

# Senator Gene Yaw

Marcellus Shale

Proposed Natural Gas Legislation



National Association of Royalty Owners (NARO)  
State College, Pennsylvania  
March 28<sup>th</sup>, 2013

# Acts Related to Marcellus Shale



# Act 15 of 2010

- ❖ Requires Marcellus Shale well operators to submit semi-annual reports.
- ❖ Repeals 5 year confidentiality.
- ❖ Requires DEP to post Marcellus Shale well data online
- ❖ *Approved by Governor, March 22, 2010*

# Act 88 of 2010

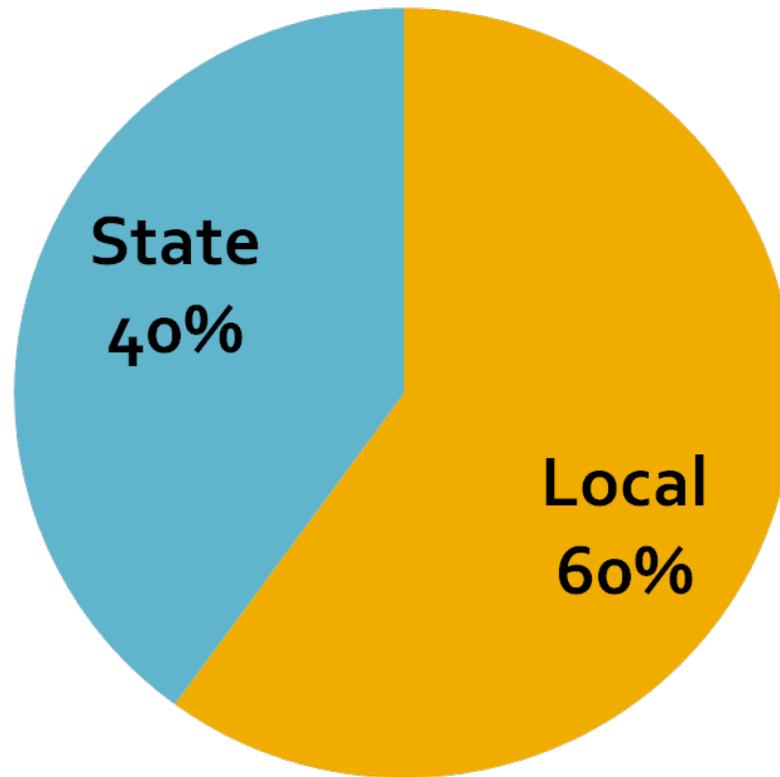
- Amends the PA Farmland and Forest Land Assessment Act, also known as Clean and Green, to provide for:
  - The exploration and removal of oil and gas, including coal bed methane
  - Development and operation of a Tier I alternative energy generation system
  - The temporary leasing of land for pipe storage yards
- *Approved by Governor, October 27, 2010.*

# Act 13 of 2012: Impact Fee

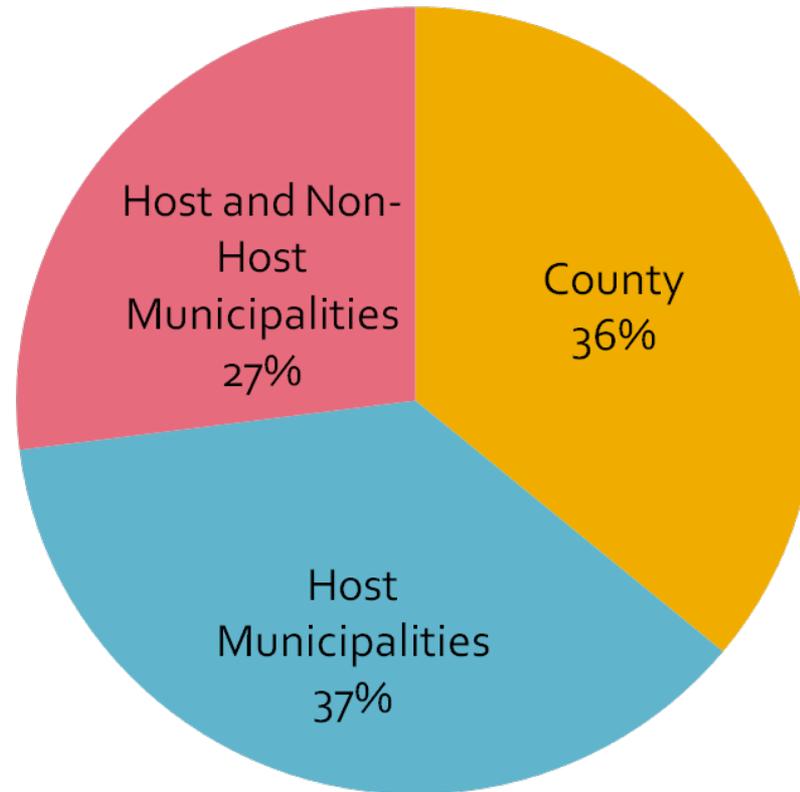
- The fee is an annual fee dependent on the price of gas during the year of production. The annual fee is set in statute.
- The fee would also be subject to the CPI beginning in 2013 and thereafter.
- The fee shall expire upon the imposition of a severance tax.
- A producer may not make the fee an obligation, indebtedness or liability of a landowner, leaseholder or other person in possession of real property, upon which the removal or extraction occurs.

Year of Production	\$0 - \$2.25	\$2.26 - \$2.99	\$3.00 - \$4.99	\$5.00 - \$5.99	=>\$6.00
One	\$ 40,000	\$ 45,000	\$ 50,000	\$ 55,000	\$ 60,000
Two	\$ 30,000	\$ 35,000	\$ 40,000	\$ 45,000	\$ 55,000
Three	\$ 25,000	\$ 30,000	\$ 30,000	\$ 40,000	\$ 50,000
Four	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
Five	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
Six	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
Seven	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
Eight	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
Nine	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
Ten	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
<b>Ten-Year Total Fee per Well:</b>	\$ 165,000	\$ 215,000	\$ 260,000	\$ 280,000	\$ 305,000
<b>Years 11 through 15:</b>	\$ 25,000	\$ 25,000	\$ 50,000	\$ 50,000	\$ 50,000
<b>Total 15-Year Fee:</b>	\$ <b>190,000</b>	\$ <b>240,000</b>	\$ <b>310,000</b>	\$ <b>330,000</b>	\$ <b>355,000</b>

# Act 13 of 2012: Distribution



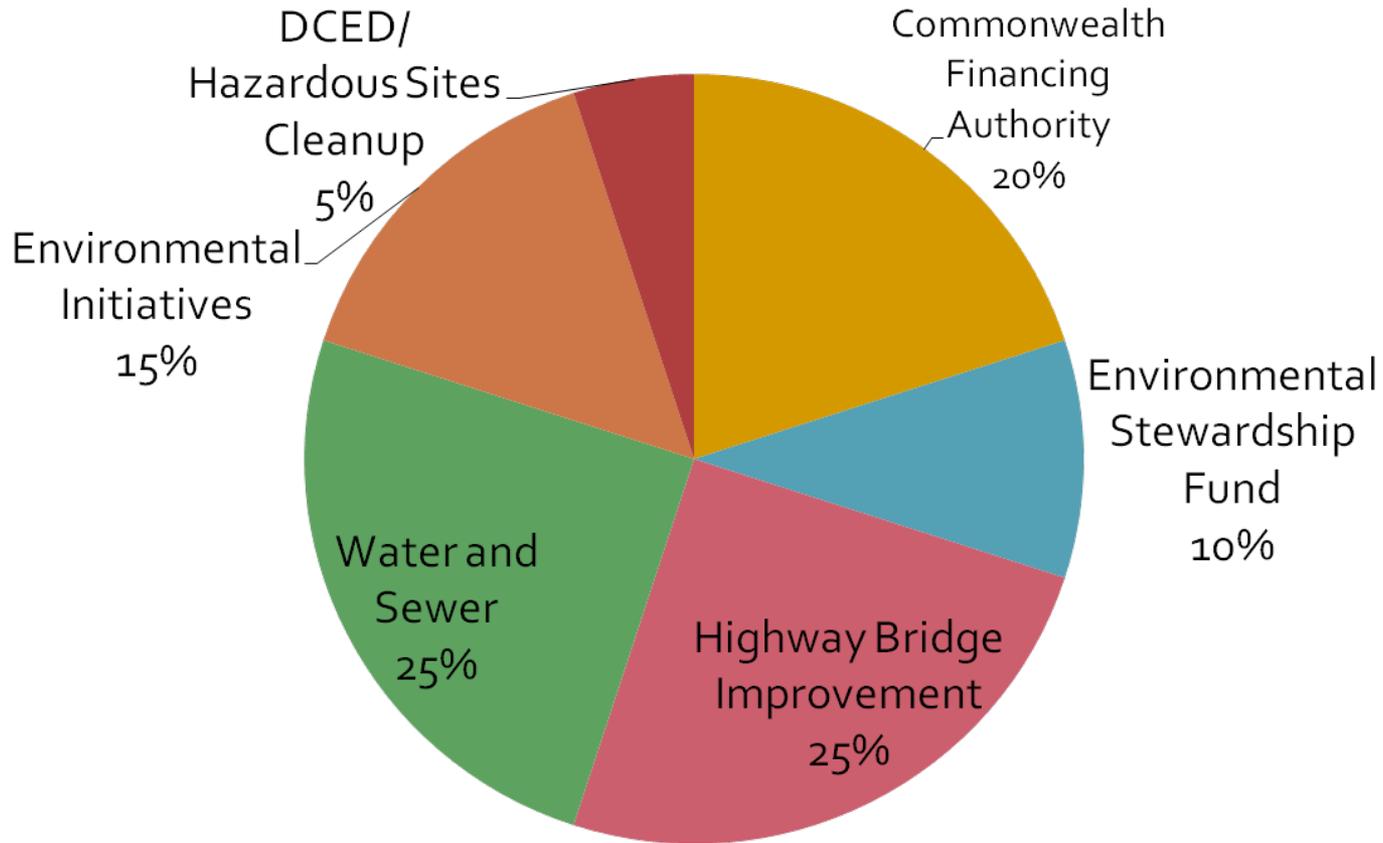
# Act 13 of 2012: Local Share



# Act 13 of 2012: Local Uses

- Construction, reconstruction, maintenance and repair of roadways, bridges and public infrastructure.
- Water, storm water and sewer systems, including construction, reconstruction, maintenance and repair.
- Emergency preparedness and public safety, including law enforcement and fire services, hazardous material response, 911, equipment acquisition and other services.
- Environmental programs, including trails, parks and recreation, open space, flood plain management, conservation districts and agricultural preservation.
- Preservation and reclamation of surface and subsurface waters and water supplies.
- Tax reductions, including homestead exclusions.
- Projects to increase the availability of safe and affordable housing to residents.
- Records management, geographic information systems and information technology.
- The delivery of social services.
- Judicial services.
- For deposit into the county or municipality's capital reserve fund if the funds are used solely for a purpose set forth in this subsection.
- Career and technical centers for training of workers in the oil and gas industry.
- Local or regional planning initiatives under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

# Act 13 of 2012: Statewide Dist.



# Act 13 of 2012: Natural Gas Energy Development Program

- **Natural Gas Development Program** will receive funds through the Marcellus Legacy Fund in the following amounts:
  - \$20,000,000 over three years
- Eligible applicants include Commonwealth Authority, Municipal Authority, Pennsylvania Turnpike Commission, Local Transportation Organization, Nonprofit Entity, State-owned or State-related University and a Company.

# Act 13 of 2012: Natural Gas Energy Development Program

- Eligible vehicles include:
  - Dedicated compressed natural gas vehicles or liquefied natural gas vehicles that are fleet vehicles and have a gross vehicle weight rating of at least 14,000 pounds.
  - Bi-fuel vehicles that are fleet vehicles.

# Act 13 of 2012: Environmental Safeguards

## ■ Increased Setbacks

- Increased setbacks from occupied structures and water wells from **200** feet to **500** feet and public drinking water sources to **1,000** feet.
- Increased the setback distance from an unconventional well and a blue line stream, spring or body of water identified on the most current 7 ½ minute topographic map from **100** feet to **300** feet.
- The department may establish additional protective measures for the storage of hazardous chemicals or material intended to be used on the well drilling site within **750** feet of any such stream, spring, body of water or wetland.

# Act 13 of 2012: Environmental Safeguards

## ■ Presumption

- Increases the distance an operator drilling an unconventional well is presumed responsible for pollution of a water supply from **1,000** feet to **2,500** feet if pollution occurred within **12** months after stimulation or alteration of the well.

## ■ Protection of Water Supplies

- Requires a well operator who affects a public or private water supply by pollution or diminution to replace the water supply with a source that meets the applicable water quality standards consistent with the Safe Drinking Water Act.

# Act 13 of 2012: Zoning

- Allows an operator or any person having the right to royalty payments under a lease of oil and gas mineral rights to request the PUC to review a local ordinance to determine whether it allows for the reasonable development of oil and gas.

# Act 13 of 2012: Zoning

- Court Action

- Commonwealth Court ruled that Section 3304 (uniformity of zoning ordinances) was unconstitutional.
- The State of PA/Attorney General/PUC appealed the Commonwealth court ruling to the Supreme Court.
- Under the law, whenever the state appeals to the Supreme Court, the ruling of the Commonwealth Court is temporarily stayed.
- The plaintiffs then countersued – they went back to Commonwealth Court and argued that the stay of the Commonwealth Court’s ruling should be RE-IMPOSED while the whole matter is ultimately litigated in the Supreme Court. The plaintiffs won that argument.
- Presently, two things are in place:
  - Section 3304 - the critical uniformity of local zoning ordinances - is NOT in effect.
  - But Section 3302 and 3303 ARE in effect.
- This means that ordinances which run afoul of those sections – namely try to regulate environmental aspects of oil and gas, are illegal.
- It is under this premise that the PUC is currently reviewing ordinances and issuing advisory opinions. They are not using section 3304 because it is not in effect right now.
- The plaintiffs are then now countersuing, alleging that the PUC has no right to review ordinances under section 3302 and 3303.

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2013-2014 Legislation  
Introduced by  
Senator Yaw

# Senate Bill 258

- ❖ Amends the Action to Quiet Title Law relating to 'subsurface rights'.
- ❖ Would provide a surface owner of land with an advantage at the start of a court case where the ownership of mineral or oil and gas rights is unclear or unknown.
- ❖ The advantage proposed is a rebuttable presumption that the subsurface rights have been abandoned in favor of the surface owner after a period of 50 years. These types of cases primarily involve situations where the ownership of the subsurface rights is untraceable or never acknowledged in estate proceedings over multiple generations.
- ❖ This bill does not change the fact that the plaintiff landowner still must prove his case, in court, by a preponderance of the evidence just as the plaintiff can, and is required, to do today.
- ❖ *Senate Environmental Resources and Energy Committee,  
January 17, 2013*

# Senate Bill 259

- ❖ Requires companies producing natural gas to show on each check stub, attachment to a payment form, or other remittance advice:
  - ❖ A name, number, or combination of name and number that identifies the lease, property, unit or well or wells for which payment is being made;
  - ❖ County in which the lease, property or well is located;
  - ❖ Month and year of gas production;
  - ❖ Total of barrels of crude oil or number of MCF of gas or volume of natural gas liquids sold;
  - ❖ Price received per barrel, MCF or gallon;
  - ❖ Total amount of severance and other production taxes and other deductions permitted under the lease, with the exception of the windfall profit tax;
  - ❖ Net value of total sales after deductions;
  - ❖ Owners' interest in sales from the lease, property, or well expressed as a decimal or fraction;
  - ❖ Interest owners' share of the total value of sales prior to deductions;
  - ❖ Interest owners' share of the sales value less the interest owners' share of taxes and deductions; and
  - ❖ Contact information, including an address and telephone number.
  
- ❖ *Unanimously passed the Senate on February 5<sup>th</sup>, 2013.*

# Senate Bill 355

- ❖ “Company to Company” integration would apply to situations where one company wants to drill on (already) leased land, but is hindered by another company that doesn’t want to cooperate in developing an adjacent leased area for its own competitiveness.
- ❖ There are no private landowner rights involved.
- ❖ Enhances conservation efforts and protects landowners affected by the ongoing development of the Marcellus Shale. This legislation will achieve multiple compelling policy goals including:
  - ❖ Providing orderly development of the Marcellus Shale
  - ❖ Maximizes recovery of the natural gas resource
  - ❖ Insures that landowners are treated fairly
  - ❖ Provides environmental benefits by encouraging development of the resource using horizontal drilling techniques.
- ❖ *Senate Environmental Resources and Energy Committee, January 31, 2013*

# Senate Bill 356

- The Pugh Clause essentially defines what happens to the portion of the acreage a person leased that does not either contain a well or is not included within a producing petroleum pool or unit.
- Under current law, if a landowner has 300 acres and only 20% of it is included in a unit, the company would be able to tie up the remaining 80% by production after the primary lease expires even though there is no production on the remaining acreage. My language would release any land covered by a lease but not included in the unit.
- By introducing this legislation, we are no longer allowing gas companies the option of drilling on a small portion of a landowners' property to provide themselves additional years to utilize land. This will create a fair process for the landowners to either:
  - Re-negotiate the lease
  - Allow the company to renew the lease under previous terms
  - Lease to another company in the area
- *Senate Environmental Resources and Energy Committee, January 31, 2013*

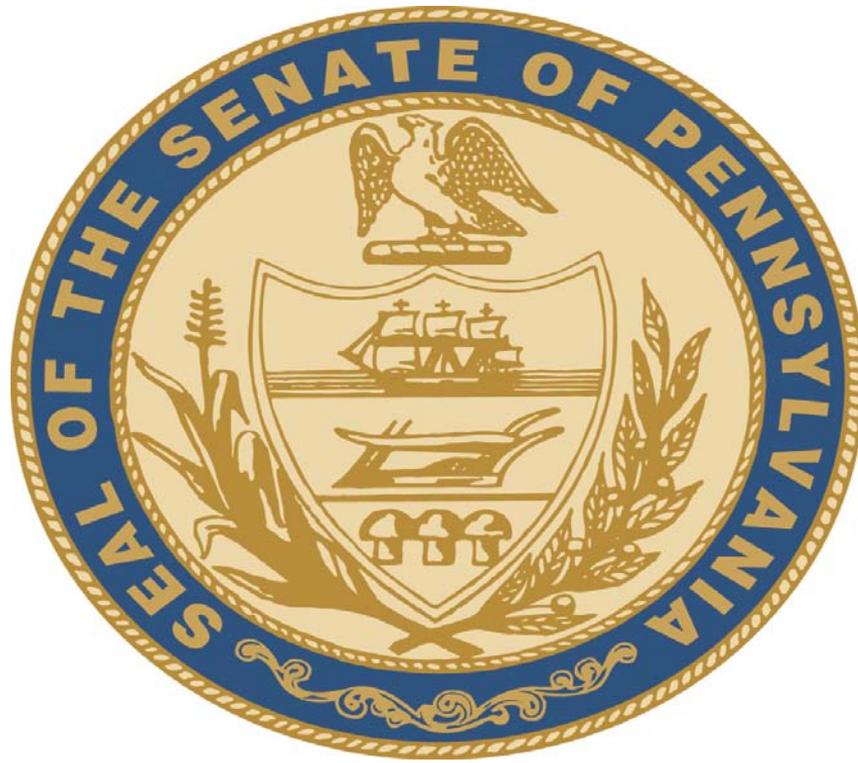
# Senate Bill 738

- Creates the Natural Gas Consumer Access Act for the distribution system extension and expansion plans to increase natural gas usage in Pennsylvania.
- Requires a Natural Gas Distribution Utility (NGDU) to submit a plan to the commission by January 1, 2014, which would include:
  - The number of existing customers by municipality in the certificated service area
  - The number of residential, commercial and industrial entities in the service area by municipality which do not have gas available and the anticipated market penetration.
  - The adjacent municipalities of a distribution system that are not serviced by any NGDU
- The plan will contain:
  - Three-year program for extension projects and expansion projects which demonstrates a reasonable increase of customers in the service area per year.
  - Three-year projection for expansion projects, demonstrating a reasonable increase in the service area of customers per year.
  - Financing that will be utilized to complete the programs, including customer contribution programs.
  - Known right-of-ways or easement issues that present an impediment to expansion or extension.
  - Form of a contract that might be required to be executed with a prospective customer.
- The commission will review the plan and has the option to reject, revise or order the NGDU to submit a revised plan for adequacy and completeness.
- The commission has the authority to do periodic reviews.

# Senate Bill 739

- Amends the Alternative Energy Investment Act to provide \$15,000,000 for grants to schools, hospitals and small businesses to obtain access to natural gas.
- Grants may provide up to 50% of the cost of the project.

# Pending Legislation in the Senate



# Senate Bills (2013-2014 Session)

- SB 154 (Greenleaf)
  - Gas mineral rights lease agreement disclosure.
- SB 411 (Kasunic)
  - Encourages the use of polluted water in hydraulic fracturing activity by giving immunity to an eligible landowner or natural gas operator who withdraws polluted water from eligible land and water that originates from a mining activity and utilizes the polluted water to hydraulically fracture a well.
- SB 459 (Costa)
  - Establishes the Emergency Drinking Water Support Fund
- SB 512 (Kasunic)
  - Amends Title 58 to require DEP to issue a written notice to a surface owner if the department issues an enforcement order for a continuing violation and the likely result of the violation is an unsafe operation or environmental damage.
- SB 540 (Leach)
  - Three year moratorium on leasing State forest lands for natural gas exploration, drilling or production. DCNR annual report regarding the effect of natural gas exploration, drilling or production on state lands. LBFC study regarding the environmental, economic and societal impacts of leasing state lands for Marcellus development

# Senate Bills (2013-2014 Session)

- SB 544 (Leach)
  - Amends Title 58 by further allowing the health care professional to use the confidential proprietary information to diagnose or treat a patient and the information is provided to another health professional to prevent future health issues.
- SB 506 (Dinniman)
  - Amends the Gas and Hazardous Liquids Pipelines Act to require pipeline operators that take taxpayer-funded agriculture and conservation easements to replace them within the same county.
- SB 592 (Dinniman)
  - Amending Title 58 to require DEP to list on its publicly accessible website the results of the water analysis obtained and completed by the department and categorized by municipality. Also requires the department to test and supply the private water supply owner with the results within five working days after the preparation of the report.

# Pending Legislation in the House of Representatives



# House Bills (2013-2014 Session)

- HB 96 (Godshall)
  - Gives property owners who do not own the oil and gas rights beneath their land an opportunity to purchase those rights when the owner of the oil and gas estate cannot be identified or located.
- HB 97 (Godshall)
  - Legislation modeled after a successful Michigan law, amending Act 115 of 2006, the Dormant Oil and Gas Act, to provide for the return of oil and gas rights to a surface owner if an interest in the oil or gas owned by a person other than the owner of the surface property is deemed abandoned following 20 years of dormancy.
- HB 268 (J. White)
  - Requires the PA Department of Environmental Protection to disclose the full and complete results (including raw data and documentation) of any water tests conducted on a landowner or leaseholder's property. This information shall be made available at no cost within five (5) business days of a written request by the landowner or leaseholder.
- HB 302 (Moul)
  - Establishes the Keystone Transit grant program available to small and medium sized mass transit agencies to cover the incremental cost of transitioning to natural gas buses.

# House Bills (2013-2014 Session)

- HB 303 (Watson)
  - Creates a revolving loan program available to large mass transit agencies to cover the incremental cost of natural gas buses.
- HB 304 (Marshall)
  - Requires certain large mass transit agencies (SEPTA, PAT and Lehigh) to purchase buses that meet certain criteria within a specific implementation schedule.
- HB 305 (Denlinger)
  - Creates a natural gas corridor tax credit which incentivizes the construction of natural gas fueling stations along an eligible corridor (I-76, I-78, I-79, I-80, I-81, I-83 and I-95).
- HB 306 (Pickett)
  - Dedicates the Alternative Fuels Incentive Fund to grants to municipalities, schools and the private sector for the purchase of natural gas vehicles.

# House Bills (2013-2014 Session)

- HB 307 (Evankovich)
  - Repeals CARB section 2030 in order to eliminate the costly duplicity of both EPA and CARB certifications for natural gas vehicles.
- HB 308 (Saylor)
  - Requires a portion of the financial resources in the Clean Air Fund to be utilized for the provision of grants for natural gas vehicles.
- HB 309 (Grove)
  - Establishes a 3-year program, the Natural Gas Vehicle Tax Credit, to provide incentives for Pennsylvania businesses to purchase heavy-duty natural gas vehicles.
- HB 351 (Reed)
  - Amends the Oil and Gas Act (Act 223 of 1984) to clarify requirements related to well permits by clarifying these provisions such that all surface landowners *and* water purveyors within 1,000 feet of a proposed well are clearly identified in the application and provided notice under the Act.

# House Bills (2013-2014 Session)

- HB 402 (Pickett)
  - Creating the Recording of Release from Oil and Natural Gas Lease Act, which will provide a formal method for landowners holding oil and natural gas leases to obtain a release from the lease upon its termination or cancellation.
- HB 444 (Causer)
  - Provides for twenty percent of the total revenue collected from the sale of timber, oil and natural gas on state owned land (with the exception of state game lands) to be returned to the local governments in which the resources were harvested.
- HB 495 (Boback)
  - Directs the Department of Environmental Protection to develop a “cooperative process” for the review of erosion and sedimentation permit applications for natural gas activity that includes the involvement of our County Conservation Districts.
- HB 661 (Milne)
  - Requires DEP, PEMA and county Emergency Management Organizations in Pennsylvania to promulgate regulations to implement constant real-time safety-monitoring and communications with each natural gas well in the Commonwealth.

# House Bills (2013-2014 Session)

- HB 800 (Mundy)
  - Prohibits hydraulic fracturing and horizontal drilling from taking place within 2,500 feet of a primary source of supply for a community water system, such as a lake or reservoir.
- HB 801 (Mundy)
  - Current law requires unconventional well operators to report production data from each of their unconventional wells to the Department of Environmental Protection on a semi-annual basis.
  - This would expand this law to require these operators to also report how much waste is produced by these wells, as well as where and how the waste is disposed of and treated.
- HB 880 (Conklin)
  - amend Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes to require that public notice be given for natural gas permit applications.
- HB 881 (Conklin)
  - Establish a statewide toll-free telephone number for the reporting of suspected violations of oil and gas laws.

# House Bills (2013-2014 Session)

- HB 950 (Vitali)
  - Introduce legislation that would impose an moratorium on additional leasing of State Forest lands for the purpose of natural gas drilling, exploration, or production.
- HB 986 (Everett)
  - Introduce legislation which will assist land owners in obtaining information from DEP and oil and gas operators pertaining to possible contamination resulting from oil and gas development and exploration.
- HB 995 (Petri)
  - Amends Title 74 (Transportation) to grant the Pennsylvania Turnpike Commission the authority to designate, acquire, or install rights of way for gas transmission lines.
  - This legislation additionally directs the commission to establish the rules and regulations necessary to carry out this duty.

# Links for Additional Information

## Regulatory Links

- ❑ Susquehanna River Basin Commission
  - ❑ <http://www.srbc.net/programs/projreviewmarcellus.htm>
- ❑ Environmental Protection Agency
  - ❑ [www.epa.gov](http://www.epa.gov)
- ❑ Department of Environmental Protection
  - ❑ [www.depweb.state.pa.us](http://www.depweb.state.pa.us)
- ❑ Fish & Boat Commission - regarding water withdrawals for endangered species
  - ❑ [www.fish.state.pa.us](http://www.fish.state.pa.us)

## Informational

- ❑ Penn State Cooperative Extension
  - ❑ [www.naturalgas.psu.edu](http://www.naturalgas.psu.edu)
- ❑ [www.economicdevelopment.psu.edu](http://www.economicdevelopment.psu.edu)
- ❑ Marcellus Shale & Education Center for Business & Workforce Development
  - ❑ [www.pct.edu/msetc](http://www.pct.edu/msetc)
- ❑ Lycoming County Gas Task Force
  - ❑ [www.lyco.org/Home/GasExplorationTaskForce/tabid/511/Default.aspx](http://www.lyco.org/Home/GasExplorationTaskForce/tabid/511/Default.aspx)
- ❑ Senator Gene Yaw
  - ❑ [www.senatorgeneyaw.com](http://www.senatorgeneyaw.com)