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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1140 Session of  
2011

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INTRODUCED BY DINNIMAN, FONTANA, HUGHES AND WILLIAMS,  
JUNE 26, 2011

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REFERRED TO FINANCE, JUNE 26, 2011

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AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," providing for an energy resource production water  
11 withdrawal tax.

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

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

17 ARTICLE XXII

18 ENERGY RESOURCE PRODUCTION WATER

19 WITHDRAWAL TAX

20 Section 2201. Definitions.

21 The following words and phrases when used in this article  
22 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Consumptive use." As defined in 27 Pa.C.S. § 3102 (relating  
3 to definitions).

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

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

10 "Energy production." The severance of an energy resource.

11 "Energy resource." Coal, oil and natural gas.

12 "Fund." The Energy Production Water Withdrawal Tax Fund.

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

21 "Nonconsumptive use." As defined in 27 Pa.C.S. § 3102  
22 (relating to definitions).

23 "Oil." Hydrocarbons in liquid form at standard temperature  
24 of 60 degrees Fahrenheit and pressure 14.7 PSIA.

25 "Person." A natural person or a corporation, fiduciary,  
26 association or other entity. When the term is used in a clause  
27 prescribing and imposing a penalty or imposing a fine or  
28 imprisonment, or both, the term shall include the members, as  
29 applied to an association, and the officers, as applied to a  
30 corporation.

1 "Producer." A person who engages or continues within this  
2 Commonwealth in the business of severing an energy resource for  
3 sale, profit or commercial use.

4 "Reporting period." A calendar year in which water is  
5 withdrawn for energy production.

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

7 "Sever." To extract or otherwise remove an energy resource  
8 from the soil or water of this Commonwealth.

9 "Severance." The extraction or other removal of an energy  
10 resource from the soil or water of this Commonwealth.

11 "Severing." Extracting or otherwise removing an energy  
12 resource from the soil or water of this Commonwealth.

13 "Tax." The tax imposed under this article.

14 "Taxpayer." A person subject to the tax imposed under this  
15 article.

16 "Water withdrawal." The removal of water from a watershed  
17 for use in the process of severing an energy resource.

18 "Watershed." As defined in 27 Pa.C.S. § 3102 (relating to  
19 definitions).

20 Section 2202. Imposition of tax.

21 (a) Levy.--There shall be levied an energy production water  
22 withdrawal tax on every producer that makes total water  
23 withdrawals of at least 750,000 gallons over a period of one  
24 year for energy production at a specific site.

25 (b) Exceptions.--The tax imposed under subsection (a) shall  
26 not be imposed upon a producer for the following water  
27 withdrawals:

28 (1) Water withdrawals for a nonconsumptive use in energy  
29 production.

30 (2) Water withdrawn for emergency purposes, such as fire

1 fighting, flood prevention, response to a discharge of  
2 hazardous substances or for other emergency purposes as may  
3 be determined by the department.

4 (c) Rate.--The rate of the tax imposed under subsection (a)  
5 shall be \$20 per thousand gallons of water on the total amount  
6 of water withdrawn.

7 Section 2203. Return and payment.

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

11 (1) From the total amount of water withdrawn by the  
12 producer, the amount of water withdrawn and used for a  
13 consumptive use in energy production.

14 (2) From the total amount of water withdrawn by the  
15 producer, the amount of water withdrawn and used for a  
16 nonconsumptive use in energy resource development.

17 (3) The amount of tax due under section 2202.

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

21 (c) Deadline.--The tax imposed under section 2202 is due on  
22 the day the return is required to be filed and becomes  
23 delinquent if not remitted to the department by that date.

24 Section 2204. Registration.

25 (a) Application.--Before a producer makes a water withdrawal  
26 in this Commonwealth, the producer shall apply to the department  
27 for a registration certificate.

28 (b) Application fee.--The department may charge an  
29 application fee to cover the administrative costs associated  
30 with the application and registration process. If the department

1 charges an application fee, the department shall not issue a  
2 registration certificate until the producer has paid the  
3 application fee.

4 (c) Issuance.--Except as provided in subsection (d), after  
5 the receipt of an application and payment of any fee imposed  
6 under subsection (b), the department shall issue a registration  
7 certificate. The registration certificate shall be  
8 nonassignable. All registrants shall be required to renew their  
9 registration certificates and wellhead meter certifications on a  
10 staggered renewal system established by the department. After  
11 the initial staggered renewal period, a registration certificate  
12 or a wellhead meter certification issued shall be valid for a  
13 period of five years.

14 (d) Refusal, suspension or revocation.--The department may  
15 refuse to issue, suspend or revoke a registration certificate if  
16 the applicant or registrant has not filed required State tax  
17 reports and paid State taxes not subject to a timely perfected  
18 administrative or judicial appeal or subject to a duly  
19 authorized deferred payment plan. The department shall notify  
20 the applicant or registrant of any refusal, suspension or  
21 revocation. The notice shall contain a statement that the  
22 refusal, suspension or revocation may be made public. The notice  
23 shall be made by first class mail. An applicant or registrant  
24 aggrieved by the determination of the department may file an  
25 appeal under the provisions for administrative appeals in this  
26 act. In the case of a suspension or revocation which is  
27 appealed, the registration certificate shall remain valid  
28 pending a final outcome of the appeals process. Notwithstanding  
29 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 or any  
30 other provision of law, if no appeal is taken or if an appeal is

1 taken and denied at the conclusion of the appeal process the  
2 department may disclose, by publication or otherwise, the  
3 identity of a producer and the fact that the producer's  
4 registration certificate has been refused, suspended or revoked  
5 under this subsection. Disclosure may include the basis for  
6 refusal, suspension or revocation.

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

23 (f) Failure to obtain registration certificate.--Failure to  
24 obtain or hold a valid registration certificate does not relieve  
25 a person from liability for the tax imposed by this article.  
26 Section 2205. Assessments.

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

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

8 Section 2206. Time for assessment.

9 (a) Requirement.--An assessment as provided under section  
10 2205 shall be made within three years after the date when the  
11 return provided for by section 2203 is filed or the end of the  
12 year in which the tax liability arises, whichever shall occur  
13 last. For the purposes of this subsection and subsection (b), a  
14 return filed before the last day prescribed for the filing  
15 period shall be considered as filed on the last day.

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

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

23 (d) Erroneous credit or refund.--Within three years of the  
24 granting of a refund or credit or within the period in which an  
25 assessment or reassessment may have been issued by the  
26 department for the taxable period for which the refund was  
27 granted, whichever period shall last occur, the department may  
28 issue an assessment to recover a refund or credit made or  
29 allowed erroneously.

30 Section 2207. Extension of assessment period.

1 Notwithstanding the provisions of this article, the  
2 assessment period may be extended in the event a taxpayer has  
3 provided written consent before the expiration of the period  
4 provided in section 2206 for a tax assessment. The amount of tax  
5 due may be assessed at any time within the extended period. The  
6 period may be extended further by subsequent written consents  
7 made before the expiration of the extended period.

8 Section 2208. Reassessments.

9 A taxpayer against whom an assessment is made may petition  
10 the department for a reassessment under Article XXVII.

11 Section 2209. Interest.

12 The department shall assess interest on any delinquent tax at  
13 the rate prescribed under section 806 of the act of April 9,  
14 1929 (P.L.343, No.176), known as The Fiscal Code.

15 Section 2210. Penalties.

16 The department shall enforce the following penalties:

17 (1) A penalty against a producer without a natural gas  
18 severance tax registration certificate. The penalty shall be  
19 \$1 for every unit severed without a valid registration  
20 certificate. The department may assess this penalty  
21 separately from or in conjunction with any assessment of the  
22 natural gas severance tax.

23 (2) A penalty against a producer for failure to timely  
24 file a return as required under section 2203. The penalty  
25 shall be 5% of the tax liability to be reported on the return  
26 for each day beyond the due date that the return is not  
27 filed.

28 (3) In addition to the penalty under paragraph (2), a  
29 penalty against the producer for a willful failure to timely  
30 file a return. The penalty shall be 200% of the tax liability



1 required to be reported on the return.

2 (4) A penalty against a producer for failure to timely  
3 pay the tax as required by section 2203(c). The penalty shall  
4 be 5% of the amount of tax due for each day beyond the  
5 payment date that the tax is not paid.

6 Section 2211. Criminal acts.

7 (a) Fraudulent return.--Any person with intent to defraud  
8 the Commonwealth, who willfully makes or causes to be made a  
9 return required by this article which is false, is guilty of a  
10 misdemeanor and shall, upon conviction, be sentenced to pay a  
11 fine of not more than \$2,000 or to imprisonment for not more  
12 than three years, or both.

13 (b) Other crimes.--

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

19 (i) Willfully failing to timely remit the tax to the  
20 department.

21 (ii) Willfully failing or neglecting to timely file  
22 a return or report required by this article.

23 (iii) Refusing to timely pay a tax, penalty or  
24 interest imposed or provided for by this article.

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

27 (v) Refusing to permit the department or its  
28 authorized agents to examine its books, records or  
29 papers.

30 (vi) Knowingly making any incomplete, false or

1 fraudulent return or report.

2 (vii) Preventing or attempting to prevent the full  
3 disclosure of the amount of natural gas severance tax  
4 due.

5 (viii) Providing any person with a false statement  
6 as to the payment of the tax imposed under this article  
7 with respect to any pertinent facts.

8 (ix) Making, uttering or issuing a false or  
9 fraudulent statement.

10 (2) The penalties imposed by this section shall be in  
11 addition to other penalties imposed by this article.

12 Section 2212. Abatement of additions or penalties.

13 Upon the filing of a petition for reassessment or a petition  
14 for refund by a taxpayer as provided under this article,  
15 additions or penalties imposed upon the taxpayer by this article  
16 may be waived or abated in whole or in part where the petitioner  
17 establishes that he acted in good faith, without negligence and  
18 with no intent to defraud.

19 Section 2213. Bulk and auction sales.

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

29 Section 2214. Collection upon failure to request reassessment,  
30 review or appeal.

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

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

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

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

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

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

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

15 (b) Prohibition.--In a case for the collection of taxes  
16 under subsection (a), the taxpayer against whom they were  
17 assessed shall not be permitted to set up a ground of defense  
18 that might have been determined by the department, the Board of  
19 Finance and Revenue or the courts, provided that the defense of  
20 failure of the department to mail notice of assessment or  
21 reassessment to the taxpayer and the defense of payment of  
22 assessment or reassessment may be raised in proceedings for  
23 collection by a motion to stay the proceedings.

24 Section 2215. Tax liens.

25 (a) Lien imposed.--If any taxpayer neglects or refuses to  
26 pay the tax imposed under this article for which the taxpayer is  
27 liable under this article after demand, the amount, including  
28 interest, addition or penalty, together with additional costs  
29 that may accrue, shall be a lien in favor of the Commonwealth  
30 upon the real and personal property of the taxpayer but only

1 after the same has been entered and docketed of record by the  
2 prothonotary of the county where the property is situated. The  
3 department may, at any time, transmit to the prothonotaries of  
4 the respective counties certified copies of all liens imposed by  
5 this section. It shall be the duty of the prothonotary receiving  
6 the lien to enter and docket the same of record to the office of  
7 the prothonotary. The lien shall be indexed as judgments are now  
8 indexed. No prothonotary shall require as a condition precedent  
9 to the entry of the lien the payment of costs incidental to its  
10 entry.

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

22 (c) No discharge by sale on junior lien.--In the case of a  
23 judicial sale of property subject to a lien imposed under this  
24 section, upon a lien or claim over which the lien imposed under  
25 this section has priority, the sale shall discharge the lien  
26 imposed under this section to the extent only that the proceeds  
27 are applied to its payment, and the lien shall continue in full  
28 force and effect as to the balance remaining unpaid. There shall  
29 be no inquisition or condemnation upon any judicial sale of real  
30 estate made by the Commonwealth under the provisions of this

1 article. The lien shall continue as provided in the act of April  
2 9, 1929 (P.L.343, No.176), known as The Fiscal Code, and a writ  
3 of execution may directly issue upon the lien without the  
4 issuance and prosecution to judgment of a writ of scire facias,  
5 provided that not less than ten days before issuance of any  
6 execution on the lien, notice of the filing and the effect of  
7 the lien shall be sent by registered mail to the taxpayer at its  
8 last known post office address, provided further that the lien  
9 shall have no effect upon any stock of goods, wares or  
10 merchandise regularly sold or leased in the ordinary course of  
11 business by the taxpayer against whom the lien has been entered,  
12 unless and until a writ of execution has been issued and a levy  
13 made upon the stock of goods, wares and merchandise.

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

20 (e) Priority.--Except as provided in this article, the  
21 distribution, voluntary or compulsory, in receivership,  
22 bankruptcy or otherwise of the property or estate of any person,  
23 all taxes imposed by this article which are due and unpaid and  
24 are not collectible under the provisions of section 225 shall be  
25 paid from the first money available for distribution in priority  
26 to all other claims and liens, except as the laws of the United  
27 States may give priority to a claim to the Federal Government. A  
28 person charged with the administration or distribution of the  
29 property or estate who violates the provisions of this section  
30 shall be personally liable for the taxes imposed by this article

1 which are accrued and unpaid and chargeable against the person  
2 whose property or estate is being administered or distributed.

3 (f) Other remedies.--Subject to the limitations contained in  
4 this article as to the assessment of taxes, nothing contained in  
5 this section shall be construed to restrict, prohibit or limit  
6 the use by the department in collecting taxes due and payable of  
7 another remedy or procedure available at law or equity for the  
8 collection of debts.

9 Section 2216. Tax suit reciprocity.

10 The courts of this Commonwealth shall recognize and enforce  
11 liabilities for energy production water withdrawal taxes  
12 lawfully imposed by any other state, provided that the other  
13 state recognizes and enforces the tax imposed under this  
14 article.

15 Section 2217. Service.

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

1 office or residence.

2 Section 2218. Refunds.

3 The department shall refund all taxes, interest and penalties  
4 paid to the Commonwealth under the provisions of this article to  
5 which the Commonwealth is not rightfully entitled. The refunds  
6 shall be made in accordance with section 3003.1 to the person or  
7 the person's heirs, successors, assigns or other personal  
8 representatives who paid the tax. No refund shall be made under  
9 this section regarding a payment made by reason of an assessment  
10 where a taxpayer filed a petition for reassessment under section  
11 2702 which was denied and which is no longer subject to further  
12 review or appeal. Nothing in this article shall prohibit a  
13 taxpayer who has filed a timely petition for reassessment from  
14 amending it to a petition for refund where the petitioner paid  
15 the tax assessed.

16 Section 2219. Refund petition.

17 (a) General rule.--Except as provided for in subsection (b),  
18 the refund or credit of tax, interest or penalty provided for by  
19 section 2218 shall be made only where the person who has paid  
20 the tax files a petition for refund with the department pursuant  
21 to section 3003.1.

22 (b) Natural gas severance tax.--A refund or credit of tax,  
23 interest or penalty paid as a result of an assessment made by  
24 the department under section 2205 shall be made only where the  
25 person who has paid the tax files with the department a petition  
26 for a refund with the department pursuant to section 3003.1. The  
27 filing of a petition for refund, under the provisions of this  
28 subsection, shall not affect the abatement of interest,  
29 additions or penalties to which the person may be entitled by  
30 reason of his payment of the assessment.

1 Section 2220. Rules and regulations.

2 The department is charged with the enforcement of the  
3 provisions of this article and is authorized and empowered to  
4 prescribe, adopt, promulgate and enforce rules and regulations  
5 not inconsistent with the provisions of this article relating to  
6 any matter or thing pertaining to the administration and  
7 enforcement of the provisions of this article and the collection  
8 of taxes, penalties and interest imposed by this article. 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 2221. Recordkeeping.

13 (a) General rule.--Every person liable for any tax imposed  
14 by this article, or for the collection of the tax, shall keep  
15 records, including those enumerated in subsection (a.1), 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 article.

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

24 (1) Water withdrawal records for each reporting period,  
25 including the total volume of water withdrawals, the total  
26 volume of water used for a consumptive use in energy  
27 production and the total volume of water used for a  
28 nonconsumptive use in energy production.

29 (2) A copy of the water use registration for the  
30 preceding year, which is required to be filed with the



1 Department of Environmental Protection under 27 Pa.C.S. Ch.  
2 31 Subch. B (relating to water resources planning), or a  
3 portion of the water use registration as determined by the  
4 department.

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

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

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

24 Section 2222. Examinations.

25 The department or any of its authorized agents are authorized  
26 to examine the books, papers and records of any taxpayer in  
27 order to verify the accuracy and completeness of any return made  
28 or, if no return was made, to ascertain and assess the tax  
29 imposed by this article. The department may require the  
30 preservation of all books, papers and records for any period

1 deemed proper by it but not to exceed three years from the end  
2 of the calendar year to which the records relate. Every taxpayer  
3 is required to give to the department or its agent the means,  
4 facilities and opportunity for examinations and investigation  
5 under this section. The department is further authorized to  
6 examine any person, under oath, concerning taxable water  
7 withdrawals by any taxpayer or concerning any other matter  
8 relating to the enforcement or administration of this article,  
9 and to this end may compel the production of books, papers and  
10 records and the attendance of all persons whether as parties or  
11 witnesses whom it believes to have knowledge of relevant  
12 matters. The procedure for the hearings or examinations shall be  
13 the same as that provided by the act of April 9, 1929 (P.L.343,  
14 No. 176), known as The Fiscal Code.

15 Section 2223. Unauthorized disclosure.

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

25 Section 2224. Cooperation with other governments.

26 Notwithstanding the provisions of section 2216, the  
27 department may permit the Commissioner of the Internal Revenue  
28 Service of the United States, the proper officer of any state or  
29 the authorized representative of either of them to inspect the  
30 tax returns of any taxpayer, or may furnish to the commissioner

1 or officer or to either of their authorized representative an  
2 abstract of the return of any taxpayer, or supply him with  
3 information concerning any item contained in any return or  
4 disclosed by the report of any examination or investigation of  
5 the return of any taxpayer. This permission shall be granted  
6 only if the laws of the United States or another state grant  
7 substantially similar privileges to the proper officer of the  
8 Commonwealth charged with the administration of this article.  
9 Section 2225. Bonds.

10 (a) Taxpayer to file bond.--The department may require a  
11 nonresident natural person or any foreign corporation,  
12 association, fiduciary or other entity, not authorized to do  
13 business within this Commonwealth or not having an established  
14 place of business in this Commonwealth and subject to the tax  
15 imposed by section 2202, to file a bond issued by a surety  
16 company authorized to do business in this Commonwealth and  
17 approved by the Insurance Commissioner as to solvency and  
18 responsibility, in amounts as it may fix, to secure the payment  
19 of any tax or penalties due or which may become due from a  
20 nonresident natural person, corporation, association, fiduciary  
21 or other entity whenever it deems it necessary to protect the  
22 revenues obtained under this article. The department may also  
23 require a bond of a person petitioning the department for  
24 reassessment in the case of any assessment over \$500 or where,  
25 in its opinion, the ultimate collection is in jeopardy. For a  
26 period of three years, the department may require a bond of any  
27 person who has, on three or more occasions within a 12-month  
28 period, either filed a return or made payment to the department  
29 more than 30 days late. In the event the department determines a  
30 taxpayer is required to file a bond, it shall give notice to the

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

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

19 (c) Failure to file bond.--The department may file a lien  
20 under section 2215 against any taxpayer who fails to file a bond  
21 when required to do so under this section. All funds received  
22 upon execution of the judgment on the lien shall be refunded to  
23 the taxpayer with 3% interest, should a final determination be  
24 made that it does not owe any payment to the department.

25 Section 2226. Establishment.

26 (a) Energy Production Water Withdrawal Tax Fund.--

27 (1) The Energy Production Water Withdrawal Tax Fund is  
28 established as a restricted account within the General Fund.

29 (2) The proceeds of the tax imposed under section 2202  
30 and penalties and interest imposed under this article, less

1 the amounts transferred to the department under section 2229,  
2 shall be deposited into the fund.

3 (b) Educational Supplement Account.--

4 (1) The Educational Supplement Account is established as  
5 a nonlapsing, restricted account within the Department of  
6 Education.

7 (2) The allocation under section 2227(2) shall be  
8 deposited into the Educational Supplement Account and shall  
9 be distributed as provided under section 2228.

10 Section 2227. Transfers and distributions.

11 Annually the State Treasurer shall transfer the revenue in  
12 the fund as follows:

13 (1) Fifty percent to the Environmental Stewardship Fund.

14 (2) Fifty percent to the Educational Supplement Account.

15 Section 2228. Distributions from the Educational Supplement  
16 Account.

17 The Department of Education shall distribute the money in the  
18 Educational Supplement Account in accordance with section 2599.2  
19 of the act of March 10, 1949 (P.L.30, No.14), known as the  
20 Public School Code of 1949.

21 Section 2229. Administration of costs.

22 Annually, the State Treasurer shall transfer from the fund an  
23 amount not to exceed \$1,000,000 to the department to be used for  
24 costs associated with the enforcement or administration of this  
25 article.

26 Section 2. This act shall take effect immediately.