

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 680 Session of 2011

INTRODUCED BY FERLO, FONTANA, HUGHES, TARTAGLIONE, LEACH,  
FARNESE AND DINNIMAN, MARCH 28, 2011

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 28, 2011

AN ACT

1 Amending the act of December 19, 1984 (P.L.1140, No.223),  
2 entitled "An act relating to the development of oil and gas  
3 and coal; imposing duties and powers on the Department of  
4 Environmental Resources; imposing notification requirements  
5 to protect landowners; and providing for definitions, for  
6 various requirements to regulate the drilling and operation  
7 of oil and gas wells, for gas storage reservoirs, for various  
8 reporting requirements, including certain requirements  
9 concerning the operation of coal mines, for well permits, for  
10 well registration, for distance requirements, for well casing  
11 requirements, for safety device requirements, for storage  
12 reservoir obligations, for well bonding requirements, for a  
13 Well Plugging Restricted Revenue Account to enforce oil and  
14 gas well plugging requirements, for the creation of an Oil  
15 and Gas Technical Advisory Board, for oil and gas well  
16 inspections, for enforcement and for penalties," further  
17 providing for definitions, for well permits, for well  
18 location restrictions and for protection of water supplies;  
19 providing for use of surface impoundments for temporary  
20 flowback storage; and further providing for well reporting  
21 requirements, for bonding, for enforcement orders, for  
22 penalties, for civil penalties, for well plugging funds and  
23 for local ordinances.

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

26 Section 1. Section 103 of the act of December 19, 1984  
27 (P.L.1140, No.223), known as the Oil and Gas Act, is amended by  
28 adding definitions to read:

1 Section 103. Definitions.

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

5 "12-digit Hydrologic Unit Code." A subwatershed, generally  
6 ranging in size from 10,000 to 40,000 acres, as designated by  
7 the United States Geological Survey and the United States  
8 Department of Agriculture Natural Resources Conservation  
9 Service.

10 \* \* \*

11 "Body of water." A natural or artificial lake, pond,  
12 reservoir, swamp, marsh or wetland.

13 \* \* \*

14 "Erosion and sediment control permit." A permit issued by  
15 the Department of Environmental Protection and required for  
16 earth disturbance activities associated with oil and gas  
17 activities.

18 "FEMA." The Federal Emergency Management Agency.

19 "Flood." A general but temporary condition of partial or  
20 complete inundation of normally dry land areas from the overflow  
21 of streams, rivers or other waters of this Commonwealth.

22 "Floodplain." The lands adjoining a river or stream that  
23 have been or may be expected to be inundated by flood waters in  
24 a 100-year frequency flood. Unless otherwise specified, the  
25 boundary of the floodplain is as indicated on maps and flood  
26 insurance studies provided by the Federal Emergency Management  
27 Agency or equivalent floodplain maps and studies. In an area  
28 where no such maps or studies have defined the boundary of the  
29 100-year floodplain, it is assumed, absent evidence to the  
30 contrary, that the floodplain extends from the stream to 100

feet from the top of the streambank.

"Floodway." The channel of the watercourse and portions of the adjoining floodplains which are reasonably required to carry and discharge the 100-year frequency flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by the Federal Emergency Management Agency. In an area where no Federal Emergency Management Agency maps or studies have defined the boundary of the 100-year frequency floodway, it is assumed, absent evidence to the contrary, that the floodway extends from the stream to 50 feet from the top of the streambank.

\* \* \*

"Stream." A watercourse.

"Unconventional formation." Formations such as the Rhinestreet, Burket, Marcellus, Madata and Utica shale, or other formations existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval.

"Unconventional well." A well intending to produce or producing from an unconventional formation.

"Watercourse." A channel or conveyance of surface water having defined bed and banks, whether natural or artificial, with perennial or intermittent flow.

\* \* \*

"Wild trout stream." A stream classified as supporting naturally reproducing trout populations by the Fish and Boat Commission.

"Wilderness trout stream." A surface water designated by the Fish and Boat Commission to protect and promote native trout fisheries and maintain and enhance wilderness aesthetics and ecological requirements necessary for the natural reproduction

1 of trout.

2 \* \* \*

3 Section 2. Section 201(a), (b), (e), (f) and (g) of the act,  
4 amended July 2, 1992 (P.L.365, No.78), are amended to read:

5 Section 201. Well permit.

6 (a) No person shall drill a well or alter any existing well,  
7 except for alterations which satisfy the requirements of  
8 subsection (j), without having first obtained a well permit  
9 pursuant to subsections (b), (c), (d) and (e). A copy of the  
10 permit shall be kept at the well site during [drilling or]  
11 preparation and construction of the well site or access road,  
12 drilling, operation and alteration of the well. However, no  
13 person shall be required to obtain a permit to redrill a  
14 nonproducing well, if:

15 (1) the redrilling has been evaluated and approved as  
16 part of an order from the department authorizing the cleaning  
17 out and plugging or replugging of a nonproducing well,  
18 pursuant to section 13(c) of the act of December 18, 1984  
19 (P.L.1069, No.214), known as the Coal and Gas Resource  
20 Coordination Act; and

21 (2) the redrilling is incidental to the plugging or  
22 replugging operation and the well subsequently is plugged  
23 within 15 days of redrilling.

24 (b) The permit application shall be accompanied by a plat  
25 prepared by a competent engineer or a competent surveyor, on  
26 forms to be furnished by the department, showing the political  
27 subdivision and county in which the tract of land upon which the  
28 well to be drilled, operated or altered, is located, the name of  
29 the surface landowner of record and lessor, the name of all  
30 surface landowners or water purveyors whose water supplies are

1 within 1,000 feet, or in the case of an unconventional well  
2 within 5,000 feet, of the [proposed well location] outer  
3 boundary of the proposed well pad and access roads, the name of  
4 the owner of record or operator of all known underlying workable  
5 coal seams, if any, the acreage in the tract to be drilled, the  
6 proposed location of the well determined by survey, the courses  
7 and distances of such location from two or more permanent  
8 identifiable points or landmarks on said tract boundary corners,  
9 the proposed angle and direction of such well, if the well is to  
10 be deviated substantially from a vertical course, the number or  
11 other identification to be given the well, the workable coal  
12 seams, if any, underlying the tract of land upon which the well  
13 is to be drilled, operated or altered, which are to be cased off  
14 in accordance with section 207, and such information needed by  
15 the department to administer this act. The applicant shall  
16 forward, by certified mail, a copy of said plat to each  
17 political subdivision in which the well is to be located, the  
18 surface landowner, all surface landowners or water purveyors  
19 whose water supplies are within 1,000 feet, or in the case of an  
20 unconventional well within 5,000 feet, of the [proposed well  
21 location] outer boundary of the proposed well pad and access  
22 roads, the owner and lessee, if any, of such coal seams, and  
23 every coal operator required to be identified on the well permit  
24 application and shall submit proof of such notification with the  
25 well permit application. With respect to surface owners,  
26 notification shall be accomplished under this section by sending  
27 notice to the persons to whom the tax notices for said surface  
28 property are sent, as indicated in the assessment books in the  
29 county in which the property is located. With respect to surface  
30 landowners or water purveyors whose water supplies are within

1 1,000 feet, or in the case of an unconventional well within  
2 5,000 feet, of the [proposed well location] outer boundary of  
3 the proposed well pad and access roads, notification shall be  
4 made on forms and in a manner prescribed by the department  
5 sufficient to identify, for such persons, the rights afforded  
6 them under section 208 and the advisability of taking their own  
7 predrilling or prealteration survey. With respect to the  
8 political subdivision in which the well is to be located,  
9 notification shall be made on forms and in a manner prescribed  
10 by the department. If the applicant submits to the department  
11 written approval of the proposed well location by the political  
12 subdivision in which the well is to be located, the surface  
13 landowner and the coal operator, lessee or owner, if any, of the  
14 coal underlying the proposed well location and no objections are  
15 raised by the department within 15 days of filing or if no such  
16 approval has been submitted and no objections are made to such  
17 proposed well location within 15 days from receipt of such  
18 notice by the political subdivision in which the well is to be  
19 located, the surface landowner and the coal operator, lessee or  
20 owner, if any, or by the department, the same shall be filed and  
21 become a permanent record of such location, subject to  
22 inspection at any time by any interested person. The application  
23 form to operate an abandoned or orphan well shall notify the  
24 applicant of its responsibilities to plug the well upon  
25 abandonment.

26 \* \* \*

27 (e) The department shall issue a permit within 45 days of  
28 the submission of a permit application unless the department  
29 denies the permit application for one or more of the [five]  
30 reasons set forth below: Provided, however, That the department

1 shall have the right to extend such period for 15 days for cause  
2 shown upon notification to the applicant of the reasons for that  
3 extension. The department may impose such permit terms and  
4 conditions as are necessary to assure compliance with this act  
5 and other laws administered by the department. The department  
6 shall have the authority to deny a permit to any person for the  
7 following reasons:

8 (1) the well site for which a permit is requested is in  
9 violation of any of the provisions of this act, or if  
10 issuance of such permit would result in a violation of this  
11 act or any other applicable environmental statute, rule or  
12 regulation;

13 (2) the permit application is incomplete;

14 (3) unresolved objections to the well location by coal  
15 mine owner or operator remain;

16 (4) the requirements of section 215 have not been met;  
17 [or]

18 (5) the applicant, with respect to any other well or  
19 wells which the applicant operates, is in continuing  
20 violation of this act or any other applicable statute  
21 administered by the department and the likely result of that  
22 violation is an unsafe operation or environmental damage. If  
23 a final determination has been made in the applicant's favor,  
24 the permit denied shall be reconsidered and the violation  
25 shall not be a consideration in the awarding of the permit.  
26 The department may not collect an application fee for the  
27 reconsideration[. The right of the department to deny a

28 permit under this paragraph shall not be effective until a  
29 final administrative determination has been made of any of  
30 these violations and no appeal is pending in which a stay has

1       been granted.];

2       (6) the applicant failed to pay or file a return under  
3       section 5A04, unless a valid appeal is in process. The  
4       Secretary of Revenue shall notify the department of any  
5       applicant who has failed to pay or file a return and who does  
6       not have a valid appeal pending; or

7       (7) the applicant does not have a reasonable written  
8       plan to reuse at least 30% of the total water that will be  
9       used to hydraulically fracture the well.

10       (f) Upon issuance of a permit, the well operator may proceed  
11 [with the drilling of] to prepare or construct the well site and  
12 access roads and drill, operate or alter the well at the exact  
13 location shown on the plat after providing the department, the  
14 surface landowner and the local political subdivision in which  
15 the well is to be located 24 hours' notice of the date that  
16 drilling will commence. In noncoal areas where more than one  
17 well is to be drilled as part of the same development project,  
18 only the first well of the project need be located by survey.  
19 The remaining wells of the project shall be shown on the plat in  
20 a manner prescribed by regulation. Prior to drilling each of the  
21 additional project wells, the well operator shall notify the  
22 department of his intention and provide reasonable notice of the  
23 date drilling will commence. Whenever, before or during the  
24 drilling of any well which is not within the outside boundaries  
25 of an operating coal mine, the well operator shall encounter  
26 conditions of such a nature as to render drilling of the bore  
27 hole or portions thereof more hazardous than usual, or otherwise  
28 impossible, then the well operator shall have the right, upon  
29 verbal notice to the department, to immediately plug all or  
30 portions of the bore hole, if drilling has occurred, and to



1 commence a new bore hole not more than 50 feet distant if the  
2 location of the new bore hole does not violate section 205 and  
3 if, for wells subject to the act of July 25, 1961 (P.L.825,  
4 No.359), known as the Oil and Gas Conservation Law, the new  
5 location complies with any existing law, regulation or spacing  
6 order and if the new bore hole is a minimum of 330 feet distant  
7 from the nearest lease boundary. Within ten days of commencement  
8 of the new bore hole, the well operator shall file with the  
9 department a written notice of intention to plug, a well record,  
10 a completion report, a plugging certificate for the original  
11 bore hole and an amended plat for the new bore hole. The well  
12 operator shall forward a copy of the amended plat to the surface  
13 landowner identified on the well permit application within ten  
14 days of commencement of the new well bore.

15 (g) The well permit number and operator's name, address and  
16 telephone number shall be posted at the drilling site, in a  
17 conspicuous manner, prior to [commencement of drilling]  
18 initiating preparation and during construction of the well site  
19 or access road, drilling, operation and alteration of the well.

20 \* \* \*

21 Section 3. Section 205 of the act is amended to read:  
22 Section 205. Well location restrictions.

23 (a) Wells may not be drilled within 200 feet, or in the case  
24 of an unconventional well within 1,500 feet, measured  
25 horizontally from any existing building or existing water well  
26 without the written consent of the owner thereof. Where the  
27 distance restriction would deprive the owner of the oil and gas  
28 rights of the right to produce or share in the oil or gas  
29 underlying said surface tract, the well operator may be granted  
30 a variance from said distance restriction upon submission of a

1 plan which shall identify the additional measures, facilities or  
2 practices to be employed during well site construction, drilling  
3 and operations. The variance, if granted, shall include such  
4 additional terms and conditions as the department shall require  
5 to insure the safety and protection of affected persons and  
6 property. The provisions may include insurance, bonding and  
7 indemnification, as well as technical requirements.

8 (b) No well site may be prepared or well drilled within  
9 [100] 500 feet measured horizontally from any [stream, spring or  
10 body of water as identified on the most current 7 ½ minute  
11 topographic quadrangle map of the United States Geological  
12 Survey] watercourse, natural or artificial lake, pond or  
13 reservoir or within [100 feet of any wetlands greater than one  
14 acre in size.] the boundary of a wetland or the boundary that  
15 affects the functions and values of a wetland. However, no well  
16 may be drilled using hydraulic fracturing or horizontal drilling  
17 within 2,500 feet of a surface water source, and within 1,000  
18 feet of a groundwater source or an exceptional value water  
19 source as designated under 25 Pa. Code 93.4b (relating to  
20 qualifying as High Quality or Exceptional Value Waters), that  
21 serves a public water system. The distance from the public water  
22 supply source, as identified by the department, shall be  
23 measured as follows:

24 (1) For a surface water intake on a lake or reservoir,  
25 the distance shall be measured from the boundary of the lake  
26 or reservoir.

27 (2) For a surface water intake on a flowing stream, the  
28 distance shall be measured from a semicircular radius  
29 extending upstream of the surface water intake.

30 (3) For a groundwater source, the distance shall be

1 measured from the wellhead or spring.

2 The department may waive such distance restrictions upon  
3 submission of a plan which shall identify the additional  
4 measures, facilities or practices to be employed during well  
5 site construction, drilling and operations. Such waiver, if  
6 granted, shall impose such permit conditions as are necessary to  
7 protect the waters of the Commonwealth.

8 (c) [The] On making a determination on a well permit, the  
9 department shall[, on making a determination on a well permit,]  
10 consider and may deny or condition a well permit based on the  
11 impact of the proposed well on public resources to include, but  
12 not be limited to, the following:

13 (1) Publicly owned parks, forests, gamelands and  
14 wildlife areas.

15 (2) National or State scenic rivers.

16 (3) National natural landmarks.

17 (4) Habitats of rare and endangered flora and fauna and  
18 other critical communities.

19 (5) Historical and archaeological sites listed on the  
20 Federal or State list of historic places.

21 (6) Bodies of water and watercourses, including, but not  
22 limited to, wetlands, wild trout streams and wilderness trout  
23 streams.

24 (7) Sources used for public drinking water supplies.

25 (8) Whether the proposed well location is within a  
26 floodplain.

27 (d) The department shall establish additional protective  
28 measures for storage of hazardous chemicals and materials  
29 intended to be used, or that have been used, on an  
30 unconventional well drilling site within 1,000 feet of a

watercourse, natural or artificial lake, pond, reservoir,  
wetland or groundwater source that serves a public water system,  
or within 5,000 feet of a surface water source that serves a  
public water system.

(e) Prior to submitting a permit application to the  
department for a well or well site within a wild trout stream,  
wilderness trout stream or a High Quality or Exceptional Value  
watershed as indicated by the 12-digit Hydrologic Unit Code, the  
applicant shall notify the Pennsylvania Fish and Boat  
Commission.

Section 4. Section 208(a), (c) and (d) of the act are  
amended and the section is amended by adding subsections to  
read:

Section 208. Protection of water supplies.

(a) [Any] 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 or quality for the purposes served by the supply. The  
department shall ensure the restored or replaced water supply  
meets the applicable water quality standards consistent with the  
Safe Drinking Water Act (Public Law 93-523, 21 U.S.C. § 349 and  
42 U.S.C. §§ 201 and 300f et seq.), the act of May 1, 1984  
(P.L.206, No.43), known as the Pennsylvania Safe Drinking Water  
Act, and predrilling or alteration water quality standards as  
determined by the department. The Environmental Quality Board  
shall promulgate regulations necessary to meet the requirements  
of this subsection.

\* \* \*

(b.1) The department shall establish a single Statewide

1 toll-free telephone number that persons may use to report cases  
2 of water contamination. The Statewide toll-free telephone number  
3 shall be provided in a conspicuous manner in the notification  
4 required under section 201(b) and on the department's Internet  
5 website.

6 (b.2) The department shall develop appropriate  
7 administrative responses to calls received on the Statewide  
8 toll-free number for water contamination.

9 (b.3) The department shall establish a website that lists  
10 the confirmed cases of water supply contamination that result  
11 from hydraulic fracturing.

12 (c) Unless rebutted by one of the five defenses established  
13 in subsection (d), it shall be presumed that a well operator is  
14 responsible for the pollution of a water supply that is within  
15 1,000 feet, or in the case of an unconventional well within  
16 5,000 feet, of the oil or gas well, where the pollution occurred  
17 within six months after [the completion of drilling] the  
18 drilling, stimulation or alteration of such well.

19 (c.1) If the affected water supply is within the rebuttable  
20 presumption area as provided in subsection (c) and the  
21 rebuttable presumption applies and the water user is without a  
22 readily available alternative source of water, the operator  
23 shall provide a temporary water supply within 24 hours of being  
24 contacted by the water user or the department, whichever occurs  
25 first. The temporary water supply provided under this subsection  
26 shall be adequate in quantity and quality for the purposes  
27 served by the supply.

28 (d) In order to rebut the presumption of liability  
29 established in subsection (c), the well operator must  
30 affirmatively prove one of the following five defenses:

1           (1) The pollution existed prior to the drilling,    
2       stimulation or alteration [activity] activities as determined  
3       by a predrilling or prealteration survey.

4           (2) The landowner or water purveyor refused to allow the  
5       operator access to conduct a predrilling or prealteration  
6       survey.

7           (3) The water supply is not within 1,000 feet, or in the  
8       case of an unconventional well within 5,000 feet, of the  
9       well.

10          (4) The pollution occurred more than six months after  
11       [completion of drilling] the drilling, stimulation or  
12       alteration activities.

13          (5) The pollution occurred as the result of some cause  
14       other than the drilling, stimulation or alteration [activity]  
15       activities.

16       \* \* \*

17       Section 5. The act is amended by adding sections to read:

18   Section 208.1. Use of surface impoundments for temporary  
19       flowback storage.

20       Where centralized flowback impoundments are used to  
21   temporarily store flowback water, the department shall require  
22   the use of dual liner systems with a leak detection system  
23   installed between the two liners. The department shall inspect  
24   such impoundments on a monthly basis.

25   Section 208.2. Transportation records; hydraulic fracturing  
26       fluids.

27       Each well operator who transports hydraulic fracturing fluids  
28   shall maintain records of the amount and destination of the  
29   fluids transported. The records shall be on a form approved by  
30   the department.

1       (1) Recordkeeping requirements shall be determined by  
2       the department and shall include at least the following:

3               (i) The number of gallons of hydraulic fracturing  
4               fluids used in the drilling, stimulation or alteration of  
5               a well.

6               (ii) Upon completion of the well, the name of the  
7               person or company who transports the hydraulic fracturing  
8               fluids to a disposal site or a location other than the  
9               well site.

10              (iii) The location where hydraulic fracturing fluids  
11              were disposed or to which they were transported and the  
12              volumes that were disposed of at each location.

13              (iv) The method of disposal.

14       (2) Records shall be retained by the well operator for a  
15       period of five years. The records shall be made available to  
16       the department upon request.

17       Section 6. Section 212(b) of the act, amended March 22, 2010  
18       (P.L.169, No.15), is amended and the section is amended by  
19       adding subsections to read:

20       Section 212. Well reporting requirements.

21       \* \* \*

22       (b) It shall be the duty of the well operator to keep  
23       records of any well drilled or altered. A record of the well  
24       containing such information as required by [regulation] the  
25       department, including the information required under subsection  
26       (b.1), shall be filed with the department within 30 days [of  
27       cessation of drilling] after stimulation of the well. A  
28       completion report containing such additional information as  
29       required by regulation shall be filed with the department within  
30       30 days after [the completion] stimulation of the well and it

1 shall be kept on file by the department. Within 90 days after  
2 the completion of drilling or recompletion of a well, if  
3 requested by the department, the well operator shall submit a  
4 copy of the electrical, radioactive or other standard industry  
5 logs if they have been run. In addition, if requested by the  
6 department within one year, the well operator shall file a copy  
7 of drill stem test charts, formation water analysis, porosity,  
8 permeability or fluid saturation measurements, core analysis and  
9 lithologic log or sample description or other similar data as  
10 compiled. No such information shall be required unless the well  
11 operator has had such information compiled in the ordinary  
12 course of business. No interpretation of the data is to be  
13 filed.

14 (b.1) Report contents.--The completion report shall contain  
15 the operator's stimulation record which shall include the  
16 following:

17 (1) A descriptive list of the chemical additives in the  
18 stimulation fluids, including any acid, biocide, breaker,  
19 brine, corrosion inhibitor, crosslinker, demulsifier,  
20 friction reducer, gel, iron control, oxygen scavenger, pH  
21 adjusting agent, proppant, scale inhibitor and surfactant.

22 (2) The percent by volume of each chemical additive in  
23 the stimulation fluid.

24 (3) A list of the chemicals in the material safety data  
25 sheets, by name and chemical abstract service number,  
26 corresponding to the appropriate chemical additive.

27 (4) The percent by volume of each chemical list in the  
28 material safety data sheets.

29 (5) The total volume of the base fluid.

30 (6) A list of water sources used under the approved



1 water management plan and the volume of water used.

2 (7) The pump rates and pressure used in the well.

3 (8) The depth at which potable aquifers are encountered.

4 (b.2) Trade secret or confidential proprietary

5 information.--When an operator submits its stimulation record

6 under subsection (b.1), it may designate specific portions of

7 the stimulation record as containing a trade secret or

8 confidential proprietary information. The department shall

9 prevent disclosure of the designated confidential information to

10 the extent permitted by the act of February 14, 2008 (P.L.6,

11 No.3), known as the Right-to-Know Law. However, in the event of

12 an emergency well, the department shall make available the

13 entire completion report to emergency personnel that respond.

14 (b.3) List of the chemical constituents.--In addition to

15 submitting a stimulation record to the department under

16 subsection (b.1) and subject to the protections afforded for

17 trade secrets and confidential proprietary information under the

18 Right-to-Know Law, the operator shall provide a list of the

19 chemical constituents of the chemical additives used to

20 hydraulically fracture a well, by name and chemical abstract

21 service number, unless the additive does not have a number, to

22 the department upon written request of the department.

23 \* \* \*

24 Section 7. Section 215(a), (c), (d), (d.1) and (f) of the  
25 act, amended July 2, 1992 (P.L.365, No.78), are amended to read:

26 Section 215. Bonding.

27 (a) (1) Except as provided in subsection (d) hereof, upon  
28 filing an application for a well permit and before continuing  
29 to operate any oil or gas well, the owner or operator thereof  
30 shall file with the department a bond for the well and the

1 well site on a form to be prescribed and furnished by the  
2 department. Any such bond filed with an application for a  
3 well permit shall be payable to the Commonwealth and  
4 conditioned that the operator shall faithfully perform all of  
5 the drilling, water supply replacement, restoration and  
6 plugging requirements of this act. Any such bond filed with  
7 the department for a well in existence on the effective date  
8 of this act shall be payable to the Commonwealth and  
9 conditioned that the operator shall faithfully perform all of  
10 the water supply replacement, restoration and plugging  
11 requirements of this act. The amount of the bond required  
12 shall be in the [amount of \$2,500 per well for at least two  
13 years following the effective date of this act, after which  
14 time the bond amount] following amounts and may be adjusted  
15 by the Environmental Quality Board every [two] three years to  
16 reflect the projected costs to the Commonwealth of performing  
17 well plugging[.]:

18 (i) For wells less than 2,500 feet in depth:

19 (A) \$2,500 per well, provided the operator shall  
20 not be required to provide a bond under this item  
21 exceeding \$35,000 for 25 wells.

22 (B) For operating 26 to 50 wells, \$35,000 plus  
23 \$2,500 per well, provided the operator may not be  
24 required to provide a bond under this item exceeding  
25 \$60,000.

26 (C) For operating 51 to 100 wells, \$60,000 plus  
27 \$2,500 per well, provided the operator may not be  
28 required to provide a bond under this item exceeding  
29 \$100,000.

30 (D) For operating over 100 wells, \$100,000 plus

\$2,500 per well, provided the operator may not be required to provide a bond under this item exceeding \$250,000.

(ii) For wells between 2,500 feet and 5,000 feet in depth:

(A) \$5,000 per well, provided the operator may not be required to provide a bond under this item exceeding \$70,000 for 25 wells.

(B) For operating 26 to 50 wells, \$70,000 plus \$5,000 per well, provided the operator may not be required to provide a bond under this item exceeding \$120,000.

(C) For operating 51 to 100 wells, \$120,000 plus \$5,000 per well, provided the operator may not be required to provide a bond under this item exceeding \$200,000.

(D) For operating over 100 wells, \$200,000 plus \$5,000 per well, provided the operator may not be required to provide a bond under this item exceeding \$500,000.

(iii) For wells over 5,000 feet in depth:

(A) \$12,500 per well, provided the operator may not be required to provide a bond under this item exceeding \$220,000 for 25 wells.

(B) For operating 26 to 50 wells, \$220,000 plus \$12,500 per well, provided the operator may not be required to provide a bond under this item exceeding \$375,000.

(C) For operating 51 to 100 wells, \$375,000 plus \$12,500 per well, provided the operator may not be

1           required to provide a bond under this item exceeding  
2           \$625,000.

3           (D) For operating over 100 wells, \$625,000 plus  
4           \$12,500 per well.

5           [(2) In lieu of individual bonds for each well, an owner  
6           or operator may file a blanket bond, on a form prepared by  
7           the department, covering all of its wells in Pennsylvania as  
8           enumerated on the bond form. A blanket bond shall be in the  
9           amount of \$25,000 for at least two years following the  
10          effective date of this act, after which time the bond amount  
11          may be adjusted by the Environmental Quality Board every two  
12          years to reflect the projected costs to the Commonwealth of  
13          performing well plugging.]

14          (3) Liability under such bond shall continue until the  
15          well has been properly plugged in accordance with this act  
16          and for a period of one year after filing of the certificate  
17          of plugging with the department. Each bond shall be executed  
18          by the operator and a corporate surety licensed to do  
19          business in the Commonwealth and approved by the secretary.  
20          The operator may elect to deposit cash, certificates of  
21          deposit or automatically renewable irrevocable letters of  
22          credit from financial institutions chartered or authorized to  
23          do business in Pennsylvania and regulated and examined by the  
24          Commonwealth or a Federal agency which may be terminated at  
25          the end of a term only upon the financial institution giving  
26          90 days prior written notice to the permittee and the  
27          department or negotiable bonds of the United States  
28          Government or the Commonwealth, the Pennsylvania Turnpike  
29          Commission, the General State Authority, the State Public  
30          School Building Authority or any municipality within the

1 Commonwealth, or United States Treasury Bonds issued at a  
2 discount without a regular schedule of interest payments to  
3 maturity, otherwise known as Zero Coupon Bonds, having a  
4 maturity date of not more than ten years after the date of  
5 purchase and at such maturity date having a value of not less  
6 than \$25,000, with the department in lieu of a corporate  
7 surety. The cash deposit, certificate of deposit, amount of  
8 such irrevocable letter of credit or market value of such  
9 securities shall be equal at least to the sum of the bond.  
10 The secretary shall, upon receipt of any such deposit of  
11 cash, letters of credit or negotiable bonds, immediately  
12 place the same with the State Treasurer, whose duty it shall  
13 be to receive and hold the same in the name of the  
14 Commonwealth, in trust, for the purpose for which such  
15 deposit is made. The State Treasurer shall at all times be  
16 responsible for the custody and safekeeping of such deposits.  
17 The operator making deposit shall be entitled from time to  
18 time to demand and receive from the State Treasurer, on the  
19 written order of the secretary, the whole or any portion of  
20 any collateral so deposited, upon depositing with him, in  
21 lieu thereof, other collateral of the classes herein  
22 specified having a market value at least equal to the sum of  
23 the bond, and also to demand, receive and recover the  
24 interest and income from said negotiable bonds as the same  
25 becomes due and payable. Where negotiable bonds, deposited as  
26 aforesaid, mature or are called, the State Treasurer, at the  
27 request of the owner thereof, shall convert such negotiable  
28 bonds into such other negotiable bonds of the classes herein  
29 specified as may be designated by the owner. Where notice of  
30 intent to terminate a letter of credit is given, the

department shall give the operator 30 days' written notice to replace the letter of credit with other acceptable bond guarantees as provided herein and, if the owner or operator fails to replace the letter of credit within the 30-day notification period, the department shall draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee.

\* \* \*

(c) If the well owner or operator fails or refuses to comply with the applicable requirements of this act identified in subsection (a), the regulations promulgated hereunder or the conditions of the permit relating thereto, the department may declare the bond forfeited and shall certify the same to the Attorney General, who shall proceed to enforce and collect the full amount of the bond and, where the owner or operator has deposited cash or securities as collateral in lieu of a corporate surety, the department shall declare said collateral forfeited and shall direct the State Treasurer to pay the full amount of said funds into the Well Plugging Restricted Revenue Account or to proceed to sell said security to the extent forfeited and pay the proceeds thereof into the Well Plugging Restricted Revenue Account. Should any corporate surety or financial institution fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further bonds under the act or any other environmental act administered by the department. Any person aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to appeal to the Environmental Hearing Board in the manner provided by law. Upon forfeiture of a [blanket] bond for a violation occurring at one or more well sites, the person whose

1 bond is forfeited shall submit a replacement bond to cover all  
2 other wells of which he is owner or operator within ten days of  
3 said forfeiture. Failure to submit said replacement bond  
4 constitutes a violation of this section as to each of the wells  
5 owned or operated by said person.

6 (d) [(1) Any operator of not more than 200 wells who cannot  
7 obtain a bond for a well drilled prior to April 18, 1985, as  
8 required under subsection (a), due to an inability to  
9 demonstrate sufficient financial resources may, in lieu of  
10 the bond:

11 (i) Submit to the department a fee in the amount of  
12 \$50 per well, or a blanket fee of \$500 for ten to 20  
13 wells, or a blanket fee of \$1,000 for more than 20 wells,  
14 which shall be a nonrefundable fee paid each year that  
15 the operator has not filed a bond with the department.  
16 All fees collected in lieu of a bond under this  
17 subsection shall be used for the purposes authorized by  
18 this act. The Environmental Quality Board shall have the  
19 power, by regulation, to increase the amount of the fees  
20 established under this subsection.

21 (ii) (A) Make phased deposits of collateral to  
22 fully collateralize the bond. Such payment shall be  
23 based on the number of wells the operator owns or  
24 operates. The operator shall make an initial deposit  
25 and shall, thereafter, make annual deposits in  
26 accordance with the schedule in clause (B). Interest  
27 accumulated by the collateral shall become a part of  
28 the bond until such time as the collateral plus  
29 accumulated interest equals the amount of the  
30 required bond. The collateral shall be deposited, in

1 trust, with the State Treasurer as provided in this  
2 subsection, or with a bank selected by the department  
3 which shall act as trustee for the benefit of the  
4 Commonwealth to guarantee the operator's compliance  
5 with the drilling, water supply replacement,  
6 restoration and plugging requirements of this act.  
7 The operator shall be required to pay all costs of  
8 the trust.

9 (B) An operator of up to ten existing wells who  
10 does not intend to operate additional wells shall  
11 deposit \$250 per well and shall, thereafter, annually  
12 deposit \$50 per well until the obligations of this  
13 section are fully met. An operator of 11 to 25 wells  
14 or an operator of up to ten wells who applies for one  
15 or more permits for additional wells shall deposit  
16 \$2,000 and shall, thereafter, annually deposit \$1,150  
17 plus \$150 for each additional well to be permitted  
18 that year until the obligations of this section are  
19 fully met. An operator of 26 to 50 wells shall  
20 deposit \$3,000 and shall, thereafter, annually  
21 deposit \$1,300 plus \$400 for each additional well to  
22 be permitted that year until the obligations of this  
23 section are fully met. An operator of 51 to 100 wells  
24 shall deposit \$4,000 and shall, thereafter, annually  
25 deposit \$1,500 plus \$400 for each additional well to  
26 be permitted that year until the obligations of this  
27 section are fully met. Operators of 101 to 200 wells  
28 shall deposit \$8,000 and shall, thereafter, annually  
29 deposit \$1,600 plus \$1,000 for each additional well  
30 to be permitted that year until the obligations of



1           this section are fully met. Operators of more than  
2           200 wells shall fully bond their wells immediately.  
3           The department shall reduce the amount of phased  
4           collateral payments or the period of time over which  
5           phased collateral payments shall be made on behalf of  
6           owners or operators who, prior to the effective date  
7           of this amendatory act, have paid a fee in lieu of  
8           bond pursuant to subparagraph (i), and who, within  
9           one year of the effective date of this amendatory  
10          act, choose to enter the phased collateral program  
11          pursuant to this subparagraph (ii) rather than to  
12          continue to make payments in lieu of bond. Payments  
13          made in lieu of bond prior to the effective date of  
14          this amendatory act shall not be credited in any  
15          other manner, nor shall the department be required to  
16          refund such fees at any time. The Environmental  
17          Quality Board shall have the power, by regulation, to  
18          change the annual deposits established under this  
19          clause if it is found to be necessary to accommodate  
20          a change in the amount of the bond required under  
21          this section.

22           (2) An operator may continue to pay a fee in lieu of  
23          bond or make phased deposits of collateral to fully  
24          collateralize the bond so long as the operator does not miss  
25          any payments for wells as provided under this subsection and  
26          so long as the operator remains in compliance with the  
27          provisions of this act and regulations and permits issued  
28          thereunder. If an operator has missed any payments for wells  
29          as provided under this subsection, the operator shall:

30           (i) immediately submit the appropriate bond amount

1           in full; or

2           (ii) cease all operations and plug the wells in  
3           accordance with section 210.

4       (d.1) (1) An individual who cannot obtain a bond to drill  
5       new wells due to an inability to demonstrate financial  
6       resources may meet the collateral bond requirements of  
7       subsection (a) by making phased deposits of collateral to  
8       fully collateralize the bond. Such individuals shall be  
9       limited to drilling ten new wells per calendar year. The  
10      individual shall, for each well to be drilled, deposit \$500  
11      and shall, thereafter, annually deposit 10% of the remaining  
12      bond amount for a period of ten years. Interest accumulated  
13      by the collateral shall become a part of the bond until such  
14      time as the collateral, plus accumulated interest, equals the  
15      amount of the required bond. The collateral shall be  
16      deposited, in trust, with the State Treasurer as provided in  
17      subsection (a) or with a bank selected by the department  
18      which shall act as trustee for the benefit of the  
19      Commonwealth, to guarantee the individual's compliance with  
20      the drilling, water supply replacement, restoration and  
21      plugging requirements of this act. The individual shall be  
22      required to pay all costs of the trust.

23      (2) Individuals may continue to use phased collateral to  
24      obtain permits so long as they have not missed any payments  
25      for wells drilled under this provision and so long as they  
26      remain in compliance with this act and regulations and  
27      permits issued thereunder. If an individual has missed any  
28      payments for wells under this subsection, the operator shall:

29           (i) immediately submit the appropriate bond amount  
30           in full; or

1           (ii) cease all operations and plug the wells in  
2           accordance with section 210.

3 For the purposes of this subsection an "individual" is defined  
4 as an applicant who is a natural person doing business under his  
5 own name.] The Environmental Quality Board shall, by regulation,  
6 develop an alternative financial assurance requirement in which  
7 an operator may voluntarily choose to participate. An operator  
8 participating in the alternative financial assurance requirement  
9 established pursuant to this paragraph may be exempt from a bond  
10 specified under subsection (a). The alternative financial  
11 assurance requirement may require an insurance policy, trust  
12 fund or financial mechanism but must provide for full coverage  
13 of an operator's well plugging liability as determined by the  
14 board. The alternative financial assurance mechanism may only be  
15 utilized to plug wells upon abandonment and may not be forfeited  
16 or otherwise recovered for violations of the act.

17       \* \* \*

18       [(f) Owners or operators who have failed to meet the  
19 requirements of this section prior to the effective date of this  
20 amendatory act shall not be required to make payments pursuant  
21 to this section on a retroactive basis as a condition of  
22 obtaining a permit under this act nor shall such failure be  
23 deemed a violation of this act.]

24       Section 8. Sections 503(c), 505 and 506 of the act are  
25 amended to read:

26       Section 503. Enforcement orders.

27       \* \* \*

28       (c) Prior to the suspension or revocation of a well permit  
29 or registration, the department shall serve written notice upon  
30 the well operator or its agent of the intention of the

1 department to suspend or revoke and shall state with specificity  
2 the statutory provisions, appropriate rule or regulation or  
3 other reason and the factual circumstances which surround the  
4 violation upon which the suspension or revocation is to be  
5 based. The well operator shall have 15 days to request a  
6 conference with the department to give such cause why such  
7 action should not be taken. Upon receipt of such written notice,  
8 the department shall hold a conference and shall, within 15 days  
9 thereafter, make a decision on whether to suspend or revoke the  
10 well permit or registration. The department shall provide  
11 written notice of its decision to revoke to the well operator or  
12 its agent, which shall become effective upon receipt thereof and  
13 the operator shall immediately plug the well.

14 \* \* \*

15 Section 505. Penalties.

16 (a) Any person who violates any provisions of the act is  
17 guilty of a summary offense and, upon conviction thereof, shall  
18 be sentenced to pay a fine of not more than [\$300] \$10,000 or  
19 undergo imprisonment of not more than 90 days, or both. Each  
20 day's continuance of such violation shall be a separate and  
21 distinct offense.

22 (b) Any person who willfully violates any provisions of this  
23 act or any order of the department issued pursuant to the  
24 provisions of this act is guilty of a misdemeanor and, upon  
25 conviction thereof, shall be sentenced to pay a fine of not more  
26 than [\$5,000] \$150,000 or undergo imprisonment of not more than  
27 one year, or both. Each day's continuance of such violation  
28 shall be a separate distinct offense.

29 (c) The department shall have the authority to institute  
30 prosecutions against any person or municipality under this act.

1 Section 506. Civil penalties.

2 In addition to proceeding under any other remedy available at  
3 law or in equity for a violation of a provision of this act or a  
4 rule or regulation of the department or a permit condition or  
5 any order of the department, the [Environmental Hearing Board]  
6 department, after hearing, may assess a civil penalty upon a  
7 person for such violation. Such a penalty may be assessed  
8 whether or not the violation was willful. The civil penalty so  
9 assessed shall not exceed [\$25,000, plus \$1,000] \$100,000, plus  
10 \$10,500 for each day of continued violation. In determining the  
11 amount of the civil penalty, the [board] department shall  
12 consider the willfulness of the violation, damage or injury to  
13 the natural resources of the Commonwealth or their uses,  
14 endangerment of the safety of others, costs of remedying the  
15 harm, savings resulting to the person in consequence of such  
16 violation and other relevant factors. It shall be payable to the  
17 Commonwealth and shall be collectible in any manner provided at  
18 law for the collection of debts. If any person liable to pay any  
19 such penalty neglects or refuses to pay the same after demand,  
20 the amount, together with interest and any costs that may  
21 accrue, shall be a lien in favor of the Commonwealth upon the  
22 property, both real and personal, of such person but only after  
23 same has been entered and docketed of record by the prothonotary  
24 of the county where such is situated. The [board] department  
25 may, at any time, transmit to the prothonotaries of the  
26 respective counties certified copies of all such liens, and it  
27 shall be the duty of each prothonotary to enter and docket the  
28 same of record in his office and to index the same as judgments  
29 are indexed, without requiring the payment of costs as a  
30 condition precedent to the entry thereof.

1 Section 9. The act is amended by adding a chapter to read:

2 CHAPTER 5A

3 EFFECTS OF NATURAL GAS DRILLING

4 Section 5A01. Definitions.

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

8 "Accredited laboratory." A facility engaged in the testing  
9 and calibration of scientific measurement devices and certified  
10 by the Department of Environmental Protection as having met the  
11 department's standards for accreditation.

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

15 "Base rate." The rate under section 5A02(b).

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

18 "Corporation." A corporation, joint stock association,  
19 limited liability company, business trust or any other  
20 incorporated enterprise organized under the laws of this  
21 Commonwealth, the United States or any other state, territory or  
22 foreign country or dependency.

23 "Department." The Department of Revenue of the Commonwealth.

24 "First responder." Professional and volunteer fire service  
25 personnel, emergency medical personnel, law enforcement  
26 personnel or State, county or local emergency management  
27 personnel.

28 "Fund." The Natural Gas Severance Tax Fund established under  
29 section 5A28.

30 "Meter." A device to measure the passage of volumes of gases

1 or liquids past a certain point.

2 "Municipality." A city, borough, incorporated town or  
3 township.

4 "Natural gas." A fossil fuel consisting of a mixture of  
5 hydrocarbon gases, primarily methane, possibly including ethane,  
6 propane, butane, pentane, carbon dioxide, oxygen, nitrogen and  
7 hydrogen sulfide and other gas species. The term includes  
8 natural gas from oil fields known as associated gas or casing  
9 head gas, natural gas fields known as nonassociated gas, coal  
10 beds, shale beds and other formations. The term does not include  
11 coal bed methane.

12 "Nonproducing site." A point of severance that is not  
13 capable of producing natural gas in paying quantities.

14 "Paying quantities." Profit to the producer, however small,  
15 over the producer's current operating expenses.

16 "Person." A natural person or a corporation, fiduciary,  
17 association or other entity, including the Commonwealth, its  
18 political subdivisions, instrumentalities and authorities. When  
19 the term is used in a clause prescribing and imposing a penalty  
20 or imposing a fine or imprisonment, or both, the term shall  
21 include the members, as applied to an association, and the  
22 officers, as applied to a corporation.

23 "Producer." A person who engages or continues within this  
24 Commonwealth in the business of severing natural gas for sale,  
25 profit or commercial use. The term does not include a person who  
26 severs natural gas from a storage field.

27 "Producing site." A point of severance capable of producing  
28 natural gas in paying quantities.

29 "Reporting period." A calendar month in which natural gas is  
30 severed.

1     "Secretary." The Secretary of Revenue of the Commonwealth.

2     "Sever." To extract or otherwise remove natural gas from the  
3 soil or water of this Commonwealth.

4     "Severance." The extraction or other removal of natural gas  
5 from the soil or water of this Commonwealth.

6     "Severing." Extracting or otherwise removing natural gas  
7 from the soil or water of this Commonwealth.

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

11    "Stripper well." A producing site or a nonproducing site  
12 that is not capable of producing and does not produce more than  
13 60,000 cubic feet of natural gas per day.

14    "Tax." The tax imposed under this chapter.

15    "Tax rate adjustment index." The amount calculated under  
16 section 5A03(c) by which the rate of the tax imposed under  
17 section 5A02(b) is adjusted annually.

18    "Taxpayer." A person subject to the tax imposed by this  
19 chapter.

20    "Unit." A thousand cubic feet of natural gas measured at the  
21 wellhead at a temperature of 60 degrees Fahrenheit and an  
22 absolute pressure of 14.73 pounds per square inch in accordance  
23 with American Gas Association Standards and according to Boyle's  
24 Law for the measurement of gas under varying pressures with  
25 deviations as follows:

26       (1) The average absolute atmospheric pressure shall be  
27 assumed to be 14.4 pounds to the square inch, regardless of  
28 elevation or location of point of delivery above sea level or  
29 variations in atmospheric pressure from time to time.

30       (2) The temperature of the gas passing the meters shall



1 be determined by the continuous use of a recording  
2 thermometer installed to properly record the temperature of  
3 gas flowing through the meters. The arithmetic average of the  
4 temperature recorded each 24-hour day shall be used in  
5 computing gas volumes. If a recording thermometer is not  
6 installed, or is installed and not operating properly, an  
7 average flowing temperature of 60 degrees Fahrenheit shall be  
8 used in computing gas volume.

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

14 (4) The deviation of the natural gas from Boyle's Law  
15 shall be determined by annual tests or at other shorter  
16 intervals as found necessary in practice. The apparatus and  
17 method used in making the test shall be in accordance with  
18 recommendations of the National Bureau of Standards or Report  
19 No. 3 of the Gas Measurement Committee of the American Gas  
20 Association, or amendments thereto. The results of the tests  
21 shall be used in computing the volume of gas delivered under  
22 this chapter.

23 "Wellhead meter." A meter placed at a producing or  
24 nonproducing site to measure the volume of natural gas severed  
25 for which a wellhead meter certification has been issued.

26 "Wellhead meter certification." A report issued by an  
27 accredited laboratory certifying the accuracy of a wellhead  
28 meter.

29 Section 5A02. Imposition of tax.

30 (a) Establishment.--Beginning July 1, 2011, there shall be

1 levied a natural gas severance tax on every producer. The tax  
2 shall not be imposed on units severed from a stripper well  
3 unless the following apply:

4 (1) The stripper well is one of multiple producing sites  
5 or nonproducing sites where the combined volumes of gas  
6 produced by all of such sites are measured by a single  
7 wellhead meter as provided in section 5A06.

8 (2) The combined volumes of gas produced by all the  
9 producing sites or nonproducing sites described in paragraph  
10 (1) is more than 60,000 cubic feet of natural gas per day.

11 (a.1) Exemptions.--The tax shall not be imposed on the  
12 following:

13 (1) Units severed by a producer and sold and delivered  
14 to a manufacturer of tangible personal property, as defined  
15 in section 201(m) of the act of March 4, 1971 (P.L.6, No.2),  
16 known as the Tax Reform Code of 1971, for the manufacturer's  
17 use within this Commonwealth if the units have been severed  
18 from one or more producing sites or nonproducing sites on  
19 property owned by the manufacturer.

20 (2) Units provided free of charge to the owner of the  
21 surface under which the gas is severed if the surface owner  
22 is the end user of the gas.

23 (b) Rate.--Subject to the provisions of section 5A03  
24 (relating to tax rate adjustment), the rate shall be 24¢ per  
25 unit severed at the wellhead.

26 Section 5A03. Tax rate adjustment.

27 (a) Annual adjustment.--The tax rate shall be adjusted  
28 annually by the amount of the tax rate adjustment index as  
29 calculated under subsection (c), provided that the tax rate  
30 shall never be less than the base rate. The adjusted tax rate

1 shall be effective for the next year.

2 (b) Determination of adjustment.--On or before April 30 of  
3 each year following the effective date of this section, the  
4 secretary shall calculate and determine the amount of the tax  
5 rate adjustment index.

6 (c) Calculation of adjustment.--The tax rate adjustment  
7 index shall be determined as follows:

8 (1) If 6% of the average of New York Mercantile Exchange  
9 (NYMEX) Henry Hub settled price on the last trading day of  
10 the month, as reported by the Wall Street Journal for the  
11 previous 12-month period ending March 31, is less than the  
12 base rate, the tax rate adjustment index shall be zero and  
13 the adjusted tax rate shall be the base rate.

14 (2) If 6% of the average of the NYMEX Henry Hub settled  
15 price on the last trading day of the month, as reported by  
16 the Wall Street Journal for the previous 12-month period  
17 ending March 31, is greater than the base rate, the tax rate  
18 adjustment index shall be 50% of the difference between 6% of  
19 the average of the NYMEX Henry Hub settled price on the last  
20 trading day of the month, as reported in the Wall Street  
21 Journal for the previous 12-month period ending March 31, and  
22 the base rate. The adjusted tax rate shall be the resulting  
23 tax rate adjustment index plus the base rate.

24 (d) Publication of adjustment.--The secretary shall forward  
25 the amount of the tax rate adjustment index and the adjusted tax  
26 rate, as determined under subsection (c), to the Legislative  
27 Reference Bureau for publication in the Pennsylvania Bulletin by  
28 May 1 of each year and shall simultaneously provide the  
29 information to producers by written notice. Failure of the  
30 amount of the tax rate adjustment index and the adjusted tax

rate to be published or provided to producers as required by  
this subsection shall not affect the effectiveness of the  
adjusted tax rate under subsection (b).

(e) Discontinuance of data.--If publication of the NYMEX  
Henry Hub average monthly gas price data is discontinued, the  
tax rate then in effect shall not be adjusted until a comparable  
method for determining the tax rate adjustment index is adopted  
by the General Assembly in legislation.

(f) Other adjustments.--If the base data of the NYMEX Henry  
Hub average monthly gas price is substantially revised, the  
secretary shall, when determining the amount of the tax rate  
adjustment index under subsection (c), make appropriate changes  
to ensure that the tax rate adjustment index is reasonably  
consistent with the result which would have been attained had  
the substantial revision not been made. If the secretary is  
unable to make reasonable changes sufficient to ensure a  
consistent result, the tax rate then in effect shall not be  
adjusted until a comparable method for determining the tax rate  
adjustment index is adopted by the General Assembly in  
legislation.

Section 5A04. Return and payment.

(a) Requirement.--Every producer is required to file a  
return with the department, on a form prescribed by the  
department, which shall include all of the following:

(1) The number of natural gas units severed by the  
producer for the reporting period.

(2) The number of producing sites used by the producer  
for the severance of natural gas in each county and  
municipality.

(3) The amount of tax due under section 5A02.

1     (b) Filing.--The return required by subsection (a) shall be  
2     filed with the department within 15 days following the end of a  
3     reporting period.

4     (c) Deadline.--The tax imposed under section 5A02 is due on  
5     the day the return is required to be filed and becomes  
6     delinquent if not remitted to the department by that date.

7     Section 5A05. Natural gas severance tax registration.

8     (a) Application.--Before a producer severs natural gas in  
9     this Commonwealth, the producer shall apply to the department  
10    for a natural gas severance tax registration certificate.

11    (a.1) Application fee.--The department may charge an  
12    application fee to cover the administrative costs associated  
13    with the application and registration process. If the department  
14    charges an application fee, the department shall not issue a  
15    registration certificate until the producer has paid the  
16    application fee.

17    (a.2) Declaration.--The producer shall include in its  
18    application a declaration of all producing sites and  
19    nonproducing sites used by the producer for the severance of  
20    natural gas. The declaration shall include copies of wellhead  
21    meter certifications for each site. The producer is required to  
22    update the declaration when the producer adds or removes a  
23    producing site or nonproducing site in this Commonwealth or when  
24    there is a change in the status of a producing site or  
25    nonproducing site or when the producer uses a different  
26    accredited laboratory to issue a wellhead meter certification.  
27    The producer shall update the declaration within 30 days after a  
28    calendar month in which a change to the declaration occurs.

29    (b) Issuance.--Except as provided in subsection (c), after  
30    the receipt of an application and payment of the fee imposed

1 under subsection (a.1), the department shall issue a  
2 registration certificate. The registration certificate shall be  
3 nonassignable. All registrants shall be required to renew their  
4 registration certificates and wellhead meter certifications on a  
5 staggered renewal system established by the department. After  
6 the initial staggered renewal period, a registration certificate  
7 or a wellhead meter certification issued shall be valid for a  
8 period of five years.

9 (c) Refusal, suspension or revocation.--The department may  
10 refuse to issue, suspend or revoke a registration certificate if  
11 the applicant or registrant has not filed required State tax  
12 reports and paid State taxes not subject to a timely perfected  
13 administrative or judicial appeal or subject to a duly  
14 authorized deferred payment plan. The department shall notify  
15 the applicant or registrant of any refusal, suspension or  
16 revocation. The notice shall contain a statement that the  
17 refusal, suspension or revocation may be made public. The notice  
18 shall be made by first class mail. An applicant or registrant  
19 aggrieved by the determination of the department may file an  
20 appeal under the provisions for administrative appeals in the  
21 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
22 of 1971. In the case of a suspension or revocation which is  
23 appealed, the registration certificate shall remain valid  
24 pending a final outcome of the appeals process. Notwithstanding  
25 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the  
26 Tax Reform Code of 1971 or any other provision of law, if no  
27 appeal is taken or if an appeal is taken and denied at the  
28 conclusion of the appeal process the department may disclose, by  
29 publication or otherwise, the identity of a producer and the  
30 fact that the producer's registration certificate has been

1 refused, suspended or revoked under this subsection. Disclosure  
2 may include the basis for refusal, suspension or revocation.

3 (d) Violation.--A person severing natural gas in this  
4 Commonwealth without holding a valid registration certificate  
5 under subsection (b) shall be guilty of a summary offense and  
6 shall, upon conviction, be sentenced to pay a fine of not less  
7 than \$300 nor more than \$1,500. In the event the person  
8 convicted defaults in the payment of the fine, he shall be  
9 sentenced to imprisonment for not less than five days nor more  
10 than 30 days. The penalties imposed by this subsection shall be  
11 in addition to any other penalties imposed by this chapter. For  
12 purposes of this subsection, the severing of natural gas during  
13 any calendar day shall constitute a separate violation. The  
14 secretary may designate employees of the department to enforce  
15 the provisions of this subsection. The employees shall exhibit  
16 proof of and be within the scope of the designation when  
17 instituting proceedings as provided by the Pennsylvania Rules of  
18 Criminal Procedure.

19 (e) Failure to obtain registration certificate.--Failure to  
20 obtain or hold a valid registration certificate does not relieve  
21 a person from liability for the tax imposed by this chapter.

22 Section 5A06. Wellhead meters.

23 (a) General rule.--Except as provided in subsection (b), a  
24 producer shall provide for and maintain a discrete wellhead  
25 meter where natural gas is severed. A producer shall ensure that  
26 the wellhead meters are maintained according to industry  
27 standards. Any wellhead meter installed after the effective date  
28 of this section shall be a digital meter.

29 (b) Exception.--If a producer has multiple producing sites  
30 or nonproducing sites where the combined volumes of gas produced

by all of such sites are measured by a single wellhead meter,  
the producer shall not be required to provide for a discrete  
wellhead meter at any of those producing sites or nonproducing  
sites that is also a stripper well.

Section 5A07. Assessments.

(a) Authorization and requirement.--The department is  
authorized and shall make the inquiries, determinations and  
assessments of the tax imposed under this chapter, including  
interest, additions and penalties imposed under this chapter.

(b) Notice.--The notice of assessment and demand for payment  
shall be mailed to the taxpayer. The notice shall set forth the  
basis of the assessment. The department shall send the notice of  
assessment to the taxpayer at its registered address via  
certified mail if the assessment increases the taxpayer's tax  
liability by \$300. Otherwise, the notice of assessment may be  
sent via regular mail.

Section 5A08. Time for assessment.

(a) Requirement.--An assessment as provided under section  
5A07 shall be made within three years after the date when the  
return provided for by section 5A04 is filed or the end of the  
year in which the tax liability arises, whichever shall occur  
last. For the purposes of this subsection and subsection (b), a  
return filed before the last day prescribed for the filing  
period shall be considered as filed on the last day.

(b) Exception.--If the taxpayer underpays the correct amount  
of the tax due by 25% or more, the assessment shall be made  
within six years after the date the return was filed.

(c) Intent to evade.--Where no return is filed or where the  
taxpayer files a false or fraudulent return with intent to evade  
the tax imposed by this chapter, the assessment may be made at



1 any time.

2 (d) Erroneous credit or refund.--Within three years of the  
3 granting of a refund or credit or within the period in which an  
4 assessment or reassessment may have been issued by the  
5 department for the taxable period for which the refund was  
6 granted, whichever period shall last occur, the department may  
7 issue an assessment to recover a refund or credit made or  
8 allowed erroneously.

9 Section 5A09. Extension of assessment period.

10 Notwithstanding the provisions of this chapter, the  
11 assessment period may be extended in the event a taxpayer has  
12 provided written consent before the expiration of the period  
13 provided in section 5A08 for a tax assessment. The amount of tax  
14 due may be assessed at any time within the extended period. The  
15 period may be extended further by subsequent written consents  
16 made before the expiration of the extended period.

17 Section 5A10. Reassessments.

18 A taxpayer against whom an assessment is made may petition  
19 the department for a reassessment under Article XXVII of the act  
20 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
21 1971.

22 Section 5A11. Interest.

23 The department shall assess interest on any delinquent tax at  
24 the rate prescribed under section 806 of the act of April 9,  
25 1929 (P.L.343, No.176), known as The Fiscal Code.

26 Section 5A12. Penalties.

27 The department shall enforce the following penalties:

28 (1) A penalty against a producer without a natural gas  
29 severance tax registration certificate. The penalty shall be  
30 \$1 for every unit severed without a valid registration

1 certificate. The department may assess this penalty  
2 separately from or in conjunction with any assessment of the  
3 natural gas severance tax.

4 (2) A penalty against a producer for failure to timely  
5 file a return as required under section 5A04. The penalty  
6 shall be 5% of the tax liability to be reported on the return  
7 for each day beyond the due date that the return is not  
8 filed.

9 (3) In addition to the penalty under paragraph (2), a  
10 penalty against the producer for a willful failure to timely  
11 file a return. The penalty shall be 200% of the tax liability  
12 required to be reported on the return.

13 (4) A penalty against a producer for failure to timely  
14 pay the tax as required by section 5A04(c). The penalty shall  
15 be 5% of the amount of tax due for each day beyond the  
16 payment date that the tax is not paid.

17 Section 5A13. Criminal acts.

18 (a) Fraudulent return.--Any person with intent to defraud  
19 the Commonwealth, who willfully makes or causes to be made a  
20 return required by this chapter which is false, is guilty of a  
21 misdemeanor and shall, upon conviction, be sentenced to pay a  
22 fine of not more than \$2,000 or to imprisonment for not more  
23 than three years, or both.

24 (b) Other crimes.--

25 (1) Except as otherwise provided by subsection (a), a  
26 person is guilty of a misdemeanor and shall, upon conviction,  
27 be sentenced to pay a fine of not more than \$1,000 and costs  
28 of prosecution or to imprisonment for not more than one year,  
29 or both, for any of the following:

30 (i) Willfully failing to timely remit the tax to the

1 department.

2 (ii) Willfully failing or neglecting to timely file  
3 a return or report required by this chapter.

4 (iii) Refusing to timely pay a tax, penalty or  
5 interest imposed or provided for by this chapter.

6 (iv) Willfully failing to preserve its books, papers  
7 and records as directed by the department.

8 (v) Refusing to permit the department or its  
9 authorized agents to examine its books, records or  
10 papers.

11 (vi) Knowingly making any incomplete, false or  
12 fraudulent return or report.

13 (vii) Preventing or attempting to prevent the full  
14 disclosure of the amount of natural gas severance tax  
15 due.

16 (viii) Providing any person with a false statement  
17 as to the payment of the tax imposed under this chapter  
18 with respect to any pertinent facts.

19 (ix) Making, uttering or issuing a false or  
20 fraudulent statement.

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

23 Section 5A14. Abatement of additions or penalties.

24 Upon the filing of a petition for reassessment or a petition  
25 for refund by a taxpayer as provided under this chapter,  
26 additions or penalties imposed upon the taxpayer by this chapter  
27 may be waived or abated in whole or in part where the petitioner  
28 establishes that he acted in good faith, without negligence and  
29 with no intent to defraud.

30 Section 5A15. Bulk and auction sales.

A person that sells or causes to be sold at auction, or that sells or transfers in bulk, 51% or more of a stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate involved in a business for which the person holds a registration certificate or is required to obtain a registration certificate under the provisions of this chapter shall be subject to the provisions of section 1403 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 5A16. Collection upon failure to request reassessment, review or appeal.

(a) Power of department.--The department may collect the tax imposed under this chapter:

(1) If an assessment of the tax is not paid within 30 days after notice to the taxpayer when no petition for reassessment has been filed.

(2) Within 60 days of the reassessment, if no petition for review has been filed.

(3) If no appeal has been made, within 30 days of:

(i) the Board of Finance and Revenue's decision of a petition for review; or

(ii) the expiration of the board's time for acting upon the petition.

(4) In all cases of judicial sales, receiverships, assignments or bankruptcies.

(b) Prohibition.--In a case for the collection of taxes under subsection (a), the taxpayer against whom they were assessed shall not be permitted to set up a ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts, provided that the defense of

failure of the department to mail notice of assessment or  
reassessment to the taxpayer and the defense of payment of  
assessment or reassessment may be raised in proceedings for  
collection by a motion to stay the proceedings.

Section 5A17. Tax liens.

(a) Lien imposed.--If any taxpayer neglects or refuses to  
pay the tax imposed under this chapter for which the taxpayer is  
liable under this chapter after demand, the amount, including  
interest, addition or penalty, together with additional costs  
that may accrue, shall be a lien in favor of the Commonwealth  
upon the real and personal property of the taxpayer but only  
after the same has been entered and docketed of record by the  
prothonotary of the county where the property is situated. The  
department may, at any time, transmit to the prothonotaries of  
the respective counties certified copies of all liens imposed by  
this section. It shall be the duty of the prothonotary receiving  
the lien to enter and docket the same of record to the office of  
the prothonotary. The lien shall be indexed as judgments are now  
indexed. No prothonotary shall require as a condition precedent  
to the entry of the lien the payment of costs incidental to its  
entry.

(b) Priority of lien and effect on judicial sale.--Except  
for the costs of the sale and the writ upon which the sale was  
made and real estate taxes and municipal claims against the  
property, a lien imposed under this section shall have priority  
from the date of its recording and shall be fully paid and  
satisfied out of the proceeds of any judicial sale of property  
subject to the lien, before any other obligation, judgment,  
claim, lien or estate to which the property may subsequently  
become subject, but shall be subordinate to mortgages and other

1 liens existing and duly recorded or entered of record prior to  
2 the recording of the lien.

3 (c) No discharge by sale on junior lien.--In the case of a  
4 judicial sale of property subject to a lien imposed under this  
5 section, upon a lien or claim over which the lien imposed under  
6 this section has priority, the sale shall discharge the lien  
7 imposed under this section to the extent only that the proceeds  
8 are applied to its payment, and the lien shall continue in full  
9 force and effect as to the balance remaining unpaid. There shall  
10 be no inquisition or condemnation upon any judicial sale of real  
11 estate made by the Commonwealth under the provisions of this  
12 chapter. The lien shall continue as provided in the act of April  
13 9, 1929 (P.L.343, No.176), known as The Fiscal Code, and a writ  
14 of execution may directly issue upon the lien without the  
15 issuance and prosecution to judgment of a writ of scire facias,  
16 provided that not less than ten days before issuance of any  
17 execution on the lien, notice of the filing and the effect of  
18 the lien shall be sent by registered mail to the taxpayer at its  
19 last known post office address, provided further that the lien  
20 shall have no effect upon any stock of goods, wares or  
21 merchandise regularly sold or leased in the ordinary course of  
22 business by the taxpayer against whom the lien has been entered,  
23 unless and until a writ of execution has been issued and a levy  
24 made upon the stock of goods, wares and merchandise.

25 (d) Duty of prothonotary.--Any willful failure of any  
26 prothonotary to carry out any duty imposed upon him by this  
27 section shall be a misdemeanor. Upon conviction, he shall be  
28 sentenced to pay a fine of not more than \$1,000 and costs of  
29 prosecution or to imprisonment for not more than one year, or  
30 both.

1     (e) Priority.--Except as provided in this chapter, the  
2 distribution, voluntary or compulsory, in receivership,  
3 bankruptcy or otherwise of the property or estate of any person,  
4 all taxes imposed by this chapter which are due and unpaid and  
5 are not collectible under the provisions of section 225 of the  
6 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
7 of 1971, shall be paid from the first money available for  
8 distribution in priority to all other claims and liens, except  
9 as the laws of the United States may give priority to a claim to  
10 the Federal Government. A person charged with the administration  
11 or distribution of the property or estate who violates the  
12 provisions of this section shall be personally liable for the  
13 taxes imposed by this chapter which are accrued and unpaid and  
14 chargeable against the person whose property or estate is being  
15 administered or distributed.

16     (f) Other remedies.--Subject to the limitations contained in  
17 this chapter as to the assessment of taxes, nothing contained in  
18 this section shall be construed to restrict, prohibit or limit  
19 the use by the department in collecting taxes due and payable of  
20 another remedy or procedure available at law or equity for the  
21 collection of debts.

22 Section 5A18. Tax suit reciprocity.

23     The courts of this Commonwealth shall recognize and enforce  
24 liabilities for natural gas severance or extraction taxes  
25 lawfully imposed by any other state, provided that the other  
26 state recognizes and enforces the tax imposed under this  
27 chapter.

28 Section 5A19. Service.

29     A producer is deemed to have appointed the Secretary of the  
30 Commonwealth its agent for the acceptance of service of process

or notice in a proceeding for the enforcement of the civil provisions of this chapter and service made upon the Secretary of the Commonwealth as agent shall be of the same legal force and validity as if the service had been personally made upon the producer. Where service cannot be made upon the producer in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth. In that case, a copy of the process or notice shall be personally served upon any agent or representative of the producer who may be found within this Commonwealth or, where no agent or representative may be found, a copy of the process or notice shall be sent via registered mail to the producer at the last known address of its principal place of business, home office or residence.

Section 5A20. Refunds.

The department shall refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this chapter to which the Commonwealth is not rightfully entitled. The refunds shall be made in accordance with section 3003.1 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, to the person or the person's heirs, successors, assigns or other personal representatives who paid the tax. No refund shall be made under this section regarding a payment made by reason of an assessment where a taxpayer filed a petition for reassessment under section 2702 of the Tax Reform Code of 1971 which was denied and is no longer subject to further review or appeal. Nothing in this chapter shall prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner paid the tax assessed.



1 Section 5A21. Refund petition.

2 (a) General rule.--Except as provided for in subsection (b),  
3 the refund or credit of tax, interest or penalty provided for by  
4 section 5A20 shall be made only where the person who has paid  
5 the tax files a petition for refund with the department under  
6 section 3003.1 of the Tax Reform Code of 1971.

7 (b) Natural gas severance tax.--A refund or credit of tax,  
8 interest or penalty paid as a result of an assessment made by  
9 the department under section 5A05 shall be made only where the  
10 person who has paid the tax files with the department a petition  
11 for a refund with the department under Article XXVII of the Tax  
12 Reform Code of 1971 within the time limits of section 3003.1 of  
13 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
14 Code of 1971. The filing of a petition for refund, under the  
15 provisions of this subsection, shall not affect the abatement of  
16 interest, additions or penalties to which the person may be  
17 entitled by reason of his payment of the assessment.

18 Section 5A22. Rules and regulations.

19 The department is charged with the enforcement of the  
20 provisions of this chapter and is authorized and empowered to  
21 prescribe, adopt, promulgate and enforce rules and regulations  
22 not inconsistent with the provisions of this chapter relating to  
23 any matter or thing pertaining to the administration and  
24 enforcement of the provisions of this chapter and the collection  
25 of taxes, penalties and interest imposed by this chapter. The  
26 department may prescribe the extent, if any, to which any of the  
27 rules and regulations shall be applied without retroactive  
28 effect.

29 Section 5A23. Recordkeeping.

30 (a) General rule.--Every person liable for any tax imposed

1 by this chapter, or for the collection of the tax, shall keep  
2 records, including those enumerated in subsection (a.1), render  
3 statements, make returns and comply with the rules and  
4 regulations as the department may prescribe regarding matters  
5 pertinent to the person's business. Whenever it is necessary,  
6 the department may require a person, by notice served upon the  
7 person or by regulations, to make returns, render statements or  
8 keep records as the department deems sufficient to show whether  
9 or not a person is liable to pay tax under this chapter.

10 (a.1) Records.--Records to be maintained are:

11 (1) Wellhead meter charts for each reporting period and  
12 the meter calibration and maintenance records. If turbine  
13 meters are in use, the maintenance records will be made  
14 available to the department upon request.

15 (2) Records, statements and other instruments furnished  
16 to a producer by a person to whom the producer delivers for  
17 sale, transport or delivery of natural gas.

18 (3) Records, statements and other instruments as the  
19 department may prescribe by regulation.

20 (b) Records of nonresidents.--A nonresident who does  
21 business in this Commonwealth as a producer shall keep adequate  
22 records of the business and of the tax due as a result. The  
23 records shall be retained within this Commonwealth unless  
24 retention outside this Commonwealth is authorized by the  
25 department. The department may require a taxpayer who desires to  
26 retain records outside this Commonwealth to assume reasonable  
27 out-of-State audit expenses.

28 (c) Keeping of separate records.--A producer who is engaged  
29 in another business or businesses which do not involve the  
30 severing of natural gas taxable under this chapter shall keep

separate books and records of the businesses so as to show the taxable severing of natural gas under this chapter separately from other business activities not taxable hereunder. If any person fails to keep separate books and records, the person shall be liable for a penalty equaling 100% of tax due under this chapter for the period where separate records were not maintained.

Section 5A24. Examinations.

The department or any of its authorized agents are authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this chapter. The department may require the preservation of all books, papers and records for any period deemed proper by it but not to exceed three years from the end of the calendar year to which the records relate. Every taxpayer is required to give to the department or its agent the means, facilities and opportunity for examinations and investigation under this section. The department is further authorized to examine any person, under oath, concerning the taxable severing of natural gas by any taxpayer or concerning any other matter relating to the enforcement or administration of this chapter, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of relevant matters. The procedure for the hearings or examinations shall be the same as that provided by the act of April 9, 1929 (P.L.343, No. 176), known as The Fiscal Code.

Section 5A25. Unauthorized disclosure.

Any information gained by the department as a result of any

return, examination, investigation, hearing or verification  
required or authorized by this chapter shall be confidential  
except for official purposes and except in accordance with  
proper judicial order or as otherwise provided by law, and any  
person unlawfully divulging the information shall be guilty of a  
misdemeanor and shall, upon conviction, be sentenced to pay a  
fine of not more than \$1,000 and costs of prosecution or to  
imprisonment for not more than one year, or both.

Section 5A26. Cooperation with other governments.

Notwithstanding the provisions of section 5A18, the  
department may permit the Commissioner of the Internal Revenue  
Service of the United States, the proper officer of any state or  
the authorized representative of either of them to inspect the  
tax returns of any taxpayer, or may furnish to the commissioner  
or officer or to either of their authorized representative an  
abstract of the return of any taxpayer, or supply him with  
information concerning any item contained in any return or  
disclosed by the report of any examination or investigation of  
the return of any taxpayer. This permission shall be granted  
only if the laws of the United States or another state grant  
substantially similar privileges to the proper officer of the  
Commonwealth charged with the administration of this chapter.

Section 5A27. Bonds.

(a) Taxpayer to file bond.--The department may require a  
nonresident natural person or any foreign corporation,  
association, fiduciary or other entity, not authorized to do  
business within this Commonwealth or not having an established  
place of business in this Commonwealth and subject to the tax  
imposed by section 5A02, to file a bond issued by a surety  
company authorized to do business in this Commonwealth and

1 approved by the Insurance Commissioner as to solvency and  
2 responsibility, in amounts as it may fix, to secure the payment  
3 of any tax or penalties due or which may become due from a  
4 nonresident natural person, corporation, association, fiduciary  
5 or other entity whenever it deems it necessary to protect the  
6 revenues obtained under this chapter. The department may also  
7 require a bond of a person petitioning the department for  
8 reassessment in the case of any assessment over \$500 or where,  
9 in its opinion, the ultimate collection is in jeopardy. For a  
10 period of three years, the department may require a bond of any  
11 person who has, on three or more occasions within a 12-month  
12 period, either filed a return or made payment to the department  
13 more than 30 days late. In the event the department determines a  
14 taxpayer is required to file a bond, it shall give notice to the  
15 taxpayer specifying the amount of the bond required. The  
16 taxpayer shall file the bond within five days after notice is  
17 given by the department unless, within five days, the taxpayer  
18 shall request in writing a hearing before the secretary or his  
19 representative. At the hearing, the necessity, propriety and  
20 amount of the bond shall be determined by the secretary or the  
21 secretary's representative. The determination shall be final and  
22 the taxpayer shall comply with it within 15 days after notice is  
23 mailed to the taxpayer.

24 (b) Securities in lieu of bond.--In lieu of the bond  
25 required by this section, securities approved by the department  
26 or cash in a prescribed amount may be deposited. The securities  
27 or cash shall be kept in the custody of the department. The  
28 department may apply the securities or cash to the tax imposed  
29 by this chapter and interest or penalties due without notice to  
30 the depositor. The securities may be sold by the department to

pay the tax and/or interest or penalties due at public or private sale upon five days' written notice to the depositor.

(c) Failure to file bond.--The department may file a lien under section 5A17 against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on the lien shall be refunded to the taxpayer with 3% interest, should a final determination be made that it does not owe any payment to the department.

Section 5A28. Funds and accounts established.

(a) Natural Gas Severance Tax Fund.--

(1) The Natural Gas Severance Tax Fund is established as a restricted account within the General Fund.

(2) The proceeds of the tax imposed under section 5A02 and penalties and interest imposed under this chapter, less the amounts transferred to the department under section 5A32, shall be deposited into the fund.

(3) The money in the fund shall only be used in accordance with sections 5A29 and 5A30.

(b) Local Government Services Account.--The Local Government Services Account is established as a restricted account within the fund.

(c) Oil and Gas Emergency Response Account.--The Oil and Gas Emergency Response Account is established as a restricted account within the fund.

Section 5A29. Transfers and distributions.

The State Treasurer shall make the following distributions from the money deposited into the fund at the end of each month as follows:

(1) Thirty percent to the Local Government Services Account established under 5A28(b) and shall be distributed as

1 provided in section 5A30.

2 (2) Thirty percent to the Environmental Stewardship Fund  
3 established under 27 Pa.C.S. § 6104 (relating to fund).

4 (3) Thirty percent to the Hazardous Sites Cleanup Fund  
5 established under section 901 of the act of October 18, 1988  
6 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

7 (4) Ten percent, but not more than \$11,000,000 per  
8 fiscal year, to the Oil and Gas Emergency Response Account  
9 established under 5A28(c), and shall be distributed as  
10 provided in section 5A31. In the event more than \$11,000,000  
11 is collected in any fiscal year the excess proceeds shall be  
12 distributed equally among paragraphs (1), (2) and (3).

13 Section 5A30. Distributions from local government services  
14 account.

15 (a) Quarterly distributions.--On the last business day of  
16 each period of three calendar months, the State Treasurer shall  
17 make the following distributions from the money in the Local  
18 Government Services Account:

19 (1) Fifty percent shall be distributed as follows:

20 (i) Thirty-five percent to counties with producing  
21 sites to be used as provided in subsection (c). The money  
22 under this subparagraph shall be distributed to each  
23 eligible county based on the following formula:

24 (A) Divide:

25 (I) the number of producing sites in the  
26 county; by

27 (II) the total number of producing sites in  
28 all the counties in this Commonwealth.

29 (B) Multiply:

30 (I) the quotient under clause (A); by

1                   (II) the amount of money available for  
2                   distribution under this subparagraph.

3                   (ii) Fifty percent to municipalities with producing  
4                   sites. The money under this subparagraph shall be  
5                   distributed to each eligible municipality based on the  
6                   following formula:

7                   (A) Divide:

8                   (II) the number of producing sites in the  
9                   municipality; by

10                   (II) the total number of producing sites in  
11                   all municipalities in this Commonwealth.

12                   (B) Multiply:

13                   (I) the quotient under clause (A); by

14                   (II) the amount of money available for  
15                   distribution under this clause.

16                   (C) The amount distributed to a municipality  
17                   shall not exceed 50% of the municipality's total  
18                   budget for fiscal year 2010-2011, adjusted for  
19                   inflation in subsequent years by an amount not to  
20                   exceed an annual cost-of-living adjustment calculated  
21                   by applying the Annual Percent Change in the Consumer  
22                   Price Index for all Urban Consumers immediately prior  
23                   to the date the adjustment is due to take effect. The  
24                   amount distributed under this clause shall be used  
25                   for the following purposes:

26                   (I) Reconstruction, maintenance and repair  
27                   of municipal roadways and bridges, which the  
28                   municipality has determined have been or are  
29                   being used extensively to transport natural gas  
30                   or equipment related to the production of natural



1           gas.

2                   (II) Preservation and improvement of  
3           municipal water supplies.

4                   (III) Maintenance and capital improvements  
5           to municipal waste and sewage systems.

6                   (IV) Preservation and reclamation of the  
7           surface waters of the municipality.

8                   (V) Other lawful purposes reasonably related  
9           to the health, welfare and safety consequences of  
10          severing natural gas in the municipality.

11          Any funds not distributed to the municipalities in a  
12          county because of the budgetary limitations under  
13          clause (A) shall be distributed to the county to be  
14          used solely for grants to municipalities to defer the  
15          cost of regional cooperation endeavors undertaken by  
16          the municipalities within the county.

17          (iii) Fifteen percent to municipalities with no  
18          producing sites located in a county with producing sites.  
19          The money under this subparagraph shall be distributed to  
20          each eligible municipality based on the following  
21          formula:

22                  (A) Divide:

23                          (I) the number of producing sites in the  
24                  county; by

25                          (II) the total number of producing sites in  
26                  all counties in this Commonwealth.

27                  (B) Multiply:

28                          (I) the quotient under clause (A); by

29                          (II) the amount of money available for  
30                  distribution under this clause.

1           (C) The State Treasurer shall distribute an  
2           equal share to each eligible municipality within the  
3           same county. The amount distributed to a municipality  
4           shall not exceed 50% of the municipality's total  
5           budget for fiscal year 2010-2011, adjusted for  
6           inflation in subsequent years by an amount not to  
7           exceed an annual cost-of-living adjustment calculated  
8           by applying the Annual Percent Change in the Consumer  
9           Price Index for all Urban Consumers immediately prior  
10          to the date the adjustment is due to take effect and  
11          shall be used for the following purposes:

12                 (I) Reconstruction, maintenance and repair  
13                 of municipal roadways and bridges, which the  
14                 municipality has determined have been, or are  
15                 being, used extensively to transport natural gas  
16                 or equipment related to the production of natural  
17                 gas.

18                 (II) Preservation and improvement of  
19                 municipal water supplies.

20                 (III) Maintenance and capital improvements  
21                 to municipal waste and sewage systems.

22                 (IV) Preservation and reclamation of surface  
23                 waters of the municipality.

24                 (V) Other lawful purposes reasonably related  
25                 to the health, welfare and safety consequences of  
26                 severing natural gas in municipalities within the  
27                 county.

28           Any funds not distributed to the municipalities in a  
29           county because of the budgetary limitations under  
30           clause (B) shall be distributed to the county to be

1           used solely for grants to municipalities to defer the  
2           cost of regional cooperation endeavors undertaken by  
3           the municipalities within the county.

4           (2) Fifty percent shall be distributed to the  
5           Commonwealth Financing Authority to fund eligible projects  
6           under 64 Pa.C.S. § 1551 (relating to Business in Our Sites  
7           Program).

8           (b) Limitations.--Only producing sites and nonproducing  
9           sites on which the tax is levied under section 5A02(a) during  
10          the three-month period for which transfers and distributions are  
11          made shall be included in any of the calculations made under  
12          subsection (a) for that three-month period.

13          (c) Administration of funds by counties.--

14           (1) The governing body of each county receiving  
15           distributions under subsection (a)(1)(i) shall administer the  
16           funds received. The governing body shall give priority to the  
17           reconstruction, repair and maintenance of county roadways and  
18           bridges, which the governing body has determined have been or  
19           are being used to transport natural gas or equipment related  
20           to the production of natural gas. A simple majority vote of  
21           all of the members of the governing body shall be required  
22           for any action under this paragraph.

23           (2) The Department of Community and Economic Development  
24           shall have the authority to audit a county's use of such  
25           funds and each county receiving funds shall make their  
26           financial records and other documents relating to its use of  
27           funds available to the Department of Community and Economical  
28           Development.

29          (d) Administration of funds by municipalities.--

30           (1) The governing body of a municipality receiving

1 distributions under subsection (a)(2) or (3) shall administer  
2 the funds received.

3 (2) The Department of Community and Economic Development  
4 shall have the authority to audit a municipality's use of the  
5 funds. Each municipality receiving funds shall make financial  
6 records and other documents relating to its use of the funds  
7 available to the Department of Community and Economic  
8 Development.

9 (f) Administration.--The department shall make the  
10 calculations required for the transfers and distributions under  
11 this section and shall submit the calculations to the State  
12 Treasurer in sufficient time for the State Treasurer to make the  
13 transfers and distributions as required by this section.

14 Section 5A31. Distributions from the Oil and Gas Emergency  
15 Response Account.

16 (a) Well emergency response and grant program.--One million  
17 dollars shall be distributed to the Office of the State Fire  
18 Commission for the development of a training program for oil and  
19 gas well emergency response, for oil and gas well emergency  
20 response training of first responders and for the administration  
21 of the grant program under subsection (b).

22 (b) Purchase or repair of equipment.--Ten million dollars  
23 shall be distributed to the Office of the State Fire  
24 Commissioner for a grant program for the purchase or repair of  
25 equipment necessary for oil and gas well emergency response by  
26 first responders. Only first responders in counties with  
27 producing sites shall be eligible for grants under this section.

28 Section 5A32. Administration of costs.

29 Annually, the State Treasurer shall transfer from the fund an  
30 amount not to exceed \$3,000,000 to the department to be used for

1 costs associated with the enforcement or administration of this  
2 chapter.

3 Section 10. Sections 601(a) and 602 of the act, amended July  
4 2, 1992 (P.L.365, No.78), are amended to read:

5 Section 601. Well plugging funds.

6 (a) All fines, civil penalties, permit and registration fees  
7 collected under this act are hereby appropriated to the  
8 Department of Environmental [Resources] Protection to carry out  
9 the purposes of this act.

10 \* \* \*

11 Section 602. Local ordinances.

12 Except with respect to ordinances adopted pursuant to the act  
13 of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania  
14 Municipalities Planning Code, [and], the act of October 4, 1978  
15 (P.L.851, No.166), known as the Flood Plain Management Act, and  
16 the act of March 31, 1927 (P.L.98, No.69), referred to as the  
17 Second Class City Zoning Law, all local ordinances and  
18 enactments purporting to regulate oil and gas well operations  
19 regulated by this act are hereby preempted and superseded to the  
20 extent the ordinances and enactments regulate the method of oil  
21 and gas well operations. No ordinances or enactments adopted  
22 pursuant to the aforementioned acts shall contain provisions  
23 which impose conditions, requirements or limitations on the  
24 [same features] method of oil and gas well operations regulated  
25 by this act or that accomplish the same purposes as set forth in  
26 this act. [The Commonwealth, by this enactment, hereby preempts  
27 and supersedes the regulation of oil and gas wells as herein  
28 defined.] Nothing in this act shall affect the traditional power  
29 of local government to regulate zoning and land development of  
30 oil and gas activities as well as other aspects, such as the

1 time and the place of operations to protect the health, safety  
2 and welfare of the general public through local ordinances and  
3 enactments.

4 Section 11. The act is amended by adding a section to read:  
5 Section 604.1. Moratorium.

6 (a) Notwithstanding any other provision of law, there is  
7 hereby established a moratorium on the new leasing and the  
8 issuance of new well permits under this act for any State forest  
9 land not under a lease agreement by September 1, 2010, for the  
10 natural gas drilling on State forest lands in the Marcellus  
11 Shale formation in this Commonwealth. The purpose of the  
12 moratorium shall be to provide additional time to review the  
13 permitting process and guidelines and regulations to protect the  
14 public land, health and safety.

15 (b) The moratorium shall expire two years after the  
16 effective date of this section.

17 Section 12. This act shall take effect in 60 days.