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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2446 Session of  
2008

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INTRODUCED BY REED, BASTIAN, CALTAGIRONE, CAPPELLI, DENLINGER,  
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APRIL 15, 2008

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
APRIL 15, 2008

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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  
27 (P.L.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 at 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  
26 road associated with the well heard and decided by a coal  
27 bed methane review board, established under an act of the  
28 General Assembly that provides for the Coal Bed Methane  
29 Well Dispute Resolution. You may participate with or  
30 without a lawyer in any conference session the board may

1 hold to hear your objections.

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

5 (Address)

6 (City, State, Zip Code)

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

12 (b) Filing of written objections.--

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

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

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

26 (c) Scheduling of conference.--

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

1 resolution conference and shall notify the surface owner and  
2 well operator of the time and place where the conference will  
3 be held.

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

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

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

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

19 (d) Conference session.--

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

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

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

1 conference may extend the time for completion of the  
2 conference to a date mutually agreed upon.

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

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

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

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

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



1           (7) (i) Within 15 business days of the date of  
2           completion of the conference, the board shall issue a  
3           written statement setting forth findings of fact and  
4           reasons in support of its determination and shall serve  
5           copies of the written statement by certified mail upon  
6           the surface owner, the well operator and the department.

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

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

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

18          (f) Appeal.--

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

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

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

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

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

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

18 Section 106. Ordinances and resolutions superseded.

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

22 Section 107. Enforcement actions.

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

27 Section 108. Other remedies.

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

1 granted by statute, common law, deed or contract.

2 Section 109. Publication in Pennsylvania Bulletin.

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

5 Section 110. Effective date.

6 This act shall take effect as follows:

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

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