

Senate Marcellus rules bill passed to state House

■ *Some question scope of legislation, spacing requirements for wells*

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Despite several hours of debate, nearly 20 attempts to change the bill and unresolved criticism from environmentalists, new regulations for the West Virginia gas industry are on the edge of becoming law following legislative action Tuesday.

Gov. Earl Ray Tomblin's Marcellus shale bill — the culmination of

two years of legislative debate, industry lobbying and public outcry — appears likely to pass the full Legislature today.

Tomblin's bill, with few changes, passed the Senate Tuesday 33-0.

After that, the House Judiciary Committee took up the Senate-approved version. The committee considered numerous amendments but made only minor changes. After six hours of debate and tweaking, the committee voted to recommend that the full House pass the bill.

The measure now appears likely to pass the House and the Senate as early as today, handing Tomblin a

major legislative victory.

Members of the House committee met privately most of Tuesday morning and ended up canceling a 9 a.m. public meeting so they could continue to huddle behind closed doors.

Delegates Barbara Evans Fleischauer, D-Monongalia; Mike Manypenny, D-Taylor; Linda Longstreth, D-Marion; and Woody Ireland, R-Ritchie, appeared to have the most concerns.

When the committee finally met in public in the early afternoon, Fleischauer spent an hour and 21 minutes asking questions that made

clear she did not think Tomblin's bill went far enough to protect the environment.

The gas industry is placing enormous bets on the profitability of the Marcellus shale gas field, and state officials hope a boom will rejuvenate the state economy. But getting to the gas requires using the so-called fracking technique, a process that uses massive amounts of water laced with chemicals to help release the gas from the rock.

Environmentalists and some lawmakers say Tomblin's proposal is

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too friendly to the gas industry. They say Tomblin removed some of the regulatory teeth from a draft bill approved last month by a 10-member joint House and Senate committee.

Industry lobbyists and Tomblin's aides managed to prevent major changes to the bill.

At times, Judiciary Committee Vice Chairman Mark Hunt, D-Kanawha, urged his fellow House members to reject amendments, citing opposition from the Governor's Office.

"What we're trying to do tonight is to not Christmas tree this bill," Hunt said. Minutes later he said his goal was not to be "over-draconian."

In the end, the Judiciary Committee considered 17 amendments and approved eight. None of them were considered deal breakers, and most had the stamp of approval from the Governor's Office, the industry or both.

During Fleischauer's lengthy questioning and as lawmakers

considered doomed amendments from Manypenny and Longstreth, some industry lobbyists shifted impatiently and muttered derisively on the sidelines.

Perhaps the most significant change to Tomblin's bill was to reinsert criminal penalties for people and companies caught violating the new rules. Other sections of the law governing quarries, coal mines and air quality all have criminal penalties, said Joe Altizer, an attorney for the judiciary committee.

Tomblin's office intentionally took out the criminal penalties, said Tomblin chief of staff Rob Alsop. He said the Governor's Office felt some of the activity was criminal under federal law.

Lawmakers apparently did not agree, and the Governor's Office agreed to support the penalties, which make violations of the rules a misdemeanor punishable by up to a year in jail, a \$5,000 fine or both.

Also approved: The bill would now prevent gas companies from disposing of drill cuttings on property without landowners' permission. Regulators also would need to post public comments about well permits online.

The committee also adopted two amendments by Delegate Meshea Poore, D-Kanawha. The first added new requirements to a study the Legislature wants to be conducted on gas industry employment. The one-time study replaced a controversial plan backed by labor unions

that would have required companies to regularly report how many out-of-state workers they employed.

Poore's amendment required the study to look at the number of minorities and veterans being hired. Poore said she did not know how the study would be done.

Poore's second amendment encouraged the state to focus on training minorities for gas industry jobs. The proposal was a watered-down version of an apprenticeship program she had asked for earlier in the day. Alsop said the state did not have the money for such a program.

Despite the amendments that were approved, lawmakers rejected the most significant amendments, in part because they might have imperiled the bill.

One, backed by Delegate Mike Manypenny, D-Taylor, would have significantly limited the places gas companies could withdraw water and created a complex system to monitor water use. Manypenny said the amendment was in reaction to allegations that gas companies are dumping water — potentially laced with chemicals — into streams.

Lawmakers also rejected two attempts to keep multi-acre well pads farther from people's homes. The bill Tomblin introduced set the distance at 625 feet from the center of the well pad. But since some well pads can be 600 feet wide, the edge of the well pads might end up

being just over 300 feet from a house.

In a sort of compromise, lawmakers kept the 625 feet distance but ordered the Department of Environmental Protection to study whether light, noise, pollution and dust from drilling should force the pads to be kept farther away.

The industry pushed back against accusations that fracking can be linked with radioactivity, an allegation environmentalists have begun to press on.

Randy Huffman, DEP secretary, said neither his agency nor the U.S. Environmental Protection Agency had been able to find a link yet.

"We're not as concerned as before," Huffman said.

But he conceded there was concern — unaddressed by Tomblin's bill — about emissions from natural gas facilities.

"I am concerned about what we don't know about air quality," Huffman said. He said his agency needs data before it can know what, if anything, to do.

Fleischauer said she was worried there was a lot that regulators did not yet know about large-scale gas production. Fleischauer said there was a time when regulators did not know some of the dangers associated with coal mining and so did not do enough to protect coalfield communities.

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