

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 905 Session of 2011

INTRODUCED BY YUDICHAK, ERICKSON, COSTA, BLAKE, McILHINNEY,
FONTANA, GREENLEAF AND WILLIAMS, 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," imposing a
17 natural gas severance tax; providing for collection of the
18 tax; establishing the Natural Gas Severance Tax Fund and the
19 Local Government Services Account; and providing for
20 transfers and distributions of certain funds.

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

23 Section 1. The act of December 19, 1984 (P.L.1140, No.223),
24 known as the Oil and Gas Act, is amended by adding a chapter to
25 read:

26 CHAPTER 5A

27 EFFECTS OF NATURAL GAS DRILLING

1 Section 5A01. Definitions.

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

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

9 "Association." A partnership, limited partnership or any
10 other form of unincorporated enterprise owned or conducted by
11 two or more persons.

12 "Base rate." The rate under section 5A02(a).

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

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

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

21 "Fund." The Natural Gas Severance Tax Fund established under
22 section 5A27.

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

25 "Municipality." A city, borough, incorporated town or
26 township.

27 "Natural gas." A fossil fuel consisting of a mixture of
28 hydrocarbon gases, primarily methane, possibly including ethane,
29 propane, butane, pentane, carbon dioxide, oxygen, nitrogen and
30 hydrogen sulfide and other gas species. The term includes

1 natural gas from oil fields known as associated gas or casing
2 head gas, natural gas fields known as nonassociated gas, coal
3 beds, shale beds and other formations. The term does not include
4 coal bed methane.

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

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

9 "Person." A natural person or a corporation, fiduciary,
10 association or other entity, including the Commonwealth, its
11 political subdivisions, instrumentalities and authorities. When
12 the term is used in a clause prescribing and imposing a penalty
13 or imposing a fine or imprisonment, or both, the term shall
14 include the members, as applied to an association, and the
15 officers, as applied to a corporation.

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

20 "Producing site." A point of severance capable of producing
21 natural gas in paying quantities.

22 "Reporting period." A calendar month in which natural gas is
23 severed.

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

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

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

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

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

4 "Stripper well." A producing site or a nonproducing site
5 that is not capable of producing and does not produce more than
6 60,000 cubic feet of natural gas per day.

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

8 "Taxpayer." A person subject to the tax imposed by this
9 chapter.

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

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

20 (2) The temperature of the gas passing the meters shall
21 be determined by the continuous use of a recording
22 thermometer installed to properly record the temperature of
23 gas flowing through the meters. The arithmetic average of the
24 temperature recorded each 24-hour day shall be used in
25 computing gas volumes. If a recording thermometer is not
26 installed, or is installed and not operating properly, an
27 average flowing temperature of 60 degrees Fahrenheit shall be
28 used in computing gas volume.

29 (3) The specific gravity of the gas shall be determined
30 annually by tests made by the use of an Edwards or Acme

1 gravity balance, or at intervals as found necessary in
2 practice. Specific gravity determinations shall be used in
3 computing gas volumes.

4 (4) The deviation of the natural gas from Boyle's Law
5 shall be determined by annual tests or at other shorter
6 intervals as found necessary in practice. The apparatus and
7 method used in making the test shall be in accordance with
8 recommendations of the National Bureau of Standards or Report
9 No. 3 of the Gas Measurement Committee of the American Gas
10 Association, or amendments thereto. The results of the tests
11 shall be used in computing the volume of gas delivered under
12 this chapter.

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

16 "Wellhead meter certification." A report issued by an
17 accredited laboratory certifying the accuracy of a wellhead
18 meter.

19 Section 5A02. Imposition of tax.

20 (a) Establishment.--Beginning July 1, 2011, there shall be
21 levied a natural gas severance tax on every producer. The tax
22 shall not be imposed on units severed from a stripper well
23 unless the following apply:

24 (1) The stripper well is one of multiple producing sites
25 or nonproducing sites, the combined volumes of gas produced
26 by all of which sites are measured by a single wellhead meter
27 as provided in section 5A05.

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

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

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

10 (2) Units provided free of charge to the owner of the
11 surface under which the gas is severed if the surface owner
12 is the end user of the gas.

13 (b) Rate.--

14 (1) For the first three years of production of the well,
15 the tax imposed shall be 2% of the gross value of the units
16 severed at the wellhead during a reporting period. The 2%
17 severance tax rate shall apply to the first 36 consecutive
18 calendar months beginning on the date of first production
19 from the well, regardless of whether production commenced
20 prior to July 1, 2011; provided that all production
21 attributable to the period prior to July 1, 2011, shall be
22 taxed at the 2% rate in effect.

23 (2) If the well has been in production for more than
24 three years on or after July 1, 2011, the tax rate shall be
25 5% of the gross value of the units severed at the wellhead
26 during a reporting period.

27 (3) Notwithstanding paragraphs (1) and (2), the tax rate
28 for any well shall be 2% of the gross value of the units
29 severed at the wellhead if the rate of production from the
30 well is less than 150,000 cubic feet of natural gas per day

1 and above 60,000 cubic feet of natural gas per day.

2 Section 5A03. Return and payment.

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

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

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

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

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

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

18 Section 5A04. Natural gas severance tax registration.

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

22 (a.1) Application fee.--The department may charge an
23 application fee to cover the administrative costs associated
24 with the application and registration process. If the department
25 charges an application fee, the department shall not issue a
26 registration certificate until the producer has paid the
27 application fee.

28 (a.2) Declaration.--The producer shall include in its
29 application a declaration of all producing sites and
30 nonproducing sites used by the producer for the severance of

1 natural gas. The declaration shall include copies of wellhead
2 meter certifications for each site. The producer is required to
3 update the declaration when the producer adds or removes a
4 producing site or nonproducing site in this Commonwealth or when
5 there is a change in the status of a producing site or
6 nonproducing site or when the producer uses a different
7 accredited laboratory to issue a wellhead meter certification.
8 The producer shall update the declaration within 30 days after a
9 calendar month in which a change to the declaration occurs.

10 (b) Issuance.--Except as provided in subsection (c), after
11 the receipt of an application, the department shall issue a
12 registration certificate under subsection (a). The registration
13 certificate shall be nonassignable. All registrants shall be
14 required to renew their registration certificates and wellhead
15 meter certifications on a staggered renewal system established
16 by the department. After the initial staggered renewal period, a
17 registration certificate or a wellhead meter certification
18 issued shall be valid for a period of five years.

19 (c) Refusal, suspension or revocation.--The department may
20 refuse to issue, suspend or revoke a registration certificate if
21 the applicant or registrant has not filed required State tax
22 reports and paid State taxes not subject to a timely perfected
23 administrative or judicial appeal or subject to a duly
24 authorized deferred payment plan. The department shall notify
25 the applicant or registrant of any refusal, suspension or
26 revocation. The notice shall contain a statement that the
27 refusal, suspension or revocation may be made public. The notice
28 shall be made by first class mail. An applicant or registrant
29 aggrieved by the determination of the department may file an
30 appeal under the provisions for administrative appeals in the

1 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
2 of 1971. In the case of a suspension or revocation which is
3 appealed, the registration certificate shall remain valid
4 pending a final outcome of the appeals process. Notwithstanding
5 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the
6 Tax Reform Code of 1971 or any other provision of law, if no
7 appeal is taken or if an appeal is taken and denied at the
8 conclusion of the appeal process the department may disclose, by
9 publication or otherwise, the identity of a producer and the
10 fact that the producer's registration certificate has been
11 refused, suspended or revoked under this subsection. Disclosure
12 may include the basis for refusal, suspension or revocation.

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

29 (e) Failure to obtain registration certificate.--Failure to
30 obtain or hold a valid registration certificate does not relieve

1 a person from liability for the tax imposed by this chapter.

2 Section 5A05. Meters.

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

9 (b) Exception.--If a producer has multiple producing sites
10 or nonproducing sites, the combined volumes of gas produced by
11 all of which sites are measured by a single wellhead meter, the
12 producer shall not be required to provide for a discrete
13 wellhead meter at any of those producing sites or nonproducing
14 sites that is also a stripper well.

15 Section 5A06. Assessments.

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

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

27 Section 5A07. Time for assessment.

28 (a) Requirement.--An assessment as provided under section
29 5A06 shall be made within three years after the date when the
30 return provided for by section 5A03 is filed or the end of the

1 year in which the tax liability arises, whichever shall occur
2 last. For the purposes of this subsection and subsection (b), a
3 return filed before the last day prescribed for the filing
4 period shall be considered as filed on the last day.

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

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

12 (d) Erroneous credit or refund.--Within three years of the
13 granting of a refund or credit or within the period in which an
14 assessment or reassessment may have been issued by the
15 department for the taxable period for which the refund was
16 granted, whichever period shall last occur, the department may
17 issue an assessment to recover a refund or credit made or
18 allowed erroneously.

19 Section 5A08. Extension of assessment period.

20 Notwithstanding the provisions of this chapter, the
21 assessment period may be extended in the event a taxpayer has
22 provided written consent before the expiration of the period
23 provided in section 5A07 for a tax assessment. The amount of tax
24 due may be assessed at any time within the extended period. The
25 period may be extended further by subsequent written consents
26 made before the expiration of the extended period.

27 Section 5A09. Reassessments.

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

1 1971.

2 Section 5A10. Interest.

3 The department shall assess interest on any delinquent tax at
4 the rate prescribed under section 806 of the act of April 9,
5 1929 (P.L.343, No.176), known as The Fiscal Code.

6 Section 5A11. Penalties.

7 The department shall enforce the following penalties:

8 (1) A penalty against a producer without a natural gas
9 severance tax registration certificate. The penalty shall be
10 \$1 for every unit severed without a valid registration
11 certificate. The department may assess this penalty
12 separately from or in conjunction with any assessment of the
13 natural gas severance tax.

14 (2) A penalty against a producer for failure to timely
15 file a return as required under section 5A03. The penalty
16 shall be 5% of the tax liability to be reported on the return
17 for each day beyond the due date that the return is not
18 filed.

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

23 (4) A penalty against a producer for failure to timely
24 pay the tax as required by section 5A03(c). The penalty shall
25 be 5% of the amount of tax due for each day beyond the
26 payment date that the tax is not paid.

27 Section 5A12. Criminal acts.

28 (a) Fraudulent return.--Any person with intent to defraud
29 the Commonwealth, who willfully makes or causes to be made a
30 return required by this chapter which is false, is guilty of a

1 misdemeanor and shall, upon conviction, be sentenced to pay a
2 fine of not more than \$2,000 or to imprisonment for not more
3 than three years, or both.

4 (b) Other crimes.--

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

10 (i) Willfully failing to timely remit the tax to the
11 department.

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

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

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

18 (v) Refusing to permit the department or its
19 authorized agents to examine its books, records or
20 papers.

21 (vi) Knowingly making any incomplete, false or
22 fraudulent return or report.

23 (vii) Preventing or attempting to prevent the full
24 disclosure of the amount of natural gas severance tax
25 due.

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

29 (ix) Making, uttering or issuing a false or
30 fraudulent statement.

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

3 Section 5A13. Abatement of additions or penalties.

4 Upon the filing of a petition for reassessment or a petition
5 for refund by a taxpayer as provided under this chapter,
6 additions or penalties imposed upon the taxpayer by this chapter
7 may be waived or abated in whole or in part where the petitioner
8 establishes that he acted in good faith, without negligence and
9 with no intent to defraud.

10 Section 5A14. Bulk and auction sales.

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

20 Section 5A15. Collection upon failure to request reassessment,
21 review or appeal.

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

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

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

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

30 (i) the Board of Finance and Revenue's decision of a

1 petition for review; or

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

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

6 (b) Prohibition.--In a case for the collection of taxes
7 under subsection (a), the taxpayer against whom they were
8 assessed shall not be permitted to set up a ground of defense
9 that might have been determined by the department, the Board of
10 Finance and Revenue or the courts, provided that the defense of
11 failure of the department to mail notice of assessment or
12 reassessment to the taxpayer and the defense of payment of
13 assessment or reassessment may be raised in proceedings for
14 collection by a motion to stay the proceedings.

15 Section 5A16. Tax liens.

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

1 entry.

2 (b) Priority of lien and effect on judicial sale.--Except
3 for the costs of the sale and the writ upon which the sale was
4 made and real estate taxes and municipal claims against the
5 property, a lien imposed under this section shall have priority
6 from the date of its recording and shall be fully paid and
7 satisfied out of the proceeds of any judicial sale of property
8 subject to the lien, before any other obligation, judgment,
9 claim, lien or estate to which the property may subsequently
10 become subject, but shall be subordinate to mortgages and other
11 liens existing and duly recorded or entered of record prior to
12 the recording of the lien.

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

1 merchandise regularly sold or leased in the ordinary course of
2 business by the taxpayer against whom the lien has been entered,
3 unless and until a writ of execution has been issued and a levy
4 made upon the stock of goods, wares and merchandise.

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

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

26 (f) Other remedies.--Subject to the limitations contained in
27 this chapter as to the assessment of taxes, nothing contained in
28 this section shall be construed to restrict, prohibit or limit
29 the use by the department in collecting taxes due and payable of
30 another remedy or procedure available at law or equity for the

1 collection of debts.

2 Section 5A17. Tax suit reciprocity.

3 The courts of this Commonwealth shall recognize and enforce
4 liabilities for natural gas severance or extraction taxes
5 lawfully imposed by any other state, provided that the other
6 state recognizes and enforces the tax imposed under this
7 chapter.

8 Section 5A18. Service.

9 A producer is deemed to have appointed the Secretary of the
10 Commonwealth its agent for the acceptance of service of process
11 or notice in a proceeding for the enforcement of the civil
12 provisions of this chapter and service made upon the Secretary
13 of the Commonwealth as agent shall be of the same legal force
14 and validity as if the service had been personally made upon the
15 producer. Where service cannot be made upon the producer in the
16 manner provided by other laws of this Commonwealth relating to
17 service of process, service may be made upon the Secretary of
18 the Commonwealth. In that case, a copy of the process or notice
19 shall be personally served upon any agent or representative of
20 the producer who may be found within this Commonwealth or, where
21 no agent or representative may be found, a copy of the process
22 or notice shall be sent via registered mail to the producer at
23 the last known address of its principal place of business, home
24 office or residence.

25 Section 5A19. Refunds.

26 Under Article XXVII of the act of March 4, 1971 (P.L.6,
27 No.2), known as the Tax Reform Code of 1971, the department
28 shall refund all taxes, interest and penalties paid to the
29 Commonwealth under the provisions of this chapter to which the
30 Commonwealth is not rightfully entitled. The refunds shall be

1 made to the person or the person's heirs, successors, assigns or
2 other personal representatives who paid the tax, provided that
3 no refund shall be made under this section regarding a payment
4 made by reason of an assessment where a taxpayer has filed a
5 petition for reassessment under section 2702 of the Tax Reform
6 Code of 1971 to the extent the petition is adverse to the
7 taxpayer by a decision which is no longer subject to further
8 review or appeal. Nothing in this chapter shall prohibit a
9 taxpayer who has filed a timely petition for reassessment from
10 amending it to a petition for refund where the petitioner paid
11 the tax assessed.

12 Section 5A20. Refund petition.

13 (a) General rule.--Except as provided for in subsection (b),
14 the refund or credit of tax, interest or penalty provided for by
15 section 5A19 shall be made only where the person who has paid
16 the tax files a petition for refund with the department under
17 Article XXVII of the act of March 4, 1971 (P.L.6, No.2), known
18 as the Tax Reform Code of 1971, within the time limits of
19 section 3003.1 of the Tax Reform Code of 1971.

20 (b) Natural gas severance tax.--A refund or credit of tax,
21 interest or penalty paid as a result of an assessment made by
22 the department under section 5A04 shall be made only where the
23 person who has paid the tax files with the department a petition
24 for a refund with the department under Article XXVII of the Tax
25 Reform Code of 1971 within the time limits of section 3003.1 of
26 the Tax Reform Code of 1971. The filing of a petition for
27 refund, under the provisions of this subsection, shall not
28 affect the abatement of interest, additions or penalties to
29 which the person may be entitled by reason of his payment of the
30 assessment.

1 Section 5A21. Rules and regulations.

2 The department is charged with the enforcement of the
3 provisions of this chapter and is authorized and empowered to
4 prescribe, adopt, promulgate and enforce rules and regulations
5 not inconsistent with the provisions of this chapter relating to
6 any matter or thing pertaining to the administration and
7 enforcement of the provisions of this chapter and the collection
8 of taxes, penalties and interest imposed by this chapter. The
9 department may prescribe the extent, if any, to which any of the
10 rules and regulations shall be applied without retroactive
11 effect.

12 Section 5A22. Recordkeeping.

13 (a) General rule.--Every person liable for any tax imposed
14 by this chapter, or for the collection of the tax, shall keep
15 records, including those enumerated in subsection (b), render
16 statements, make returns and comply with the rules and
17 regulations as the department may prescribe regarding matters
18 pertinent to the person's business. Whenever it is necessary,
19 the department may require a person, by notice served upon the
20 person or by regulations, to make returns, render statements or
21 keep records as the department deems sufficient to show whether
22 or not a person is liable to pay tax under this chapter.

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

24 (1) Wellhead meter charts for each reporting period and
25 the meter calibration and maintenance records. If turbine
26 meters are in use, the maintenance records will be made
27 available to the department upon request.

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

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

3 (b) Records of nonresidents.--A nonresident who does
4 business in this Commonwealth as a producer shall keep adequate
5 records of the business and of the tax due as a result. The
6 records shall be retained within this Commonwealth unless
7 retention outside this Commonwealth is authorized by the
8 department. The department may require a taxpayer who desires to
9 retain records outside this Commonwealth to assume reasonable
10 out-of-State audit expenses.

11 (c) Keeping of separate records.--A producer who is engaged
12 in another business or businesses which do not involve the
13 severing of natural gas taxable under this chapter shall keep
14 separate books and records of the businesses so as to show the
15 taxable severing of natural gas under this chapter separately
16 from other business activities not taxable hereunder. If any
17 person fails to keep separate books and records, the person
18 shall be liable for a penalty equaling 100% of tax due under
19 this chapter for the period where separate records were not
20 maintained.

21 Section 5A23. Examinations.

22 The department or any of its authorized agents are authorized
23 to examine the books, papers and records of any taxpayer in
24 order to verify the accuracy and completeness of any return made
25 or, if no return was made, to ascertain and assess the tax
26 imposed by this chapter. The department may require the
27 preservation of all books, papers and records for any period
28 deemed proper by it but not to exceed three years from the end
29 of the calendar year to which the records relate. Every taxpayer
30 is required to give to the department or its agent the means,

1 facilities and opportunity for examinations and investigation
2 under this section. The department is further authorized to
3 examine any person, under oath, concerning the taxable severing
4 of natural gas by any taxpayer or concerning any other matter
5 relating to the enforcement or administration of this chapter,
6 and to this end may compel the production of books, papers and
7 records and the attendance of all persons whether as parties or
8 witnesses whom it believes to have knowledge of relevant
9 matters. The procedure for the hearings or examinations shall be
10 the same as that provided by the act of April 9, 1929 (P.L.343,
11 No. 176), known as The Fiscal Code.

12 Section 5A24. Unauthorized disclosure.

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

22 Section 5A25. Cooperation with other governments.

23 Notwithstanding the provisions of section 5A17, the
24 department may permit the Commissioner of the Internal Revenue
25 Service of the United States, the proper officer of any state or
26 the authorized representative of either of them to inspect the
27 tax returns of any taxpayer, or may furnish to the commissioner
28 or officer or to either of their authorized representative an
29 abstract of the return of any taxpayer, or supply him with
30 information concerning any item contained in any return or

1 disclosed by the report of any examination or investigation of
2 the return of any taxpayer. This permission shall be granted
3 only if the laws of the United States or another state grant
4 substantially similar privileges to the proper officer of the
5 Commonwealth charged with the administration of this chapter.
6 Section 5A26. Bonds.

7 (a) Taxpayer to file bond.--The department may require a
8 nonresident natural person or any foreign corporation,
9 association, fiduciary or other entity, not authorized to do
10 business within this Commonwealth or not having an established
11 place of business in this Commonwealth and subject to the tax
12 imposed by section 5A02, to file a bond issued by a surety
13 company authorized to do business in this Commonwealth and
14 approved by the Insurance Commissioner as to solvency and
15 responsibility, in amounts as it may fix, to secure the payment
16 of any tax or penalties due or which may become due from a
17 nonresident natural person, corporation, association, fiduciary
18 or other entity whenever it deems it necessary to protect the
19 revenues obtained under this chapter. The department may also
20 require a bond of a person petitioning the department for
21 reassessment in the case of any assessment over \$500 or where,
22 in its opinion, the ultimate collection is in jeopardy. For a
23 period of three years, the department may require a bond of any
24 person who has, on three or more occasions within a 12-month
25 period, either filed a return or made payment to the department
26 more than 30 days late. In the event the department determines a
27 taxpayer is required to file a bond, it shall give notice to the
28 taxpayer specifying the amount of the bond required. The
29 taxpayer shall file the bond within five days after notice is
30 given by the department unless, within five days, the taxpayer

1 shall request in writing a hearing before the secretary or his
2 representative. At the hearing, the necessity, propriety and
3 amount of the bond shall be determined by the secretary or the
4 secretary's representative. The determination shall be final and
5 the taxpayer shall comply with it within 15 days after notice is
6 mailed to the taxpayer.

7 (b) Securities in lieu of bond.--In lieu of the bond
8 required by this section securities approved by the department
9 or cash in a prescribed amount may be deposited. The securities
10 or cash shall be kept in the custody of the department. The
11 department may apply the securities or cash to the tax imposed
12 by this chapter and interest or penalties due without notice to
13 the depositor. The securities may be sold by the department to
14 pay the tax and/or interest or penalties due at public or
15 private sale upon five days' written notice to the depositor.

16 (c) Failure to file bond.--The department may file a lien
17 under section 5A16 against any taxpayer who fails to file a bond
18 when required to do so under this section. All funds received
19 upon execution of the judgment on the lien shall be refunded to
20 the taxpayer with 3% interest, should a final determination be
21 made that it does not owe any payment to the department.

22 Section 5A27. Funds and accounts established.

23 (a) Natural Gas Severance Tax Fund.--

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

26 (2) The proceeds of the tax imposed under section 5A02
27 and penalties and interest imposed under this chapter, less
28 the amounts transferred to the department under section 5A30,
29 shall be deposited into the fund.

30 (3) The money in the fund shall only be used in

1 accordance with sections 5A28 and 5A29.

2 (b) Local Government Services Account.--

3 (1) The Local Government Services Account is established
4 as a restricted account within the fund.

5 (2) The allocation under section 5A28(3) shall be
6 deposited into the Local Government Services Account and
7 shall be distributed as provided in section 5A29(c).

8 Section 5A28. Transfers from fund.

9 For fiscal year 2011-2012 and each fiscal year thereafter,
10 the State Treasurer shall transfer the moneys in the fund at the
11 end of each month as follows:

12 (1) Thirty-three percent to the Commonwealth Financing
13 Authority established under 64 Pa.C.S. Ch. 15 (relating to
14 Commonwealth Financing Authority) for projects defined in the
15 act of July 9, 2008 (P.L.908, No.63), known as the H2O PA
16 Act.

17 (2) Thirty three percent to the Environmental
18 Stewardship Fund established pursuant to 27 Pa.C.S. § 6104
19 (relating to fund).

20 (3) Thirty-four percent to the Local Government Services
21 Account established in section 5A27.

22 Section 5A29. Distributions from local government services
23 account.

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

28 (1) Thirty-five percent to counties with producing sites
29 to be used as provided in subsection (c). The money under
30 this subparagraph shall be distributed to each eligible

1 county based on the following formula:

2 (i) Divide:

3 (A) the number of producing sites in the county;

4 by

5 (B) the total number of producing sites in all
6 the counties in this Commonwealth.

7 (ii) Multiply:

8 (A) the quotient under subparagraph (i); by

9 (B) the amount of money available for
10 distribution under this paragraph.

11 (2) Fifty-five percent to municipalities with producing
12 sites. The money under this subparagraph shall be distributed
13 to each eligible municipality based on the following formula:

14 (i) Divide:

15 (A) the number of producing sites in the
16 municipality; by

17 (B) the total number of producing sites in all
18 municipalities in this Commonwealth.

19 (ii) Multiply:

20 (A) the quotient under subparagraph (i); by

21 (B) the amount of money available for
22 distribution under this paragraph.

23 (iii) The amount distributed to a municipality shall
24 not exceed 50% of the municipality's total budget for
25 fiscal year 2010-2011, adjusted for inflation in
26 subsequent years by an amount not to exceed an annual
27 cost-of-living adjustment calculated by applying the
28 Annual Percent Change in the Consumer Price Index for all
29 Urban Consumers immediately prior to the date the
30 adjustment is due to take effect. The amount distributed

1 under this subparagraph shall be used for the following
2 purposes:

3 (A) Reconstruction, maintenance and repair of
4 municipal roadways and bridges, which the
5 municipality has determined have been or are being
6 used extensively to transport natural gas or
7 equipment related to the production of natural gas.

8 (B) Preservation and improvement of municipal
9 water supplies.

10 (C) Maintenance and capital improvements to
11 municipal waste and sewage systems.

12 (D) Preservation and reclamation of the surface
13 waters of the municipality.

14 (E) Other lawful purposes reasonably related to
15 the health, welfare and safety consequences of
16 severing natural gas in the municipality.

17 Any funds not distributed to the municipalities in a
18 county because of the budgetary limitations under
19 subparagraph (i) shall be distributed to the county to be
20 used solely for grants to municipalities to defer the
21 cost of regional cooperation endeavors undertaken by the
22 municipalities within the county.

23 (3) Fifteen percent to municipalities with no producing
24 sites located in a county with producing sites. The money
25 under this subparagraph shall be distributed to each eligible
26 municipality based on the following formula:

27 (i) Divide:

28 (A) the number of producing sites in the county;

29 by

30 (B) the total number of producing sites in all

1 counties in this Commonwealth.

2 (ii) Multiply:

3 (A) the quotient under subparagraph (i); by

4 (B) the amount of money available for

5 distribution under this paragraph.

6 (iii) The State Treasurer shall distribute an equal
7 share to each eligible municipality within the same

8 county. The amount distributed to a municipality shall

9 not exceed 50% of the municipality's total budget for

10 fiscal year 2010-2011, adjusted for inflation in

11 subsequent years by an amount not to exceed an annual

12 cost-of-living adjustment calculated by applying the

13 Annual Percent Change in the Consumer Price Index for all

14 Urban Consumers immediately prior to the date the

15 adjustment is due to take effect and shall be used for

16 the following purposes:

17 (A) Reconstruction, maintenance and repair of
18 municipal roadways and bridges, which the

19 municipality has determined have been, or are being,

20 used extensively to transport natural gas or

21 equipment related to the production of natural gas.

22 (B) Preservation and improvement of municipal
23 water supplies.

24 (C) Maintenance and capital improvements to
25 municipal waste and sewage systems.

26 (D) Preservation and reclamation of surface
27 waters of the municipality.

28 (E) Other lawful purposes reasonably related to
29 the health, welfare and safety consequences of
30 severing natural gas in municipalities within the

1 county.

2 Any funds not distributed to the municipalities in a
3 county because of the budgetary limitations under
4 subparagraph (ii) shall be distributed to the county to
5 be used solely for grants to municipalities to defer the
6 cost of regional cooperation endeavors undertaken by the
7 municipalities within the county.

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 paragraphs (1), (2) and (3) 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 (c)(1) 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. The governing body shall
21 allocate the remainder to the county or its municipalities
22 for any of the purposes enumerated in subsection (c)(3) or
23 (5). A simple majority vote of all of the members of the
24 governing body shall be required for any action under this
25 paragraph.

26 (2) Commencing in 2012, before February 1, each county
27 receiving distributions under subsection (c)(1) shall prepare
28 and deliver a report to the Governor, the Secretary of the
29 Senate and the Chief Clerk of the House of Representatives
30 detailing the expenditure of funds. The Department of

1 Community and Economic Development shall have the authority
2 to audit a county's use of such funds and each county
3 receiving funds shall make their financial records and other
4 documents relating to its use of funds available to the
5 Department of Community and Economical Development.

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

7 (1) The governing body of a municipality receiving
8 distributions under subsection (a)(2) or (3) shall administer
9 the funds received.

10 (2) Commencing in 2012, before February 1, each
11 municipality receiving distributions under this paragraph or
12 paragraph (3) shall prepare and deliver a report to the
13 Governor, the Secretary of the Senate and the Chief Clerk of
14 the House of Representatives detailing the expenditure of
15 funds.

16 (3) The Department of Community and Economic Development
17 shall have the authority to audit a municipality's use of the
18 funds. Each municipality receiving funds shall make financial
19 records and other documents relating to its use of the funds
20 available to the Department of Community and Economic
21 Development.

22 (e) Administration.--The department shall make the
23 calculations required for the transfers and distributions under
24 this section and shall submit the calculations to the State
25 Treasurer in sufficient time for the State Treasurer to make the
26 transfers and distributions as required by this section.

27 Section 5A30. Administration of costs.

28 Annually, the State Treasurer shall transfer from the fund an
29 amount not to exceed \$3,000,000 to the department to be used for
30 costs associated with the enforcement or administration of this

1 chapter.

2 Section 2. This act shall take effect in 60 days.