Sept 2013: Mining and Energy Commission (Fracking) study reports are being forwarded to the NC Legislature, as required, by October 1.

The Legislature will consider recommendations and formalize in law, probably in 2014.

1. Compulsory Pooling Study Group recommendations

(a) Require that 90% of ACREAGE in the "gas drilling unit" must be under voluntary leases before a pooling order can be issued. NOTE: Maps in the study outlined a "random" 640-acre drilling unit in Lee County's "high probability" area that includes portions of a large subdivision. In this example even though the 90% leased acreage is achieved, about 51% of land owners (unleased) would be "forced" into the pool. In Lee County and Town of Sanford more than 80% of land parcels are 5 acres or less...lots of subdivisions, many small land owners.

(b) Cost share. Existing 1945 NC law exempts "compelled" owners from paying any production costs (called a free-ride). To increase "attractiveness" of NC to gas industry and encourage land owners to sign leases, the Study Group recommendsrepealing the "free-ride," and suggests three options for "compelled" owners:

Option #1—Pay a direct share of production costs as an "interest owner" as costs are incurred (pay as you go), then get full production royalties.

Option #2—Surrender "working interest" so that gas operator pays all production costs: Land owner gets bonus payment and some royalty interest.

Option #3—Assign"risk penalty" where gas operator and other interest owners pay all costs until production stage, but then the "compelled" owner must pay for their share of production, and could incur up to a 200% penalty. These owners would receive only 1/8 of their share of royalties until their portion of costs are fully recovered by the 7/8 royalty withheld.

The Study Group recommends that "compelled" owners of less than 10 acres should not be assessed a risk penalty.

(c) Landowner Protections. Require gas operator to provide a "fair and reasonable offer" to land owners prior to requesting a pooling order.

Require gas operator to obtain consent from the surface owner to "disturb and use" the surface, prior to requesting a pooling order.

Require gas operator to provide written notice (30 days before drilling) to every surface owner and mineral owner "forced" into a pool.

Require gas operator to provide written notice (30 days before drilling) to all holders of a mortgage lien on "forced" properties where the lien is recorded in the County Register of Deeds.

Require gas operator to provide specific and detailed production statements to accompany each royalty payment or working interest share.
Require automatic dissolution of drilling unit after one year if no production occurs after pooling order is issued.

(d) Give immunity to "compelled" owners from any action arising from the exploration or production activities on the owner's property, and require operator to defend against any third-party actions brought against the "compelled" owner.

(e) Recommend that Legislature revisit NC General Statute §1-49 that extinquished ancient claims for mineral rights on January 1986, unless certain conditions were met, including the requirement that each of the 100 counties published notice *[may not have happened]*. There are legal issues around "dormant" mineral claims and whether this statute can be challenged in court.

Note: Several non-voting members of the Study Group did not support Compulsory Pooling of unleased land owners; and one MEC voting member wanted the leased acreage threshold set at 95%. The Study Group agreed that Compulsory pooling should be limited. The Mining & Energy Commission (MEC) will set the area of the Drilling Unit based on the gas operator's permit application. MEC needs legislative authority to issue a Compulsory Pooling Order and assign the risk penalty percentages.

Full text: http://portal.ncdenr.org/c/document_library/get_file?uuid=7be9a2bd-fe8f-4910-a864-5d35a721ea4b&groupId=8198095

2. Local Government Study Group recommendations
In accordance with Legislative directive, local government ordinances cannot "prohibit" this industry. However, NC League of Municipalities and NC Association of County Commissioners do not want Legislature to erode local controls.
(a) Zoning. Local government should retain right to apply zoning and land-use authority to oil and gas industry, but only relating to surface use, not subsurface. Local zoning could implement "special use" permitting (ex. forestry districts, agricultural areas, family farms) and allow shale gas drilling on these same properties as another "special use" permit.

(b) Setbacks. Defers authority to State, and Mining and Energy Commission. Recommends giving MEC the legislative authority to grant variances if petitioned by *local governments*, adjacent property owners, or oil and gas developers. Setbacks refer to the surface area of well pad, well lateral lines, gathering lines and transmission lines. MEC Chair, Jim Womack, wants setbacks for "health and safety;" other environment considerations not included.

(c) Light, Noise, Odor. Local governments continue to handle these issues, but they should offer "variances" for time-limited needs. The gas operator "could" appeal to MEC if local government does not provide a variance. *[Reminder: Actual fracking is continuous 24-hour operation for 7 to 10 days, extreme high-decibel noise, continuous diesel truck traffic all day/night].* In a municipal Extraterritorial Jurisdiction (ETJ) the county ordinances for nuisance applies, not the town's.

(d) Water, Wastewater, Air Quality. Leave under State authority, and procedures. There is a new ambient air monitoring station in Lee County recently added to the State's network of 60 stations. It is downstream of the Wake County station and upstream of the existing Montgomery County station. Municipal wastewater collection systems "could" accept fracking wastewater if meet local standards for industrial pretreatment.

(e) Emergency Preparedness. Establish regional response team *[who pays?],* trained at Community College and industry-sponsored schools located in other states.

(f) Infrastructure Impacts on Municipal-Owned Roads. Municipalities should enter into "Excess Maintenance Agreements" with gas developers to ensure that their roads are maintained from considerable impacts of this industry. Municipalities "could" work with gas developers on permits regarding over-weight industry traffic: Post weight limits on city-owned roads; placement of infrastructure in municipal rights-of-way; truck routes and timing of truck operations. [NOTE: Outside of municipal jurisdictions all other roads are maintained by State DOT. Those "maintenance costs" will be captured in the "Funding and Sources of Revenue Study Group" report to the Legislature.]

(g) Gathering Lines. No entity, including public utilities statues, has jurisdiction. Need Legislation, but "should" be coordinated with local governments. *[Note: these pipelines are significant and can run for miles, crossing roads, multiple properties, probably streams.]*

(h) Taxes and local cost-recovery. *Defer to the "Funding and Sources of Revenue Study Group."* Local government has ad valorem taxation authority. Additionally, could tax mineral rights when resource is pumped from ground, tax wellpad equipment stored on-site, tax joint surface/mineral rights at time of future property sale.

Full text, http://portal.ncdenr.org/c/document_library/get_file?uuid=48665ab9-244f-4e94-ad75-6d338339ebf2&groupId=8198095

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