



**TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS**

**BEFORE THE
HOUSE REPUBLICAN POLICY COMMITTEE**

ON

IMPACT OF MARCELLUS SHALE

PRESENTED BY

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DOYLESTOWN, PA**

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Chairman Reed and members of the House Republican Policy Committee:

Good morning. My name is Elam M. Herr, assistant executive director for the Pennsylvania State Association of Township Supervisors. We are a non-profit and non-partisan association appearing before you today on behalf of the 1,455 townships in Pennsylvania that we represent. Thank you for this opportunity to participate today on this issue that is so important to our members.

Townships comprise 95 percent of the commonwealth's land area and are home to more than 5.5 million Pennsylvanians — nearly 44 percent of the state's population. These townships are very diverse, ranging from rural communities with fewer than 200 residents to more populated communities with populations approaching 60,000 residents.

Pennsylvania is sitting on the second largest energy field in the world with the addition of Marcellus and Utica Shale gas, which impacts 55 counties ranging from Greene to Wayne. Townships throughout the state are facing the impact of natural gas well drilling like never before. While the natural resource is economically benefitting many communities, drilling comes with both positive and negative impacts on townships and their residents.

PSATS supports these economic opportunities, but they must be conducted in an environmentally responsible manner and the negative impacts, both environmental and community-based, must be mitigated to the maximum extent possible.

The sudden growth of the industry across the Marcellus Shale region was not an activity that most communities could have predicted or planned for. As such, many areas of the state went from very little or even no growth to very rapid growth as the value of and the ability to acquire this resource was realized. The end result is that communities are playing catch-up in trying to figure out what needs to be done to plan for a future that few had envisioned just five years ago.

Townships across the state have faced a number of impacts, and as such, we are strongly supportive of a reasonable impact fee on natural gas extraction provided that the majority of the revenues are returned to the communities that are impacted by these activities.

The most visible and immediate concern of many township officials is damage to roads caused by heavy truck traffic. Prior to the current drilling activity, traffic on rural roads was light with little heavy hauling other than loggers and milk trucks and in some regions, coal. Today, drilling-related truck traffic has had, and will continue to have, a major impact on municipalities throughout this region, a number of which had not even considered bonding their roads prior to the start of these activities. Truck traffic affects not only those municipalities hosting well sites, but also those that serve as an access route to the well drilling site. And pipeline construction activity is only just beginning.

Many in the industry are working with their communities to ensure that road repairs are made and PennDOT very recently updated its publications to address the challenges faced by the overweight drilling traffic. However, we are asking PennDOT to develop a manual very similar to its own just for municipal officials so that they will have the tools they need to fully recover their costs from the industry. Posting and bonding should be enforced through excess maintenance agreements to ensure that the extensive road improvements made by the industry meet all applicable standards. And remember, it is not always the drilling companies causing problems.

It is worth noting that the drilling companies do have an incentive to work with municipalities to rebuild roads at this time: they need the roads to be in good condition so that supplies can be delivered and drilling can continue. However, what will our roads look like in the future, after a couple of Pennsylvania winters, and once drilling is complete and the companies no longer need our roads to be in good condition?

In Pennsylvania, we can see the scars that remain from the extraction or harvesting of our natural resources, including coal and wood. Once a healthy environment is damaged, it can take decades, if not centuries, to recover.

Contamination of local water supplies is a major concern because most of the residents in rural areas rely on well water and are wary of pollution from drilling activities, including the migration of methane gas. If this happens, the municipality could bear the responsibility for permanently operating a new water treatment plant.

Affected communities are concerned because modern drilling techniques use very large quantities of water, which is laced with industrial chemicals. The resulting wastewater is difficult to process, as specialized facilities are needed to treat it. Without treatment, these water withdrawals may not be returned to our aquifers, which could impede an adequate water supply for residents. While more wastewater is being recycled every month, this remains an issue.

Other major impacts include the need for increased public safety activities, such as police protection, the need for emergency services planning, training, and acquisition of additional equipment for emergency service providers, the proliferation of gathering lines needed to transport natural gas to market and the need to coordinate this activity with local officials and emergency service providers.

Finally, in areas with heavy Marcellus shale drilling activity, townships have reported a sharp increase in labor costs, particularly for CDL drivers. These drivers, and many other skilled employees, are taking good paying jobs with the companies supporting the industry. While clearly the creation of family sustaining jobs is a benefit to the community, it also significantly increases municipal labor costs for attracting and retaining skilled employees by as much as 20 to 25 percent over what was formerly a good wage in the area.

Many townships also need to increase staffing hours or hire additional employees to keep up with the industry through reasonable regulations for zoning and building permits, daily inspections of the roads, and the rebuilding that is necessitated by overweight vehicle use. The cost of materials has also increased in part due to high demand for road repairs in active areas.

However, the local tax revenue received in the communities affected by natural gas drilling has changed little since the Marcellus play began. Other than the local services tax (*\$52 annually*) for employees primarily employed in a particular municipality and property taxes on any physical support facilities, the industry is contributing minimal tax revenues to the host communities.

While other natural resources in Pennsylvania are assessed as real estate and subject to the property tax, including coal deposits, natural gas and coal bed methane reserves have been exempt since 2002, when the Pennsylvania Supreme Court ruled in *Independent Oil and Gas Association of Pennsylvania v. the Board of Assessment Appeals of Fayette County* that assessing and levying property taxes on oil and gas wells was not explicitly authorized under the law. As such, municipalities are not receiving any property tax revenues from these reserves nor from the value of the extracted gas.

As noted in a 2009 analysis by Professor Timothy Kelsey with Penn State Cooperative Extension, both lease and royalty income are exempt from the local income tax in Pennsylvania. In addition, except for Allegheny County and Philadelphia, Pennsylvania's local governments do not receive any revenues from the sales tax. Unless a local government directly leases land for a gas well or receives some payment for gathering lines placed in its right-of-way, it will see little, if any, revenue from the industry.

As such, the Association supports an impact fee on natural gas extraction, provided that the majority of this revenue comes back to the local governments that are affected by the activity. An impact fee, properly levied, is simply a responsible way to do business in the commonwealth and levels the playing field for Pennsylvania consumers.

Our association has worked with the other municipal government associations to develop a local distribution proposal that returns the majority of the funds to the local governments directly affected by the drilling activity, to be divided amongst the host counties, host municipalities, and non-host municipalities within a host county.

One bill that received some consideration in the Senate this spring is **Senate Bill 1100 (PN 1328)**, which follows a very similar model for its impact fee language and allocates nearly 60 percent of the revenues to local governments in a formula that we can support: 36 percent to counties with producing wells; 37 percent to municipalities with producing wells; and 27 percent to all other municipalities in host counties. In addition, the bill would allow municipalities to spend these funds on a large range of impacts. We support the impact language in SB 1100 as fair and equitable.

However, we take issue with the zoning language in SB 1100 and are urging the Senate to remove this provision, which would set statewide rules that would require municipalities to permit drilling in every zoning district and would restrict municipalities' ability to impose reasonable limits on noise, light, the height or security of fencing for drilling operations, natural gas compressor stations, and natural gas processing plants. We believe it would unfairly tie the hands of municipal government to impose reasonable land use regulations, which is already subject to limitations under existing state law.

While the Oil and Gas Act has long exempted the industry from local regulations on drilling operations, townships do maintain the ability to regulate the location of gas wells through the land development process. Recently, the PA Supreme Court upheld a municipality's authority to impose reasonable zoning regulations upon oil and gas well exploration, drilling and development as authorized in the Municipalities Planning Code and the Flood Plain Management Act. And as long as these ordinances do not purport to regulate the operations of the activity – those covered by the Oil and Gas Act and permitted by DEP – they have the blessings of the courts. It is when a municipal ordinance steps over that line or attempts to prohibit or ban drilling that the ordinance is found to violate existing state law.

To help our members meet this challenge, PSATS has developed a model ordinance with commonsense guidelines. The model is meant to allow the timely continuation of exploration while maintaining local control over reasonable health, safety, and quality of life issues in the community. Key issues include reasonable buffers, emergency preparedness, and noise and lighting guidance to decrease the impacts of the industry while staying within the constraints identified by the courts.

We partnered with the other local government associations, the industry, and environmental groups to establish some commonsense baselines. As an example, the only place we suggest is not a “use by right” is in a residential area. We encourage municipalities to adopt commonsense as opposed to overly restrictive provisions that will result in costly, and ultimately futile, litigation at great cost to residents and taxpayers.

In the House, **HB 1700 (PN 2138)** would impose an impact fee and allocate 50 percent of the funds to affected local governments. Of the local governments' share, 50 percent would be distributed to municipalities with wells, which could be used for water, storm water and sewer systems; to preserve and reclaim surface and subsurface waters and water supplies; and to construct and maintain local roads and bridges. The remaining 50 percent would be provided to counties in which wells are located for police, fire, and EMS equipment and training grants; municipal grants for watershed protection or improvement, flood control, or floodplain management projects; and municipal grants to offset planning and enforcement costs of the Pennsylvania Sewage Facilities Act.

We applaud the sponsor of HB 1700 for opting to preserve local land use authority. While we support this proposal since it would provide 50 percent of the revenues to impacted local governments, we prefer the local distribution model and allowable uses contained in SB 1100 because it would provide funding to impacted non-host municipalities and includes a more comprehensive list of allowable uses. As we

mentioned earlier, many of the impacts are to a township's daily operations and as such, we ask for as broad use of the funding.

Neither of these bills would impose caps or other unreasonable limits on the municipal use of impact fees. In fact, we believe that budget caps are unnecessary due to the fact that the revenue from an impact fee is not estimated to raise enough funds to create a windfall for any municipality.

In closing, municipalities should be able to use any impact fee revenue for a broad range of issues and impacts and should also be able to plan for out-year expenses now by accumulating impact fee revenue for impacts that will be faced in future years. As you well know, township officials are elected by their residents to govern and manage the affairs of their community. This means making tough decisions about spending and raising revenue. No one wants to raise property taxes, but with the current economic conditions and impacts due to the Marcellus Shale play, many municipalities will be left with no other option if there is not a local impact fee.

Thank you for the opportunity to comment today.