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Time to tighten Act 13 reporting

Summary: In February 2012, Act 13 was adopted not only to establish an impact fee for drillers in Pennsylvania's shale formations, but also to set up rules governing both the allocation of the fee revenue to local and state government as well as to specify how the money can be used by the municipalities and counties receiving the funds. All are required to report to the Pennsylvania Public Utility Commission how Act 13 proceeds have been spent. However, not all municipalities are diligent in meeting those reporting requirements.

From 2011 to 2016 municipalities in the seven-county Pittsburgh Metropolitan Statistical Area (MSA)—Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland counties— received $104,623,116 from the impact fee collections. While "fracking" has received plenty of attention, little attention has been paid to local accountability regarding Act 13 revenue usage. This Brief will look at municipalities in the Pittsburgh MSA.

Municipalities receiving impact fee revenue must submit annually paperwork to the Pennsylvania Public Utility Commission (PUC) demonstrating how the payments have been used in the 13 legislatively designated categories.

They are: 1) Construction, reconstruction, maintenance and repair of roadways, bridges and public infrastructure;

2) Water, storm water and sewer systems;

3) Emergency preparedness and public safety, including law enforcement and fire services, as well as hazardous material response, 911 and equipment;

4) Environmental programs, including trails, parks and recreation, open space, flood plain management, conservation districts and agricultural preservation;

5) Preservation and reclamation of surface and subsurface waters and water supplies;

6) Tax reductions, including homestead exclusions;

7) Housing projects to increase safe and affordable housing;

8) Records management, geographic information systems and information technology;

9) Social services;

10) Judicial services;

11) Career and technical centers for training of oil and gas industry workers;

12) Local or regional planning initiatives under the Pennsylvania Municipalities Planning Code;

13) Placed in the municipality’s capital reserve fund that can later be used in the aforementioned categories.

It’s important to note that municipalities are not obligated to spend Act 13 funds in the year they are received. The municipality’s capital reserve fund can act as a savings account for the assets to be used at a later date.

Within the Pittsburgh MSA the most popular categories for municipal fund use have been capital reserve fund and public infrastructure/construction.

Municipalities in Allegheny County, that did report, placed 39 percent of their Act 13 revenue in their capital reserve funds from 2011 to 2016. Over the same period, Allegheny County municipalities spent 30 percent of their impact fee allocation on public infrastructure and construction.

Act 13 mandates municipalities submit a yearly report to the PUC disclosing expenditures. This basic form requires the municipality to indicate the dollar amount spent or allocated for future use within the 13 categories. Yet many municipalities have failed to meet the reporting requirement. Under Act 13 regulations if a municipality fails to submit the annual Municipal Approved Budget Report, the municipality will be limited to a maximum of $500,000 in annual future distributions from the Unconventional Gas Well fund. But within the Pittsburgh 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 expected to get as much as $500,000.

In 2016, 45 municipalities out of a total of 130 in Allegheny County failed to report their Act 13 details to the PUC. This has improved since 2012 when 95 municipalities failed to do so. The best year for reporting was 2015 when just 31 municipalities did not report.

For example, since the impact fee was established, the City of Pittsburgh has disclosed the use of its shale dollars one time, in 2013. Brentwood Borough, McKeesport City, Pleasant Hills Borough and Sewickley Borough have never reported how their impact money was used.

Meanwhile, municipalities in other counties had lower rates of reporting non-compliance. In 2016, four municipalities out of 57 in Butler; Washington, five municipalities out of 66; Armstrong, eight municipalities out of 45; Fayette, nine municipalities out of 43; Westmoreland, 18 municipalities out of 65.

Since Act 13 passed, the mandate that municipalities report annually how they spend their impact fee allocations has been obeyed by the vast majority of municipalities in the seven counties of the Pittsburgh MSA. Overall, municipalities within the MSA have improved their reporting from 2011 to 2016.

Allegheny County municipalities received a total of $2,797,742 from 2011 to 2016 compared to Washington County's municipalities' $55,412,444. 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. Washington County's municipalities have received the largest amount of fees in the MSA, followed by those in Butler, Fayette, Westmoreland, Armstrong, Allegheny and Beaver counties.

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

Governments must be responsible for all actions including accounting for where all revenues are spent. Municipalities receiving Act 13 funds, regardless of the amount, are required to report the use and should do so. It's not a municipal choice but an obligation.

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.

Failure to correct this loophole leaves open too much opportunity for funds to be used as municipalities wish as opposed to the uses designated by law.

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