FAST FACTS

From the House Appropriations Committee

JOE MARKOSEK, DEMOCRATIC CHAIRMAN **UPDATED December 5, 2011**

UPDATED: Watered Down Impact Fee: Boiling Down HB 1950

After adopting several amendments in the House, House Bill 1950 printer's number 2777 still mirrors the small, locally implemented "impact fee" presented by Gov. Corbett in early October. This bill also provides for regulations related to well safety and setbacks from waterways. It also changes bonding requirements. Check www.hacd.net for additional information on the impact from Marcellus Shale natural gas extraction.

Summary of the Impact Fee Proposal

House Bill 1950 authorizes counties individually to enact a gas well impact fee on "unconventional" wells that are developed but not plugged. Unconventional wells are essentially, wells that employ horizontal boring and fracking processes. Under HB 1950, the maximum fee per well is:

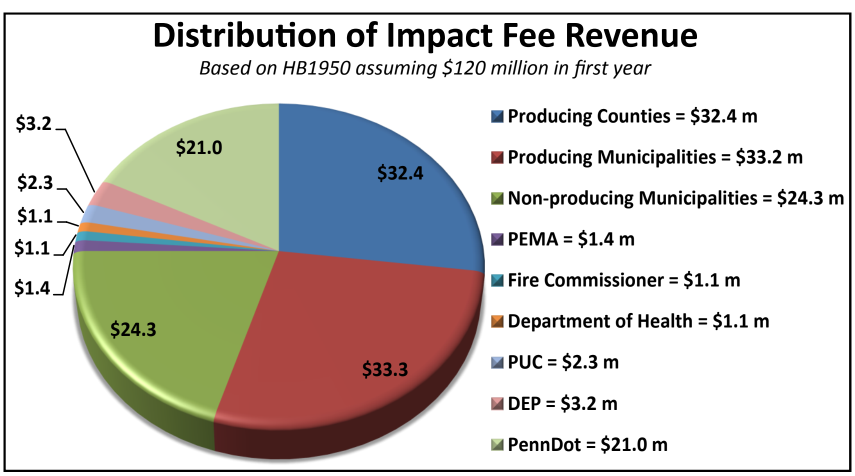
- $40,000 in year one,
- $30,000 in year two,
- $20,000 in year three, and
- $10,000 per year in years four through 10.

The distribution of revenues would be split:

- 75 percent to host counties and their municipalities, and
- 25 percent among six state agencies to be used for shale related development.

According to the governor's estimate the fee could generate $120 million in the first year and up to $195 million by the sixth year.

This proposal for a locally implemented impact fee **allows the governor to avoid taking responsibility for enacting a fee by pushing the decision to each county.** Forcing counties to make a tough decision on whether to enact a fee **will result in a disjointed and non-uniform system.** Some gas-producing counties might decide to opt out in hopes of drawing development away from neighboring counties, or it might not be worth the trouble for counties that have a small number of wells. Counties might also opt for a fee rate lower than the maximum allowed, which will result in a complex patchwork system across the state. If counties opt out, or opt for lower rates, **the estimated $120 million in revenue will not be realized.**



HB 1950's county enabling approach is **not business friendly or efficient** for collecting and enforcing fees, because:

- Each drilling company would need to track the various rates in each county and remit separate payments to each county in which it operates.
- Counties that initially opt out could institute the fee in the future with very little notice.

- Each county that opts for the fee will incur its own set of administrative costs, which in some cases could be significant or prohibitive.

Who Gets a Piece of the Pie?

The **75 percent local portion** would be divided:

- 36 percent to gas-producing counties *(27.1 percent of the total)*,
- 37 percent to gas-producing municipalities *(27.8 percent of the total)*, and
- 27 percent to non-producing municipalities *(20.3 percent of the total)*.

The **25 percent state share** would be divided:

- 4.5 percent to the Pennsylvania Emergency Management Agency *(1.1 percent of the total)*,
- 3.75 percent to the State Fire Commissioner *(0.9 percent of the total)*,
- 3.75 percent to the Department of Health *(0.9 percent of the total)*,
- 7.5 percent to the Public Utility Commission *(1.9 percent of the total)*,
- 10.5 percent to the Department of Environmental Protection *(2.6 percent of the total)*, and
- 70 percent to the Department of Transportation (*17.5 percent of the total)*.

Counties and municipalities can **use the funds in any of the following ways**:

- roadway and bridge maintenance and repair,
- water, storm water and sewer maintenance, repair and construction,
- emergency preparedness,
- preservation and reclamation of water,
- records management and information technology,
- affordable housing projects,
- delivery of social services,
- assistance to county conservation districts,
- county or municipal planning,
- career and technical centers for oil and gas industry workers, or
- local tax reduction.

Estimated County* Share - Year One (in thousands, based on estimated $120 million revenue)		
County	Estimated Revenue	Percent of Total
ALLEGHENY	$ 43	0.1%
ARMSTRONG	$ 791	1.6%
BLAIR	$ 19	0.1%
BRADFORD	$ 6,001	23.1%
BUTLER	$ 957	3.0%
CAMBRIA	$ 34	0.2%
CAMERON	$ 72	0.2%
CENTRE	$ 400	1.6%
CLARION	$ 134	0.4%
CLEARFIELD	$ 710	2.5%
CLINTON	$ 421	1.5%
COLUMBIA	$ 25	0.2%
ELK	$ 270	1.1%
FAYETTE	$ 1,686	4.3%
FOREST	$ 23	0.1%
GREENE	$ 3,591	7.3%
INDIANA	$ 301	0.9%
JEFFERSON	$ 181	0.8%
LUZERNE	$ 31	0.2%
LYCOMING	$ 2,092	9.4%
MCKEAN	$ 314	1.2%
POTTER	$ 624	2.1%
SOMERSET	$ 112	0.5%
SULLIVAN	$ 244	1.7%
SUSQUEHANNA	$ 2,812	7.6%
TIOGA	$ 4,284	13.5%
WARREN	$ 26	0.0%
WASHINGTON	$ 4,268	9.2%
WESTMORELAND	$ 1,587	3.9%
WYOMING	$ 349	1.9%
Total	**$ 32,400**	**100.0%**

**** Only counties receiving revenue under HB 1950 appear on the list.***

The amount of anticipated **revenue from the HB 1950 impact fee is inadequate to address all items on the list** above, however the list of uses appears to cover all of the currently known bases related to mitigating the impact that gas drilling has on the environment and the neighboring communities.

While local tax reduction is an admirable goal, long-established local taxes are not a direct result of the impact from natural gas drilling and, therefore, one could argue should not be affected by the impact fee in HB 1950.

County Share

Gas-producing counties that opt for this impact fee would be allowed to retain 27.1 percent of the total, which is $32.4 million out of the governor's estimated $120 million in year one. This means:

- On average, the 30 gas-producing (or soon-to-be producing) counties would retain approximately $1 million each.
- The amounts per county could range from $22,000 to more than $6 million.

- More than 60 percent of the county share would most likely end up going to just five counties with the most drilling activity:
  - Bradford,
  - Greene,
  - Tioga,
  - Susquehanna, and
  - Washington.

The table on page 2 shows an estimate of possible revenue by county.

Municipal Share

Gas-producing municipalities would retain 27.8 percent of the total revenue.

- This equates to a maximum of $89,000 per gas-producing municipality, on average, if all counties enact an ordinance at the maximum rate.
- Non-producing municipalities within producing counties could only receive a maximum of $22,000 on average.
- On the low end, municipalities could receive just several hundred dollars. For example Allegheny County has only five active well permits, and therefore each gas-producing municipality could generate as little as $11,120. The remaining 123 municipalities could only receive $330 each.

PennDOT Share

17.5 percent of the total would go to the Department of Transportation for road, bridge, rail and other infrastructure improvements. Based on the estimated total revenue of $120 million in the first year, this is estimated to result in $21 million. That is enough to reconstruct five to six miles of a two-lane highway or repave approximately 60 miles of a two-lane highway. Or, when shared among the counties that currently have gas-producing wells, **enough to repave just two miles in each county**.

Environmental Protection

- It is difficult to predict just how much environmental protection regulation could be purchased for the estimated $3.2 million that the Department of Environmental Protection might receive. Placed in perspective, **$3.2 million is less than one half of one percent of DEP's full operating budget.** Just the General Fund portion of the DEP budget was cut by more than $10 million from the prior to the current fiscal year.
- Amendments adopted in the House added requirements for DEP to publish protocols for the detection, quantification, and reporting of air contaminant emissions from un-conventional gas production processes. DEP is required to publish a final report on air contaminant emissions one year after the effective date of the act and a revised report every five years thereafter.

Oil and Gas Lease Fund

With more than 385,000 acres of state forest land under commonwealth-issued leases, the revenue deposited in this fund will continue to grow at a rapid pace as more natural gas wells are drilled.

House Bill 1950 establishes the following transfers from the Oil and Gas Lease Fund since revenues are rising above levels for originally intended purposes:

- 25 percent of the Oil and Gas Lease Fund to the Environmental Stewardship Fund for plugging abandoned wells and other uses already authorized by the fund.
- $40 million to the Hazardous Sites Cleanup Fund beginning in 2014, to be adjusted in accordance with the consumer price index annually.
- 5 percent (not to exceed $5 million) of the Oil and Gas Lease Fund to the several counties and school districts covered under the Forest Reserves Municipal Financial Relief Law (Act 591 of 1929).
- $15 million to the Conservation District Fund.

Expedited Permits

HB 1950, as introduced, would have allowed applicants for well permits to pay an additional fee to receive an expedited permit review. **Amendments adopted by the House removed this provision.**

Well Setbacks

This bill increases well setbacks to 500 feet from buildings and 1,000 feet from water wells and other water sources. **Increased setbacks are an improvement, but may not be sufficient to protect water supplies.**

Bonding

The bonding requirements are increased in this bill to $10,000 per well, with various blanket bonds available based on larger quantities of wells operated by the same company. A recent study by Carnegie Mellon estimates that the **average cost of plugging a well is approximately $100,000.**

Local Preemption

- HB 1950, as introduced, would have allowed for state preemption of local ordinances that fall under any environmental law. Amendments adopted by the House under printer's number 2777 provided for a new system of strategic preemption of local ordinances.
- According to printer's number 2777 of HB 1950 local ordinances may only be enacted pursuant to the Municipalities Planning Code (Act 69 of 1927) or the Flood Plain Management Act (Act 166 of 1978) and must provide for "reasonable" development of minerals. Local ordinances cannot conflict with nor regulate oil and gas operations covered by environmental acts as defined in this bill.
- An owner or operator of an oil and gas operation, or any person having rights to royalties or leases, may request the Attorney General to review a local ordinance to determine whether it allows for the reasonable development of oil and gas resources. Local governments may also request a review by the Attorney General before enacting an ordinance.
- The Attorney General or any person aggrieved by a local ordinance may bring a **civil action against the local government** in Commonwealth Court.
- If the court determines that a local government enacted or enforced an ordinance with willful or reckless disregard for the limitation of authority established under state law, the court may order the local government to pay the plaintiff reasonable attorney fees and other costs incurred by the plaintiff in connection with the action. If the court determines that the action brought by the plaintiff was frivolous, it may order the plaintiff to pay the local government's legal fees.
- If the Attorney General, the Commonwealth Court or the Supreme Court determines that a local ordinance fails to provide for the reasonable development of oil and gas resources, **the local government shall be ineligible to receive any funds from the impact fee.**
- **Although this bill does not completely preempt local ordinances, it does take away a significant amount of local control.** If local governments decide to propose an ordinance, there would be much higher risk and the potential for very significant legal fees. The decisions, actions and sanctions of this provision hinge on a determination of "reasonableness," which of course is subjective, and therefore will result in a non-uniform set of case laws that could vary from region to region across the state and be inconsistent over time as new Attorneys General and Justices are elected.

House Appropriations Committee (D)

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