

AMENDMENTS TO HOUSE BILL NO. 1401

Sponsor: REPRESENTATIVE O'NEILL

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1 Amend Bill, page 1, lines 10 and 11, by striking out "natural
2 gas drilling tax investment" and inserting
3 volumetric severance tax; and making a related repeal

4 Amend Bill, page 1, lines 14 through 21; pages 2 through 27,
5 lines 1 through 30; page 28, lines 1 through 27; by striking out
6 all of said lines on said pages and inserting

7 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
8 the Tax Reform Code of 1971, is amended by adding an article to
9 read:

10 ARTICLE XXIV

11 VOLUMETRIC SEVERANCE TAX

12 Section 2401. Definitions.

13 The following words and phrases when used in this article
14 shall have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Average annual price of natural gas." As defined in 58
17 Pa.C.S. § 2301 (relating to definitions).

18 "Commission." The Pennsylvania Public Utility Commission.

19 "Department." The Department Of Environmental Protection Of
20 The Commonwealth.

21 "Gross proceeds." Money generated from the sale by a lessee
22 of oil, natural gas or gas of any other designation or their
23 constituents removed or recovered under a lease in an arms-
24 length transaction designated and fixed at the actual point of
25 sale.

26 "Lease." An agreement conveying to a lessee the right to
27 remove or recover oil, natural gas or gas of any other
28 designation from land of the lessor.

29 "Meter." A device to measure the passage of volumes of gases
30 or liquids past a certain point.

31 "Natural gas." As defined in 58 Pa.C.S. § 2301.

32 "Producer." As defined in 58 Pa.C.S. § 2301.

33 "Royalty payment." A payment made by a lessee to a lessor in
34 accordance with a lease.

35 "Sever." The extraction or other removal of natural gas from

1 an unconventional formation in this Commonwealth. The term does
2 not include natural gas, in gaseous or liquid form, which is
3 burned, used, consumed or otherwise employed in oil and gas
4 operations at a natural gas well site:

- 5 (1) for secondary recovery;
- 6 (2) for re-pressuring;
- 7 (3) for pressure maintenance; or
- 8 (4) as fuel for equipment.

9 "Storage field." A natural gas formation or other side that
10 is used to store natural gas that did not originate from and has
11 been transplanted into the formation or site.

12 "Trigger date." The date 60 days after the effective date of
13 this section.

14 "Unconventional formation." As defined in 58 Pa.C.S. § 2301.

15 "Unconventional gas well." As defined in 58 Pa.C.S. § 2301.

16 "Unit." A thousand cubic feet (MCF) of natural gas at a
17 temperature of 60 degrees Fahrenheit and an absolute pressure of
18 14.73 pounds per square inch, in accordance with American Gas
19 Association (AGA) standards and according to Boyle's law for the
20 measurement of gas under varying pressures with deviations
21 therefrom as follows:

22 (1) The average absolute atmospheric pressure shall be
23 assumed to be 14.4 pounds to the square inch, notwithstanding
24 the actual elevation or location of point of delivery above
25 sea level or variations in the atmospheric pressure.

26 (2) The temperature of the gas passing the meters shall
27 be determined by the continuous use of a recording
28 thermometer installed so that the thermometer may properly
29 record the temperature of the gas flowing through the meters.
30 The arithmetic average of the temperature recorded each 24-
31 hour day shall be used in computing gas volumes. If a
32 recording thermometer is not installed, or if installed and
33 not operating properly, an average flowing temperature of 60
34 degrees Fahrenheit shall be used in computing gas volume.

35 (3) The specific gravity of the gas shall be determined
36 by tests made by the use of an Edwards or Acme gravity
37 balance annually or at intervals as are found necessary in
38 practice. Specific gravity shall be used in computing gas
39 volumes.

40 (4) The deviation of the natural gas from Boyle's law
41 shall be determined by tests annually or at other shorter
42 intervals as are found necessary in practice. The apparatus
43 and the method to be used in making the tests shall be in
44 accordance with recommendations of the National Bureau of
45 Standards of the Department of Commerce or Report No. 3 of
46 the Gas Measurement Committee of the American Gas
47 Association, or any amendments of the report. The results of
48 the tests shall be used in computing the volume of gas
49 delivered.

50 "Wellhead meter." A meter placed at a producing site to
51 measure the actual volume of natural gas severed.

1 Section 2402. Volumetric severance tax.

2 (a) Imposition.--Each producer subject to the unconventional
3 gas well fee imposed under 58 Pa.C.S. § 2302 (relating to
4 unconventional gas well fee) shall pay a volumetric severance
5 tax.

6 (b) Computation.--The volumetric severance tax for each
7 unconventional gas well shall be calculated by applying the
8 applicable rate under subsection (b.1) to natural gas severed
9 from the unconventional gas well during the imposition period
10 under subsection (b.2).

11 (b.1) Tax rate.--The tax rate shall be as follows:

12 (1) If the average annual price of natural gas for the
13 calendar year immediately preceding the start of the
14 imposition period is not more than \$3.00, the surcharge rate
15 shall be \$0.02 per unit severed.

16 (2) If the average annual price of natural gas for the
17 calendar year immediately preceding the start of the
18 imposition period is greater than \$3.00 and less than \$5.00,
19 the tax rate shall be \$0.025 per unit severed.

20 (3) If the average annual price of natural gas for the
21 calendar year immediately preceding the start of the
22 imposition period is greater than \$4.99 and less than \$6.00,
23 the tax rate shall be \$0.03 per unit severed.

24 (4) If the average annual price of natural gas for the
25 calendar year immediately preceding the start of the
26 imposition period is more than \$5.99, the tax rate shall be
27 \$0.035 per unit severed.

28 (b.2) Imposition period.--The imposition period shall be as
29 follows:

30 (1) For fiscal year 2017-2018, the imposition period
31 shall be from October 1, 2017, to April 30, 2018.

32 (2) For fiscal year 2018-2019, and each fiscal year
33 thereafter, the imposition period shall be from May 1 of the
34 preceding fiscal year to April 30 of the current fiscal year.

35 (b.3) Payment.--The volumetric severance tax imposed under
36 this article shall be due on the same day the report is due
37 under subsection (b.4). The tax shall become delinquent if not
38 remitted to the commission on the reporting date.

39 (b.4) Report.--By June 15, 2018, and June 15 of each year
40 thereafter, each producer shall submit payment of the volumetric
41 severance tax to the commission and a report on a form
42 prescribed by the commission for the imposition period.

43 (b.5) Exemptions.--The volumetric severance tax imposed
44 under this article shall not be imposed on the following:

45 (1) natural gas severed, sold and delivered by a
46 producer at or within five miles of the producing site for
47 the processing or manufacture of tangible personal property
48 as defined under section 201;

49 (2) natural gas severed under a natural gas lease and
50 provided to a lessor for no consideration for the lessor's
51 own use; or

1 (3) natural gas severed from a storage field.
2 (c) Volume measurement.--
3 (1) Except as provided under paragraph (2), for purposes
4 of computing the volumetric severance tax, natural gas
5 severed shall be measured at the wellhead meter.
6 (2) Natural gas severed prior to the trigger date shall
7 be measured according to the standards and methods used for
8 reporting natural gas production to the department.
9 (d) Administration.--The volumetric severance tax shall be
10 administered and enforced in the same manner as the
11 unconventional gas well fee under 58 Pa.C.S. Ch. 23 (relating to
12 unconventional gas well fee).
13 (e) Use of funds.--Money collected from the volumetric
14 severance tax under this section shall be transferred to the
15 State Treasurer to be deposited into the General Fund.
16 (f) Independent Fiscal Office.--Beginning September 30,
17 2018, and quarterly thereafter, the Independent Fiscal Office
18 shall publish a report on its publicly accessible Internet
19 website that shows the calculation of an average effective tax
20 rate of the volumetric severance tax imposed under this article
21 and the unconventional gas well fee imposed under 58 Pa.C.S. Ch.
22 23, imposed for the preceding imposition period. The average
23 effective tax rate shall quantify the implicit tax burden
24 imposed on a producer by both the volumetric severance tax and
25 the unconventional gas well fee in a given year. The average
26 effective tax rate shall be based upon the market value of
27 natural gas at the wellhead using regional price information
28 from hubs located in this Commonwealth and postproduction costs
29 shall be deducted to approximate the value of natural gas at the
30 wellhead. The report shall include the methodology used to
31 calculate the average effective tax rate.
32 (g) Payment of tax.--A producer may not make the tax imposed
33 under this section on natural gas severed under a lease an
34 obligation, indebtedness or liability of the lessor and may not
35 otherwise require the lessor to reimburse the producer for the
36 amount of the tax.
37 Section 2403. Minimum royalty.
38 (a) Amount.--
39 (1) The minimum royalty payment made under the act of
40 July 20, 1979 (P.L.183, No.60), known as the Oil and Gas
41 Lease Act, to a lessor under a lease may not be less than
42 one-eighth of the gross proceeds received by the lessee for
43 the oil, natural gas or gas of any other designation
44 recovered by the lessee under the lease.
45 (2) A deduction or allocation of costs, expenses or
46 other adjustments may not be taken or made to gross proceeds
47 before calculating the amount of a royalty payment due to a
48 lessor under paragraph (1).
49 (b) Applicability.--The requirement to pay a minimum royalty
50 under subsection (a) shall only apply to oil, natural gas or gas
51 of any other designation recovered and sold by a lessee after

1 the effective date of this section.

2 Section 2404. Remedy.

3 (a) Civil action and venue.--A lessor who is party to a
4 lease may file an action for failure of the lessee to pay the
5 minimum royalty under section 2403 in the court of common pleas
6 of the county where the land of the lessor is located or the
7 county in this Commonwealth in which the lessor resides.

8 (b) Burden of proof.--

9 (1) Demonstration by a lessor who is party to a lease
10 that the lessee has made a royalty payment which is less than
11 the amount required under section 2403(a) shall create a
12 presumption that a violation of section 2403 has occurred.

13 (2) The presumption under paragraph (1) may be rebutted
14 if the lessee presents clear and convincing evidence that the
15 required minimum royalty payment was made.

16 (c) Effect of notice and failure to cure.--In an action in
17 which a court finds that the lessee who is party to a lease has
18 violated the terms of section 2403, the lessor shall be entitled
19 to the remedies under subsections (d) and (e) if, before filing
20 suit, the lessor gave to the lessee 30 days' written notice by
21 certified mail of the deficiency and the lessee failed to cure
22 the deficiency.

23 (d) Additional remedies.--In addition to actual damages and
24 any other remedy deemed appropriate by the court, the court
25 shall award to the lessor reasonable attorney fees and costs in
26 bringing the action, including expert witness fees.

27 (e) Treble damages.--If the court finds that the lessee
28 acted willfully in failing to pay the minimum royalty payment
29 due or where a lessee has been previously found to have failed
30 to pay the minimum royalty payment due, the court may award
31 treble damages to the lessor.

32 (f) Other remedies not precluded.--The remedies provided
33 under this section are not exclusive of, do not require
34 exhaustion of and shall be in addition to any other remedies
35 provided by the lease, by law or in equity.

36 Section 2405. Severability.

37 The provisions of this article are severable. If any
38 provision of this article or its application to any person or
39 circumstance is held invalid, the invalidity shall not affect
40 other provisions or applications of this article which can be
41 given effect without the invalid provision or application.

42 Section 2. The following shall apply retroactively to
43 October 1, 2017:

44 (1) The addition of Article XXIV of the act, except for
45 sections 2403 and 2404.

46 (2) Section 3 of this act.

47 Section 3. Repeals are as follows:

48 (1) The General Assembly declares that the repeal under
49 paragraph (2) is necessary to effectuate the addition of
50 Article XXIV of the act.

51 (2) 58 Pa.C.S. § 2318 is repealed.

1 Section 4. This act shall take effect immediately.