

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 539 Session of  
2009

INTRODUCED BY REED, BEYER, CALTAGIRONE, DENLINGER, EVERETT,  
HENNESSEY, MOUL, MUSTIO, PYLE, REICHLEY, ROHRER, SCAVELLO,  
SIPTROTH, SOLOBAY, VULAKOVICH AND WANSACZ, FEBRUARY 19, 2009

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
FEBRUARY 19, 2009

AN ACT

1 Establishing the Coal Bed Methane Review Board to resolve  
2 disputes between property owners over the location of coal  
3 bed methane wells and access roads.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 101. Short title.

7 This act shall be known and may be cited as the Coal Bed  
8 Methane Well Dispute Resolution Act.

9 Section 102. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Alternative dispute resolution." The procedure for dispute  
14 resolution provided for under this act.

15 "Board." The Coal Bed Methane Review Board established under  
16 this act.

17 "Coal bed methane." Gas that can be produced from a coal

1 seam, a mined-out area or a gob well.

2 "Coal bed methane well." A hole or well that is sunk,  
3 drilled, bored or dug into the earth for the production of coal  
4 bed methane from a coal seam, mined-out area or gob well for  
5 consumption or sale. The term includes a horizontal borehole.

6 The term does not include any of the following:

7 (1) A shaft, hole or well that is sunk, drilled, bored  
8 or dug into the earth for core drilling or production of coal  
9 or water.

10 (2) A borehole drilled or being drilled for the purpose  
11 of or to be used for degasifying coal seams if one of the  
12 following is met:

13 (i) the borehole is:

14 (A) used to vent methane to the outside  
15 atmosphere from an operating coal mine;

16 (B) regulated as part of the mining permit under  
17 the act of June 22, 1937 (P.L.1987, No.394), known as  
18 The Clean Streams Law, and the act of May 31, 1945  
19 (P.L.1198, No.418), known as the Surface Mining  
20 Conservation and Reclamation Act; and

21 (C) drilled by the operator of the operating  
22 coal mine for the purpose of increased safety; or

23 (ii) the borehole is used to vent methane to the  
24 outside atmosphere under a federally funded or  
25 Commonwealth-funded abandoned mine reclamation project.

26 (3) A well or borehole drilled in a coal seam from  
27 within an underground coal mine for the production of coal  
28 bed methane. This paragraph includes a well or borehole  
29 connected to a well or borehole that is sunk, drilled or dug  
30 from the surface.

1 "Department." The Department of Environmental Protection of  
2 the Commonwealth.

3 "Oil and Gas Act." The act of December 19, 1984 (P.L.1140,  
4 No.223), known as the Oil and Gas Act.

5 "Permit." A well permit issued pursuant to the act of  
6 December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas  
7 Act.

8 "Secretary." The Secretary of Environmental Protection of  
9 the Commonwealth.

10 "Surface owner."

11 (1) A person who owns any of the following interests in  
12 the surface upon which a coal bed methane well or associated  
13 access road may be constructed:

14 (i) a fee interest;

15 (ii) an interest for life; or

16 (iii) a remainder interest.

17 (2) The term does not include:

18 (i) the Federal or State Government or any agency or  
19 political subdivision thereof;

20 (ii) a person who is entitled to royalties for  
21 removal or recovery of coal bed methane; and

22 (iii) a person who owns a lease, easement, right-of-  
23 way, license, privilege or other similar interest in the  
24 surface.

25 "Well operator." A person who has filed or who is required  
26 to file for a permit under the act of December 19, 1984 (P.L.  
27 1140, No.223), known as the Oil and Gas Act.

28 Section 103. Legislative purpose and intent.

29 It is the purpose of this act to establish an alternative  
30 procedure to court action for consideration and resolution of

1 objections to the location of certain coal bed methane wells or  
2 access roads associated with those wells to be constructed on  
3 surface lands and to modify the procedure for review of permit  
4 applications to the extent necessary to allow for the procedure  
5 for alternative dispute resolution.

6 Section 104. Coal Bed Methane Review Board.

7 (a) Establishment.--The Coal Bed Methane Review Board is  
8 established.

9 (b) Composition.--The board shall consist of members as  
10 follows:

11 (1) One member shall be appointed by the Pennsylvania  
12 Farm Bureau.

13 (2) One member shall be appointed jointly by the  
14 Pennsylvania Oil and Gas Association, the Independent Oil and  
15 Gas Association of Pennsylvania and the Pennsylvania Coal  
16 Association.

17 (3) One member shall be an individual with expertise in  
18 petroleum geology or petroleum engineering with at least  
19 three years of experience in practice in this Commonwealth  
20 who is selected jointly by the Deans of the College of  
21 Agricultural Sciences of The Pennsylvania State University  
22 and the College of Earth and Mineral Sciences of The  
23 Pennsylvania State University.

24 (c) Term of appointment.--The term of appointment of a board  
25 member shall be three years or until a successor is duly  
26 appointed. A board member may be appointed for successive terms.

27 (d) Staffing.--The department shall provide administrative  
28 and clerical support to the board as requested.

29 (e) Purpose.--The purpose of the board shall be to consider  
30 objections and attempt to reach agreement on or determine a

1 location for the coal bed methane well or access road.

2 (f) Compensation.--

3 (1) Members of the board shall be compensated at the  
4 appropriate per diem rate based on the prevailing formula  
5 administered by the Commonwealth, but not less than \$150 per  
6 day, plus all reasonable expenses incurred while performing  
7 their official duties.

8 (2) The compensation shall be adjusted annually by the  
9 secretary to account for inflation based on the rate of  
10 inflation identified by the Consumer Price Index published by  
11 the United States Department of Labor.

12 (3) An individual member may waive the individual's  
13 right to all or part of the compensation set forth under this  
14 subsection.

15 Section 105. Procedure and alternative dispute resolution.

16 (a) Notification.--A well operator who intends to drill a  
17 coal bed methane well or construct an access road associated  
18 with a coal bed methane well shall provide written notification  
19 to the surface owner in the time and manner prescribed under  
20 section 201(b) of the Oil and Gas Act. The notification shall  
21 also include the following statement in at least ten-point  
22 print:

23 Right to Participate in Alternative Dispute Resolution

24 You have the right to have your objections to the well  
25 operator's proposed location of the well or of the access road  
26 associated with the well heard and decided by a coal bed methane  
27 review board, established under an act of the General Assembly  
28 that provides for the Coal Bed Methane Well Dispute Resolution.  
29 You may participate with or without a lawyer in any conference  
30 session the board may hold to hear your objections.

1       Important: To exercise the right, you must file your  
2 objections in writing with the regional office of the Department  
3 of Environmental Protection at:

4       (Address)

5       (City, State, Zip Code)

6       within 15 days of the date you received this notification.  
7 Otherwise you will be considered to have waived this right to  
8 resolve your objections through the Coal Bed Methane Review  
9 Board. Your objections may be filed in person or by first-class  
10 mail.

11       (b) Filing of written objections.--

12           (1) A surface owner who intends to invoke alternative  
13 dispute resolution under this act must file written  
14 objections to the well operator's proposed location for the  
15 coal bed methane well or access road with the department  
16 within 15 days of the date of receipt of the written  
17 notification and plan prescribed in subsection (a).

18           (2) The written objections may indicate an alternative  
19 location at which the proposed coal bed methane well could be  
20 drilled or the access road could be located to overcome the  
21 objections.

22           (3) If no objections are filed in the time prescribed in  
23 this subsection, the department shall proceed to issue or  
24 deny the permit.

25       (c) Scheduling of conference.--

26           (1) If objections are filed by a surface owner pursuant  
27 to subsection (b), the department shall, within two days,  
28 notify the operator and the board of the objections, and the  
29 board shall fix a time and place for holding the dispute  
30 resolution conference and shall notify the surface owner and

1 well operator of the time and place where the conference will  
2 be held.

3 (2) (i) The conference shall be scheduled to commence  
4 not more than ten business days from the date of service  
5 of such objections on the well operator.

6 (ii) If the board cannot be fully convened for a  
7 conference within the ten-business-day period, the  
8 conference shall be scheduled to commence on the earliest  
9 reasonable date on which the board can be fully convened,  
10 but no later than 15 business days from the date of the  
11 service of the objections on the well operator.

12 (3) The conference shall be held at the applicable  
13 regional district office of the department closest to the  
14 tract which is the subject of the objection.

15 (4) The board may use and the department shall provide  
16 clerical assistance and the use of regional or district  
17 offices for the board in conducting conference sessions.

18 (d) Conference session.--

19 (1) At the conference, the well operator and surface  
20 owner or owners, as are present or represented, shall  
21 consider the objections and attempt to agree upon a location  
22 for the coal bed methane well or access road. The board may  
23 hold more than one conference session.

24 (2) (i) The conference shall be completed within ten  
25 days from the date that the conference is originally  
26 commenced.

27 (ii) The board, in its sole discretion, may extend  
28 the time for completion of the conference by an  
29 additional five business days, and the parties to the  
30 conference may extend the time for completion of the

conference to a date mutually agreed upon.

(3) An agreement reached at the conference shall be consistent with the requirements of the Oil and Gas Act, shall be reduced to writing by the board and submitted to the department within ten business days of the date that the conference is completed.

(4) Upon receipt of notice that the board's conference resulted in a mutual agreement between the operator and the surface owner, the department shall proceed to issue or deny the permit.

(5) If the parties to the conference before the board fail to agree upon a location of the coal bed methane well or access road or if only the party requesting review participates in the conference, the board shall make a determination in writing establishing a location of the coal bed methane well or access road that, in the judgment of the majority of the board, will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane.

(6) (i) Issuance of the written determination shall be made within ten business days of the date of completion of the conference and shall be served on the date of issuance by certified mail upon the surface owner, the well operator and the department.

(ii) Failure by the board to issue a written determination within the ten-business-day period shall be deemed a final determination by the board to affirm the location of the well or access road proposed by the well operator.

(7) (i) Within 15 business days of the date of

1 completion of the conference, the board shall issue a  
2 written statement setting forth findings of fact and  
3 reasons in support of its determination and shall serve  
4 copies of the written statement by certified mail upon  
5 the surface owner, the well operator and the department.

6 (ii) Failure by the board to issue the written  
7 statement of findings of fact and reasons in support of  
8 its determination within the 15-business-day period shall  
9 not preclude an aggrieved person from exercising the  
10 right of appeal to courts of common pleas of the  
11 Commonwealth as provided under subsection (f).

12 (8) If no appeal of the board's determination is filed  
13 under subsection (f), the department shall proceed to issue  
14 or deny the permit.

15 (e) Binding effect of board determination.--Any such  
16 determination by the board shall be binding on the department.

17 (f) Appeal.--

18 (1) Any person aggrieved by a determination of the board  
19 issued under subsection (d) shall have the right, within 15  
20 days of receipt of the written determination, to appeal the  
21 determination to the courts of common pleas of the  
22 Commonwealth in the judicial district in which the affected  
23 property is located. A copy of the appeal shall be served  
24 upon all the parties to the conference. The board or the  
25 department shall not be a party to the appeal.

26 (2) The court shall hold a hearing on the appeal within  
27 30 days of the filing of the appeal and shall render its  
28 decision in the appeal within 60 days of the filing of the  
29 appeal. In any such appeal, the only issue to be determined  
30 by the court is whether the location of the disputed well or

1 access road, as the case may be, determined by the board,  
2 will cause only those surface impairments that are reasonably  
3 necessary for purposes of extracting the underlying coal bed  
4 methane.

5 (3) (i) If the court agrees that the board's  
6 determination meets this standard, it shall affirm the  
7 board's determination.

8 (ii) If the court determines that the board's  
9 determination does not meet this standard, it shall issue  
10 an order indicating the location of the disputed well or  
11 access road, as the case may be, that, in the opinion of  
12 the court, will cause only those surface impairments that  
13 are reasonably necessary for purposes of extracting the  
14 underlying coal bed methane.

15 (4) Upon issuance of a decision by the court, the  
16 department shall proceed to issue or deny the permit.

17 Section 106. Ordinances and resolutions superseded.

18 This act supersedes the ordinances and resolutions of  
19 political subdivisions dealing with material regulated by this  
20 section.

21 Section 107. Enforcement actions.

22 The provisions of this act shall not be construed to affect,  
23 limit or impair any enforcement action taken by the department  
24 under the Oil and Gas Act prior to the effective date of this  
25 section.

26 Section 108. Other remedies.

27 Nothing in this act precludes a person from seeking other  
28 remedies allowed by statute, common law, deed or contract, nor  
29 does this act diminish or alter rights previously established or  
30 granted by statute, common law, deed or contract.

1 Section 109. Publication in Pennsylvania Bulletin.

2 The board shall publish a notice in the Pennsylvania Bulletin  
3 when all members have been initially appointed to the board.

4 Section 110. Effective date.

5 This act shall take effect as follows:

6 (1) Section 105 shall take effect upon publication of  
7 the notice under section 109.

8 (2) The remainder of this act shall take effect  
9 immediately.