108 which would establish a natural gas exploration and extraction liability act. Liz Krueger is sponsoring the Senate bill (893). Right now, individuals, businesses and municipalities can recover damages from drillers and landowners who have allowed drilling on their property. But to do so, they must prove that negligent conduct caused the damage.

This bill would allow people harmed by drilling activities to recover damages by showing a causal connection between drilling activities and the damage. Such “strict liability” is found throughout the law, most relevantly in the Navigation Law regarding damages that result from petroleum spills, explains Lifton.

You can follow bills by going to <http://assembly.state.ny.us/leg/>