
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1000 Session of
2018

INTRODUCED BY YUDICHAK, HUGHES, STREET, LEACH, TARTAGLIONE,
FONTANA, COSTA, KILLION, HAYWOOD, SABATINA AND BLAKE,
MAY 9, 2018

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MAY 9, 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

19 Section 2601. Definitions.

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

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

3 "Department." The Department Of Environmental Protection Of
4 The Commonwealth.

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

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

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

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

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

17 "Royalty payment." A payment made by a lessee to a lessor in
18 accordance with a lease.

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

- 24 (1) for secondary recovery;
25 (2) for re-pressuring;
26 (3) for pressure maintenance; or
27 (4) as fuel for equipment.

28 "Storage field." A natural gas formation or other side that
29 is used to store natural gas that did not originate from and has
30 been transplanted into the formation or site.

1 "Trigger date." The date 60 days after the effective date of
2 this section.

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

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

5 "Unit." A thousand cubic feet (MCF) of natural gas at a
6 temperature of 60 degrees Fahrenheit and an absolute pressure of
7 14.73 pounds per square inch, in accordance with American Gas
8 Association (AGA) standards and according to Boyle's law for the
9 measurement of gas under varying pressures with deviations
10 therefrom as follows:

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

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

24 (3) The specific gravity of the gas shall be determined
25 by tests made by the use of an Edwards or Acme gravity
26 balance annually or at intervals as are found necessary in
27 practice. Specific gravity shall be used in computing gas
28 volumes.

29 (4) The deviation of the natural gas from Boyle's law
30 shall be determined by tests annually or at other shorter

1 intervals as are found necessary in practice. The apparatus
2 and the method to be used in making the tests shall be in
3 accordance with recommendations of the National Bureau of
4 Standards of the Department of Commerce or Report No. 3 of
5 the Gas Measurement Committee of the American Gas
6 Association, or any amendments of the report. The results of
7 the tests shall be used in computing the volume of gas
8 delivered.

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

11 Section 2602. Volumetric severance tax.

12 (a) Imposition.--Each producer subject to the unconventional
13 gas well fee imposed under 58 Pa.C.S. § 2302 (relating to
14 unconventional gas well fee) shall pay a volumetric severance
15 tax.

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

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

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

26 (2) If the average annual price of natural gas for the
27 calendar year immediately preceding the start of the
28 imposition period is equal to or greater than \$3.00 and less
29 than \$5.00, the tax rate shall be \$0.053 per unit severed.

30 (3) 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 \$5.00 and less
3 than \$6.00, the tax rate shall be \$0.064 per unit severed.

4 (4) 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 \$6.00, the tax
7 rate shall be \$0.074 per unit severed.

8 (b.2) Imposition period.--The imposition period shall be as
9 follows:

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

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

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

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

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

26 (1) natural gas severed, sold and delivered by a
27 producer at or within five miles of the producing site for
28 the processing or manufacture of tangible personal property
29 as defined under section 201;

30 (2) natural gas severed under a natural gas lease and

1 provided to a lessor for no consideration for the lessor's
2 own use; or

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

4 (c) Volume measurement.--

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

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

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

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

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

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

30 (f) Independent Fiscal Office.--Beginning September 30,

1 2018, and quarterly thereafter, the Independent Fiscal Office
2 shall publish a report on its publicly accessible Internet
3 website that shows the calculation of an average effective tax
4 rate of the volumetric severance tax imposed under this article
5 and the unconventional gas well fee imposed under 58 Pa.C.S. Ch.
6 23 (relating to unconventional gas well fee), imposed for the
7 preceding imposition period. The average effective tax rate
8 shall quantify the implicit tax burden imposed on a producer by
9 both the volumetric severance tax and the unconventional gas
10 well fee in a given year. The average effective tax rate shall
11 be based upon the market value of natural gas at the wellhead
12 using regional price information from hubs located in this
13 Commonwealth and postproduction costs shall be deducted to
14 approximate the value of natural gas at the wellhead. The report
15 shall include the methodology used to calculate the average
16 effective tax rate.

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

22 Section 2603. Minimum royalty.

23 (a) Amount.--

24 (1) The minimum royalty payment made under the act of
25 July 20, 1979 (P.L.183, No.60), known as the Oil and Gas
26 Lease Act, to a lessor under a lease may not be less than
27 one-eighth of the gross proceeds received by the lessee for
28 the oil, natural gas or gas of any other designation
29 recovered by the lessee under the lease.

30 (2) A deduction or allocation of costs, expenses or

1 other adjustments may not be taken or made to gross proceeds
2 before calculating the amount of a royalty payment due to a
3 lessor under paragraph (1).

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

8 Section 2604. Remedy.

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

14 (b) Burden of proof.--

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

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

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

29 (d) Additional remedies.--In addition to actual damages and
30 any other remedy deemed appropriate by the court, the court

1 shall award to the lessor reasonable attorney fees and costs in
2 bringing the action, including expert witness fees.

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

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

12 Section 2605. Unconventional gas well permits.

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

15 (1) Whenever, before or during the drilling of an
16 unconventional gas well not within the boundaries of an
17 operating coal mine, the operator of the unconventional gas
18 well encounters conditions of a nature that renders drilling
19 of the bore hole or a portion thereof impossible, or more
20 hazardous than usual, the operator of the unconventional gas
21 well, upon verbal notice to the department, may immediately
22 plug all or part of the bore hole, if drilling has occurred,
23 and commence a new bore hole not more than 50 feet from the
24 old bore hole indicated on the plat submitted with the
25 approved unconventional gas well permit application if the
26 location of the new bore hole does not violate 58 Pa.C.S. §
27 3215 (relating to well location restrictions) and, in the
28 case of a well subject to act of July 25, 1961 (P.L.825,
29 No.359), known as the Oil and Gas Conservation Law, if the
30 new location complies with existing laws, regulations and

1 spacing orders and the new bore hole is at least 330 feet
2 from the nearest lease boundary. An operator of the
3 unconventional gas well deviating the surface of an
4 unconventional gas well location in compliance with this
5 section may drill the unconventional gas well at the new
6 surface hole location under the permit issued for the
7 proposed surface hole location so long as the other
8 information in the unconventional gas well permit application
9 remains accurate and complete.

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

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

24 (4) The subterranean unconventional gas well bore path
25 may deviate from the proposed subterranean unconventional gas
26 well bore path indicated on the plat submitted with the
27 approved unconventional gas well permit application if the
28 deviation is the result of geologic, safety or environmental
29 protection concerns, or for optimal resource extraction.
30 Subterranean unconventional gas well bore deviation in

1 accordance with this paragraph will not constitute a
2 violation of this article if the operator of the
3 unconventional gas well notifies the department after the
4 completion of drilling, provides the location of the
5 subterranean unconventional gas well bore path in a manner
6 specified by the department and submits an analysis of
7 potential impacts to nearby unconventional gas wells prior to
8 the commencement of hydraulic fracturing activities to ensure
9 compliance with all applicable law.

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

25 Section 2606. Multi-well permitting.

26 The following shall apply:

27 (1) The department shall establish regulations for the
28 permitting and operating of multiple unconventional gas wells
29 drilled on a single unconventional gas well site through a
30 single permit application in lieu of obtaining a permit to

1 drill a single unconventional gas well under 58 Pa.C.S. §
2 3211 (relating to well permits).

3 (2) The following shall apply:

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

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

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

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

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

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

24 (4) In order to facilitate the prompt implementation of
25 this section, the department may establish temporary
26 regulations, including temporary regulations establishing
27 fees for multi-well permit applications, which shall not be
28 subject to:

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

1 1929.

2 (ii) Section 1920-A of The Administrative Code of
3 1929.

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

7 (v) Section 204(b) and 301(10) of the act of October
8 15, 1980 (P.L.950, No.164), known as the Commonwealth
9 Attorneys Act.

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

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

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

20 Section 2607. Severability.

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

26 Section 2. Repeals are as follows:

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

30 (2) 58 Pa.C.S. § 2318 is repealed.

1 Section 3. This act shall take effect immediately.