AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," providing for volumetric severance tax and for multi-well permitting; and making a related repeal.

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

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

ARTICLE XXVI

VOLUMETRIC SEVERANCE TAX
Section 2601. Definitions.

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

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

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

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

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

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

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

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

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

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

(1) for secondary recovery;

(2) for re-pressuring;

(3) for pressure maintenance; or
(4) as fuel for equipment.

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

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

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

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

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

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

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

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

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

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

Section 2602. Volumetric severance tax.

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

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

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

(1) If the average annual price of natural gas for the calendar year immediately preceding the start of the imposition period is less than $3.00, the surcharge rate shall be $0.042 per unit severed.

(2) If the average annual price of natural gas for the
calendar year immediately preceding the start of the
imposition period is equal to or greater than $3.00 and less
than $5.00, the tax rate shall be $0.053 per unit severed.

(3) If the average annual price of natural gas for the
calendar year immediately preceding the start of the
imposition period is equal to or greater than $5.00 and less
than $6.00, the tax rate shall be $0.064 per unit severed.

(4) If the average annual price of natural gas for the
calendar year immediately preceding the start of the
imposition period is equal to or greater than $6.00, the tax
rate shall be $0.074 per unit severed.

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

(1) For fiscal year 2018-2019, the imposition period
shall be from July 1, 2018, to April 30, 2019.

(2) For fiscal year 2019-2020 and each fiscal year
thereafter, the imposition period shall be from May 1 of the
preceding fiscal year to April 30 of the current fiscal year.

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

(b.4) Report.--By June 15, 2019, and June 15 of each year
thereafter, each producer shall submit payment of the volumetric
severance tax to the Department of Revenue and a report on a
form prescribed by the Department of Revenue for the imposition
period.

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

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

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

(3) natural gas severed from a storage field.

(c) Volume measurement.--

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

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

(d) Administration.--The Department of Revenue shall enforce
the provisions of this article and may prescribe, adopt,
promulgate and enforce rules and regulations relating to any
matter or thing pertaining to the administration or enforcement
of the provisions of this article and the collection of taxes
imposed by this article.

(e) Use of funds.--Money collected from the volumetric
severance tax under this section shall be allocated annually as
follows:

(1) If the total amount of the fees due by April 1 of
each year under 58 Pa.C.S. § 2303(b) (relating to
administration) is less than $200,000,000, an amount equal to
the difference between $200,000,000 and the total amount
shall be deposited into the Unconventional Gas Well Fund and
shall be distributed as provided under 58 Pa.C.S. §§ 2314
(relating to distribution of fee) and 2315 (relating to
(2) After deposit under paragraph (1), all of the remaining money shall be deposited into the General Fund.

(f) Independent Fiscal Office.--Beginning September 30, 2018, and quarterly thereafter, the Independent Fiscal Office shall publish a report on its publicly accessible Internet website that shows the calculation of an average effective tax rate of the volumetric severance tax imposed under this article and the unconventional gas well fee imposed under 58 Pa.C.S. Ch. 23 (relating to unconventional gas well fee), imposed for the preceding imposition period. The average effective tax rate shall quantify the implicit tax burden imposed on a producer by both the volumetric severance tax and the unconventional gas well fee in a given year. The average effective tax rate shall be based upon the market value of natural gas at the wellhead using regional price information from hubs located in this Commonwealth and postproduction costs shall be deducted to approximate the value of natural gas at the wellhead. The report shall include the methodology used to calculate the average effective tax rate.

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

Section 2603. Minimum royalty.

(a) Amount.--

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

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

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

Section 2604. Remedy.

(a) Civil action and venue.--A lessor who is party to a
lease may file an action for failure of the lessee to pay the
minimum royalty under section 2603 in the court of common pleas
of the county where the land of the lessor is located or the
county in this Commonwealth in which the lessor resides.

(b) Burden of proof.--

(1) Demonstration by a lessor who is party to a lease
that the lessee has made a royalty payment which is less than
the amount required under section 2603(a) shall create a
presumption that a violation of section 2603 has occurred.

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

(c) Effect of notice and failure to cure.--In an action in
which a court finds that the lessee who is party to a lease has
violated the terms of section 2603, the lessor shall be entitled
to the remedies under subsections (d) and (e) if, before filing
suit, the lessor gave to the lessee 30 days' written notice by
certified mail of the deficiency and the lessee failed to cure the deficiency.

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

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

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

Section 2605. Unconventional gas well permits.

Notwithstanding any provision of 58 Pa.C.S. Ch. 32 (relating to development), the following shall apply:

(1) Whenever, before or during the drilling of an unconventional gas well not within the boundaries of an operating coal mine, the operator of the unconventional gas well encounters conditions of a nature that renders drilling of the bore hole or a portion thereof impossible, or more hazardous than usual, the operator of the unconventional gas well, upon verbal notice to the department, may immediately plug all or part of the bore hole, if drilling has occurred, and commence a new bore hole not more than 50 feet from the old bore hole indicated on the plat submitted with the approved unconventional gas well permit application if the location of the new bore hole does not violate 58 Pa.C.S. §...
3215 (relating to well location restrictions) and, in the
case of a well subject to act of July 25, 1961 (P.L. 825,
No. 359), known as the Oil and Gas Conservation Law, if the
new location complies with existing laws, regulations and
spacing orders and the new bore hole is at least 330 feet
from the nearest lease boundary. An operator of the
unconventional gas well deviating the surface of an
unconventional gas well location in compliance with this
section may drill the unconventional gas well at the new
surface hole location under the permit issued for the
proposed surface hole location so long as the other
information in the unconventional gas well permit application
remains accurate and complete.

(2) When applicable in accordance with this section,
within 10 days of commencement of drilling the new bore hole,
the operator of the unconventional gas well shall file with
the department a written notice of intention to plug, an
unconventional gas well record, a completion report, a
plugging certificate for the original bore hole and an
amended plat for the new bore hole.

(3) When an operator of the unconventional gas well
deviates the surface hole location in accordance with this
section, the operator of the unconventional gas well shall
forward a copy of the amended plat to the surface landowner
identified on the unconventional gas well permit application
within 10 days of commencement of drilling the new
unconventional gas well bore.

(4) The subterranean unconventional gas well bore path
may deviate from the proposed subterranean unconventional gas
well bore path indicated on the plat submitted with the
approved unconventional gas well permit application if the deviation is the result of geologic, safety or environmental protection concerns, or for optimal resource extraction. Subterranean unconventional gas well bore deviation in accordance with this paragraph will not constitute a violation of this article if the operator of the unconventional gas well notifies the department after the completion of drilling, provides the location of the subterranean unconventional gas well bore path in a manner specified by the department and submits an analysis of potential impacts to nearby unconventional gas wells prior to the commencement of hydraulic fracturing activities to ensure compliance with all applicable law.

(5) A operator of the unconventional gas well may select a one year, two year, or three year unconventional gas well expiration period at the time of application to the department. Unconventional gas well permits issued for drilling of unconventional gas wells under this article shall expire according to the period selected, but not more than three years after issuance unless operations for drilling the unconventional gas wells are commenced within the period and pursued with due diligence or unless the permit is renewed in accordance with regulations of the department. If drilling is commenced during the selected period, the unconventional gas well permit shall remain in force until the unconventional gas well is plugged in accordance with 58 Pa.C.S. § 3220 (relating to plugging requirements), or the permit is revoked.

Section 2606. Multi-well permitting.

The following shall apply:
(1) The department shall establish regulations for the permitting and operating of multiple unconventional gas wells drilled on a single unconventional gas well site through a single permit application in lieu of obtaining a permit to drill a single unconventional gas well under 58 Pa.C.S. § 3211 (relating to well permits).

(2) The following shall apply:

(i) All applicable requirements of the following shall apply to permits authorized under this section:

(A) 58 Pa.C.S. Ch. 32 (relating to development).
(B) The act of July 25, 1961 (P.L.825, No.359), known as the Oil and Gas Conservation Law.
(C) The act of December 18, 1984 (P.L.1069, No.214), known as the Coal and Gas Resource Coordination Act.

(ii) Where a workable coal seam underlies an unconventional gas well site authorized under this section, all unconventional gas wells on the unconventional gas well site must be located in an unconventional gas well cluster, as that term is defined in section 2 of the act of December 18, 1984 (P.L.1069, No.214), known as the Coal and Gas Resource Coordination Act.

(3) Each application for a multi-well permit shall be accompanied by permit fee established by the Environmental Quality Board which bears a reasonable relationship to the cost of administering this article.

(4) In order to facilitate the prompt implementation of this section, the department may establish temporary regulations, including temporary regulations establishing
fees for multi-well permit applications, which shall not be subject to:

(i) Section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.


(iii) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(v) Section 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.


(5) The department shall publish temporary regulations in the Pennsylvania Bulletin no later than six months after the effective date of this section.

(6) The department's authority to establish temporary regulations under this section shall expire two years after publication of temporary regulations in the Pennsylvania Bulletin. Regulations adopted after this period shall be promulgated as provided by law.

Section 2607. Severability.

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

Section 2. Repeals are as follows:
(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of Article XXVI of the act.

(2) 58 Pa.C.S. § 2318 is repealed.

Section 3. This act shall take effect immediately.