

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1715 Session of 2011

INTRODUCED BY ELLIS, REED, GERGELY, BARRAR, BENNINGHOFF, BURNS,
CALTAGIRONE, CHRISTIANA, D. COSTA, DEASY, DeLUCA, EVERETT,
GABLER, GALLOWAY, GIBBONS, GROVE, M. K. KELLER, MAHONEY,
MAJOR, PEIFER, PICKETT AND SCAVELLO, JUNE 21, 2011

REFERRED TO COMMITTEE ON APPROPRIATIONS, JUNE 21, 2011

AN ACT

1 Authorizing an unconventional gas well impact fee in counties
2 where unconventional wells are located; providing for
3 distribution of the fee and for the powers and duties of the
4 Pennsylvania Public Utility Commission.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the
9 Unconventional Gas Well Impact Fee for Local Governments Act.

10 Section 2. Definitions.

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

14 "Association." A partnership, limited partnership or any
15 other form of unincorporated enterprise owned or conducted by
16 two or more persons.

17 "Coal bed methane." Gas that can be produced from coal beds,
18 coal seams, mined-out areas or gob wells.

1 "Commission." The Pennsylvania Public Utility Commission.

2 "Construction." The point in time when well drilling
3 operations are completed.

4 "Corporation." A corporation, joint stock association,
5 limited liability company, business trust or any other
6 incorporated enterprise organized under the laws of the United
7 States, this Commonwealth or any other state, territory or
8 foreign country or dependency.

9 "Municipality." A city, borough, incorporated town or
10 township.

11 "Natural gas." A fossil fuel consisting of a mixture of
12 hydrocarbon gases, primarily methane, possibly including ethane,
13 propane, butane, pentane, carbon dioxide, oxygen, nitrogen and
14 hydrogen sulfide and other gas species. The term includes gas
15 from oil fields known as associated gas or casing head gas,
16 natural gas fields known as nonassociated gas, coal beds, shale
17 beds and other formations. The term does not include coal bed
18 methane.

19 "Nonproducing well." A natural gas well that does not
20 produce natural gas in excess of 90,000 cubic feet per day.

21 "Operator." A person or its subsidiary, affiliate or holding
22 company that holds a permit or other authorization to engage in
23 the business of severing natural gas for sale, profit or
24 commercial use from an unconventional gas well in this
25 Commonwealth. The term does not include a person who severs
26 natural gas from a storage field.

27 "Person." A natural person or a corporation, fiduciary,
28 association or other entity, including the Commonwealth and any
29 of its political subdivisions, instrumentalities and
30 authorities. When the term is used in a provision prescribing

1 and imposing a penalty or imposing a fine or both, the term
2 shall include a member of an association and an officer of a
3 corporation.

4 "Rate." The rate under section 3.

5 "Reporting period." The fiscal year in which an
6 unconventional gas well impact fee is assessed.

7 "Unconventional gas well." A bore hole drilled or being
8 drilled for the purpose of or to be used for producing oil or
9 gas from a geologic formation existing below the base of the Elk
10 Sandstone or its geologic equivalent stratigraphic interval
11 where oil or gas generally cannot be produced at economic flow
12 rates or in economic volumes except by wells stimulated by
13 hydraulic fracture treatments, a horizontal well bore or by
14 using multilateral well bores or other techniques to expose more
15 of the formation of the well bore.

16 "Unconventional gas well impact fee." The fee authorized
17 under section 3 on each unconventional gas well producing
18 natural gas within this Commonwealth and is calculated and
19 distributed as a means to defray the impacts on the environment
20 and infrastructure where such unconventional gas wells are
21 located.

22 Section 3. Unconventional gas well impact fee.

23 (a) Authorization.--Beginning July 1, 2011, except as
24 otherwise provided in subsection (b), a county may by resolution
25 and subject to the provisions of this section impose and collect
26 an unconventional gas well impact fee on every unconventional
27 gas well for which construction has been completed in this
28 Commonwealth.

29 (b) Exemptions.--The unconventional gas well impact fee
30 shall not be imposed on:

1 (1) nonproducing wells; or
2 (2) unconventional gas wells in which the natural gas is
3 used directly by a consumer.

4 (c) Rate.--Upon completion of the construction of an
5 unconventional gas well, the unconventional gas well impact fee
6 shall be assessed annually on the unconventional gas well
7 beginning in the year construction was completed and based upon
8 the following schedule:

9 (1) Years 1 and 2 - \$25,000.

10 (2) Years 3 through 10 - \$10,000.

11 (d) Cessation.--The annual payments shall cease upon:

12 (1) certification to the county in which the
13 unconventional gas well is located by the operator that the
14 unconventional gas well has ceased production and has been
15 plugged according to the regulations established by the
16 Department of Environmental Protection.

17 (2) The 11th year after completion of the construction
18 of the unconventional gas.

19 (e) Existing wells.--

20 (1) An operator shall be required to remit the
21 unconventional gas well impact fee for all unconventional
22 wells in existence on the effective date of this section.

23 (2) The amount of the unconventional gas well impact fee
24 to be remitted shall be calculated using the year the
25 unconventional well was constructed that corresponds with the
26 schedule in subsection (c).

27 (f) Re-opened wells.--

28 (1) In the event an operator re-opens a previously
29 capped unconventional gas well and places the well into
30 production the amount of the unconventional gas well fee

1 shall be calculated using the year the unconventional well
2 was originally constructed that corresponds with the schedule
3 in subsection (c).

4 (2) In the event that the unconventional gas well was
5 originally constructed more than ten years prior to being
6 reopened, the unconventional gas well impact fee shall be in
7 the amount of \$10,000 annually until the operator ceases
8 production and plugs the unconventional gas well in
9 accordance with regulations of the department.

10 (g) Prohibition.--

11 (1) Under no circumstances may an operator make an
12 unconventional gas well impact fee, or any other levy related
13 to the removal or extraction of natural gas or other natural
14 resource, an obligation, indebtedness or liability of a
15 landowner, leaseholder or other person in possession of real
16 property upon which such removal or extraction occurs.

17 (2) An agreement between an operator and a landowner,
18 leaseholder or other person in possession of real property
19 upon which removal or extraction of natural gas occurs that
20 violates paragraph (1) shall be null and void.

21 Section 4. Return and payment.

22 (a) General rule.--An operator in a county that imposes the
23 unconventional gas well impact fee shall file a certificate with
24 the county in which the operator of an unconventional gas well,
25 on a form prescribed by the county, which shall include a list
26 by municipality of the total number of unconventional gas wells
27 owned by the operator in the county for the reporting period.
28 The operator shall also submit to the county treasurer the
29 amount of the unconventional gas well impact fee due at the time
30 the certificate is submitted.

1 (b) Filing.--The certificate required by subsection (a)
2 shall be filed with the county within 30 days following the end
3 of a reporting period. The operator may submit the
4 unconventional gas well impact fee due on a quarterly basis on a
5 schedule approved by the county.

6 (c) Deadline.--The unconventional gas well impact fee shall
7 be due on the day the certificate is required to be filed and
8 shall become delinquent if not remitted to the county by that
9 date.

10 Section 5. Penalties.

11 (a) Failure to file a timely certificate.--An operator who
12 willfully fails to file a timely certificate shall be assessed
13 an administrative fine equal to 100% of the unconventional gas
14 well impact fee liability required to be reported on the
15 certificate. The county in which the unconventional gas well is
16 located and which imposes the unconventional gas well impact fee
17 shall enforce this penalty.

18 (b) Fraudulent certificate.--Any person, with intent to
19 defraud the county that imposes the unconventional gas well
20 impact fee, who willfully makes or causes to be made a
21 certificate required by this act which is false, shall, upon
22 finding by the relevant county, be ordered to pay an
23 administrative fine of not more than 100% of the liability.

24 (c) Penalties or other acts.--

25 (1) Except as otherwise provided by subsection (a), an
26 operator shall be ordered to pay a fine of not more than
27 \$50,000 and costs of prosecution for any of the following:

28 (i) Willfully failing to timely remit the
29 unconventional gas well impact fee to the county.

30 (ii) Willfully failing or neglecting to timely file

1 a certificate or report required by this act.

2 (iii) Refusing to timely pay a penalty or interest
3 imposed or provided for by this act.

4 (iv) Willfully failing to preserve its books, papers
5 and records as directed by the county.

6 (v) Refusing to permit the county or its authorized
7 agents to examine its books, records or papers.

8 (vi) Knowingly making any incomplete, false or
9 fraudulent certificate or report required by this act.

10 (vii) Preventing or attempting to prevent the full
11 disclosure of the amount of unconventional gas well
12 impact fee due.

13 (viii) Providing any person with a false statement
14 as to the payment of the unconventional gas well impact
15 fee with respect to any pertinent facts.

16 (ix) Making, uttering or issuing a false or
17 fraudulent statement required by this act.

18 (x) Entering or attempting to enter into an
19 agreement that violates section 3(e)(1).

20 (2) The penalties imposed by this section shall be in
21 addition to other penalties imposed by law.

22 Section 6. Recordkeeping.

23 (a) Records.--Every person responsible for the collection
24 and remittance of the unconventional gas well impact fee shall
25 maintain records, statements and other instruments as the county
26 that imposes the unconventional gas well impact fee may
27 prescribe.

28 (b) Examinations.--A county that imposes the unconventional
29 gas well impact fee or any of its authorized agents may:

30 (1) Examine the books, papers and records of any

1 operator of an unconventional gas well in the county in order
2 to verify the accuracy and completeness of the unconventional
3 gas well impact fee submitted or reported.

4 (2) Require the preservation of all books, papers and
5 records for any period deemed proper by it, but not to exceed
6 five years from the end of the calendar year to which the
7 records relate.

8 (3) Examine any person, under oath, concerning any
9 matter relating to the enforcement or administration of this
10 act, and to this end, may compel the production of books,
11 papers and records and the attendance of all persons whether
12 as parties or witnesses whom it believes to have knowledge of
13 relevant matters.

14 (c) Duties of operators.--Every operator shall provide a
15 county in which the unconventional gas well is located and which
16 imposes the unconventional gas well impact fee or its agent with
17 the means, facilities and opportunity for examinations and
18 investigations under this section.

19 (d) Unauthorized disclosure.--

20 (1) Any information gained by a county as a result of
21 any certificate, examination, investigation, hearing or
22 verification required or authorized by this act shall be
23 confidential, except for official purposes, or in accordance
24 with proper judicial order or as otherwise provided by law.

25 (2) Any person who unlawfully divulges information
26 required to be kept confidential under this act shall, upon
27 conviction thereof, be sentenced to pay a fine of not more
28 than \$1,000 and costs of prosecution.

29 Section 7. Deposit and distribution of fee.

30 (a) Establishment of account.--Each county imposing and

collecting the unconventional gas well impact fee shall establish a separate, restricted account for the deposit of all moneys collected under this act.

(b) Distributions.--The money collected from the unconventional gas well impact fee by a county shall be distributed by the county treasurer as follows:

(1) Thirty percent of the moneys shall be retained by the county. These funds may be used by the county for projects that will provide for watershed protection or improvements, or flood control and flood plain management.

(2) Thirty percent of the moneys shall be provided to the municipalities in which the unconventional gas wells are located. These moneys shall be prorated based upon the number of unconventional gas wells located within each municipality. A municipality shall utilize these moneys for construction or maintenance of infrastructure within the municipality that ameliorates the impact of unconventional gas well development.

(3) Twenty percent of the moneys shall be provided to the municipalities in which no unconventional gas well is located. A municipality shall utilize these moneys for construction or maintenance of infrastructure within the municipality that ameliorates the impact of unconventional gas well development.

(4) Fifteen percent of the moneys shall be provided to school districts within the county. The moneys shall be prorated among the school districts based upon an average daily membership. In instances where a school district encompasses more than one county in which unconventional gas wells are located, the moneys shall be distributed on a

1 prorated basis and based upon the number of students who
2 reside in each county. These funds shall be used for local
3 property tax reductions.

4 (5) Five percent of the moneys shall be provided to the
5 county conservation district.

6 (c) Municipal budget limitation.--In the event the moneys
7 received exceed the municipality's annual budget in amount of
8 two times or higher, the excess funds may only be allocated and
9 be used for local tax reductions, including homestead
10 exclusions, as determined by a majority vote of the governing
11 body of the municipality.

12 Section 8. Calculation of payments.

13 A county treasurer of a county that collects the
14 unconventional gas well impact fee shall:

15 (1) Certify the number of all unconventional gas wells
16 located within each municipality based upon the appropriate
17 reports provided by the Department of Environmental
18 Protection and information provided by the operators of
19 unconventional gas wells.

20 (2) Pay to each municipality in which unconventional gas
21 wells are located an amount equal to the total number of
22 unconventional gas wells located within the municipality
23 based on the fee schedule established in section 3.

24 (3) Pay to each municipality in which unconventional gas
25 wells are not located an amount equal to the distribution
26 formula established in section 7(b)(3).

27 Section 9. Report.

28 (a) General rule.--Commencing in calendar year 2012 and each
29 year thereafter, before December 1, each county that collects
30 the unconventional gas well impact fee shall prepare and deliver

1 a report to the Secretary of the Senate and the Chief Clerk of
2 the House of Representatives detailing the expenditure of the
3 funds.

4 (b) Audit.--The Department of Community and Economic
5 Development may audit a county's and municipality's expenditure
6 of the unconventional gas well impact fee.

7 (c) Availability of records.--A county and municipality that
8 expends any portion of the unconventional gas well impact fee
9 shall make its financial records and other documents relating to
10 its expenditure of the unconventional gas well impact fee
11 available to the Department of Community and Economic
12 Development.

13 (d) Report.--Each municipality that receives any portion of
14 the unconventional gas well impact fee shall prepare and deliver
15 a report to the county commissioners of the county detailing the
16 expenditure of the unconventional gas well impact fee received,
17 which information shall be included in the report required under
18 subsection (a). The report of the county commissioners shall
19 specifically justify the manner in which moneys expended under
20 section 7(b)(2) and (3) ameliorates the impact of unconventional
21 gas well development.

22 Section 10. Model municipal ordinance.

23 (a) Purposes.--The purposes of this section are:

24 (1) To optimize the development and use of this
25 Commonwealth's oil and gas reserves by increasing reasonable
26 consistency in zoning and other municipal regulation.

27 (2) To foster expeditious and efficient handling of
28 municipal oil and gas permitting procedures.

29 (3) To allow municipalities to enact regulations under
30 the act of July 31, 1968 (P.L.805, No.247), known as the

Pennsylvania Municipalities Planning Code, and the act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act, insofar as the regulation is authorized by law and this section.

(b) Authority.--The commission shall develop and adopt a model ordinance to fulfill the purposes of this section.

(c) Adoption of provisions.--

(1) Within 120 days of the effective date of this section, the commission shall, by majority vote, adopt a model ordinance for counties and municipalities pertaining to oil and gas drilling activities in accordance with the Pennsylvania Municipalities Planning Code, as applicable, the Flood Plain Management Act and this section.

(2) The model zoning ordinance shall do all of the following:

(i) Authorize oil and gas development as a permitted use by right in all zoning districts except residential districts. The model zoning ordinance may allow oil and gas development in residential zoning districts by conditional use or special exception with conditions dependent on the density of existing uses within the district and the isolation distances achievable in each residential district.

(ii) Authorize natural gas compression stations:

(A) as a permitted use by right in all agricultural, industrial and commercial districts; and

(B) as a conditional use in all other zoning districts.

(iii) Authorize natural gas processing plants:

1 (A) as a permitted use by right in all
2 industrial districts; and

3 (B) as a conditional use or special exception in
4 agricultural districts.

5 (3) The model zoning ordinance may not:

6 (i) Impose limitations on the hours of operation on
7 drilling operations.

8 (ii) Impose limitations on noise, light, height or
9 security or fencing on drilling operations, natural gas
10 compressor stations or natural gas processing plants if
11 the limitations are more stringent than limitations
12 imposed on construction activities for other similar land
13 uses. The model zoning ordinance may include limitations
14 on noise, light, height and security and fencing for
15 equipment or processes which are unique to the gas
16 industry and which are rational, nondiscriminatory and
17 reasonably defensible in the particular zone where they
18 apply.

19 (iii) Have a permit review period for uses by right
20 that exceeds 30 days for complete and responsive
21 submissions.

22 (iv) Impose restrictions on vehicular access routes
23 for overweight vehicles except as authorized under:

24 (A) 75 Pa.C.S. (relating to vehicles); or

25 (B) the Pennsylvania Municipalities Planning
26 Code.

27 (v) Regulate storm water, erosion and sedimentation
28 control or grading where the use is subject to regulation
29 by the Department of Environmental Protection through an
30 Erosion and Sedimentation Control General Permit or

1 similar permit.

2 (4) Nothing in this subsection shall be construed to
3 limit or preempt a county or municipality from action
4 pursuant to the act of October 4, 1978 (P.L.864, No.167),
5 known as the Storm Water Management Act.

6 (d) Effect of model zoning ordinance.--If an ordinance
7 adopted by a county or municipality contains more stringent
8 standards than the model ordinance, the county or municipality
9 shall be ineligible to receive funding under section 7.

10 (e) Timing.--The commission shall publish the adopted model
11 zoning ordinance in the Pennsylvania Bulletin immediately after
12 its adoption and shall disseminate information about the model
13 zoning ordinance through the Department of Community and
14 Economic Development, municipal associations and other means as
15 the commission shall deem appropriate. The costs of the
16 notification shall be borne by the Department of Community and
17 Economic Development.

18 (f) Miscellaneous.--The commission shall review the model
19 zoning ordinance annually. Proposed amendments shall be
20 published in the Pennsylvania Bulletin within 30 days after
21 their adoption.

22 (g) Effective date of model zoning ordinance.--The model
23 zoning ordinance shall take effect 70 days following the
24 commission's publication of the ordinance in the Pennsylvania
25 Bulletin under this section.

26 Section 11. Construction.

27 Nothing in this act shall be construed to impair or infringe
28 upon the preemption or supersedure of the regulation of gas
29 wells under section 602 of the act of December 19, 1984
30 (P.L.1140, No.223), known as the Oil and Gas Act.

1 Section 12. Effective date.

2 This act shall take effect in 120 days.