

Local Impact Fee Becomes Law

HOUSE BILL 1950 WAS PASSED INTO LAW AS ACT 13 OF 2012. THE FRONT LINE IS PROVIDING TOUCH POINTS ON THE ACT, ITS IMPACTS AND DEADLINES FOR IMPLEMENTATION. This is by no means a complete analysis, however, it begins to expand on the Act's impact on our borough communities. In addition, PSAB has developed a dynamic website located at www.ogf.boroughs.org containing current documents useful to our boroughs regarding the Act.

We begin our touch points with:

General information. Act 13 of 2012 amends the Oil and Gas Title – Title 58 of the Pennsylvania Consolidated Statutes – to provide for an unconventional gas well fee or “local impact fee.” It further provides for its administration, distribution and allowable uses. It regulates permitting for gas wells, regulates environmental matters relative to these gas wells, reenacts relevant parts of the Oil and Gas Act, and provides for matters relating to municipal zoning and land use.

County fee authorization and levy. County governing bodies are empowered to levy an impact fee on unconventional gas wells. A county action to adopt the ordinance enacting a fee must occur within 60 days of the effective date of the section, which is April 16, 2012. While the Act is unclear, it appears the intent is that in any case where county action is not taken within 60 days of the effective date of the act, it can take action at a later date, but the levy does not take effect until the following year. A county hosting unconventional gas wells that fails to enact the levy by April 16, 2012 may not receive revenues from state initia-

tives or programs cited or created by the Act. Should a county enact its levy after April 16, 2012, it cannot receive revenues for one year following the date of its enactment of the levy. Counties that do not host unconventional gas wells do not need to enact the levy in order to receive distributions from the statewide initiatives or programs cited or created by the Act.

Municipal resolutions. Municipal governing bodies within a county that does not levy the fee may pass resolutions compelling the county to enact the levy, following 60 days (April 16, 2012) but no later than 120 days (June 13, 2012). If at least half of the municipalities, or municipalities representing at least 50 percent of the population of the county, pass resolutions, then the fee takes effect county-wide thus compelling the county to levy the fee. The municipal resolution is in the form: “The (borough, township or city of) in the county of (insert name) hereby resolves to have the county impose an unconventional gas well fee on each unconventional gas well spud in the county.” A municipality failing to pass a resolution which seeks to compel the county to levy an impact fee shall be prohibited from receiving any funds under the distribution formula of the Act. The only possible way such municipalities would receive funds is if the county levies the fee in the future. Municipalities must provide a copy of the resolution to all counties wherein a municipality is located and the Public Utility Commission (PUC). Should the municipality be located in more than one county, it shall transmit a copy of the resolution to each county in which it is located.



ONLINE RESOURCE PSAB created www.ogf.boroughs.org to help disseminate information related to Act 13 in a timely manner

PSAB has a model resolution available upon request.

Fee plan. The fee is levied annually per unconventional gas well. Unconventional gas wells are defined as bore holes drilled for the purpose of production of gas, so each hole on a pad is counted separately for purposes of the fee. The fee is established as a sliding scale, with duration of 15 years for each well coupled with a schedule based on the price of gas. The fee schedule is determined by the average price of natural gas for the prior calendar year and the overall schedule is adjusted for inflation each year, starting in 2013. The fee for vertical unconventional wells is 20 percent of the rate for horizontal wells (§ 2302(f)) and ends after the tenth year.

Fee distribution. All fees collected are deposited in the Unconventional Gas Well Fund in the state Treasury, and will be administered by the PUC. All payments from the fund are to

(Continued on page 18)

House OKs Reforms for Debt-Financed Capital Program

HOUSE BILL 2175 REFORMS THE STATE'S REDEVELOPMENT ASSISTANCE CAPITOL PROJECTS, OR RACP, PROGRAM BY REDUCING THE DEBT CEILING OVER A PERIOD OF YEARS; requiring new projects to go through a more transparent application process; and ending "lame duck" projects approved between a gubernatorial election and the inauguration date.

The RACP program — pronounced

"R-Cap" — was created in 1986 and capped at \$400 million, which grew to a debt ceiling of \$1.2 billion by 1999. In the past 12 years, it has been increased six times; bringing the spending cap to more than \$4 billion after an increase was approved in 2010. The House-approved bill would restore the cap to \$1.5 billion over a 20-year period, requiring annual spending reductions. It also would redefine eligible projects to

focus on "transformative projects" with substantial economic impact, job creation and infrastructure development, said Representative Mike Turzai, (R-Allegheny) who sponsored the bill. The program's list includes more than 8,000 projects, though most have not been funded. As initially proposed, the bill would have removed all projects waiting for funding.

(Continued on page 19)

(Local Impact Fee Becomes Law...Continued from page 17)

be made as delineated in the statute within three months after the fee due date. For 2012 only, municipalities should expect to see distributions by December 1, 2012. In each subsequent year, the PUC must distribute revenues to municipalities by July 1st.

Uses of fees. County and municipal governments receiving funds are authorized to use them for the following purposes: Roadways, bridges, public infrastructure, water, stormwater, sewer, emergency preparedness and public safety, environmental and recreation programs including conservation districts, open space and agricultural preservation, preservation and reclamation of water supplies, tax reduc-

tions (including homestead exclusion), availability of safe and affordable housing, records management, GIS and information technology, delivery of social services, judicial and legal services, deposits are authorized into capital reserve for use on projects, career and technology centers for training related to the oil and gas industry, and local or regional planning initiatives under the Municipalities Planning Code

Local ordinances. The Act preempts local ordinances that are not in compliance with the Municipalities Planning Code and the Flood Plain Management Act or are in direct conflict with the Act. Statutory provisions in the Act supersede local zoning ordinances in

as much they deny the reasonable development of oil and gas resources. In general, municipalities may continue to impose conditions on the height, screening, fencing, lighting and noise of permanent oil and gas operations that are the same as those imposed on other industrial uses or other land development within the same zoning district.

PUC ordinance review. A procedure is established, comparable to ACRE, which allows an owner, operator or aggrieved resident to ask the PUC to review a local ordinance and determine whether it allows for the reasonable development of oil and gas. An order must be issued by the PUC after review stating the compliance or non-compliance with the MPC and Act. A municipality may appeal the order to Commonwealth Court within 30 days. Another provision allows a municipality itself to seek predetermination from the PUC to see if a proposed ordinance is in compliance with the law.

Existing ordinance review. A local government that has enacted a local ordinance related to oil and gas operations prior to the enactment of **HB1950** must review and amend their ordinance to comply with the Act within 120 days of the effective date of Chapter 33 (August 14, 2012). **(B)**

The above "touch points" are excerpts from PSAB Oil & Gas Focus website at www.ogf.boroughs.org. You can access the entire analysis and related materials at the site.

Act 13 Benchmarks

February 14, 2012 – Governor Corbett signs House Bill 1950 into law as Act 13 of 2012. Local Impact Fee becomes effective immediately.

April 16, 2012 – Remaining provisions of Act 13 become effective.

April 16, 2012 – Last day for counties to levy the Act 13 Local Impact Fee for 2011.

April 17, 2012 – First day for boroughs to pass and transmit resolutions to compel and enact an impact fee if their county did not act by April 16, 2012.

June 13, 2012 – Last and final day for boroughs to pass and transmit resolutions to compel and enact an impact fee if their county did not act by April 16, 2012. To qualify for any future local impact fund distributions boroughs must pass this resolution by June 13, 2012. This Act 13 "municipal trigger" is valid only during the first year (year one) of Act 13.

August 13, 2012 – Last day for boroughs to amend their local zoning ordinances to comply with Act 13.

December 1, 2012 – PUC deadline to distribute 2011 Impact Fee revenue to boroughs.

July 1, 2013 – PUC deadline to distribute 2012 Impact Fee revenue to boroughs.

New Alternative, Clean Energy Investments will Create Jobs and Investment

PENNSYLVANIA IS EXPANDING ITS COMMITMENT TO ADVANCE CLEAN, ALTERNATIVE AND RENEWABLE ENERGY SOURCES with the investment of more than \$15.9 million in 10 projects in 10 counties that is expected to create 356

jobs over the next three years.

“These state investments can help families, businesses and municipalities save collectively on their utility costs,” said the Secretary of Commu-
(Continued on page 20)

(House OKs Reforms for Debt-Financed Capital Program...Continued from page 18)

But the administration and some lawmakers requested changes that were implemented in the state House to keep existing projects less than 10 years old on the list, Turzai said. However, projects not already funded would have to meet the new criteria, he said. The bill would require that at least one public hearing be held on a project funded with RACP dollars, and that approved projects be listed on the state’s website, provisions that were originally part of a bill sponsored by Representative Rosita Youngblood (D-Philadelphia).

The Corbett administration publicly has backed the proposal. Pileggi previously indicated an interest in reducing the cap on the program and said it may be possible to do so more quickly than the proposal in the state House. RACP’s numerous increases have been approved during Republican and Democratic administrations and with Republicans and Democrats in control of the state House, at times. Republicans have controlled the state Senate for all increases, many of which were passed unanimously or with wide bipartisan support.

Senator Dominic Pileggi (R-Chester) voted for the RACP increases several times in the previous decade, but his spokesman, Erik Arneson, said that it is “absolutely the right time to take a fresh, hard look at RACP and to adjust the program so that it is in line with current fiscal realities.” “There is value in RACP, if it is properly structured and



CAPPING RACP Legislation was introduced to reform the state’s Redevelopment Assistance Capitol Projects Program to reduce the debt ceiling, create a transparent process, and end lame duck approvals

managed,” Arneson wrote in an email. “Reasonable people can differ on the appropriate debt level for this program. However, in this time of recession there should be no debate about the mounting concerns regarding overall government debt levels.”

State Treasurer Rob McCord said that further reforms should be undertaken, including a limit on new funding commitments instead of only on debt and a more thorough review of costs and benefits for each publicly funded project. “The answer is not as simple as less debt,” McCord said. “The best, fullest approach would provide a more strategic and disciplined process — and only fund projects that provide a measurable return.” **(B)**

Excerpts by Eric Boehm, PA Independent

House Bill 2175 Summary

THE BILL AMENDS A VARIETY OF REDEVELOPMENT ASSISTANCE CAPITAL PROJECTS (RACP) PROVISIONS CONTAINED WITHIN THE CAPITAL DEBT ENABLING ACT. AMONG THEM, IT TRANSFERS FROM THE EXISTING ACT THE DEFINITION OF “APPLICANT” TO MAKE IT A DEFINED TERM.

“Capital projects” is amended to include five categories and to clarify that infrastructure can be funded as a part of the capital project. Types of eligible projects are expanded to include stormwater infrastructure and tunnels can be funded if they are associated with an economic development project. A minimum 50 percent private match is required for state funding and the Budget Office can give preference to projects with at least 75 percent private funding.

Upon enactment, the RACP debt limit would be cut from \$4.05 billion to \$3.5 billion, and would then decrease incrementally until it reaches \$1.5 billion sometime after 2020. No redevelopment assistance capital project may be approved in the period between the date of the general election at which the governor-elect was elected and the third Tuesday of January next following the election. All projects not authorized as of December 31, 2011, would expire and need to be re-listed in compliance with the updated requirements of the act. Requires projects to be submitted to the General Assembly as a single piece of legislation and approved by the General Assembly. Also requires certain reports on the projects to the General Assembly. The bill also provides for disclosure of approved projects on a publicly accessible website. **(B)**

U.S. Senate Transportation Offerings

BARELY TWO WEEKS BEFORE THE CURRENT PROGRAM EXPIRES, THE U.S. SENATE PASSED A NEW TRANSPORTATION BILL (S.1813) IN MID-MARCH THAT WOULD KEEP FEDERAL MONEY FLOWING TO STATES FOR HIGHWAYS AND TRANSIT SYSTEMS FOR ANOTHER TWO YEARS.

The Senate's \$109 billion plan would make several changes to try to make federal transportation processes more efficient. It would make no major changes in the main source of federal funding for transportation projects, but it would add some funds by using money now dedicated to helping clean up leaks from underground fuel tanks and by ending tax credits for paper makers.

But the senators overwhelmingly voted down a proposal to let states raise money by commercializing rest stops on interstate highways. Opponents said the move would be bad for local businesses along the interstates.

The chamber also soundly rejected an alternative put forward by U.S. Senator Jim DeMint, a South Carolina Republican, to gradually phase out the federal gas tax and to leave the primary responsibility for paying for roads to the states. Still, the American Association of State Highway and Transportation Officials (AASHTO) praised senators for passing a bill. "Their bipartisan approach," said executive director John Horsley, in a statement, "helped set a path forward for this bill that not only provides a greater degree of funding certainty for states, it also establishes reforms that will streamline project delivery, consolidate programs and improve performance reporting and accountability."

The plan cleared the Senate with bipartisan support, on a vote of 74 to 22. But it did so mainly by sidestepping a major question: How to pay for

a growing wish list of transportation projects with a dwindling amount of money brought in by the federal gas tax. Largely because of that question, Congress passed short-term highway funding bills instead of a major update eight times since 2009. A ninth extension may still be in the cards. The House has not passed its own transportation bill, because of divisions within the Republican majority. Speaker John Boehner has backed a five-year plan but could not find the votes to support it. The House may vote on the Senate version or opt for yet another temporary bill instead. Horsley suggested that another extension would give Congress more time to reach a final agreement on a larger transportation package. **(B)**

Excerpts by Daniel C. Vock, Stateline Staff Writer

(New Alternative, Clean Energy Investments will Create Jobs and Investment...Continued from page 19)

nity and Economic Development C. Alan Walker. "In addition, these new projects, which are large and small, urban and rural, are creating additional private economic investment in the Commonwealth and creating jobs statewide."

The Commonwealth Financing Authority (CFA) yesterday approved 10 projects, through the state's Alternative and Clean Energy Program that will result in \$247,197 in annual energy savings. The electric generation could power at least 7,300 homes.

Lehighton Borough will receive a \$5.5 million Alternative and Clean Energy Program grant for the construction of a hydroelectric plant at the Beltzville Lake Dam in Lehighton, Carbon County. The 2.6 megawatt low-impact, hydroelectric plant is being developed as public-private partnership between the Lehighton and Summit Water Nexus LLC. The \$15.7 million project will create 9,470 megawatt hours of energy annually for the next

75 to 100 years. The project will also allow the borough to reduce consumption of electricity from the power grid at peak usage times.

Carlisle Area School District will receive a \$666,000 Alternative and Clean Energy Program grant to purchase and install a combined heat and power (CHP) system at the district's main campus located in Carlisle Borough, Cumberland County. The new one-megawatt combined heat and power system, fueled by natural gas, is expected to offset all of the site's annual electricity requirements. The CHP system is expected to produce 6,570 megawatt hours of energy annually and offset 27,375 MMBTU's of thermal energy.

In all, projects were approved in Blair, Bucks, Carbon, Cumberland, Franklin, Mifflin, Northampton, Schuylkill, Washington and Wyoming counties. The state investments are expected to result in more than \$184.7 million in additional private economic investments.



ALTERNATIVE CREATION Pennsylvania is expanding its commitment to advance clean, alternative and renewable energy sources with the investment of more than \$15.9 million in 10 projects in 10 counties that is expected to create 356 jobs over the next three years

For a complete list of approved projects, visit www.newpa.com/webfm_send/1789. For more information about the Alternative and Clean Energy Program, and other CFA programs, visit www.newPA.com or call 866-466-3972. **(B)**

DCED press release