

County Fee for Local Use Fund

BACKGROUND:

On November 25, 2013, Act 89 of 2013 was approved and passed into law. As a result of changes it made regarding transportation-related funding for local governments, several chapters of Publication 9 needed to be updated. One of the changes allows counties to impose a \$5 fee for local use on nonexempt vehicles registered to an address located in the county. This new section establishes guidelines governing the collection, use and oversight for those funds.

Act 89 of 2013 amended the Vehicle Code, Title 75 of the Pennsylvania Consolidated Statutes, by adding Section 1935, which reads as follows:

§ 1935. Fee for local use.

- (a) Establishment of fund.**--A special fund is established within the State Treasury to be known as the Fee for Local Use Fund. Money in the fund is appropriated to the department for the purposes set forth in this section.
- (b) Levy.**--Beginning after December 31, 2014, a county may, in its discretion by ordinance, impose a fee of \$5 for each nonexempt vehicle registered to an address located in the county. A county shall notify the department of the passage of the ordinance 90 days prior to the effective date of the ordinance.
- (c) Collection.**--The department shall collect fees imposed under subsection (a) at the time a vehicle is registered and shall deposit the money in the Fee for Local Use Fund.
- (d) Distribution.**--Money paid into the Fee for Local Use Fund shall be distributed by the department to each participating county in accordance with the amounts collected from the county. Funds payable to a county under this section shall be added to funds payable to the county under section 9010(b) (relating to disposition and use of tax) and shall be used by the county for transportation purposes or be allocated by the county in accordance with section 9010(c).

In addition to supplying an ordinance to PennDOT, the county must also establish a separate bank account in which to receive electronic distribution of monies from the Fee for Local Use Fund. These funds are not to be comingled with County Liquid Fuels Tax funds.

The Center for Program Development and Management will distribute the funds into the established separate account in June and December annually. In 2015, the first payment is not anticipated to occur until December.

Use of the funds is constitutionally limited to highway and bridge purposes, i.e. the construction, reconstruction, maintenance and repair of and safety on public highways and bridges and costs and expenses incident thereto. Recordkeeping and auditing of these funds will be subjected to the same requirements as established for the County Liquid Fuels Tax funds.

Details for each of these points are included in this chapter as guidance for counties which establish a Fee for Local Use ordinance and account.

WHERE TO DIRECT QUESTIONS:

Counties with questions concerning payments should contact the Center for Program Development and Management at 717.214.6161. Counties with questions concerning the use of these funds should contact the Bureau of Planning and Research at 717.772.1772. If necessary, the Bureaus will interact with Driver and Vehicle Services or the Office of Chief Counsel.

Individual vehicle owners should contact PennDOT's Driver and Vehicle Services Customer Care Center in state at 1.800.932.4600 or out of state at 1.717.412.5300.

VEHICLES SUBJECT TO THE FEE FOR LOCAL USE:

All nonexempt vehicles registered to an address located in the county are subject to the fee for local use. Nonexempt vehicles are those vehicles which are not exempt from registration fees under the Vehicle Code, i.e., those for which a registration fee is due.

Vehicles exempt from registration under the Vehicle Code are addressed in Sections 1901 ("Exemptions of persons, entities and vehicles from fee"), 1302 ("Vehicles exempt from registration"), 1303 ("Vehicles of nonresidents exempt from registration"), 1335 ("Registration plates for manufacturers and dealers"), and 1337.1 ("Fleet owner transporter registration plate"). A county may not exempt vehicles other than those exempt under the Vehicle Code.

Trailers are vehicles under the Vehicle Code subject to the fee. Recreational vehicles (RVs) are motor homes or camping trailers, both of which are vehicles under the Vehicle Code subject to the fee.

Boats are not subject to the fee because they are registered by the Fish and Boat Commission, not PennDOT. Likewise, all-terrain vehicles are not subject to the fee because they are registered by the Department of Conservation and Natural Resources, not the Department.

PennDOT has a list of the approximate number of nonexempt vehicles in each county. It is available upon request.

CREATING AN ORDINANCE:

County ordinances to assess the \$5 fee for local use may be passed by counties on or after January 1, 2015, and notice provided to the Department. The effective date of imposition of the fee cannot be less than 90 days from when the county notifies PennDOT of passage of an ordinance. This timeframe will allow PennDOT to modify the vehicle renewal notices for each county that enacts an ordinance so vehicle renewals will begin with the effective date in the ordinance.

The County Commissioners Association of Pennsylvania (CCAP) has developed a model ordinance that can be used as determined appropriate by the county solicitor. This model ordinance can be found on CCAP's website at www.pacounties.org, under Legislative Quick Links, Transportation Funding/Act 89 Resources. The basic information must contain the effective date of the ordinance, and if desired, any time limits or duration of effectiveness established by the ordinance. The document must show authorized signatures and the county clerk's seal.

A county may not impose a fee of less than \$5 because Section 1935 only provides for a fee of \$5 for each nonexempt vehicle registered to an address located in the county. The \$5 fee will not be subject to automatic adjustment of fees under Section 1904(c) of the Vehicle Code because the fee is not being charged by PennDOT under the Vehicle Code, but is rather imposed at the discretion of counties by local ordinance.

A county may limit the time during which the fee will be assessed because the timeframe for imposition of the fee is not restricted in Section 1935. Any such time restriction should, however, be addressed in the ordinance if known at the time of the ordinance. PennDOT requires at least 90 days' notice before an assessment is to expire to insure proper billing for registrations in the county.

Signed and attested ordinances must be submitted to PennDOT by U.S. Mail or electronic copy as follows:

U.S. Mail Service:

Commonwealth of Pennsylvania, Department of Transportation
Deputy Secretary for Planning
400 North Street
Keystone Building, 8th Floor
Harrisburg, PA 17120-0041

Electronic Submission:

lashifflet@pa.gov

ESTABLISHING A SEPARATE ACCOUNT FOR RECEIPT OF THE FEE FOR LOCAL USE:

In addition to submitting the ordinance, the county must establish a separate fund for the receipt of the \$5 fee for local use funds. The Commonwealth's Central Vendor Management Unit is the unit that establishes the separate account. The website for this is www.vendorregistration.state.pa.us or e-mail to: RA-PSC_Supplier_Requests@pa.gov or telephone 877.435.7363 (toll free).

Once the county registers the separate fund with the Central Vendor Management Unit, should the county elect to receive monies from the Fee for Local Use Fund electronically, the county must follow the instructions for Electronic Funds Transfer (EFT) payments and complete the documentation as found on the Office of Comptroller Operations, Bureau of Payable Services website at:

<https://www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf>

Completion of these forms will allow the Department of the Treasury to deposit the funds into the county's designated bank account. Completed and signed forms should be faxed to the Central Vendor Management Unit at 717.214.0140.

COLLECTION OF THE FEE FOR LOCAL USE:

PennDOT's Driver and Vehicle Services (DVS) will collect the fee. DVS will deposit the fees with the Department of Treasury, which will establish the Fee for Local Use Fund.

DVS will collect the fee at the time of registration or renewal of nonexempt vehicles. Therefore, for owners of trailers exercising the optional five-year registration under Section 1920(b) of the Vehicle Code, the fee collected at the time the vehicle is registered is \$5. For vehicle owners who opt for biennial registration of nonexempt vehicles under Section 1307(g) of the Vehicle Code when it becomes effective in 2016, the fee is \$5 at the time of registration or renewal. Section 1935 does not provide that the fee is annual, but rather that it is collected at the time of registration.

DISTRIBUTION OF FUNDS TO THE COUNTIES:

PennDOT's Center for Program Development and Management will distribute the funds to the counties on June 1 and December 1 of each year similar to the distribution of county liquid fuel funds. However, liquid fuel funds may not be comingled with other funds. Consequently, fee for local use funds will be distributed in addition to and separately from County Liquid Fuel funds, not in the same transaction. In 2015, the first payment is not anticipated to occur until December.

Investment of Funds:

Fee for Local Use Funds should be invested to earn interest until expended and may be combined with other county funds for investment purposes. However, the principal and

its proportionate share of interest must be returned to the Fee for Local Use account and expended in accordance with the Act. Pennsylvania statutes require all deposits to be insured and, for any amount above the insured maximum, to be secured with approved collateral.

ALLOWABLE USES OF FEE FOR LOCAL USE FUNDS:

Counties can use the funds for transportation purposes or allocate them to political subdivisions within the county in accordance with Section 9010(c) of the Vehicle Code, subject to constitutional limitations.

Section 9010(c) allows funds to be apportioned to political subdivisions within the county through a formula based on road mileage and population. A county is not, however, restricted to use the formula for distribution. A county may distribute fee for local use funds to municipalities and other governmental entities through an application process similar to that used for County Liquid Fuel funds, as long as the municipality or other governmental entity uses the funds for permitted transportation purposes. A county may also distribute fee for local use funds to non-profit corporations through an application process, again as long as the non-profit corporation uses the funds for permitted transportation purposes, e.g. the creation of highway and bridge planning studies.

Article 8, Section 11 of the Pennsylvania Constitution, which restricts the diversion of proceeds from vehicle registration fees, applies to the use of fee for local use funds. Vehicle registration fees may only be used under the Pennsylvania Constitution for construction, reconstruction, maintenance and repair of and safety on public highways and bridges and costs and expenses incident thereto. Consequently, fee for local use funds can only be used by counties or others if distributed by a county under Section 9010(c) or by application, for construction, reconstruction, maintenance and repair of and safety on public highways and bridges and costs and expenses incident thereto.

Fee for local use funds cannot be used for transit purposes. Transit is not a highway or bridge purpose within the confines of Article 8, Section 11.

Fee for local use funds are not limited to those uses set forth in Section 9010(b) of the Vehicle Code addressing allowable uses for county liquid fuel funds because the phrase transportation purposes in Section 1935 is broader. However, those uses listed in Section 9010(b) are constitutional uses and thus allowable uses for fee for local use funds.

Examples of Acceptable Expenditures include:

1. Construction, reconstruction, maintenance, and repair of public roads/ streets or bridges for which the county or municipality is legally responsible including a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historical park.

2. Costs of property damages resulting from road and/or bridge construction, reconstruction, or maintenance.
3. Purchase of right-of-way for road and/or bridge construction, reconstruction, or maintenance.
4. Compensation of viewers for services in eminent domain proceedings involving roads, highways, and bridges.
5. Interest and principal payments on road or bridge loans and bonds or sinking fund charges for such bonds becoming due within that current calendar year.
6. Any road or bridge work by order of the Public Utility Commission (PUC).
7. Culverts and drainage structures.
8. Acquisition, maintenance, repair, electrification, and operation of traffic signs and traffic signal control systems at intersections and/or railroad crossings.
9. Maintenance on alleys, ways, and courts in counties, townships, boroughs, and cities provided the municipality can demonstrate it has a legal responsibility for the alley, way, or court.
10. Street lighting in excess of taxes and bridge and interchange lighting.
11. Minor equipment, equipment rentals, or repair parts for road maintenance vehicles.
12. Road drags and snow fence.
13. Purchase of PennDOT-approved materials.
14. Major road and bridge equipment (equipment costs in excess of \$4,000).
15. County Engineer's salary and benefit costs for road or bridge work.
16. Debris removal from the roadway and its gutters and shoulders.
17. Erection of street name signs, traffic directing signs, and traffic signal control systems.
18. Brush removal to improve sight distance.
19. Lane and crosswalk painting and marking.
20. Cleaning of inlets and culverts.
21. Certain structures such as salt storage sheds or buildings built to house county or municipal owned road equipment.
22. Engineering fees (fees in excess of 10% of the total contract price must be documented and justified to the satisfaction of the Municipal Services District Office).
23. Curb ramps to provide access by individuals with disabilities in accordance with the current Americans with Disabilities Act (ADA) and PennDOT standards.
24. Driveway grade adjustments due to construction or reconstruction.
25. Liability insurance for road and bridge equipment and vehicles when the named beneficiary is the entity's Liquid Fuels Tax Fund.
26. Administrative costs to a maximum of 10% of that year's total allocation, including benefits, overhead, and other administrative charges for county employees directly involved in permitted activities.

Note: expenditures must be documented and may be paid directly or charged as a mark-up on direct costs as part of an approved indirect cost allocation plan when the basis of the charge is consistent with charges to other county departments and the level of activity of the fund.

27. Indirect engineering and transportation planning costs.

Note: the total indirect cost that may be expended in any year is limited to the 10% administrative allowance (see number 26 above). Direct engineering costs either contracted or in house are not included as either indirect or administrative costs. The reimbursement of prior year indirect costs is not permitted nor is any carry forward of eligibility authorized.

28. Ferry boat operations, where applicable.
29. Appraisal fees for infrastructure assets (as required by GASB 34).
30. Curbs that are part of the drainage system.
31. Inspection costs associated with roadway and bridge structures such as signs, signals, culverts, drainage structures and bridges.
32. Transportation related safety studies or safety projects on public highways.
33. Meeting the match requirement for Department highway and bridge projects and highway and bridge projects funded under the Multimodal Fund.
34. The construction of sound walls if included in a highway project as a mitigation measure for environmental purposes and all warrants are met.
35. The portion of pedestrian trails that is located within highway right-of-way.
36. Repayment of or as security for Pennsylvania Infrastructure Bank loans with previous approval of the District Municipal Services Representative.
37. Other expenditures determined, on a case-by-case basis, to be consistent with the requirements and restrictions of Article 8, Section 11 of the Pennsylvania Constitution.

Examples of Unacceptable Expenditures include:

1. Parks, municipal buildings, or playgrounds.
2. Police departments, fire departments, or historic, charitable, or civic projects.
3. Private property drives.
4. Sidewalks not involved with road or bridge realignment projects.
5. Sanitary sewers, water lines, or utility costs.
6. Garbage or recycling pick-up.
7. Construction projects without prior Department approval.
8. Undocumented payroll expenditures.
9. Gasoline purchases for private vehicles.
10. Retroactive expenditures.
11. Transit-related expenditures.
12. The construction of sound walls if not included in a highway project as a mitigation measure for environmental purposes and/or does not meet all warrants.
13. The portion of pedestrian trails that is not located within highway right-of-way.
14. Other expenditures that do not comply with Section 1935 or the County Code.

PROCEDURE TO ESTABLISH A CONSTRUCTION/RECONSTRUCTION AND/OR RESURFACING PROJECT

The following criteria is used to determine when Project Approval is required for work on local roads utilizing fee for local use funds, when construction, reconstruction, and/or resurfacing work exceeds one inch or more in depth, as well as other activities.

Criteria To Determine when Project Approval Is Required	
Bituminous surface	One inch thickness or greater
Concrete surface	50 square yards or more
Widening	A new lane and/or more than two feet on either or both sides of existing roadway
Relocation	All
Bridges	For bridge maintenance/preservation activities, confer with Municipal Services Representative to determine if a project approval is required. All rehabilitations, replacements or any other work that affects the carrying capacity of the structure or the waterway areas require
Other	Reconstruction, such as removal and replacement of one inch or more of existing road material, including base and surface. This includes cold-mill recycling and reclamation work.
Traffic signals and lighting	New installations
Guiderail, pipe, and related items	New guiderail, pipe and replacement of existing items with a better or larger type

1. The county officials shall notify the Municipal Services Representative that work has been proposed utilizing fee for local use funds.
2. The county official or engineer shall make an appointment with the Municipal Services Representative to review the proposed work to determine if it fits the above criteria of a “project” requiring a MS-329, Project Approval Form. It is imperative that this be done prior to the project being started to ensure compliance with all requirements.
3. During the review of the work, the Municipal Services Representative may instruct the local officials or engineer on the preparation of the advertisement and proposal/contract.
4. The Municipal Services Representative and/or the county officials or engineer will estimate the cost of the work to be done. If the estimated cost exceeds \$25,000, the county officials shall request from the Pennsylvania Department of Labor and Industry guidance as to whether the work is subject to the Pennsylvania Prevailing

Wage Act and, if it is, determination of the applicable Pennsylvania prevailing wages. When prevailing wage rates apply, the county shall inform bidders of those rates through the advertisement and the proposal. If the Department of Labor and Industry determines that Prevailing Wage Rates apply to this project, then the actual rates must be advertised as part of the proposal.

5. If the project cost exceeds \$2,000 and is financed partly with federal funds, the Davis-Bacon Act, a federal statute (40 U.S.C. §§ 3141-3145), may apply. The Davis-Bacon Act applies without regard to the nature of the roadwork being performed. A county has the responsibility of obtaining the Davis-Bacon wage rates, if applicable, and including these rates in the proposal and advertisement for bids. To obtain Davis-Bacon wage rates, the county needs to contact the United States Department of Labor, Wage and Hour Division, which has district offices in Philadelphia, Pittsburgh, and Wilkes-Barre. The Pennsylvania Prevailing Wage Act does not apply to the project if the construction is covered under the Davis-Bacon Act. If the Davis-Bacon Act is applicable, it preempts the Pennsylvania Prevailing Wage Act. Furthermore, the Davis-Bacon Act, if applicable, applies to the entire project, not just the federally-funded component.
6. The county officials will prepare the advertisement and proposal/contract showing reasonable quantities and type of material or type of work. These items should be the same in the advertisement and proposal. The bids shall be opened at the same time and place indicated in the advertisement.
7. The county shall prepare a tabulation of bids and notify the Municipal Services Representative that the bids have been received and a contract awarded. The advertisement and proposal/contract documents will be reviewed by the Municipal Services Representative. Any discrepancies must be resolved and reflected on a revised MS-329, Project Approval form, authorizing the work to begin.
8. A completed and signed MS-329 will be forwarded to the municipality for future audit purposes. All revisions to the project must be reported to the Municipal Services Representative. A revised MS-329 may be issued based on changes to the scope of work.
9. During the construction, the Municipal Services Representative shall make an effort to visit the project to review the work and the progress of the job.
10. Upon completion of the project, the county officials shall complete Form MS-999, Project Completion Report, and submit this form to the Municipal Services Representative. A final field inspection will be conducted by the Municipal Services Representative. The county may be asked to provide all documentation required by PennDOT Publication 408, Highway Construction Specifications, (e.g., delivery tickets, certifications, bituminous mix designs, calculations for bituminous price adjustments). The MS-999 must reflect the actual quantities used and the total cost of the project. It shall also indicate the distribution of costs to the approved funding sources for the project.
11. Based on the Municipal Services Representative's review that the project was completed in accordance with the scope of work described on the MS-329, the MS-999 will be signed and a copy returned to the municipality for future audit purposes.

REPORTING AND AUDITING OF FEE FOR LOCAL USE FUNDS

Each county that has adopted a fee for local use ordinance must submit a set of annual reports showing the receipts and expenditures of all fee for local use funds received from the Commonwealth on forms supplied by the Center for Program Development and Management. These forms and other related forms are listed below. Please visit www.dot.state.pa.us/bms under “Forms and Publications” for all applicable forms in both .pdf and spreadsheet format.

Preparation of Forms:

All of the forms listed are available through PennDOT’s Services to Local Governments web page at <http://www.dot.state.pa.us/bms>. Since these forms change from time to time, they are not included in this publication. Only their general purpose and uses are described below. Detailed instructions for their completion can be obtained from your Municipal Services Representative. The MS-991 and MS-992 forms are prepared throughout the year and are due before January 31st for the preceding calendar year.

Report of Fees for Local Use Funds:

This form requests such information as:

- Balance in the Fee for Local Use Fund at the beginning of the report calendar year.
- Receipts which must be itemized and include interest, reimbursable agreements, and miscellaneous items such as loans, sale of salvageable material, and damage claims to road or bridge property.
- Accounts receivable (to be realized within 60 days of the year end).
- Total Fee for Local Use funds available for expenditure.
- Expenditures for county-owned bridges.
- Accounts payable (to be paid within 60 days of the year end).
- Balance in the fund at the close of the report calendar year.
- Ending balance on hand at the close of the report calendar year.

Fee for Local Use Fund-Account Expenditures:

Expenditures are listed individually, in order by date and voucher number. Required data also include the recipient, purpose, type of expenditure (e.g., maintenance, repair, and construction), loans repaid, and grants. PennDOT, PUC, and/or other agreement numbers should be included when applicable. Note: project numbers are assigned by the Municipal Services District Office and are included on the MS-329, Project Approval form.

MS-339 Application for County Aid (from Political Subdivisions):

Section one of this form is prepared by a municipality requesting county aid on a construction or maintenance project. This is the county's record of the request for funds and certifies that a proper resolution was passed by the municipality requesting aid. The county shall ensure that municipalities have signed and sealed the document.

Section two of the form is completed by the county, which certifies that a proper resolution was passed by the county granting the requested aid and is also a commitment by the county that the municipality will be reimbursed upon satisfactory completion of the MS-999, Project Completion Report.

Section three is the PennDOT approval section and will be completed by the Municipal Services Representative.

MS-329 Project Approval Form:

This form is completed by a Municipal Services Representative when investigating a project. It records the approval of the scope of work and authorizes expenditures for the project from the Fee for Local Use Fund. The form contains a project number. One copy is given to the county and one copy is retained by the Municipal Services District Office.

MS-999 Completion Report:

When construction or maintenance project work is completed, the county completes section one and forwards the form to the Municipal Services District Office. All costs associated with the project are included. The Municipal Services Representative completes section two of the form, approving the expenditure of Fee for Local Use funds.

Audit Requirement:

All Fee for Local Use Funds are subject to audit annually by the Pennsylvania Department of the Auditor General in accordance with the requirements of Section 403 of the Fiscal Code, 72 P.S. § 403.