

## AMENDMENTS TO HOUSE BILL NO. 1401

Sponsor: REPRESENTATIVE MAHER

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1 Amend Bill, page 1, lines 1 through 11, by striking out all  
2 of said lines and inserting

3 Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated  
4 Statutes, in unconventional gas well fee, repealing  
5 expiration and providing for volumetric severance tax.

6 Amend Bill, page 28, lines 29 and 30; pages 29 through 35,  
7 lines 1 through 30; page 36, lines 1 through 22; by striking out  
8 all of said lines on said pages and inserting

9 Section 1. Section 2318 of Title 58 of the Pennsylvania  
10 Consolidated Statutes is repealed:

11 [§ 2318. Expiration.

12 (a) Notice.--The Secretary of the Commonwealth shall, upon  
13 the imposition of a severance tax on unconventional gas wells in  
14 this Commonwealth, submit for publication in the Pennsylvania  
15 Bulletin notice of the imposition.

16 (b) Date.--This chapter shall expire on the date of the  
17 publication of the notice under subsection (a).]

18 Section 2. Title 58 is amended by adding a part to read:

19 PART IV  
20 TAXATION

21 Chapter

22 51. Volumetric Severance Tax

23 CHAPTER 51

24 VOLUMETRIC SEVERANCE TAX

25 § 5101. Definitions.

26 The following words and phrases when used in this chapter  
27 shall have the meanings given to them in this section unless the  
28 context clearly indicates otherwise:

29 "Average annual price of natural gas." As defined in section  
30 2301 (relating to definitions).

31 "Commission." The Pennsylvania Public Utility Commission.

32 "Department." The Department Of Environmental Protection Of  
33 The Commonwealth.

34 "Gross proceeds." Money generated from the sale by a lessee  
35 of oil, natural gas or gas of any other designation or their

1 constituents removed or recovered under a lease in an arms-  
2 length transaction designated and fixed at the actual point of  
3 sale.

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

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

9 "Natural gas." As defined in section 2301.

10 "Producer." As defined in section 2301.

11 "Royalty payment." A payment made by a lessee to a lessor in  
12 accordance with a lease.

13 "Sever." The extraction or other removal of natural gas from  
14 an unconventional formation in this Commonwealth. The term does  
15 not include natural gas, in gaseous or liquid form, which is  
16 burned, used, consumed or otherwise employed in oil and gas  
17 operations at a natural gas well site:

18 (1) for secondary recovery;

19 (2) for re-pressuring;

20 (3) for pressure maintenance; or

21 (4) as fuel for equipment.

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

25 "Trigger date." The date 60 days after the effective date of  
26 this section.

27 "Unconventional formation." As defined in section 2301.

28 "Unconventional gas well." As defined in section 2301.

29 "Unit." A thousand cubic feet (MCF) of natural gas at a  
30 temperature of 60 degrees Fahrenheit and an absolute pressure of  
31 14.73 pounds per square inch, in accordance with American Gas  
32 Association (AGA) standards and according to Boyle's law for the  
33 measurement of gas under varying pressures with deviations  
34 therefrom as follows:

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

39 (2) The temperature of the gas passing the meters shall  
40 be determined by the continuous use of a recording  
41 thermometer installed so that the thermometer may properly  
42 record the temperature of the gas flowing through the meters.  
43 The arithmetic average of the temperature recorded each 24-  
44 hour day shall be used in computing gas volumes. If a  
45 recording thermometer is not installed, or if installed and  
46 not operating properly, an average flowing temperature of 60  
47 degrees Fahrenheit shall be used in computing gas volume.

48 (3) The specific gravity of the gas shall be determined  
49 by tests made by the use of an Edwards or Acme gravity  
50 balance annually or at intervals as are found necessary in  
51 practice. Specific gravity shall be used in computing gas

1 volumes.

2 (4) The deviation of the natural gas from Boyle's law  
3 shall be determined by tests annually or at other shorter  
4 intervals as are found necessary in practice. The apparatus  
5 and the method to be used in making the tests shall be in  
6 accordance with recommendations of the National Bureau of  
7 Standards of the Department of Commerce or Report No. 3 of  
8 the Gas Measurement Committee of the American Gas  
9 Association, or any amendments of the report. The results of  
10 the tests shall be used in computing the volume of gas  
11 delivered.

12 "Wellhead meter." A meter placed at a producing site to  
13 measure the actual volume of natural gas severed.  
14 § 5102. Volumetric severance tax.

15 (a) Imposition.--Each producer subject to the unconventional  
16 gas well fee imposed under section 2302 (relating to  
17 unconventional gas well fee) shall pay a volumetric severance  
18 tax.

19 (b) Computation.--The volumetric severance tax for each  
20 unconventional gas well shall be calculated by applying the  
21 applicable rate under subsection (c) to natural gas severed from  
22 the unconventional gas well during the imposition period under  
23 subsection (d).

24 (c) Tax rate.--The tax rate shall be as follows:

25 (1) If the average annual price of natural gas for the  
26 calendar year immediately preceding the start of the  
27 imposition period is less than \$3.00, the surcharge rate  
28 shall be \$0.02 per unit severed.

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

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

37 (4) If the average annual price of natural gas for the  
38 calendar year immediately preceding the start of the  
39 imposition period is greater than \$5.99, the tax rate shall  
40 be \$0.035 per unit severed.

41 (d) Imposition period.--The imposition period shall be as  
42 follows:

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

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

48 (e) Payment.--The volumetric severance tax imposed under  
49 this chapter shall be due on the same day the report is due  
50 under subsection (f). The tax shall become delinquent if not  
51 remitted to the commission on the reporting date.

1 (f) Report.--By June 15, 2018, and June 15 of each year  
2 thereafter, each producer shall submit payment of the volumetric  
3 severance tax to the commission and a report on a form  
4 prescribed by the commission for the imposition period.

5 (g) Exemptions.--The volumetric severance tax imposed under  
6 this chapter shall not be imposed on the following:

7 (1) natural gas severed, sold and delivered by a  
8 producer at or within five miles of the producing site for  
9 the processing or manufacture of tangible personal property  
10 as defined under section 201 of the act of March 4, 1971  
11 (P.L.6, No.2), known as the Tax Reform Code of 1971;

12 (2) natural gas severed under a natural gas lease and  
13 provided to a lessor for no consideration for the lessor's  
14 own use; or

15 (3) natural gas severed from a storage field.

16 (h) Volume measurement.--

17 (1) Except as provided under paragraph (2), for purposes  
18 of computing the volumetric severance tax, natural gas  
19 severed shall be measured at the wellhead meter.

20 (2) Natural gas severed prior to the trigger date shall  
21 be measured according to the standards and methods used for  
22 reporting natural gas production to the department.

23 (i) Administration.--The volumetric severance tax shall be  
24 administered and enforced in the same manner as the  
25 unconventional gas well fee under Chapter 23 (relating to  
26 unconventional gas well fee).

27 (j) Use of money.--Money collected from the volumetric  
28 severance tax under this section shall be transferred to the  
29 State Treasurer to be deposited into the General Fund.

30 (k) Independent Fiscal Office.--Beginning September 30,  
31 2018, and quarterly thereafter, the Independent Fiscal Office  
32 shall publish a report on its publicly accessible Internet  
33 website that shows the calculation of an average effective tax  
34 rate of the volumetric severance tax imposed under this chapter  
35 and the unconventional gas well fee imposed under Chapter 23,  
36 imposed for the preceding imposition period. The average  
37 effective tax rate shall quantify the implicit tax burden  
38 imposed on a producer by both the volumetric severance tax and  
39 the unconventional gas well fee in a given year. The average  
40 effective tax rate shall be based upon the market value of  
41 natural gas at the wellhead using regional price information  
42 from hubs located in this Commonwealth and postproduction costs  
43 shall be deducted to approximate the value of natural gas at the  
44 wellhead. The report shall include the methodology used to  
45 calculate the average effective tax rate.

46 (l) Payment of tax.--A producer may not make the tax imposed  
47 under this section on natural gas severed under a lease an  
48 obligation, indebtedness or liability of the lessor and may not  
49 otherwise require the lessor to reimburse the producer for the  
50 amount of the tax.

51 § 5103. Minimum royalty.

1 (a) Amount.--

2 (1) The minimum royalty payment made under the act of  
3 July 20, 1979 (P.L.183, No.60), known as the Oil and Gas  
4 Lease Act, to a lessor under a lease may not be less than  
5 one-eighth of the gross proceeds received by the lessee for  
6 the oil, natural gas or gas of any other designation  
7 recovered by the lessee under the lease.

8 (2) A deduction or allocation of costs, expenses or  
9 other adjustments may not be taken or made to gross proceeds  
10 before calculating the amount of a royalty payment due to a  
11 lessor under paragraph (1).

12 (b) Applicability.--The requirement to pay a minimum royalty  
13 under subsection (a) shall only apply to oil, natural gas or gas  
14 of any other designation recovered and sold by a lessee after  
15 the effective date of this section.

16 § 5104. Remedy.

17 (a) Civil action and venue.--A lessor who is party to a  
18 lease may file an action for failure of the lessee to pay the  
19 minimum royalty under section 5103 (relating to minimum royalty)  
20 in the court of common pleas of the county where the land of the  
21 lessor is located or the county in this Commonwealth in which  
22 the lessor resides.

23 (b) Burden of proof.--

24 (1) Demonstration by a lessor who is party to a lease  
25 that the lessee has made a royalty payment which is less than  
26 the amount required under section 5103(a) shall create a  
27 presumption that a violation of section 5103 has occurred.

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

31 (c) Effect of notice and failure to cure.--In an action in  
32 which a court finds that the lessee who is party to a lease has  
33 violated the terms of section 5103, the lessor shall be entitled  
34 to the remedies under subsections (d) and (e) if, before filing  
35 suit, the lessor gave to the lessee 30 days' written notice by  
36 certified mail of the deficiency and the lessee failed to cure  
37 the deficiency.

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

42 (e) Treble damages.--If the court finds that the lessee  
43 acted willfully in failing to pay the minimum royalty payment  
44 due or where a lessee has been previously found to have failed  
45 to pay the minimum royalty payment due, the court may award  
46 treble damages to the lessor.

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

51 § 5105. Severability.

1     The provisions of this chapter are severable. If any  
2     provision of this chapter or its application to any person or  
3     circumstance is held invalid, the invalidity shall not affect  
4     other provisions or applications of this chapter which can be  
5     given effect without the invalid provision or application.

6     Section 3. The following shall apply retroactively to  
7     October 1, 2017:

8         (1) The repeal of 58 Pa.C.S. § 2318.

9         (2) The addition of 58 Pa.C.S. Pt. IV, except for 58  
10     Pa.C.S. §§ 5103 and 5104.

11     Section 4. This act shall take effect immediately.