



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1950

PRINTERS NO. 2765

PRIME SPONSOR: Ellis

COST / (SAVINGS)

FUND	FY 2011/12	FY 2012/13
General Fund – DEP*	(\$12,500,000)	\$0
General Fund – In Lieu of Taxes*	\$0	\$0
Clean Air Fund*	\$250,000	\$250,000
Environmental Stewardship Fund*	\$0	\$0
Hazardous Sites Cleanup Fund*	\$0	\$0
Conservation District Fund*	\$0	\$0
Oil and Gas Lease Fund*	\$12,500,000	\$0

(* Primary Costs / Savings are in future years beginning FY 2013-14. See Fiscal Impact below.)

SUMMARY: House Bill 1950, Printer's Number 2765, amends Title 27 (Environmental Resources) and Title 58 (Oil and Gas) to: establish interfund transfers and the appropriation of moneys from the Oil and Gas Lease Fund; providing for the imposition of an unconventional gas well impact fee; and to provide for updates and revisions to the Oil and Gas Act (Act 223 of 1984). This legislation would take effect in 60 days upon enactment.

ANALYSIS: This bill addresses changes to Title 27 (Environmental Resources) and Title 58 (Oil and Gas) by adding two new chapters addressing the Oil and Gas (Chapter 33) and Wells (Chapter 35), specifically addressing unconventional gas wells. The other section of this bill works to consolidate the Oil and Gas Act into Title 58 and makes several changes including, but not limited to, regulatory enforcement, notification requirements and duties of the Department of Environmental Protection.

Oil and Gas Lease Fund: Chapter 32 establishes and defines the Oil and Gas Lease Fund in the State Treasury. As established by Act 256 of 1955, the fund receives all rents and royalties from oil and gas leases of any land owned by the Commonwealth, except rents and royalties received from game and fish lands. All monies paid into the fund are specifically appropriated on a continuing basis to the Department of Conservation and Natural Resources and to be used exclusively for conservation, recreation, dams or flood control projects or to match any Federal grants for related projects. It also establishes interfund transfers and the appropriation of moneys from the fund as follows:

- On July 1, 2013 and each July 1 thereafter, 25% of the total moneys received from the prior fiscal year shall be transferred to the Environmental Stewardship Fund;
- Beginning July 1, 2014, \$40 million shall be transferred to the Hazardous Sites Cleanup Fund. On July 15, 2015 and each July 1 thereafter, the amount transferred from the prior fiscal year and an amount equal to the percentage change in the Consumer Price Index for All Urban Consumers from the prior fiscal year, multiplied by the amount transferred in the prior fiscal year, shall be transferred to the Hazardous Sites Cleanup Fund.
- On July 1, 2013 and each July 1 thereafter, an amount equal to 5% of the total moneys received from the prior fiscal year, not to exceed \$5 million, shall be transferred from the fund to the counties, school districts and townships entitled to receive payment in lieu of taxes under the Forest Reserves Municipal Financial Relief Law (Act 591 of 1929). The moneys allocated to each county, school district and township will be based on the number of acres of land in the county, school district or township to which the payment under Act 591 applies in proportion to the aggregate number of acres of all such lands of the counties, school districts and townships in this Commonwealth.
- On July 1, 2013 and each July 1 thereafter, a total of \$15 million shall be transferred to the Conservation District Fund. These funds will be distributed in a manner consistent with the Conservation District Law and the provisions of the State Conservation Commission's Conservation District Fund Allocation Program-Statement of Policy.
- Establishes a one-time transfer of \$7.5 million to the Department of Environmental Protection (DEP) to create the Clean Transit Program - a loan program to aid the transition of large mass transit bus fleets to compressed natural gas. This money will be appropriated on a continuing basis to the department to administer the program.
- Establishes a one-time transfer of \$5 million to DEP for the Keystone Transit Program - a competitive grant program to fund small mass transit authority fleet conversions using natural gas as a vehicle fuel.

Unconventional Gas Well Impact Fee: Chapter 35 addresses wells and establishes a subchapter to authorize counties to impose an impact fee on unconventional gas wells known as the Unconventional Gas Well Impact Act, and establishes the definition of an unconventional gas well. By enactment of an ordinance, a county may impose an impact fee on each unconventional gas well that is located on a well pad and produces natural gas within the county. The fee would be exempt on nonproducing wells, i.e. those wells that produce less than 90,000 cubic feet of natural gas per day per calendar year, or unconventional wells in which the natural gas is used directly by the consumer.

The fee enacted by the county ordinance for an unconventional well that is in existence on the effective date of the ordinance or is drilled after the effective date shall be as follows:

- \$40,000 for the first year of production following the effective date;
- \$30,000 for the second year of production following the effective date;
- \$20,000 for the third year of production following the effective date; and
- \$10,000 for the fourth through tenth year of production following the effective date.

Each county imposing a fee shall establish an interest bearing account designed solely for unconventional well impact fees. All fees collected from the imposition of an impact fee must be deposited into this account. The county must distribute the fees within 45 days of receipt.

The fees deposited in this account shall be distributed and allocated as follows:

- Seventy-five percent of all fees shall be allocated to the county and its municipalities and divided as follows: 36% retained by the county; 37% distributed to host municipalities and 27% distributed to all municipalities. It requires that 50% of the revenue shall be distributed based on a formula using the population of the municipality divided by the population of county multiplied by the amount available for distribution; and 50% shall be distributed based the highway mileage of the municipality divided by the total highway mileage of the county multiplied by the amount available for distribution.

Counties and municipalities receiving fees shall only use such monies for the following purposes associated with unconventional natural gas production within the county or municipality, such as construction, reconstruction, maintenance and repair of roadways, bridges and public infrastructure; water, storm water and sewer systems, including construction, reconstruction and repair; emergency preparedness and response, including police, fire, hazardous material response, 911, equipment acquisition, responder recruitment and other services and projects. It also includes and is not limited to county or municipal planning and local tax reduction.

- Twenty-five percent of all fees shall be allocated to the Commonwealth
 - 70% to Department of Transportation for road and other transportation infrastructure improvements to address impacts from unconventional natural gas development
 - 10.5% to DEP, not to exceed \$10 million annually;
 - 7.5% to the Public Utility Commission, not to exceed \$2 million annually
 - 4.5% to PEMA, not to exceed \$2 million annually, for emergency response planning;
 - 3.75% to the Department of Health, not to exceed \$2 million annually;
 - 3.75% to the Office of State Fire Commissioner, not to exceed \$2 million annually; and
 - any funds remaining in the restricted account shall be distributed to Transportation.

The county treasurer of a county that imposes and collects an impact fee shall certify the number of all unconventional wells located within each municipality of the county and make the payments required to municipalities as required.

Commencing in calendar year 2012 and each year thereafter, before December 1, each county that imposes an impact fee shall prepare and deliver a report to the Secretary of the Senate and the Chief Clerk of the House detailing the expenditure of the funds collected. The Department of Community and Economic Development (DCED) may audit a county's and municipality's expenditure of the funds. A county and municipality that receive funds must make its financial records and other documents relating to expenditure of the funds available to DCED.

The subchapter also includes additional language related to prohibitions, reporting, well information, county authority, records examination and the deposit of fees. It also states that by April 1 of the year following the effective date of the ordinance and each April 1 thereafter, each producer shall submit a report and payment of the fee to the county on a form prescribed by DEP. The fee must be paid by April 1 of the year following enactment of the ordinance imposing the fee and each April 1 thereafter.

Upon request, DEP must provide a county with a list of all unconventional wells that have been issued a well permit. The list must be updated on a monthly basis. DEP may, instead of providing a county with a list, maintain a list on its publicly accessible Internet website if the list is updated monthly. Additionally, a producer must notify a county within 30 days from the date the unconventional well began or ceased production.

Oil and Gas Act: The bill consolidates the Oil and Gas Act (Act 223 of 1984) into Title 58 to address the regulation of oil and gas activities and related environmental aspects and issues. Some of the language includes, but is not limited to, several changes related to setbacks from streams, water wells, buildings and public water supplies; addresses bond amounts related to drilling activity and bore length; enables the Environmental Quality Board to promulgate regulations; requires the consideration of municipal comments and issues related to security, lightning, noise and odor.

It also establishes additional responsibilities and duties for DEP related to water and air issues:

- Air contaminant emissions: DEP shall publish protocols for the detection, quantification and reporting of air contaminant emissions from unconventional gas production processes no later than three months from enactment of this legislation; a draft report of total air contaminant emissions for public comment no later than nine months from enactment of this legislation; and a final report published no later than one year, with a revised report issued every five years thereafter.
- Water supply and contamination: DEP shall ensure the restored or replaced water supply meets the applicable water quality standards, and predrilling or alteration water quality standards as determined by the department. The department shall also establish a single State-wide toll-free telephone number that persons may use to report cases of water contamination, develop administrative responses related to water contamination and establish a website that lists the confirmed cases of water supply contamination that result from hydraulic fracturing.

FISCAL IMPACT: Enactment of this bill will have three separate fiscal impacts on Commonwealth funds by: 1) establishing interfund transfers and the appropriation of moneys from the Oil and Gas Lease Fund and 2) providing for the imposition of an unconventional gas well impact fee to be enacted by the counties; and 3) requiring additional oversight, duties and responsibilities of the Department of Environmental Protection.

1. **Transfers from the Oil and Gas Lease Fund.** The bill would require two immediate transfers to DEP: a one-time transfer of \$7.5 million to create the Clean Transit Loan Program for the transition of large mass transit bus fleets to compressed natural gas, and a one-time transfer of \$5 million to DEP for the Keystone Transit Program. These immediate transfers will have no adverse impact on the fund because the total available fund balance for FY 2011-12 is projected to be over \$90 million. The bill requires all of the \$7.5 million loan repayments to be deposited into the Oil and Gas Lease Fund within five years from disbursement and before June 30, 2021.

As noted above, no other interfund transfers would be required from the Oil and Gas Lease Fund until FY 2013-14 as established in the bill. However, once the transfers begin on July 1, 2013, it is projected that the fund will have a prior year balance of \$150 million and the following distributions will be made: \$37.8 million to the Environmental Stewardship Fund; \$15 million to the Conservation District Fund; \$5 million to the General Fund for payment in lieu of taxes to local municipalities.

In FY 2014-15, the Hazardous Sites Cleanup Fund will receive its first allocation. The Oil and Gas Lease Fund is projected to have a prior year balance of \$240 million and the following distributions will be made: \$60 million to the Environmental Stewardship Fund; \$40 million to the Hazardous Sites Cleanup Fund; 15 million to the Conservation District Fund; and \$5 million to the General Fund for payment in lieu of taxes to local municipalities.

It is projected that the remaining balance in the fund will continue to be used and managed by the Department of Conservation and Natural Resources as is currently done to finance conservation, recreation, dams or flood control projects and address infrastructure needs within both the State forest and park system.

These transfers are possible in future years based on aggressive revenue growth in the Oil and Gas Lease Fund as a result of increased well activity and gas production on State forest lands. For example, the fund has historically averaged \$3 million in royalty revenues prior to 2008 and the development of the Marcellus Shale play in the Commonwealth. This also coincided with the first of three one-time lease payments from state forest natural gas leases totaling \$158 million; \$128 million and \$120 million, respectively, and used to offset budget deficits in the General Fund. The total transfer amounts were \$203 million for FY2009-10 and \$180 million for FY 2010-11.

As a result of these leases and the continued development and production of these unconventional natural gas wells, the Oil and Gas Lease Fund is projected to receive consistent revenue totaling in the hundreds of millions of dollars for the foreseeable future – with projections topping \$800 million in less than twelve years. This is further evidenced with the rapid increase in natural gas production in the Commonwealth. For example, a total of 227 MMCF of natural gas was produced in 2008, while a total of 706 MMCF was produced from July 2010 through June 2011.

2. **Imposition of Unconventional Gas Well Impact Fee.** The bill authorizes counties with shale deposits to impose an impact fee on unconventional gas wells with a ten-year, graduate impact fee. It is projected that this fee will generate \$160,000 in total revenue per well. It is estimated that, if all counties enact a local impact fee ordinance for unconventional gas wells, this could generate approximately \$208 million in additional revenue potentially within seven years. However, any such revenues are dependent upon each individual county enacting an ordinance in a timely manner to begin collecting impact fee revenues.

Assuming that all counties implement an unconventional gas well impact fee, counties could expect to collect approximately \$156 million overall and that will be distributed per the established percentages: \$56.1 million or 36% to counties; \$57.7 million or 37% to host municipalities; and \$42.1 million to all municipalities in the host county.

This would then drive twenty-five percent of the impact fee revenue, or approximately \$52 million to the Commonwealth for the following distribution as defined in the bill: \$36.4 million to Department of Transportation; \$5.5 million to DEP; \$2 million to PUC; \$2 million to PEMA; \$2 million to the Department of Health and \$2 million to the Office of State Fire Commissioner. It is estimated that approximately \$1 million in remaining revenues will be realized and transferred to the Department of Transportation as outlined in the bill.

3. **Duties of the Department.** It is expected the department will have significant administrative and operational costs associated with the requirements to publish protocols and prepare emissions reports related to unconventional gas development processes. This could also result in more staffing and funding needs for the department – from either the General Fund or the Clean Air Fund - to accomplish these additional duties. It is projected that initial costs could be \$250,000 to implement additional air and water contamination protocols and notifications, and is expected to increase especially if more testing, staff and equipment are required for these duties. These costs are in addition to the \$12.5 million in additional revenue the department will receive from the Oil and Gas Lease Fund to begin the Clean Transit Loan Program and Keystone Transit Program, respectively.

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.