AMENDMENTS TO HOUSE BILL NO. 1401

Sponsor: REPRESENTATIVE CUTLER

Printer's No. 2610

Amend Bill, page 1, line 11, by inserting after "TAX;"

in general provisions, providing for protection of water supplies;

Amend Bill, page 36, by inserting between lines 11 and 12

Section 2. The act is amended by adding a section to read:

Section 3003.23 Protection of Water Supplies.--(a) In addition to the requirements of subsection (c.1), a well operator who affects a public or private water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. The Environmental Quality Board shall promulgate regulations necessary to meet the requirements of this subsection.

(b) A landowner or water purveyor suffering pollution or diminution of a water supply as a result of the drilling, alteration or operation of an oil or gas well may so notify the Department of Environmental Protection and request that an investigation be conducted. Within ten days of notification, the Department of Environmental Protection shall investigate the claim and make a determination within forty-five days following notification. If the Department of Environmental Protection finds that the pollution or diminution was caused by drilling, alteration or operation activities or if it presumes the well operator responsible for pollution under subsection (c), the Department of Environmental Protection shall issue orders to the well operator necessary to assure compliance with subsection (a), including orders requiring temporary replacement of a water supply where it is determined that pollution or diminution may be of limited duration.

(b.1) (Reserved).

(b.2) The Department of Environmental Protection shall establish a single Statewide toll-free telephone number that individuals may use to report cases of water contamination which may be associated with the development of oil and gas resources. The Statewide toll-free telephone number shall be provided in a conspicuous manner in the notification required under 58 Pa.C.S. § 3211(b) (relating to well permits) and on the department's

publicly accessible Internet website.

(b.3) The Department of Environmental Protection shall develop appropriate administrative responses to calls received on the Statewide toll-free telephone number for water contamination.

(b.4) The Department of Environmental Protection shall publish, on its publicly accessible Internet website, lists of confirmed cases of subterranean water supply contamination that result from hydraulic fracturing.

(b.5) The Department of Environmental Protection shall ensure that a facility which seeks a National Pollutant Discharge Elimination System permit for the purposes of treating and discharging wastewater originating from oil and gas activities into waters of this Commonwealth is operated by a competent and qualified individual.

(c) Unless rebutted by a defense established in subsection (d), it shall be presumed that a well operator is responsible for pollution of a water supply if:

(1) except as set forth in paragraph (2):

(i) the water supply is within 1,000 feet of an oil or gas well; and

(ii) the pollution occurred within six months after completion of drilling or alteration of the oil or gas well; or

(2) in the case of an unconventional well:

(i) the water supply is within 2,500 feet of the unconventional vertical well bore; and

(ii) the pollution occurred within twelve months of the later of completion, drilling, stimulation or alteration of the unconventional well.

(c.1) If the affected water supply is within the rebuttable presumption area as provided in subsection (c) and the rebuttable presumption applies, the operator shall provide a temporary water supply if the water user is without a readily available alternative source of water. The temporary water supply provided under this subsection shall be adequate in quantity and quality for the purposes served by the supply.

(d) To rebut the presumption established under subsection (c), a well operator must affirmatively prove any of the following:

(1) except as set forth in paragraph (2):

(i) the pollution existed prior to the drilling or alteration activity as determined by a predrilling or prealteration survey;

(ii) the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey;

(iii) the water supply is not within 1,000 feet of the well;

(iv) the pollution occurred more than six months after completion of drilling or alteration activities; and

(v) the pollution occurred as the result of a cause other than the drilling or alteration activity; or

(2) in the case of an unconventional well:

(i) the pollution existed prior to the drilling, stimulation or alteration activity as determined by a predrilling or prealteration survey;

(ii) the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey;

(iii) the water supply is not within 2,500 feet of the unconventional vertical well bore;

(iv) the pollution occurred more than twelve months after completion of drilling or alteration activities; or

(v) the pollution occurred as the result of a cause other than the drilling or alteration activity.

(e) An operator electing to preserve a defense under subsection (d)(1) or (2) shall retain an independent certified laboratory to conduct a predrilling or prealteration survey of the water supply. A copy of survey results shall be submitted to the Department of Environmental Protection and the landowner or water purveyor in the manner prescribed by the Department of Environmental Protection.

(e.1) An operator of an unconventional well must provide written notice to the landowner or water purveyor indicating that the presumption established under subsection (c) may be void if the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey. Proof of written notice to the landowner or water purveyor shall be provided to the Department of Environmental Protection for the operator to retain the protections under subsection (d)(2)(ii). Proof of written notice shall be presumed if provided in accordance with 58 Pa.C.S. § 3212(a) (relating to permit objections).

(f) Nothing in this section shall prevent a landowner or water purveyor claiming pollution or diminution of a water supply from seeking any other remedy at law or in equity.

Amend Bill, page 36, line 12, by striking out "2" and inserting

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Amend Bill, page 36, line 16, by striking out "3" and inserting

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Amend Bill, page 36, line 17, by striking out "3" and inserting

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Amend Bill, page 36, by inserting between lines 21 and 22

(3) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of section 3003.23 of the act.

(4) 58 Pa.C.S. § 3218 is repealed.

Amend Bill, page 36, line 22, by striking out "4" and inserting

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