

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2253 Session of 2018

INTRODUCED BY WHEATLEY, O'NEILL, J. McNEILL, BARRAR, DiGIROLAMO, A. DAVIS, SAMUELSON, YOUNGBLOOD, CHARLTON, MURT, KRUEGER-BRANEKY, SOLOMON, READSHAW, DEAN, COMITTA, FITZGERALD, WATSON, HILL-EVANS, SANTORA, BRIGGS, PASHINSKI, RAVENSTAHL, MADDEN, SCHLOSSBERG, ROEBUCK, GAINEY, D. COSTA, McCLINTON, DERMODY, HANNA, FRANKEL, CONKLIN, O'BRIEN, P. COSTA, DAVIS, DONATUCCI, KINSEY, WARREN, W. KELLER, THOMAS, FABRIZIO, HARKINS, FLYNN, HAGGERTY, RABB, DALEY, MEHAFFIE, STEPHENS, CARROLL, DRISCOLL, SCHWEYER, McCARTER, HARPER AND WHITE, MAY 3, 2018

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, MAY 3, 2018

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 volumetric severance tax and for
 11 multi-well permitting; and making a related repeal.

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 XXVI

18 VOLUMETRIC SEVERANCE TAX

1 Section 2601. Definitions.

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

5 "Average annual price of natural gas." As defined in 58
6 Pa.C.S. § 2301 (relating to definitions).

7 "Department." The Department Of Environmental Protection Of
8 The Commonwealth.

9 "Gross proceeds." Money generated from the sale by a lessee
10 of oil, natural gas or gas of any other designation or their
11 constituents removed or recovered under a lease in an arms-
12 length transaction designated and fixed at the actual point of
13 sale.

14 "Lease." An agreement conveying to a lessee the right to
15 remove or recover oil, natural gas or gas of any other
16 designation from land of the lessor.

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

19 "Natural gas." As defined in 58 Pa.C.S. § 2301.

20 "Producer." As defined in 58 Pa.C.S. § 2301.

21 "Royalty payment." A payment made by a lessee to a lessor in
22 accordance with a lease.

23 "Sever." The extraction or other removal of natural gas from
24 an unconventional formation in this Commonwealth. The term does
25 not include natural gas, in gaseous or liquid form, which is
26 burned, used, consumed or otherwise employed in oil and gas
27 operations at a natural gas well site:

28 (1) for secondary recovery;

29 (2) for re-pressuring;

30 (3) for pressure maintenance; or

1 (4) as fuel for equipment.

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

5 "Trigger date." The date 60 days after the effective date of
6 this section.

7 "Unconventional formation." As defined in 58 Pa.C.S. § 2301.

8 "Unconventional gas well." As defined in 58 Pa.C.S. § 2301.

9 "Unit." A thousand cubic feet (MCF) of natural gas at a
10 temperature of 60 degrees Fahrenheit and an absolute pressure of
11 14.73 pounds per square inch, in accordance with American Gas
12 Association (AGA) standards and according to Boyle's law for the
13 measurement of gas under varying pressures with deviations
14 therefrom as follows:

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

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

28 (3) The specific gravity of the gas shall be determined
29 by tests made by the use of an Edwards or Acme gravity
30 balance annually or at intervals as are found necessary in

1 practice. Specific gravity shall be used in computing gas
2 volumes.

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

13 "Wellhead meter." A meter placed at a producing site to
14 measure the actual volume of natural gas severed.

15 Section 2602. Volumetric severance tax.

16 (a) Imposition.--Each producer subject to the unconventional
17 gas well fee imposed under 58 Pa.C.S. § 2302 (relating to
18 unconventional gas well fee) shall pay a volumetric severance
19 tax.

20 (b) Computation.--The volumetric severance tax for each
21 unconventional gas well shall be calculated by applying the
22 applicable rate under subsection (b.1) to natural gas severed
23 from the unconventional gas well during the imposition period
24 under subsection (b.2).

25 (b.1) Tax rate.--The tax rate shall be as follows:

26 (1) If the average annual price of natural gas for the
27 calendar year immediately preceding the start of the
28 imposition period is less than \$3.00, the surcharge rate
29 shall be \$0.042 per unit severed.

30 (2) If the average annual price of natural gas for the

1 calendar year immediately preceding the start of the
2 imposition period is equal to or greater than \$3.00 and less
3 than \$5.00, the tax rate shall be \$0.053 per unit severed.

4 (3) If the average annual price of natural gas for the
5 calendar year immediately preceding the start of the
6 imposition period is equal to or greater than \$5.00 and less
7 than \$6.00, the tax rate shall be \$0.064 per unit severed.

8 (4) If the average annual price of natural gas for the
9 calendar year immediately preceding the start of the
10 imposition period is equal to or greater than \$6.00, the tax
11 rate shall be \$0.074 per unit severed.

12 (b.2) Imposition period.--The imposition period shall be as
13 follows:

14 (1) For fiscal year 2018-2019, the imposition period
15 shall be from July 1, 2018, to April 30, 2019.

16 (2) For fiscal year 2019-2020 and each fiscal year
17 thereafter, the imposition period shall be from May 1 of the
18 preceding fiscal year to April 30 of the current fiscal year.

19 (b.3) Payment.--The volumetric severance tax imposed under
20 this article shall be due on the same day the report is due
21 under subsection (b.4). The tax shall become delinquent if not
22 remitted to the Department of Revenue on the reporting date.

23 (b.4) Report.--By June 15, 2019, and June 15 of each year
24 thereafter, each producer shall submit payment of the volumetric
25 severance tax to the Department of Revenue and a report on a
26 form prescribed by the Department of Revenue for the imposition
27 period.

28 (b.5) Exemptions.--The volumetric severance tax imposed
29 under this article shall not be imposed on the following:

30 (1) natural gas severed, sold and delivered by a

1 producer at or within five miles of the producing site for
2 the processing or manufacture of tangible personal property
3 as defined under section 201;

4 (2) natural gas severed under a natural gas lease and
5 provided to a lessor for no consideration for the lessor's
6 own use; or

7 (3) natural gas severed from a storage field.

8 (c) Volume measurement.--

9 (1) Except as provided under paragraph (2), for purposes
10 of computing the volumetric severance tax, natural gas
11 severed shall be measured at the wellhead meter.

12 (2) Natural gas severed prior to the trigger date shall
13 be measured according to the standards and methods used for
14 reporting natural gas production to the department.

15 (d) Administration.--The Department of Revenue shall enforce
16 the provisions of this article and may prescribe, adopt,
17 promulgate and enforce rules and regulations relating to any
18 matter or thing pertaining to the administration or enforcement
19 of the provisions of this article and the collection of taxes
20 imposed by this article.

21 (e) Use of funds.--Money collected from the volumetric
22 severance tax under this section shall be allocated annually as
23 follows:

24 (1) If the total amount of the fees due by April 1 of
25 each year under 58 Pa.C.S. § 2303(b) (relating to
26 administration) is less than \$200,000,000, an amount equal to
27 the difference between \$200,000,000 and the total amount
28 shall be deposited into the Unconventional Gas Well Fund and
29 shall be distributed as provided under 58 Pa.C.S. §§ 2314
30 (relating to distribution of fee) and 2315 (relating to

1 Statewide initiatives).

2 (2) After deposit under paragraph (1), all of the
3 remaining money shall be deposited into the General Fund.

4 (f) Independent Fiscal Office.--Beginning September 30,
5 2018, and quarterly thereafter, the Independent Fiscal Office
6 shall publish a report on its publicly accessible Internet
7 website that shows the calculation of an average effective tax
8 rate of the volumetric severance tax imposed under this article
9 and the unconventional gas well fee imposed under 58 Pa.C.S. Ch.
10 23 (relating to unconventional gas well fee), imposed for the
11 preceding imposition period. The average effective tax rate
12 shall quantify the implicit tax burden imposed on a producer by
13 both the volumetric severance tax and the unconventional gas
14 well fee in a given year. The average effective tax rate shall
15 be based upon the market value of natural gas at the wellhead
16 using regional price information from hubs located in this
17 Commonwealth and postproduction costs shall be deducted to
18 approximate the value of natural gas at the wellhead. The report
19 shall include the methodology used to calculate the average
20 effective tax rate.

21 (g) Payment of tax.--A producer may not make the tax imposed
22 under this section on natural gas severed under a lease an
23 obligation, indebtedness or liability of the lessor and may not
24 otherwise require the lessor to reimburse the producer for the
25 amount of the tax.

26 Section 2603. Minimum royalty.

27 (a) Amount.--

28 (1) The minimum royalty payment made under the act of
29 July 20, 1979 (P.L.183, No.60), known as the Oil and Gas
30 Lease Act, to a lessor under a lease may not be less than

1 one-eighth of the gross proceeds received by the lessee for
2 the oil, natural gas or gas of any other designation
3 recovered by the lessee under the lease.

4 (2) A deduction or allocation of costs, expenses or
5 other adjustments may not be taken or made to gross proceeds
6 before calculating the amount of a royalty payment due to a
7 lessor under paragraph (1).

8 (b) Applicability.--The requirement to pay a minimum royalty
9 under subsection (a) shall only apply to oil, natural gas or gas
10 of any other designation recovered and sold by a lessee after
11 the effective date of this section.

12 Section 2604. Remedy.

13 (a) Civil action and venue.--A lessor who is party to a
14 lease may file an action for failure of the lessee to pay the
15 minimum royalty under section 2603 in the court of common pleas
16 of the county where the land of the lessor is located or the
17 county in this Commonwealth in which the lessor resides.

18 (b) Burden of proof.--

19 (1) Demonstration by a lessor who is party to a lease
20 that the lessee has made a royalty payment which is less than
21 the amount required under section 2603(a) shall create a
22 presumption that a violation of section 2603 has occurred.

23 (2) The presumption under paragraph (1) may be rebutted
24 if the lessee presents clear and convincing evidence that the
25 required minimum royalty payment was made.

26 (c) Effect of notice and failure to cure.--In an action in
27 which a court finds that the lessee who is party to a lease has
28 violated the terms of section 2603, the lessor shall be entitled
29 to the remedies under subsections (d) and (e) if, before filing
30 suit, the lessor gave to the lessee 30 days' written notice by

1 certified mail of the deficiency and the lessee failed to cure
2 the deficiency.

3 (d) Additional remedies.--In addition to actual damages and
4 any other remedy deemed appropriate by the court, the court
5 shall award to the lessor reasonable attorney fees and costs in
6 bringing the action, including expert witness fees.

7 (e) Treble damages.--If the court finds that the lessee
8 acted willfully in failing to pay the minimum royalty payment
9 due or where a lessee has been previously found to have failed
10 to pay the minimum royalty payment due, the court may award
11 treble damages to the lessor.

12 (f) Other remedies not precluded.--The remedies provided
13 under this section are not exclusive of, do not require
14 exhaustion of and shall be in addition to any other remedies
15 provided by the lease, by law or in equity.

16 Section 2605. Unconventional gas well permits.

17 Notwithstanding any provision of 58 Pa.C.S. Ch. 32 (relating
18 to development), the following shall apply:

19 (1) Whenever, before or during the drilling of an
20 unconventional gas well not within the boundaries of an
21 operating coal mine, the operator of the unconventional gas
22 well encounters conditions of a nature that renders drilling
23 of the bore hole or a portion thereof impossible, or more
24 hazardous than usual, the operator of the unconventional gas
25 well, upon verbal notice to the department, may immediately
26 plug all or part of the bore hole, if drilling has occurred,
27 and commence a new bore hole not more than 50 feet from the
28 old bore hole indicated on the plat submitted with the
29 approved unconventional gas well permit application if the
30 location of the new bore hole does not violate 58 Pa.C.S. §

1 3215 (relating to well location restrictions) and, in the
2 case of a well subject to act of July 25, 1961 (P.L.825,
3 No.359), known as the Oil and Gas Conservation Law, if the
4 new location complies with existing laws, regulations and
5 spacing orders and the new bore hole is at least 330 feet
6 from the nearest lease boundary. An operator of the
7 unconventional gas well deviating the surface of an
8 unconventional gas well location in compliance with this
9 section may drill the unconventional gas well at the new
10 surface hole location under the permit issued for the
11 proposed surface hole location so long as the other
12 information in the unconventional gas well permit application
13 remains accurate and complete.

14 (2) When applicable in accordance with this section,
15 within 10 days of commencement of drilling the new bore hole,
16 the operator of the unconventional gas well shall file with
17 the department a written notice of intention to plug, an
18 unconventional gas well record, a completion report, a
19 plugging certificate for the original bore hole and an
20 amended plat for the new bore hole.

21 (3) When an operator of the unconventional gas well
22 deviates the surface hole location in accordance with this
23 section, the operator of the unconventional gas well shall
24 forward a copy of the amended plat to the surface landowner
25 identified on the unconventional gas well permit application
26 within 10 days of commencement of drilling the new
27 unconventional gas well bore.

28 (4) The subterranean unconventional gas well bore path
29 may deviate from the proposed subterranean unconventional gas
30 well bore path indicated on the plat submitted with the

1 approved unconventional gas well permit application if the
2 deviation is the result of geologic, safety or environmental
3 protection concerns, or for optimal resource extraction.
4 Subterranean unconventional gas well bore deviation in
5 accordance with this paragraph will not constitute a
6 violation of this article if the operator of the
7 unconventional gas well notifies the department after the
8 completion of drilling, provides the location of the
9 subterranean unconventional gas well bore path in a manner
10 specified by the department and submits an analysis of
11 potential impacts to nearby unconventional gas wells prior to
12 the commencement of hydraulic fracturing activities to ensure
13 compliance with all applicable law.

14 (5) A operator of the unconventional gas well may select
15 a one year, two year, or three year unconventional gas well
16 expiration period at the time of application to the
17 department. Unconventional gas well permits issued for
18 drilling of unconventional gas wells under this article shall
19 expire according to the period selected, but not more than
20 three years after issuance unless operations for drilling the
21 unconventional gas wells are commenced within the period and
22 pursued with due diligence or unless the permit is renewed in
23 accordance with regulations of the department. If drilling is
24 commenced during the selected period, the unconventional gas
25 well permit shall remain in force until the unconventional
26 gas well is plugged in accordance with 58 Pa.C.S. § 3220
27 (relating to plugging requirements), or the permit is
28 revoked.

29 Section 2606. Multi-well permitting.

30 The following shall apply:

1 (1) The department shall establish regulations for the
2 permitting and operating of multiple unconventional gas wells
3 drilled on a single unconventional gas well site through a
4 single permit application in lieu of obtaining a permit to
5 drill a single unconventional gas well under 58 Pa.C.S. §
6 3211 (relating to well permits).

7 (2) The following shall apply:

8 (i) All applicable requirements of the following
9 shall apply to permits authorized under this section:

10 (A) 58 Pa.C.S. Ch. 32 (relating to development).

11 (B) The act of July 25, 1961 (P.L.825, No.359),
12 known as the Oil and Gas Conservation Law.

13 (C) The act of December 18, 1984 (P.L.1069,
14 No.214), known as the Coal and Gas Resource
15 Coordination Act.

16 (ii) Where a workable coal seam underlies an
17 unconventional gas well site authorized under this
18 section, all unconventional gas wells on the
19 unconventional gas well site must be located in an
20 unconventional gas well cluster, as that term is defined
21 in section 2 of the act of December 18, 1984 (P.L.1069,
22 No.214), known as the Coal and Gas Resource Coordination
23 Act.

24 (3) Each application for a multi-well permit shall be
25 accompanied by permit fee established by the Environmental
26 Quality Board which bears a reasonable relationship to the
27 cost of administering this article.

28 (4) In order to facilitate the prompt implementation of
29 this section, the department may establish temporary
30 regulations, including temporary regulations establishing

1 fees for multi-well permit applications, which shall not be
2 subject to:

3 (i) Section 612 of the act of April 9, 1929
4 (P.L.177, No.175), known as The Administrative Code of
5 1929.

6 (ii) Section 1920-A of The Administrative Code of
7 1929.

8 (iii) Sections 201, 202, 203, 204 and 205 of the act
9 of July 31, 1968 (P.L.769, No.240), referred to as the
10 Commonwealth Documents Law.

11 (v) Section 204(b) and 301(10) of the act of October
12 15, 1980 (P.L.950, No.164), known as the Commonwealth
13 Attorneys Act.

14 (vi) The act of June 25, 1982 (P.L.633, No.181),
15 known as the Regulatory Review Act.

16 (5) The department shall publish temporary regulations
17 in the Pennsylvania Bulletin no later than six months after
18 the effective date of this section.

19 (6) The department's authority to establish temporary
20 regulations under this section shall expire two years after
21 publication of temporary regulations in the Pennsylvania
22 Bulletin. Regulations adopted after this period shall be
23 promulgated as provided by law.

24 Section 2607. Severability.

25 The provisions of this article are severable. If any
26 provision of this article or its application to any person or
27 circumstance is held invalid, the invalidity shall not affect
28 other provisions or applications of this article which can be
29 given effect without the invalid provision or application.

30 Section 2. Repeals are as follows:

1 (1) The General Assembly declares that the repeal under
2 paragraph (2) is necessary to effectuate the addition of
3 Article XXVI of the act.

4 (2) 58 Pa.C.S. § 2318 is repealed.

5 Section 3. This act shall take effect immediately.