



Hydraulic Fracturing – The Case for State Regulation

Environmental Issue or Revolutionary Technological Discovery?

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The technique of extracting natural gas from deep, dense sedimentary rock formations (shale) using a high pressure water and sand mixture is commonly known as “hydraulic fracturing” or simply “fracking.” While the general concept of fracking has existed for the past 60 years,¹ the current advancements in technology using high volume horizontals (as opposed to the traditional

shallow vertical wells) have only been available since approximately 2007. As new methods of fracking evolve and the practice increases in various areas of the United States, legislatures and citizen action groups are scrambling to address alleged environmental concerns and establish laws to regulate and govern the use of this technology.

As companies seeking to utilize this technology turn attention toward Michigan, both local and state government representatives are assessing the law and how it may impact the future of fracking activity within our State. It

¹ Fracturing was first employed in Michigan in 1952. There are currently more than 12,000 wells throughout the Lower Peninsula.

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appears that many local governments may exercise their police powers to regulate or even prohibit fracking within their boundaries. Given the possibility of a patchwork of conflicting local rules, ordinances and regulations—and the likelihood that some local governments will attempt to simply prohibit fracking—this article will examine the need for the legislature to evaluate and expand the present regulatory scheme and approval process for fracking wells that would allow local governments to provide input, but limit their ability to prohibit fracking outright, similar to those in place for electric transmission, gas pipelines, and wind energy under Act 30 of 1995 (Act 30), Act 9 of 1929 (Act 9) and Act 295 of 2008 (Act 295).

I. Local Resolutions and Ordinances

There is currently no general federal regulation of fracking that would preempt state or local regulation. In Michigan, Part 615 of the Natural Resources Environmental Protection Act² gives the Supervisor of Wells—housed within the Michigan Department of Environmental Quality (MDEQ)—authority to regulate certain aspects of fracking. Indeed, the MDEQ has recently proposed rules that will expand MDEQ's regulation of fracking in order to address public health and safety concerns, including addressing issues related to disclosure of chemical information.³ But Part 615 and the regulations promulgated under Part 615 do not preempt all local police powers. Indeed, although not in the fracking context, the Michigan Supreme Court has concluded that the Supervisor of Wells' jurisdiction "does not extend to all aspects of the production process."⁴ This means that, while a local government may not be able to regulate issues covered by Part 615 and MDEQ regulation, local governments still have authority to exercise certain police powers to impact and regulate fracking—including activities ancillary to fracking.⁵ For example, while generally a municipality may not completely exclude a particular land use, it is possible to justify certain exclusions based on health, safety and welfare concerns and to regulate in areas not

otherwise pre-empted, so long as such regulation is in furtherance of a reasonable governmental interest and is not arbitrary and capricious.⁶

The lack of federal or state preemption has caused many local governments to directly address the effects of fracking in their communities. As of June 11, 2014, an estimated 15 local governments in Michigan have passed resolutions in support of state or national restrictions on fracking.⁷ Most of these resolutions have called for either outright bans on fracking or moratoriums until further research can be conducted on the risks.

A few local governments have gone further by passing resolutions or ordinances that attempt to regulate or discourage fracking activity within their borders. These local governments include the townships of Cannon, Courtland, Mayfield, and West Bloomfield. The townships of Cannon and Courtland passed almost identical moratoriums on any actions by the township that relate to "applications, proposals, [or] requests for zoning approval, zoning or other permits, or similar review and approval by the Township of any oil or gas well, or facilities or operations ancillary to the operation of such wells which are subject to Township regulation."⁸ The moratoriums for Cannon and Courtland stated that the moratoriums were "not intended to infringe upon the jurisdiction reserved to state or federal agencies

2 MCL 324.61501 et seq.

3 MDEQ's proposed rules are available at: <http://www7.dleg.state.mi.us/orr/Rules.aspx?type=dept&id=EQ>.

4 Addison Twp v Gout, 435 Mich 809, 813; 460 NW2d 215 (1990).

5 See R. Hammersly & K. Redman, "Local Government Regulation of Large-Scale Hydraulic Fracturing Activities and Uses," Mich Bar J, June 2014, pp 37-38 (proposing that there is "still ample room for carefully designed and reasonable local regulation of these types of activities, facilities, and uses").

6 Houdek v Centerville Twp, 276 Mich App 568; 741 NW2d 587 (2007); Robinson Twp v Knoll, 410 Mich 293; 302 NW2d 146 (1981); MCL 125.3207.

7 The fifteen local resolutions that were identified were in Burleigh Township (05/17/2012), Cross Village Township (03/06/2012), Dearborn Heights (09/25/2012), Detroit (07/22/2011), Ferndale (09/12/2011), Heath Township (10/08/2012), Ingham County (05/14/2012), Orangeville Township (07/02/2012), Reno Township (05/14/2012), Southfield (05/14/2012), Thornapple Township (04/26/2012), Waterford Township (07/23/2012), Wayne County (07/22/2011), Yankee Springs Township (05/10/2012), and Ypsilanti (09/18/2012). Copies of these resolutions are available at <http://www.foodandwaterwatch.org/water/fracking/fracking-action-center/local-action-documents/>.

8 Township of Cannon, Resolution No. 2013-17, Moratorium on Issuance of Permits for Oil and Gas Related Activities, available at http://documents.foodandwaterwatch.org/doc/Frack_Actions_CannonTownshipMI.pdf#_ga=1.201585617.197767249.1402443680. For reference of the resolution in meeting minutes, see http://www.cannontwp.org/egov/documents/1391550342_87366.pdf; Township of Courtland, Resolution No. 2013-08, Moratorium on Issuance of Permits for Oil and Gas Related Activities, available at http://documents.foodandwaterwatch.org/doc/Frack_Actions_CourtlandTownshipMI.pdf#_ga=1.38395875.197767249.1402443680.



which have exclusive jurisdiction over such subjects.” The moratorium for Courtland is still active, while Cannon’s was set to expire no later than June 13, 2014.⁹

West Bloomfield’s moratorium targeted all actions by the township on “applications, proposals, requests, permits, approvals, zoning compliance or certificates regarding drilling operations in the Township.”¹⁰ The moratorium also stated that “during the moratorium period, no drilling operation shall be allowed in the Township.”¹¹ The moratorium was initially passed on September 1, 2012 for a period of six months.¹² It was then extended for another year through February, 2013.¹³

Mayfield Township passed an ordinance that could be relevant to fracking activity even though it targets injection wells rather than wells where gas is extracted.¹⁴ (Injection wells are used to deposit wastewater from fracking operations, among other things, and can be far from the fracking sites.¹⁵) The ordinance requires that special use permits be obtained for the operation of injection wells, and the permits are contingent on the operator comply-

ing with a number of regulatory criteria.¹⁶ These criteria include: (1) providing a yearly report of the waste stream; (2) allowing Mayfield to conduct random samples of the waste stream; (3) conducting a groundwater analysis from at least three wells placed near the proposed well; and (4) conducting soil tests near the proposed well.¹⁷

II. Potential Regulations on the Horizon

In addition, a number of local governments have initiated the process of developing regulations that target fracking activities. Several more local governments, including Cannon, Conway, Gun Plain, and West Bloomfield Townships have expressed a general interest in developing local regulations.¹⁸ Three out of these four townships are participating in a program administered by the FLOW organization called “FLOW Local Ordinance Program,” which claims to provide “technical planning assistance to Michigan townships interested in crafting ordinances to regulate the ancillary industrial processes of fracking.”¹⁹

III. Other States’ Actions

Local governments’ actions in other states have demonstrated that Michigan is not alone in grappling with localized regulation of hydrofracking. Despite a New York statewide moratorium on fracking that has been in place since 2008, several municipalities in New York have banned fracking activity within their borders (presumably to have the bans in place if the moratorium is suddenly lifted).²⁰ The fracking bans for two towns are facing legal challenges,²¹ which

9 For reference to the expiration of Cannon’s moratorium, see meeting minutes for Cannon Township board meeting on Jan 13, 2014, available at http://www.cannontwp.org/egov/documents/1391550342_87366.pdf.

10 Township of West Bloomfield, Resolution Continuing and Extending Moratorium on All Natural Resource Exploration and Extraction Activities in the Township, Feb 11, 2013, available at http://documents.foodandwaterwatch.org/doc/Frack_Actions_WestBloomfieldTownshipMI.pdf.

11 *Id.*

12 See Township of West Bloomfield, Resolution Continuing and Extending Moratorium on All Natural Resource Exploration and Extraction Activities in the Township, Feb 11, 2013, Exhibit #11, available at http://documents.foodandwaterwatch.org/doc/Frack_Actions_WestBloomfieldTownshipMI.pdf.

13 See Township of West Bloomfield, Resolution Continuing and Extending Moratorium on All Natural Resource Exploration and Extraction Activities in the Township, Feb 11, 2013, available at http://documents.foodandwaterwatch.org/doc/Frack_Actions_WestBloomfieldTownshipMI.pdf.

14 Mayfield Township, Class I Injection Well Ordinance, adopted Oct 11, 2010, available at <http://flowforwater.org/wp-content/uploads/2013/07/5770.00-Mayfield-Township-SUP-Ordinance-8-19-10L.pdf>. See generally <http://www.acmetownshiparchives.info/agendas/Packets/PC/12-17-12/Groundwater%20Maps.pdf>.

15 Drillers Begin Reusing ‘Frack Water,’ The Wall Street Journal, Nov 20 2012, available at <http://online.wsj.com/news/articles/SB10001424052970203937004578077183112409260>.

16 Mayfield Township, Class I Injection Well Ordinance, adopted Oct 11, 2010, available at <http://flowforwater.org/wp-content/uploads/2013/07/5770.00-Mayfield-Township-SUP-Ordinance-8-19-10L.pdf>.

17 *Id.*

18 See FLOW, FLOW Local Ordinance Program Brings Fracking Protection to Two Michigan Townships, available at <http://flowforwater.org/wp-content/uploads/2013/05/2013-05-23-Township-Fracking-Ordinance-FLOW-Program-press-release.pdf>; FLOW, FLOW Local Ordinance Program Addresses Fracking Impacts in Conway Township, MI, available at <http://flowforwater.org/wp-content/uploads/2014/02/2014-02-10-Conway-Township-1st-meeting-press-release.pdf>.

19 FLOW, Enacting Township Ordinances to Protect Communities from the Impacts of Fracking, <http://flowforwater.org/wp-content/uploads/2014/02/2013-12-03-fracking-program-overview-ONLY.pdf>.

20 <http://www.bloomberg.com/news/2014-06-03/cuomo-ponders-drilling-as-fracking-bans-reach-top-court.html>.

21 Matter of Norse Energy Corp USA v Town of Dryden, 108

were being considered in the state's highest appellate court at the time this article was being written.²²

The two municipalities whose bans are the subject of the legal challenges are Drydan and Middlefield. The challenges to both bans center on whether the bans are preempted by New York's Oil, Gas, and Solution Mining Law,²³ which regulates oil and gas extraction in New York. This statute states that "[t]he provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; *but shall not supersede local government jurisdiction over local roads* or the rights of local governments under the real property tax law."²⁴ The bans in both townships were in the forms of amendments to zoning ordinances. For Drydan, the zoning ordinance was amended to ban all activities involving the extraction, production, and storage of oil and natural gas.²⁵ For Middlefield, the zoning ordinance made oil, gas, and solution extraction activities prohibited land uses.²⁶

In both cases, the New York Supreme Court (the intermediate appellate court in New York) dismissed the challenges to the bans, finding that the New York statute neither expressly nor impliedly preempted the locality's power to prohibit oil and gas related activities through their zoning ordinances.²⁷ For the question of express preemption, the court analyzed the text and legislative history of the New York statute,²⁸ concluding that the statute: (1) primarily sought to regulate the *operational* aspects of oil and gas activities, and (2) did not seek to "usurp the authority traditionally delegated to municipalities to establish permissible and prohibited uses of land within their jurisdictions."²⁹

For the question of implied preemption, the court held that the local bans did not conflict with the provisions or policy of the New York statute. The court again

noted that the state statute focused on the operational aspects of oil and gas activities rather than land use considerations.³⁰ The court also disagreed with the challengers' assertion that the state statute intended to maximize the recovery of oil and natural gas within the state and that the local bans interfered with that goal.³¹ The court asserted that *minimizing waste* of oil and gas resources, which is an explicit goal of the statute, does not equate to *maximizing recovery* of oil and gas resources without regard to land use considerations.³²

In June, 2014, the decision of the lower courts was affirmed by New York's highest court, which upheld local bans on hydrofracking, holding that the state's oil and gas mining law does not trump local zoning laws.³³

The Drydan and Middlefield cases are being closely watched by both opponents and advocates of hydrofracking, especially since it has been reported that more than 75 municipalities in New York have banned fracking, and New York's governor has said that the statewide moratorium will be reconsidered in the next few years.³⁴

Similarly, Pennsylvania's Act 13 of 2012 amended the Pennsylvania Oil and Gas Act by repealing certain parts of the Act and adding provisions affecting a wide variety of policies related to oil and natural gas extraction, production, and use.³⁵ Most relevant to this article was the addition of Chapter 33, which prohibited all local regulations that directly regulate oil and gas operations (section 3303).³⁶ Chapter 33 also provided uniform requirements for all local zoning ordinances within the state as they relate to oil and natural gas operations (section 3304).³⁷

In *Robinson Twp v Commonwealth*, Act 13 was challenged by a group of citizens, organizations, and

AD3d 25 (NY App Div 3d Dep't 2013); *Cooperstown Holstein Corp v Town of Middlefield*, 106 AD3d 1170 (NY App Div 3d Dep't 2013).

22 *Id.*

23 NY CLS ECL § 23-0301 et seq. (emphasis added).

24 NY CLS ECL § 23-0303(2).

25 *Matter of Norse Energy Corp*, 108 AD3d at 27-28.

26 *Cooperstown Holstein Corp*, 106 AD3d at 1170.

27 See *Matter of Norse Energy Corp*, 108 AD3d at 38; *Cooperstown Holstein Corp*, 106 AD3d at 1171.

28 See *Matter of Norse Energy Corp*, 108 AD3d at 31-36.

29 *Id.* at 34; *Cooperstown Holstein Corp*, 106 AD3d at 1171 (citing the analysis from *Matter of Norse Energy Corp*).

30 *Id.*; *Cooperstown Holstein Corp*, 106 AD3d at 1171 (citing the analysis from *Matter of Norse Energy Corp*).

31 *Matter of Norse Energy Corp*, 108 AD3d at 34 (distinguishing between the statute's goal of minimizing waste and the concept of maximizing total oil and gas recovery within the state); *Cooperstown Holstein Corp*, 106 AD3d at 1171 (citing the analysis from *Matter of Norse Energy Corp*).

32 *Matter of Norse Energy Corp*, 108 AD3d at 37-38.

33 Importantly, the language of the New York statewide mining laws did not contain the strong pre-emption language of Michigan's regulatory statutes, such as Act 30 and Act 295.

34 <http://www.bloomberg.com/news/2014-06-03/cuomo-ponders-drilling-as-fracking-bans-reach-top-court.html>.

35 See *Robinson Twp v Commonwealth*, 83 A3d 901, 915 (Pa 2013).

36 58 PaCS § 3303.

37 58 PaCS § 3304.

localities.³⁸ The plaintiffs asserted that Act 13 violated five provisions of the Pennsylvania Constitution as well as the separation of powers doctrine and due process clause of the U.S. Constitution.³⁹ After the Pennsylvania Commonwealth Court found certain provisions of Act 13 unconstitutional, the case was appealed to the state supreme court. The state supreme court held that both the prohibition on local regulations directly regulating oil and gas (section 3303) and the zoning ordinance requirements (section 3304) were unconstitutional. However, the court failed to issue a majority opinion.

A plurality of the court held that sections 3303 and 3304 were unconstitutional because they violated Article I, Section 27 of the Pennsylvania Constitution.⁴⁰ Referred to as the "Environmental Rights Amendment," Article I, Section 27 states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.⁴¹

The plurality found that section 3303's prohibition on local regulations directly regulating oil and gas "commands municipalities to ignore their obligations under Article I, Section 27."⁴² The plurality noted that the Pennsylvania legislature cannot "remove necessary and reasonable authority from local governments" that local governments use to carry out their "constitutional duties."⁴³

For section 3304's zoning ordinance requirements, the plurality provided two primary reasons for finding

them unconstitutional. The first was that, due to the differing terrain and natural conditions from one municipality to another, the statewide requirements for zoning ordinances were incapable of protecting certain constitutionally protected aspects of the environment (e.g. as it related to the quality, quantity, and well-being of natural resources), given their failure to take specific local conditions into account.⁴⁴ The second (and related) reason was that the failure to take local conditions into account would result in more of a burden on certain properties and communities than others, resulting in a disparate impact that would conflict with Pennsylvania's duty under Article I, Section 27 to act as a trustee of natural resources "for the benefit of all the people."⁴⁵

The justice who voted with the plurality on the unconstitutionality of Act 13 but disagreed with the plurality's reasoning asserted that Act 13 was unconstitutional because it violated substantive due process rights granted by the Pennsylvania Constitution as well as the Fifth and Fourteenth Amendments of the U.S. Constitution.⁴⁶ This justice's concurring opinion argued in part that municipalities have a constitutional obligation to enforce "ordered zoning" to protect property owners from being unduly burdened by their neighbors.⁴⁷ The concurrence found that Act 13 substitutes "irrational classifications" for the constitutionally-sound zoning scheme that would ordinarily apply to oil and gas operations in Pennsylvania.⁴⁸

There were two dissenting opinions in *Robinson*, which both argued that Act 13 was well within the Pennsylvania legislature's policymaking purview (particularly given the high-level of deference that the judicial branch has traditionally afforded to the policy choices of legislatures).⁴⁹ In addition, the dissenters emphasized that municipalities in Pennsylvania are creatures of the legislature (as provided by the Pennsylvania Constitution) whose power to regulate land is granted exclusively by the legislature.⁵⁰ Therefore, the dissenters argued, it is illogical to find that a municipality has a constitutional entitlement to regulate land use that trumps the legislature's power to regulate land use.⁵¹

38 *Robinson Twp v Commonwealth*, 83 A3d 901, 917-25 (Pa 2013).

39 *Id.* at 915-16. Plaintiffs also asserted that Act 13 was unconstitutionally vague. *Id.* The five provisions of the Pennsylvania Constitution alleged to be violated were: "Article I, Section 1 (relating to inherent rights of mankind); Article I, Section 10 (relating in relevant part to eminent domain); Article I, Section 27 (relating to natural resources and the public estate); Article III, Section 3 (relating to single subject bills); and Article III, Section 32 (relating in relevant part to special laws)." *Id.*

40 *Id.* at 977-82.

41 Pa Const Art I, § 27.

42 *Robinson Twp*, 83 A3d at 978.

43 *Id.* at 977-78.

44 *Id.* at 979.

45 *Id.* at 980 (quoting Pa Const Art I, § 27).

46 *Id.* at 1008.

47 *See id.* at 1001-04.

48 *See id.* at 1001-08.

49 *See id.* at 1009-16.

50 *See id.* at 1010-11, 1015.

51 *See id.*

From the foregoing, it is clear that conflicting ordinances and rules as well as related legal disputes may arise to create a patchwork of conflicting precedent and laws relating to hydrofracking regulations. There is also conflict as to issues relating to preemption and State governance over conflicting local zoning regulations.

IV. The Need for a Centralized Optional System

Other states' experiences with local government actions indicate that the recent steps taken by local governments in Michigan are likely just the beginning. Any time a large number of local governments begin attempting to regulate a publicly controversial and complex issue like fracking, there is significant risk that such actions create a patchwork of conflicting ordinances and rules. In other words, each local government might have its own different ordinances and rules applicable to fracking—each with its own nuances. Such a process welcomes a statewide centralized solution that allows private industry to have uniformity while also allowing local governments to have significant input. Unlike the New York and Pennsylvania situations discussed above, such a solution is possible under Michigan law.

In Michigan, local units of government have no inherent authority on their own to regulate zoning. The State must specifically grant them authority.⁵² Furthermore, a local government's ability to enact ordinances is limited by statutory enactments. As the Supreme Court in *People v Llewellyn* held:

A municipality is precluded from enacting an ordinance if 1) the ordinance is in direct conflict with the state statutory scheme, or 2) if the state statutory scheme pre-empts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation.⁵³

Similarly, the Michigan Supreme Court has confirmed that although the Michigan Constitution grants local governments control over "highways, streets, alleys, and public places"⁵⁴ any regulation passed under this authority "cannot impinge upon matters of statewide con-

cern nor can a municipality regulate in a manner inconsistent with state law."⁵⁵ In *City of Taylor v Detroit Edison Co*, the plaintiff city passed an ordinance that required the underground relocation of electric utility lines along Telegraph Road at the electric utility's cost.⁵⁶ Under statutory authority granted to it by the Michigan Public Service Commission Act⁵⁷ (the MPSC Act), however, the MPSC had promulgated rules governing the replacement of existing overhead distribution lines.⁵⁸ The electric utility challenged the City of Taylor's ordinance, claiming that it conflicted with the MPSC's rules.⁵⁹ The Supreme Court recognized that "if" a state law conflicts with a local ordinance, the local ordinance must cede. Although the Court transferred the case to the MPSC to ultimately determine if there was a conflict between the ordinance at issue and the MPSC's rules, in so doing, the Court pronounced that "a local unit of government may exercise control over its 'highways, streets, alleys, and public places' as long as that regulation does not conflict with state law."⁶⁰ In other words, if the Commission found that the City of Taylor's ordinance conflicted with the MPSC's rules, the City's ordinance would be invalid.

Based on the holdings from *Llewellyn* and *City of Taylor*, it is possible for the Legislature to establish a process overseen by a state agency allowing entities seeking to establish new wells the option to apply for a certificate that would preempt local regulations and rules impacting fracking. Such legislation would specifically provide that if a certificate were issued by the agency, that certificate takes precedence over local ordinances, rules, and regulations regulating fracking locations or operations, but also allow the agency to place limiting conditions on a certificate. While the specific factors the legislation should direct the agency to consider are beyond the scope of this article, such a process should require that an applicant identify all local regulations and ordinances sought to be preempted, and require the applicant to provide local residents and the local government with notice of the application. This would allow the local governments to defend their interests and request that the agency either deny the certificate or place limiting conditions on the certificate.

55 *City of Taylor v Detroit Edison Co*, 475 Mich 109, 118; 715 NW2d (2006).

56 *Id* at 118-19.

57 PA 3 of 1939, MCL 460.6.

58 *Id* at 118.

59 *Id*.

60 *Id* at 108.

52 *Lake Township v Sytsma*, 21 Mich App 210, 212; 175 NW2d 337 (1970).

53 *People v Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977).

54 Mich Const 1963 Art 7, § 29.



This process would balance development and economic interests with the local concerns over fracking. Importantly, a similar framework is currently in place before the Michigan Public Service Commission for other important infrastructure projects, and the process has worked well in recent years.

Act 30 provides one approach to state legislation that would further uniform regulation of fracking. The history of Act 30 provides some insight into such an approach. In 1995, the Legislature determined that electric transmission lines were so important that the State should create a centralized siting authority. Before Act 30, transmission line projects were governed by a localized process that resulted in a patchwork of differing regulations. At that time, transmission line projects exposed “multi-county projects, *designed primarily for the economic benefit of the state*, to the construction and siting whims and uncertainties of each local jurisdiction traversed by the planned transmission line.”⁶¹ Accordingly, a “[s]tate-level siting authority would be preferable to what they consider a patchwork of regulations, and would ensure the uniform balancing of competing interests.”⁶² In other words, the Legislature, recognizing the statewide importance of transmission projects, determined that in certain instances, a centralized siting authority should be able to consider evidence and issue an order taking precedence over a patchwork of local regulations aimed at stopping transmission line projects. Any applicant must provide the local government and local landowners with notice of its application, and the Michigan Public Service Commission may place conditions on any certificate. Under Act 30, when a utility obtains a certificate of public convenience and necessity, pursuant to the requirements of the Act, “that certificate shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or

regulates the location or construction of a transmission line for which the commission has issued a certificate.”⁶³

Act 295 includes a similar process for transmission lines enabling wind potential in Michigan’s wind zones. Act 295 contains similar language to Act 30, in that if a certificate is granted under Act 295, it preempts local ordinances, laws, rules and regulations which regulate the location or construction.⁶⁴

Act 30 and Act 295 serve as perfect examples of ways to address and protect local concerns while dealing with important state issues when developers face a patchwork of local regulations. Should local governments’ interest in regulating fracking and issues ancillary to fracking continue, the Legislature should follow a similar procedure for fracking wells.

V. Conclusion

Michigan has a significant opportunity to be in the forefront of state wide legislation with respect to new fracking technologies. To ensure that our State has a consistent and streamlined approach to this practice, we need a clear statutory scheme that: (1) provides for technical oversight at a state agency, and (2) allows for preemption over conflicting local ordinances, laws, rules and regulations while still permitting local governments to protect their interests; and (3) avoids a patchwork of conflicting local laws and standards. Given the current framework in place for high voltage transmission lines, there is a precedence to establish similar legislation within the fracking arena, which will place Michigan among the leaders nationally in addressing these modern technological advancements.

61 Senate Majority Policy Analysis: Electric Line Certification, Tom Atkins, SB 408, March 22, 1995 (emphasis added).

62 *Id.*

63 MCL 460.570(1).

64 MCL 460.1153(4).