
North Carolina Senate Bill 820 (S820), the Clean Energy and Economic Security Act, was passed by the North Carolina legislature and vetoed by Governor Beverly Purdue (D) on July 1, 2012. The legislature quickly moved to override the veto on July 2, 2012, and did so successfully. The Act both secures the state and local economy and focuses on development of clean energy sources to reduce state reliance on “dirty” energy (i.e., non-renewable resources). S820 has five major provisions:

1. To “reconstitute the Mining Commission as the Mining and Energy Commission,”
2. To require said commission “and other regulatory agencies to develop a modern regulatory program for the management of oil and gas exploration and development activities in the state, including the use of horizontal drilling and hydraulic fracturing for that purpose,”
3. To “authorize horizontal drilling and hydraulic fracturing, but prohibit the issuance of permits for these activities pending subsequent legislative action,”
4. To “enlarge landowner and public protections related to horizontal drilling and hydraulic fracturing,” and
5. To “establish the joint legislative commissions energy policy.”

Although the final version of S820 legalized hydraulic fracturing (fracking), it prohibited the state from issuing fracking permits until the newly created Mining and Energy Commission (MEC) efficiently developed a “modern regulatory program for the management of oil and gas exploration...” A companion to S820 was introduced in February 2013. Senate Bill 76 (S76), the Domestic Energy Jobs Act, effectively removed a number of safeguards put into place by S820 in order to fast-track hydraulic fracking. After a few adjustments by state legislators, the bill provided for fracking permits to be issued on or after March 1, 2015. S76 passed the legislature with strong support and was signed into law by Governor Pat McCrory (R) in July 2013, just over one year after S820 attained final passage.

This analysis considers the content of S76 in the context of S820, examines potential flaws in S76, and explores what both pieces of legislation mean for North Carolina now and neighboring states in the future. Since one of the main objectives of both policies is to enhance economic growth and security, the analysis is particularly interested in the balance of individual and state rights, especially with regard to environmental issues.

OVERVIEW OF S76: THE DOMESTIC ENERGY JOBS ACT

S76 requires that the MEC and the Environmental Management Commission (EMC) review the exploration and drilling procedures and review the practice from a safety and resource standpoint. It also makes modifications to the MEC and EMC appointment processes. S76 directs the MEC and EMC to study development of oil and exploration permits, develop horizontal drilling and fracking methods as a use for energy sources, and provide oil and gas exploration and horizontal drilling and fracking permits by March 1, 2015. The purpose of S76 is thus to allow new methods of obtaining natural resources,

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including drilling and fracking, while also placing some restrictions on such activities. In particular, S76 requires developers to obtain a permit (dependent on the state developing rules on issuance), landmen registry, and severance taxes.

**Regulatory Changes**

Upon closer reading of both S820 and S76, there appear to be loopholes in safety procedures and environmental protection, especially with regard to fracking. From a legislative perspective, there are several discrepancies. First, S76 overrides existing environmental protections. It prohibits the Department of Environment and Natural Resources (DENR) from constructing regulations that would interfere with horizontal drilling or fracking. This means that if scientists discovered sufficient evidence of environmental endangerment linked to fracking, DENR would not be able to introduce rules to prevent fracking from continuing. The legislation also grants the issuance of fracking permits beginning in March 2015, regardless of the status review, or approval of the MEC’s developing regulatory framework. This could cause a conflict of interest between the DENR, MEC, and EMC, not to mention potential violation of landowners’ rights and concerns about environmental and public health. This would be particularly problematic if DENR had proof that fracking posed severe harm to health and sustainability, but was unable to enforce regulations that could prevent such harm.

S76 also contains vague language that leaves some provisions open to varying interpretations. The public outcry that followed the passage of S76 indicates that citizens may be concerned that the state’s interpretation of the law will result in the removal of fracking regulations and safeguards. A number of concerns may be raised: first, the policy overrides existing environmental protection by prohibiting DENR from constructing regulations that would interfere with horizontal drilling or fracking. Thus even if there were sufficient evidence of environmental endangerment linked to fracking, DENR would not be able to introduce rules to correct this potential danger. The legislation also grants the issuance of fracking permits beginning in March 2015 regardless of the status, review, or approval of the MEC’s developing regulation framework. In both instances, the legislation appears to revoke a state department’s position to uphold its division’s purpose. The bill appears to lay out a clear conflict of interest: the state protecting businesses who are seeking to drill and frack at the expense of citizens’ preferences and environmental health.

**State Geologist and MEC Appointments**

In addition to overriding existing environmental protections, S76 contains provisions to “Modify appointments to the mining and energy Commission.” What the bill actually does is to eliminate the position of State Geologist and alter procedures for making appointments to the MEC, putting more power in the hands of elected officials. Removing the geologist position is of particular concern, given that individual’s expertise and ability to make scientific judgments about the geological impacts of fracking.

**Protection for landowners**

S76 also fails to protect property and landowners, especially when read alongside S820, Sec. 2(c), which allows forced pooling for property owners who do not want to lease their land for drilling. S76 itself alters even more landowner rights by repealing the Landmen’s Registry, which provides landowners...
with protection from disreputable “landmen” whose aim is to persuade landowners to sign unfavorable leases with the fracking industry.

**Local Control**

S76 results in less local control over oil and gas extraction. This is especially hazardous as federal and state laws scale back vital safety regulations for natural gas and oil extraction. This may be the largest flaw in the legislation. If the local government has little to no say in how to operate or regulate a potentially dangerous and environmentally harmful industry, there will fragmentation in public health and safety and environmental services and policy. Of particular concern at the local level is the issue of fracking waste disposal. Since groundwater protection exemptions may be issued under S76, there is little structure and organization in planned chemical-waste disposal, and fracking waste could be disposed of without any local approval or authority.

**CONCLUSION AND POLICY RECOMMENDATIONS**

S76 impacts a number of stakeholders, including local governments, property owners, and citizens. During the legislative process for both S820 and S76, there was very little public support; indeed, there was a huge public outcry and backlash. Citizens were most concerned about environmental and human health consequences that would not only strip the rights of individuals, but might also eventually harm industry in the state.

Although S820 is not ideal legislation, it is superior to that of S76. The organization and outlined structure of precautions, regulations, and local control are much clearer in S820, and provide greater benefit to a wider number of stakeholders. Thus policymakers in North Carolina should consider repealing the Domestic Energy Jobs Act (S76) and returning to the clearer, more balanced policy prescriptions laid forth in the Clean Energy and Economic Security Act (S820).

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POLI 459 – Social Policy, December 2013