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Time to tighten Act 13 shale impact fee reporting

By Colin McNickle

The Pennsylvania Legislature should close a loophole in the law that allows government jurisdictions to skirt reporting how they use shale gas impact fee dollars by instituting more practical and stiffer penalties, concludes an analysis by the Allegheny Institute for Public Policy.

"Governments must be responsible for all actions, including accounting for where all revenues are spent," says Elizabeth Miller, a research associate at the Pittsburgh think tank.

"Municipalities receiving Act 13 funds, regardless of the amount, are required to report the use and should do so," she says (*in Policy Brief Vol. 18, No. 43*). "It's not a municipal choice but an obligation."

Act 13, adopted in February 2012, not only established the fee paid by those drilling in the commonwealth's rich shale formations but also established how such dollars are allocated to local and state governments and the criteria for how that money can be spent.

Municipalities receiving impact fee income must submit annual reports to the state Public Utility Commission (PUC) detailing expenditures in 13 legislatively designated, and quite broad, categories. The most common expenditures have been to place the money in capital reserve funds and for public infrastructure/construction.

But there's a threshold provision in Act 13's mandate that allows many jurisdictions to thwart the legislation's intent. Failure to report impact fee spending triggers a penalty clause that limits those jurisdictions to a maximum of $500,000 in annual future distributions.

But within the seven-county Pittsburgh Metropolitan Statistical Area (MSA), "a penalty has never been assessed because none of the municipalities failing to report ever received more than $500,000 a year from Act 13 fees and, presumably, never expect to get as much as $500,000," Miller notes.

Between 2011 and 2016, municipalities in the Pittsburgh MSA received $104.6 million in impact fee dollars. But in Allegheny County, in 2012, nearly 74 percent of municipalities (95 out of 130) failed to report how they spent the money.

Forty-five municipalities (34.5 percent) failed to report their impact fee spending in 2016. The best year, thus far, was in 2015, when 31 municipalities (23.8 percent) did not file reports with the PUC.

Then there's this: "(S)ince the impact fee was established, the City of Pittsburgh has disclosed the use of its shale dollars one time, in 2013," Miller says. "Brentwood Borough, the City of McKeesport, Pleasant Hills Borough and Sewickley Borough have never reported how their impact fee money was used."

Outside of Allegheny County, many municipalities had lower rates of non-reporting in 2016 – 17.7 percent in Armstrong County; 7.2 percent in Butler County; 20.9 percent in Fayette County and 7.6 percent in Washington County. Westmoreland County's 2016 non-reporting municipal rate was 27.7 percent.

Indeed, Washington County received far more impact fee dollars than Allegheny County in the 2011-16 period, roughly $55.4 million to $2.8 million.

"Clearly, municipalities in Washington County have a substantial amount of fees to lose if they fail to comply with reporting and thus are more motivated to report fund usage than municipalities in Allegheny County," Miller says.

However, municipal accountability should not be contingent on the dollar amount received but on the principle of financial accountability and transparency.

"The Legislature should revisit Act 13 and amend it to penalize municipalities that fail to report how impact fee revenues are used by withholding all future allocations regardless of (the) amount they would have received until they are in compliance by submitting reports for all past years when no reports were filed," Miller says.

"Failure to correct this loophole leaves open too much opportunity for (impact fee) funds to be used as municipalities wish as opposed to the uses designated by law," she concludes.

Colin McNickle is communications and marketing director at the Allegheny Institute for Public Policy (cmcnickle@alleghenyinstitute.org).

Allegheny Institute for Public Policy
305 Mt. Lebanon Blvd.* Suite 208* Pittsburgh PA 15234
Phone (412) 440-0079 * Fax (412) 440-0085
E-mail: aipp@alleghenyinstitute.org