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House committee amends, passes Marcellus bill

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CHARLESTON — The House Judiciary Committee amended and passed the Senate's Marcellus gas regulation bill — SB 424, the Natural Gas Horizontal Well Control Act — Wednesday.

The committee kept some Senate provisions and included some of its own lifted from HB 2878, which it had set aside to take up the Senate bill. It also includes some new language based on conversations with various interest groups.

Some of the major points, in their order of appearance in the bill, are:

- Leases must contain a bold-faced warning, to be initialed, telling the parties that it's a binding contract.

- Well operators must provide surface owners 30 days notice before going on the property for any kind of work.

- The surface owner and operator may meet, at the owner's discretion, to discuss locations of wells, waste impoundments and such.

- It defines a "horizontal shallow well" as one using more than 210,000 gallons of water that begins vertical then becomes horizontal.

- The operator must obtain



a letter from the Division of Highways regarding bonding and road maintenance.

- Wells may not be drilled within 1,000 feet of a dwelling or water well without owner's consent.

- Wells must be more than 100 feet from a watercourse or body of water, and more than 1,000 feet from surface or underground public water supply intake. The Department of Environmental Protection (DEP) may waive restrictions if the operator plans additional protections.

- The DEP must inspect each site before a new phase of work begins. Landowners may request a pre-drilling or pre-alteration survey to test for the presence of fracking fluid chemicals.

- Operators must provide a list of chemicals in their fracking fluids — the committee changed wording to protect proprietary formulations — and maintain records of water use.

- Operators must provide a comprehensive water management plan for all phases of water withdrawal, drilling and reclamation.

- Declares it is "inherently unfair" and against public policy to permit pooling without an owner's consent.

- Looks to the possibility of Marcellus operations moving farther south and east by including language about safeguards for karst formations (soluble bedrock, such as limestone, often with many caves — most of Monroe County, for example, sits on karst). Committee counsel Joe Altizer noted most drilling is now in the north-central area. The counties in the karst formations have pristine waters, and drilling may require special precautions not specifically covered in the bill.

- Well operators, contractors and subcontractors must maintain a drug-free workplace policy with random drug testing.

- The DEP secretary must deliver a number of annual reports, including air pollution, worker safety, pits and impoundments.

- The DEP will propose rules for permit fees. The Senate fee schedule is removed.

- Delegate Mike Manypenny, D-Taylor, supported by Delegate Barbara Evans Fleischauer, D-Monongalia, succeeded in adding an

amendment requiring that inspectors be hired by the DEP, with regular civil service requirements. Well inspectors are now hired by the Oil and Gas Examining Board.

Fleischauer and Manypenny said the board's requirements — such as residency and years of experience — are so unreasonable they discourage people from applying and contribute to the inspector shortage.

The bill passed by voice vote — apart from the amendment there was no discussion and only one quiet no — and now goes to the House Finance Committee.

At the evening House session, leaders tried to waive the Finance Committee reference so they could pass the bill in three separate readings, but members objected. In order to pass it by Saturday, they will have to suspend the three-day reading rule after the Finance Committee approves it.

Legislators admitted it still isn't a finished product. Stakeholders will review it to propose more changes, and some kind of compromise bill will emerge when it goes to conference committee after returning to the Senate.