FAST FACTS

From the House Appropriations Committee

JOE MARKOSEK, DEMOCRATIC CHAIRMAN **February 22, 2012**

Act 13: Watered Down Natural Gas Impact Fee Could Prove Unlucky for Residents

After months of moving through the legislative process, the final version of Act 13 (House Bill 1950) emerged with many of the same flaws that existed from its inception. The premise of the bill is a locally implemented fee where counties that opt in do so in exchange for giving up local control of ordinances relating to oil and gas regulation. While the amount of the fee was increased slightly as compared to the initial version of the bill, it is still one of the lowest in the country and does not adequately address the long -term impact on commonwealth residents and resources.

Evolution of Act 13

House Bill 1950 began as a rough plan introduced by Gov. Tom Corbett in early October 2011. As the bill moved through the Republican House more than 100 amendments were presented but only a few were adopted. The Republican Senate adopted one gut-and-replace amendment which converted the bill to mirror the Senate's own bill, Senate Bill 1100, forcing the details of the bill to be worked out in a conference committee. The General Assembly formed a conference committee only after Republican leaders announced a compromise deal days before the governor presented his 2012/13 budget proposal. The conference committee quickly voted on the plan on Feb. 6, 2012 with no chance for the public to review or comment. The very next day Republican leaders brought the bill up for a final vote in both the House and Senate. **The governor signed the bill on Feb. 14, as Act 13.**

Summary of the Impact Fee

Under Act 13, the total estimated revenue in the first year is approximately $212.4 million, based on well data reported by DEP and assuming all counties opt to implement the fee.

Counties may adopt an ordinance to impose an impact fee on unconventional wells spud — an oil and gas industry term for wells that are started — within the county. This would include vertical and horizontal wells that are started in a shale formation, utilize hydraulic fracturing methods and produce more than 90,000 cubic feet per day.

Counties are given 60 days to pass an ordinance if they are opting for the fee. Municipalities may override a county's decision to opt out of the fee, if at least half the municipalities (or those representing at least 50 percent of the county's population) within a county adopt resolutions to impose a fee.

This proposal for a locally implemented impact fee

Summary of Act 13 Impact Fee Rates

The following table shows all possible fee levels per well as described in Act 13 based on various gas prices each year. A fee is assigned to each well once a year and is dependent upon the number of years a well has been in existence and the average annual price of gas as defined by the act.

Average annual price of gas	$0-2.25	$2.26-2.99	$3.00-4.99	$5-5.99	$6.00 and higher
Year 1	$40,000	$45,000	$50,000	$55,000	$60,000
Year 2	$30,000	$35,000	$40,000	$45,000	$55,000
Year 3	$25,000	$30,000	$30,000	$40,000	$50,000
Years 4-10	$10,000	$15,000	$20,000	$20,000	$20,000
Years 11-15	$5,000	$5,000	$10,000	$10,000	$10,000
Total	**$190,000**	**$240,000**	**$310,000**	**$330,000**	**$355,000**

allows the governor to avoid responsibility for enacting a fee by pushing the decision to the local level. This will likely 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. If counties opt out, the estimated revenue will not be realized.

Who Gets a Piece of the Pie?

Summary of the Act 13 revenue distribution:

- Several flat amounts are taken off the top to provide funding for a variety of agency administrative costs. After that:
  - **60 percent goes to host counties and their municipalities**, including affordable housing programs, and
  - **40 percent goes to statewide initiatives** including local deteriorated bridges, water and sewer projects, acid mine water abatement, oil and gas well plugging, parks and recreation, Environmental Stewardship Fund, Hazardous Sites Cleanup Fund, and the Department of Community and Economic Development for liquefied natural gas facilities.

Based on assumptions and estimates in Act 13, following is a detailed breakdown of revenue distribution.

Amounts off the top:

- $2.5 million to County Conservation Districts from 2011 revenues; $5 million from 2012 revenues; and $7.5 million from 2013 revenues (with increases based on the consumer price index beginning in 2014),
- $1 million to the Fish and Boat Commission,
- $1 million to the Public Utility Commission,
- $6 million to the Department of Environmental Protection for clean air and clean water projects,
- $750,000 to the State Fire Commissioner,
- $1 million for rail freight assistance, and
- $10 million for a natural gas vehicle program from 2011 revenues; $7.5 million from 2012 revenues; and $2.5 million from 2013 revenues.

The **60 percent local portion** would be divided:

- $2.5 million to housing affordability programs from 2011 revenues; and $5 million from 2012 revenues,
- 36 percent to gas-producing counties *(18.8 percent of the total)*,
- 37 percent to gas-producing municipalities *(19.4 percent of the total),* and
- 27 percent to non-producing municipalities *(14.1 percent of the total)* within the county.

The **40 percent state share** would be divided:

- 25 percent for local deteriorated bridges *(8.9 percent of the total),*
- 25 percent for water and sewer projects *(8.9 percent of the total),*
- 20 percent to the Commonwealth Financing Authority for acid mine cleanup, gas well plugging, parks, recreation and open space, private well testing, watershed programs and flood-control projects *(7.1 percent of the total),*
- 15 percent to counties statewide for parks, recreational trails, open space, natural areas, beautification projects and water resource management *(5.4 percent of the total),*
- 10 percent to the Environmental Stewardship Fund *(3.6 percent of the total),* and
- 5 percent to the Department of Community and Economic Development for liquefied natural gas facilities from 2011, 2012 and 2013 revenues; thereafter to the Hazardous Sites Cleanup Fund (*1.8 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, or
- local tax reduction.

While the amount of funding is inadequate, this 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. One item of note from the list above is local tax reduction. Many of the current local tax structures have been in effect for numerous years and do not appear to be the result of an impact caused by natural gas drilling.

County Share

Gas-producing counties that opt for this impact fee would be allowed to retain 18.8 percent of the total, which is an estimated $40.0 million out of the $212.4 million in year one, which means:

- On average, the 35 counties with spud wells would retain approximately $1.1 million each in the first year.
- The amounts per county could range from as little as $7,500 to more than $9.5 million.
- More than 68 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 4 shows an estimate of possible revenue by county.

Municipal Share

Gas-producing municipalities would retain 19.4 percent of the total revenue. This equates to an average of approximately $116,500 per municipality annually, with a maximum of $272,000 per gas-producing municipality in Bradford County; and on the low end, only $2,600 per municipality in Wayne County.

Non-producing municipalities within producing counties could only receive $28,000 on average. Because the number of municipalities varies greatly from county to county, on the low end, municipalities could receive just a few hundred dollars. For example, Allegheny County has only nine wells spud, and therefore each gas-producing municipality could generate as little as $39,700. The remaining 126 municipalities could receive only $460 each.

Local Bridge Repair

Approximately 8.9 percent of the total possible revenue would be distributed to counties for the repair or replacement of locally owned, structurally deficient bridges. None of the revenue would be used for the more than 6,000 state-owned structurally deficient bridges. Local bridge repair funds are to be distributed to all 67 counties based on population. Each county would receive a minimum of $40,000 to the extent funds are available.

A total of approximately $18.9 million could be available in the first year. Once this is spread among all counties *(see table on page 4)*, the seven counties with the least population would qualify for the minimum $40,000. On the high end Allegheny County could receive up to $1.5 million, and Philadelphia could receive up to $1.9 million in the first year of the fee. The average amount per county would be approximately $285,000. With the cost of replacing just one bridge in the tens of millions of dollars, $40,000 to $285,000 is not even enough to pay for the engineering of a bridge and **will likely do little more than fix potholes.**

Environmental Protection

It is difficult to predict just how much environmental protection regulation could be purchased for the $6 million that the Department of Environmental Protection will receive. Placed in perspective, **$6 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, and the governor's proposed budget for fiscal year 2012/13 would cut an additional $10.6 million in state General Fund money.

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 could grow at a rapid pace as more natural gas wells are drilled; however low gas prices have created a new level of uncertainty in the pace of future drilling operations. Therefore long-term forecasts of this fund are not available.

Act 13 establishes the following transfers from the Oil and Gas Lease Fund since revenues are expected to rise above the levels needed for the originally intended purposes:

- $20 million to the Environmental Stewardship Fund for 2013, and for 2014 and each year thereafter, $35 million.
- $5 million to the Hazardous Sites Cleanup Fund in 2015, and for 2016 and each year thereafter, $15 million.

House Appropriations Committee (D)
Miriam A. Fox, Executive Director | Wendy Lewis, Budget Analyst | Barry Ciccocioppo, Communications Director

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, but it allows companies to pay less for bonding of multiple 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

Act 13 allows the commonwealth to preempt and supersede local regulation of oil and gas operations that are regulated by environmental acts. Local ordinances shall allow for "reasonable development of oil and gas." Municipalities may obtain advisory opinions from the Public Utility Commission (PUC) to determine whether a proposed ordinance violates the Municipal Planning Code. Affected parties aggrieved by an enacted ordinance may request a review by the PUC or may proceed to bring an action in Commonwealth Court.

The processing of cases through Commonwealth Court could result in significant legal fees for municipalities, and the lack of local control could dissuade counties from imposing a fee.

Estimated Impact Fee Local Distribution - Year One

(Assumes all eligible counties opt to enact impact fee)

Counties with Spud* Wells	Percent of Total	Estimated Revenue per Producing County	Average per Producing Municipality	Average per Non-Producing Municipality
Allegheny	0.2%	$ 77,234	$ 39,690	$ 460
Armstrong	1.0%	$ 393,707	$ 23,803	$ 10,546
Beaver	0.0%	$ 18,838	$ 9,680	$ 277
Bedford	0.0%	$ 9,419	$ 9,680	$ 191
Blair	0.1%	$ 56,513	$ 58,083	$ 1,843
Bradford	23.8%	$ 9,531,865	$ 272,129	$ 476,593
Butler	1.7%	$ 695,110	$ 34,020	$ 14,481
Cambria	0.1%	$ 41,443	$ 14,198	$ 518
Cameron	0.3%	$ 113,026	$ 58,083	$ 16,954
Centre	1.2%	$ 497,315	$ 102,226	$ 12,433
Clarion	0.2%	$ 86,653	$ 9,896	$ 2,600
Clearfield	3.0%	$ 1,184,890	$ 86,986	$ 24,685
Clinton	1.9%	$ 744,088	$ 127,460	$ 24,264
Columbia	0.0%	$ 11,303	$ 11,617	$ 265
Elk	0.8%	$ 327,776	$ 48,126	$ 49,166
Fayette	3.0%	$ 1,205,611	$ 68,839	$ 37,675
Forest	0.1%	$ 35,792	$ 9,196	$ 5,369
Greene	6.9%	$ 2,774,790	$ 178,242	$ 208,109
Huntingdon	0.0%	$ 9,419	$ 9,680	$ 150
Indiana	0.7%	$ 299,519	$ 27,985	$ 8,320
Jefferson	0.3%	$ 122,445	$ 12,585	$ 3,826
Lawrence	0.1%	$ 22,605	$ 11,617	$ 678
Luzerne	0.1%	$ 22,605	$ 11,617	$ 229
Lycoming	10.2%	$ 4,076,474	$ 199,510	$ 98,624
McKean	1.0%	$ 401,243	$ 51,549	$ 21,495
Potter	1.3%	$ 536,874	$ 36,786	$ 26,844
Somerset	0.3%	$ 139,399	$ 11,939	$ 2,751
Sullivan	0.9%	$ 352,265	$ 51,721	$ 44,033
Susquehanna	10.0%	$ 4,016,193	$ 229,320	$ 136,916
Tioga	13.1%	$ 5,225,572	$ 206,566	$ 301,475
Venango	0.3%	$ 133,748	$ 137,463	$ 3,344
Washington	11.5%	$ 4,594,510	$ 181,621	$ 86,147
Wayne	0.0%	$ 7,535	$ 2,581	$ 226
Westmoreland	3.5%	$ 1,393,988	$ 102,336	$ 20,500
Wyoming	2.1%	$ 857,114	$ 80,084	$ 53,570
Total		**$ 40,016,880**	**$ 41,128,460**	**$ 30,012,660**

* "Spud" refers to wells where drilling has started

House Appropriations Committee (D)

Miriam A. Fox, Executive Director — Wendy Lewis, Budget Analyst — Barry Ciccocioppo, Communications Director

Local Bridge Funding Distribution Estimate

(Assumes all eligible counties opt to enact impact fee)

County	Population	Population as a % of State	Year One
Pennsylvania	**12,604,767**	48.2%	**$18,943,000**
Adams	102,323	0.8%	$ 153,776
Allegheny	1,218,494	9.7%	$ 1,831,207
Armstrong	67,851	0.5%	$ 101,969
Beaver	171,673	1.4%	$ 257,998
Bedford	49,579	0.4%	$ 74,510
Berks	407,125	3.2%	$ 611,845
Blair	126,122	1.0%	$ 189,542
Bradford	61,131	0.5%	$ 91,870
Bucks	626,015	5.0%	$ 940,803
Butler	184,694	1.5%	$ 277,566
Cambria	143,998	1.1%	$ 216,407
Cameron [1]	5,163	0.0%	$ 40,000
Carbon	63,865	0.5%	$ 95,979
Centre	146,212	1.2%	$ 219,734
Chester	498,894	4.0%	$ 749,760
Clarion	39,479	0.3%	$ 59,331
Clearfield	82,324	0.7%	$ 123,720
Clinton	36,797	0.3%	$ 55,300
Columbia	65,111	0.5%	$ 97,852
Crawford	88,521	0.7%	$ 133,033
Cumberland	232,483	1.8%	$ 349,386
Dauphin	258,934	2.1%	$ 389,137
Delaware	558,028	4.4%	$ 838,629
Elk	32,011	0.3%	$ 48,108
Erie	280,291	2.2%	$ 421,234
Fayette	142,605	1.1%	$ 214,313
Forest [1]	6,775	0.1%	$ 40,000
Franklin	144,994	1.2%	$ 217,903
Fulton [1]	14,852	0.1%	$ 40,000
Greene	39,245	0.3%	$ 58,979
Huntingdon	45,395	0.4%	$ 68,222
Indiana	87,450	0.7%	$ 131,424
Jefferson	44,634	0.4%	$ 67,078
Juniata [1]	23,118	0.2%	$ 40,000
Lackawanna	208,801	1.7%	$ 313,795
Lancaster	507,766	4.0%	$ 763,093
Lawrence	90,160	0.7%	$ 135,496
Lebanon	130,506	1.0%	$ 196,130
Lehigh	343,519	2.7%	$ 516,256
Luzerne	312,845	2.5%	$ 470,157
Lycoming	116,840	0.9%	$ 175,592
McKean	43,196	0.3%	$ 64,917
Mercer	116,071	0.9%	$ 174,437
Mifflin	45,937	0.4%	$ 69,036
Monroe	166,355	1.3%	$ 250,006
Montgomery	782,339	6.2%	$ 1,175,734
Montour [1]	17,715	0.1%	$ 40,000
Northampton	298,990	2.4%	$ 449,335
Northumberland	91,311	0.7%	$ 137,226
Perry	45,502	0.4%	$ 68,382
Philadelphia	1,547,297	12.3%	$ 2,325,346
Pike	60,529	0.5%	$ 90,966
Potter [1]	16,714	0.1%	$ 40,000
Schuylkill	146,952	1.2%	$ 220,846
Snyder	38,519	0.3%	$ 57,888
Somerset	76,953	0.6%	$ 115,648
Sullivan [1]	6,140	0.0%	$ 40,000
Susquehanna	40,646	0.3%	$ 61,085
Tioga	40,875	0.3%	$ 61,429
Union	43,560	0.3%	$ 65,464
Venango	54,183	0.4%	$ 81,429
Warren	40,638	0.3%	$ 61,073
Washington	207,389	1.6%	$ 311,673
Wayne	51,337	0.4%	$ 77,152
Westmoreland	362,251	2.9%	$ 544,407
Wyoming	27,808	0.2%	$ 41,791
York	428,937	3.4%	$ 644,625

[1] Seven counties are expected to receive the statutory minimum of $40,000

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