
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1708 Session of
2017

INTRODUCED BY ORTITAY, BLOOM, FRITZ, GROVE, PHILLIPS-HILL,
MARSHALL, MILLARD, SACCONI AND WATSON, AUGUST 16, 2017

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
AUGUST 16, 2017

AN ACT

1 Amending the act of July 20, 1979 (P.L.183, No.60), entitled "An
2 act regulating the terms and conditions of certain leases
3 regarding natural gas and oil," further providing for
4 definitions and for royalty guaranteed; and providing for
5 written summary of unconventional gas well deductions and for
6 inspection of records for unconventional gas wells.

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

9 Section 1. Section 1.2 of the act of July 20, 1979 (P.L.183,
10 No.60), known as the Oil and Gas Lease Act, is amended by adding
11 definitions to read:

12 Section 1.2. Definitions.

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

16 * * *

17 "Corporate structure or financing costs." The lessee's costs
18 associated with any of the following:

19 (1) Corporate financing, including corporate bonds.

1 (2) Changes in ownership.

2 (3) Transfers of ownership interests of existing
3 physical assets.

4 (4) Changes in the legal entities which hold or acquire
5 an ownership interest in physical assets.

6 (5) Adjustments to asset book values and undepreciated
7 asset balances if the lessee or an affiliated entity owns a
8 controlling interest in assets used for postproduction
9 activities.

10 * * *

11 "Gas of any other designation." The term includes but is not
12 limited to, natural gas liquids and other by-products in the gas
13 stream

14 * * *

15 "Point of sale." The point at which ownership of the oil,
16 natural gas or gas of any other designation transfers to another
17 person.

18 "Postproduction costs." Costs incurred in and associated
19 with processing and transporting natural gas or gas of any other
20 designation from the point the gas is brought to the surface to
21 the point of sale. These costs shall be limited to: the costs of
22 gathering, separating, treating, dehydrating, compressing,
23 processing, transporting; losses by use as fuel or line loss of
24 natural gas or gas of any other designation; and the costs of
25 fractionating, transporting and marketing ethane, propane,
26 butane and other complex hydrocarbons. The term does not include
27 corporate structure or financing costs.

28 "Proceeds." The amount of money obtained by the sale of oil,
29 natural gas or gas of any other designation.

30 "Royalty." An interest owner's share of production, free of

1 the expenses of production.

2 "Royalty payment." A payment made by a lessee to an interest
3 owner in exchange for a royalty.

4 "Unconventional formation." A geological shale formation
5 existing below the base of the Elk Sandstone or its geologic
6 equivalent stratigraphic interval where natural gas generally
7 cannot be produced at economic flow rates or in economic volumes
8 except by vertical or horizontal well bores stimulated by
9 hydraulic fracture treatments or by using multilateral well
10 bores or other techniques to expose more of the formation to the
11 well bore.

12 "Unconventional gas well." A bore hole drilled or being
13 drilled for the purpose of or to be used for the production of
14 natural gas from an unconventional formation.

15 Section 2. Section 1.3 of the act is amended to read:

16 Section 1.3. Royalty guaranteed.

17 (a) Minimum royalty.--A lease or other such agreement
18 conveying the right to remove or recover oil, natural gas or gas
19 of any other designation from the lessor to the lessee shall not
20 be valid if the lease does not guarantee the lessor at least
21 one-eighth royalty of the value at the wellhead of all oil,
22 natural gas or gas of any other [designations] designation
23 removed or recovered from the subject real property.

24 (b) Value at the wellhead.--For the purpose of subsection
25 (a), the value at the wellhead shall be determined as prescribed
26 under subsection (d) by deducting the postproduction costs which
27 were actually and reasonably incurred from the proceeds received
28 by the lessee at the point of sale.

29 (c) Affiliated costs for unconventional gas wells.--For the
30 purposes of calculating a royalty payment pursuant to a lease

1 for an unconventional gas well, if the lessee or an entity
2 affiliated with the lessee owns any of the assets used to incur
3 postproduction costs taken as deductions, the lessee or
4 affiliated entity shall not charge more for those postproduction
5 costs than the amount that would be reasonably incurred in an
6 arm's-length transaction with a third party for the activities
7 on a volumetric basis.

8 (d) Postproduction costs for unconventional gas wells.--All
9 of the following shall apply for the purposes of calculating a
10 royalty payment pursuant to a lease for an unconventional gas
11 well entered into on or after the effective date of this
12 subsection:

13 (1) The lessee may only deduct postproduction costs if
14 the lease provides express notice that postproduction costs
15 may be deducted from the sales price in calculating the
16 royalty payment.

17 (2) The lessee may not deduct from the sales price any
18 costs other than postproduction costs:

19 (i) as defined in this act;

20 (ii) specifically enumerated in the lease; and

21 (iii) actually and reasonably incurred by the
22 lessee.

23 (3) A lessee may only deduct costs associated with
24 fractionating and marketing ethane, propane, butane and other
25 complex hydrocarbons if the lessee provides a royalty payment
26 to the lessor for those products.

27 (4) For any period in which an unconventional gas well
28 produces natural gas and a royalty payment from the lessee to
29 an interest owner is accumulated under the terms of the lease
30 or as provided under section 3.3, the amount may not be less

1 than \$0.

2 Section 3. The act is amended by adding sections to read:

3 Section 4. Written summary of unconventional gas well
4 deductions.

5 Within 60 days of receiving a written request by certified
6 mail from the lessor who is party to a lease for an
7 unconventional gas well concerning a royalty payment made during
8 the 36-month period immediately preceding the date of the
9 request, the lessee shall provide a written summary of the
10 amount and specific description of each category of costs
11 deducted from the sales price of the natural gas and gas of any
12 other designation in calculating a royalty payment. The summary
13 shall not disclose the composition of fees charged by an
14 unaffiliated third party. A request for a summary under this
15 section more than once in a six-month period, or duplicative
16 requests for summaries for the same payment, may be denied.

17 Section 5. Inspection of records for unconventional gas wells.

18 (a) Authority.--A lessor who is party to a lease for an
19 unconventional gas well or a person duly authorized in writing
20 to act on behalf of the lessor may inspect, but not copy or
21 reproduce without the written consent of the lessee, the
22 supporting documentation of the lessee specifically related to
23 the deduction of costs during the 36-month period immediately
24 preceding the date of the request.

25 (b) Procedure.--

26 (1) A lessor who is party to a lease for an
27 unconventional gas well or a person duly authorized in
28 writing to act on behalf of such lessor seeking inspection
29 under subsection (a) shall make a written request to the
30 lessee for inspection of records by certified mail.

1 (2) Within 60 days of receipt of the request, the lessee
2 shall do all of the following:

3 (i) Designate a mutually agreed upon date, time and
4 place for inspection within 90 days of receipt of the
5 request. The inspection shall take place during normal
6 business hours, allow reasonable time to permit
7 completion of the inspection and occur at a location in
8 this Commonwealth which shall not impose an unreasonable
9 travel burden on the lessor or a person duly authorized
10 in writing to act on behalf of the lessor.

11 (ii) Provide supporting documentation of costs
12 deducted from the sales price to the lessor or a person
13 duly authorized in writing to act on behalf of the
14 lessor. For services provided by unaffiliated third
15 parties, supporting documentation may consist of invoiced
16 amounts for the services provided, but shall not include
17 the composition of the fees charged by an unaffiliated
18 third party.

19 (iii) Make available a knowledgeable individual, in
20 person or by teleconference, who is able to answer
21 questions pertaining to accounting issues specifically
22 related to costs deducted from the sales price that are
23 the subject of the request.

24 (c) Confidentiality.--

25 (1) Except as specified in paragraph (2), information
26 provided to a lessor who is party to a lease for an
27 unconventional gas well or a person acting on behalf of such
28 lessor that makes a request under subsection (a):

29 (i) Shall be strictly confidential.

30 (ii) May not be disclosed to any other person other

1 than the lessor or the person duly authorized in writing
2 to act on behalf of the lessor.

3 (iii) May not be used for any other purpose than
4 verifying the applicable costs.

5 (2) Paragraph (1) does not apply to disclosure in a
6 judicial proceeding.

7 (d) Frequency.--A request for inspection under this section
8 more than once in a six-month period or duplicative requests to
9 review records for the same time period may be denied.

10 Section 4. This act shall take effect in 60 days.