

Testimony of Kevin J. Moody, Esq.
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before the
Senate Environmental Resources & Energy Committee
Hearing on SB 258
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Good morning Majority Chairman Yaw, Minority Chairman Yudichak and Committee members, I am Kevin Moody, Vice President of Government Affairs and General Counsel for the Pennsylvania Independent Oil & Gas Association, known as PIOGA. PIOGA's roots go back to 1918 when the Pennsylvania Oil, Gas and Minerals Association (POGAM) was created. In 1978 a group of independent Pennsylvania natural gas producers left POGAM to form the Pennsylvania Natural Gas Associates (PNGA) and in 1981 that organization's name changed to the Independent Oil and Gas Association of Pennsylvania (IOGA of PA). After this POGAM generally represented oil production in northwest PA and IOGA of PA included more natural gas developers in southwestern PA. Over the years IOGA's membership expanded to include Pennsylvania oil producers as well as other service companies and individuals interested in the safe and reasonable development of oil and gas resources in Pennsylvania. I am pleased to say that on April 1, 2010, IOGA of PA reunited with POGAM and the name of our reconstituted organization changed to the Pennsylvania Independent Oil & Gas Association.

With the development of the Marcellus Shale "play" PIOGA now has nearly 1,000 members: oil and natural gas producers; drilling contractors; service companies; manufacturers; marketers; PUC-licensed natural gas suppliers; professional engineering, accounting and law firms and consultants; and royalty owners. PIOGA member companies drill and operate the majority of Pennsylvania's crude oil and natural gas wells, including those in the Marcellus Shale. For decades, our members have successfully provided heat to homes, gas to stovetops, and energy to the citizens of the Commonwealth to grow and prosper their communities, while protecting the air and water resources of the Commonwealth of Pennsylvania – the State we call home.

Some oil and gas development activities of PIOGA members involve “split estate” situations addressed by SB 258. In these situations, the surface owner (or landowner) does not own the oil, gas and minerals (OGMs) located underground because those assets had been previously transferred to or reserved by other individual(s) as noted in the property deeds.

PIOGA appreciates the invitation to talk with the Committee today about “split estate” situations and SB 258. Senate Bill 258 seeks to undo the splitting of these estates by facilitating the transfer of the ownership of the severed OGMs to surface owners. SB 258 does this by establishing a rebuttable presumption in actions to quiet title that OGM rights (“subsurface rights”) have been abandoned in favor of the surface owner if the subsurface rights have not been exercised for more than 50 years. Since the enactment of SB 594 as Act 115 of 2006, the Dormant Oil and Gas Act (DOGA) has been available for use when the owners of oil or gas interests cannot be located, but our members have used it infrequently because they generally have been able to locate the OGM owners. The explicit purpose of DOGA is “to facilitate the development of subsurface properties by reducing the problems caused by fragmented and unknown or unlocatable ownership of oil and gas interests and to protect the interests of unknown or unlocatable owners of oil and gas.”

Admittedly, DOGA cannot be used to vest title to severed OGM estates in surface owners because DOGA states so. However, if quiet title actions per SB 258 – rather than amendments to DOGA – are to be used to do so, PIOGA suggests that an explicit statement that the purpose of the bill is to facilitate the development of subsurface rights, as in DOGA, would be helpful. Also, a lessee from an owner of a unified estate should not be liable for claims from previously “unknown or unlocatable” owners who may later “surface”. This provision is included in DOGA and should be added to SB 258.

A more fundamental concern with quiet title actions is the improper use of the service by publication process to provide constructive notice to so-called unknown or unlocatable defendants through service by publication. PIOGA has provided this committee with many examples of the problems caused by this, which results in default judgments that lack the finality, certainty and security of title required for our industry to enter into OGM leases because the judgments are vulnerable to being set aside by direct or collateral attacks long after they have

been entered. Provisions requiring diligent and good faith efforts to locate persons who may claim subsurface rights should be included in any legislation seeking to unify title to split estates. Also, notice should be required in major publications – rather than allowed to be placed in only local and periodic publications – and for a longer time frame than one day.

PIOGA’s suggested additions will help to ensure that the rights of all interested parties are protected and provided for.

Chairman Yaw and Committee members, PIOGA thanks you for the opportunity to be part of a thorough public discussion of the merits of legislation that seeks to ensure the efficient and effective development of Pennsylvania’s “game-changing” natural resources. We appreciate your willingness to listen to our concerns and to work with us so that our shared objective of Pennsylvania resource development is realized – to the mutual benefit of our members, the Commonwealth, the public and landowners.

We also hope that throughout this process during the last legislative session and this session, PIOGA has also shown our willingness to work with you, Mr. Chairman, and your Committee members as well as all interested parties to develop ways to encourage growth in our industry and realize the potential for Pennsylvania to be leader in the provision of energy in the United States and globally, as well as in the creation of sustainable jobs in the Commonwealth. I am happy to answer any questions you may have concerning this testimony and our industry.