

BEFORE THE
HOUSE AGRICULTURE AND RURAL AFFIARS COMMITTEE
OF
COMMONWEALTH OF PENNSYLVANIA

* * * * *

IN RE: MARCELLUS SHALE, CLEAN AND GREEN,
HB984 AND HB1394

* * * * *

BEFORE: MIKE HANNA, Chair
Tom Houghton, Representative
Richard Grucela, Representative
David Kessler, Representative
Richard Mirabito, Representative
Adam Harris, Representative
Mark Keller, Representative
David Millard, Representative
Tina Pickett, Representative
Garth Everett, Representative

LOCATION: Pennsylvania College of Technology
Klump Academic Center Auditorium
One College Avenue
Williamsport, PA 17701

HEARING: Thursday, May 7, 2009
1:00 p.m.

WITNESSES: Richard Mirabito, Davie Jane Gilmour,
Ph.D., Dennis M. Wolff, Doug Wolfgang,
Representative Garth Everett, Rob
Davidson, Rebecca Burke, Doug Hill, Lester
Greevy, Esquire, Deb Shivetts, Maggie
Emery, Joel Rotz

Reporter: Kenneth Dominic O'Hearn

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NONE OFFERED

P R O C E E D I N G S

CHAIR:

Good afternoon, everyone. I'm Representative Mike Hanna and I'm Chair of the House of Agricultural and Rural Affairs Committee. On behalf of the Committee, I want to thank you all for being with us here today.

Before we get started, I want to take a moment to thank the Pennsylvania College Of Technology for hosting this event and allowing us to be here today. I want to give special thanks to Dr. Gilmour for her hospitality and for all of the work that her and her staff did to make us welcome. Dr. Gilmour is with us today and she will be offering some remarks following Representative Rick Mirabito's introduction.

Representative Mirabito represents the people of Williamsport in Lycoming County, and he's also a member of our Committee. He encouraged us to come here today to listen to the testimony regarding a Clean and Green legislation that's been introduced for this legislative session. The testimony today will focus on Clean and Green. And Clean and Green, of course, is the law that provides a tax preference for those folks who agree to keep their land open and

1 undeveloped. So, though, we're considering this
2 legislation that will affect that law as property is
3 developed through either wind farms for the Marcellus
4 Shale. Those are specifically the focus of the two
5 pieces of legislation that we're going to hear
6 testimony on today.

7 Representative Kessler who is here with
8 us adds a piece of legislation that addresses this, as
9 does Representative Houghton. Both are going to
10 introduce their legislation and will have an
11 opportunity to describe it for you.

12 We're certainly pleased to have the
13 number of presenters that are here today. We do have
14 a set agenda. We've invited specific folks to talk to
15 us about specific issues with respect to both pieces
16 of legislation. I can assure you that, while we
17 cannot allow folks from the audience to address the
18 Committee as a part of the formal hearing process ---
19 I haven't cleared this with Representative Mirabito
20 yet, but I know how Rick operates, and both he and I
21 will assure you that anyone who wants to talk to
22 either one of us after the meeting about any subject
23 that includes the Clean and Green or the Marcellus
24 Shale or any of the legislation, both Rick and I will
25 stay to talk with you. But, for purposes of the

1 public hearing, we will stick to the set agenda with
2 the testifiers that were previously invited to speak
3 to us here today.

4 So, with that, let me introduce, the
5 Honorable Richard Mirabito and allow Representative
6 Mirabito to provide some opening comments. Rick?

7 REPRESENTATIVE MIRABITO:

8 Thank you, Representative Hanna. You
9 know, there are so many of us in rural Pennsylvania
10 and this Marcellus Shale represents a historic
11 opportunity. We know from talking to our constituents
12 about the problems that we face in rural Pennsylvania
13 in terms of access to healthcare; in terms of under
14 and unemployment; in terms of not having families with
15 enough income that it results in an overall kind of
16 the poverty. And so, we see this as a historic
17 opportunity for us, this Marcellus Shale.

18 I think that we need to, and what's so
19 exciting about having the Committee here today is
20 realizing it's going to be an ongoing process. And,
21 as Representative Hanna said, some people won't
22 necessarily be able to testify today, but we're
23 definitely going to stay around afterwards because I
24 know there are issues that people want to discuss with
25 us. I'm excited to be here because I think if you

1 look out and look at this as an opportunity over 10 or
2 20 years, and we don't just take a short-term
3 approach, we realize that we have an opportunity for
4 all of Pennsylvania. I'm hoping that with people,
5 Republicans and Democrats, that we can build the kind
6 of community we need to make sure that the benefits of
7 Marcellus Shale continually help rural Pennsylvania
8 and certainly it will be one of many alliances with
9 urban Pennsylvania so that they will support us.

10 With that, I want to introduce Dr.
11 Gilmour, because in so many ways Penn College, what
12 Penn College has been able to do in terms of providing
13 an anchor to this part of the community is something
14 that we can look forward to with the Marcellus Shale
15 doing also for rural Pennsylvania. My office where I
16 worked before I became a State Representative is only
17 about a block from here, and many of the people in the
18 audience that I know from this community have worked
19 to try to rehab the area. And, we've been able to do
20 that because of Penn College. It's a great asset to
21 us, and I think that Dr. Gilmour, who's been there for
22 30 years, has made a great contribution. I'd like her
23 to come up and just say a few words of welcome.

24 DR. GILMOUR:

25 Thank you very much. Rick asked me if he

1 could tell you I've been here 30 years without
2 revealing my age. I don't know how well he did on
3 that. It's my pleasure to welcome all of you today to
4 the Pennsylvania College of Technology, where we have
5 over 6,600 students, which I can assure you are all
6 now taking their final exams or studying for the next
7 final exam, we hope. It's a great opportunity to have
8 you here; A, to see our campus and B, to hear the
9 wonderful things, the opportunity as he suggests
10 that's happening to our area.

11 Penn College is proud to be home to the
12 Marcellus Shale Education and Training Center, and the
13 project that that group is undertaking right now, we
14 think will have significant impact on the whole
15 development of the Shale. First of all, we're looking
16 at using an economic model to do some predictive
17 forecasting, if you will, on a per well basis. What
18 kind of employment will happen as a result of the
19 Marcellus Shale site. So, this is an exciting
20 opportunity for us. We think Penn College is well
21 positioned to not only continue to provide an anchor,
22 as he suggests, to our community, but certainly in the
23 future as well. So, thank you all for coming, I hope
24 your hearing is a productive one, and you're welcome
25 back any time at Penn College. Thank you very much.

1 CHAIR:

2 Thank you, Dr. Gilmour. Now, before we
3 begin, I'd like an opportunity for everyone at the
4 head table to introduce themselves. I'm going to
5 start on my far left. As I said, I'm Representative
6 Mike Hanna. I'm the Democratic Chairman of the House
7 of Agricultural and Rural Affairs Committee. John
8 Marr is the Republican Chair of the Committee. John
9 had a previous commitment and couldn't be with us
10 today. But, he has designated Representative Dave
11 Millard, who's on the far left here, to serve in his
12 stead. So, we'll start with Dave with an
13 introduction.

14 REPRESENTATIVE MILLARD:

15 Thank you, Mr. Chairman. David Millard
16 from Columbia County and certainly, not to echo the
17 Chairman's comments, but we welcome all of you here
18 today. We appreciate your attendance and your
19 participation in this open and transparent meeting of
20 the House Ag Committee. And, Mr. Chairman, I'll allow
21 each of the members of this side to introduce
22 themselves. Thank you.

23 MS. GOLDEN:

24 Good afternoon. I'm Kerry Golden, the
25 Republican Executive Director of the Agriculture

1 Committee.

2 REPRESENTATIVE PICKETT:

3 Hello, I'm Representative Tina Pickett.
4 I have Bradford, Sullivan and Susquehanna Counties as
5 my District, just your neighbor to the north, and I'm
6 very pleased to be here today. I've been to this
7 school many times and I'm very, very proud to have it
8 as a neighbor and I always enjoy being able to deal
9 with students from Penn Tech, so thank you.

10 REPRESENTATIVE KELLER:

11 Good afternoon. Representative Mark
12 Keller. I represent the 86th District, which is all
13 of Perry County and part of Franklin County. We're
14 kind of just over the mountain from Williamsport.

15 REPRESENTATIVE HARRIS:

16 Representative Adam Harris. I represent
17 the 82nd District, all of Juniata County, parts of
18 Snyder and parts of Mifflin County as well. It's a
19 pleasure to be here. This is a great turnout. I got
20 a very nice tour of the campus because I parked
21 completely on the other end. So, I saw everything and
22 it's beautiful. It's great to be here and it's good
23 to see so many people out. This is an important
24 issue.

25 REPRESENTATIVE HOUGHTON:

1 Representative Tom Houghton, of Southern
2 Chester County, the 13th District, and I certainly had
3 a beautiful ride up here. Driving along it's quite a
4 view.

5 REPRESENTATIVE KESSLER:

6 Representative Dave Kessler from
7 Southeastern Berks. It's certainly great to be here
8 at Penn College. My younger son goes to school here
9 and he has one more semester to graduate.

10 REPRESENTATIVE GRUCELA:

11 I'm Representative Rich Grucela from the
12 137th District, Northampton County, the eastern part
13 of Northampton County. My District surrounds the City
14 of Easton.

15 REPRESENTATIVE MIRABITO:

16 Representative Rick Mirabito from the
17 83rd District, which is Williamsport and about 18
18 municipalities and townships surrounding it.

19 MS. HAIM:

20 Diane Haim, Executive Director of the
21 Agriculture and Rural Affairs Committee.

22 MS. LAURETI:

23 Alycia Laureti, Research Analyst for
24 Representative Mike Hanna.

25 CHAIR:

1 Thank you, everyone. I guess I just
2 wanted to say that I'm from Lock Haven, just up the
3 road. I represent all of Clinton County and about a
4 third of the geography of Centre County as well.

5 Before we call for brief explanations of
6 the legislation that we're conducting the hearing on,
7 I did want to let the audience members know that we do
8 have packets of information on the legislation that
9 we're considering here today. I'm told that we may be
10 down to the last one or two packets over here on the
11 side, it's on the right-hand side. But, what I wanted
12 to point out is that if you did not get a packet and
13 you're interested in receiving a packet, there's a
14 sign-in sheet there. Just provide us with your
15 contact information so that we can send you a packet
16 when we have an opportunity to produce some more of
17 them.

18 With that, let me turn to Representative
19 Dave Kessler for a brief explanation of his House Bill
20 984.

21 REPRESENTATIVE KESSLER:

22 Thank you, Mr. Chairman. The last thing
23 we want to do is deter lands that are in Clean and
24 Green from investing in alternative energy. My Bill
25 addresses windmills, where we need to also address

1 other alternative energies where a County would not
2 roll back property taxes, the break that they get in
3 Clean and Green, on the whole property, if they're
4 just taking, say, 5 acres out of 150 acres. Where the
5 rollback on the Clean and Green should be only on that
6 footprint itself, rather than on the whole farm if
7 they decide to have a company come in and build
8 windmills. But, we also have to address the other
9 alternative energies as well, which I think we will
10 hear in some of the testimony later on.

11 Just to give you an idea, Locust Ridge,
12 you may be able to see some of those windmills when
13 you come up 81. One of those windmills create two
14 megawatts. And, rule of thumb, it is approximately
15 1,000 homes per windmill --- per megawatt, excuse me.
16 So, therefore, a windmill would create approximately
17 enough electricity for 2,000 homes and I look forward
18 to giving testimony.

19 CHAIR:

20 Thank you, Representative Kessler.
21 Representative Tom Houghton with an explanation of his
22 legislation.

23 REPRESENTATIVE HOUGHTON:

24 Thank you, Mr. Chairman. I second
25 Representative Kessler on the importance of Clean and

1 Green and 319 and, to me, this initiative, discovers
2 initiative House Bill 1394. And, it simply for me was
3 a no brainer. Clean and Green has been I believe a
4 great law for Pennsylvania in terms of encouraging the
5 preservation of its State's farmland. And, my bill,
6 House Bill 1394 expands on land, it includes land, but
7 it also clarifies the status of land that is leased
8 for exploration of oil and gas, coal bed methane
9 extraction and, of course, as Representative Kessler
10 indicated, land as well. And, as Representative
11 Kessler indicated, rollback taxes would be imposed on
12 the land that's subject to the actual activity instead
13 of the entire land. So for me it's a no brainer and
14 I'm proud to have the ball handed to me from the
15 Governor. Thank you.

16 CHAIR:

17 Thank you, Representative Houghton. Our
18 first presenter today is, we're very pleased to have
19 from the Pennsylvania Department of Agriculture, the
20 Secretary of the Department of Agriculture, Dennis
21 Wolff. Joining Dennis from the Department with us
22 today are Doug Wolfgang, the Director of the Bureau of
23 Farmland Preservation and we'll turn it over to them
24 for their presentation. Mr. Secretary?

25 MR. WOLFF:

1 Good. Thank you, Mr. Chairman. Good
2 afternoon, members of the House of Ag and Rural
3 Affairs Committee. I'd like to welcome you to
4 Northeastern Pennsylvania, more specifically, the
5 Pennsylvania College of Technology or as we call it
6 here as Northeast Penn Tech. It also happens to be
7 right in the heart of the Marcellus Shale Plan. I
8 have presented to you written testimony that's about
9 two pages long. I am not going to read that. I will
10 just make a few brief remarks and then give you the
11 opportunity to ask any questions.

12 My testimony will reflect support of both
13 House Bill 984 and House Bill 1394 as it relates to
14 the rollback taxes on land that's enrolled in Clean
15 and Green. We feel that these bills correctly reflect
16 the spirit of the law and addresses the changes and
17 surface uses of areas that would be impacted by either
18 wind energy or drilling for oil or gas. We think that
19 this is a great opportunity for Pennsylvania. We
20 think that it's a viable opportunity for farmers to
21 supplement their income and it is something that will,
22 in fact, benefit agriculture going forward. So with
23 that, Mr. Chairman, I would be happy to answer any
24 questions you may have. And as you mentioned, I have
25 Doug Wolfgang with me, who is the Director of the

1 Bureau of Farmland Preservation, which is where Clean
2 and Green is administered from PA.

3 CHAIR:

4 Thank you, Mr. Secretary. Let me start
5 by asking, do we know how much farmland is within the
6 Marcellus Shale range?

7 MR. WOLFF:

8 I think is a fairly close correlation to
9 the percentage of Pennsylvania that is estimated to
10 have Marcellus Shale under it. And that goes anywhere
11 from 2/3 to over 2/3 of the land mass in Pennsylvania.
12 And that would correlate pretty close to the amount of
13 farm and forestland in Pennsylvania that's impacted by
14 having Marcellus resource under it.

15 CHAIR:

16 Thank you. Also, on my far left
17 Representative Millard.

18 REPRESENTATIVE MILLARD:

19 Thank you, Mr. Chairman. Mr. Secretary,
20 do you have any idea now what the number of permits
21 that have been submitted, not necessarily the
22 structures that have been built or anything else, the
23 financial impact that it will have as a result of this
24 legislation?

25 MR. WOLFF:

1 We have bits and pieces. Last September,
2 the Commissioner of Agriculture from New York, some of
3 their environmental department folks as well as
4 members of the Pennsylvania Department of
5 Environmental Protection toured the facilities that is
6 up near Dimock, which is Susquehanna County. We were
7 able to look at, at that time they had around eight or
8 nine wells, that were either constructed or under
9 construction.

10 And in looking at the most recent numbers
11 that I have seen actually came out of Cabot's annual
12 report. It goes to their stockholders. And it
13 reflects that the wells up there are producing very,
14 very well and that the vertical wells have been
15 producing around a million cubic feet per day and the
16 horizontal wells was substantially more than that,
17 maybe four or five million cubic feet per day. And
18 that's the numbers I have right now.

19 It's my understanding that the gas
20 companies do not have to report that income on public
21 report on that until about a year and a half after the
22 well's online. If that's a correct overview of that.
23 So it appears that the wells in this part of
24 Pennsylvania that are online and are now proven wells
25 have done quite well. The other factor that's the

1 unknown is how long it will sustain that production,
2 how many years it will sustain that production.

3 REPRESENTATIVE MILLARD:

4 Thank you, Mr. Secretary. Thank you, Mr.
5 Chairman.

6 CHAIR:

7 Representative Pickett?

8 REPRESENTATIVE PICKETT:

9 Thank you, Mr. Chairman and welcome
10 Secretary Wolff. It's good to see you here. If you
11 could --- one of the things I've discovered since I've
12 been in this area is how complex and controversial
13 Clean and Green can be. It doesn't appear that way at
14 first glance and it always becomes so. I wonder if
15 you could go back in time a little bit and comment on
16 really what was the intent of a full rollback average
17 when they instituted such a penalty for seven years
18 back.

19 MR. WOLFF:

20 Well, it's my understanding that if it
21 changes the surface value, and we probably have people
22 here that can speak to it more specifically in terms
23 of the way that it's been appealed and the case
24 history that we have on it here in the Commonwealth of
25 Pennsylvania. But, basically Clean and Green, the

1 rollback is imposed when you change the surface use of
2 the property, and of course, by drilling a well, you
3 are impacting a small section of the surface use and
4 as this legislation recommends that is our suggestion
5 in terms of the area that would be subject to the
6 rollback penalty.

7 REPRESENTATIVE PICKETT:

8 Do you think if we could go forth with
9 allowing the pad area basically of the gas line to be
10 the only part that's considered for the rollback, are
11 we going to bump into other instances that we haven't
12 seen coming? Consequences that we haven't seen coming
13 where other people are going to say, what about me?

14 MR. WOLFF:

15 Well, I think that it would, you know,
16 that would be a case-by-case basis. You know? And if
17 they reflect the minimal impact on the surface, the
18 changing of the surface of land enrolled in Clean and
19 Green, they would be looked at on a case-by-case
20 basis. So I guess, when the law was written, we
21 didn't expect the Marcellus Shale Play to become such
22 an important discussion here in Pennsylvania. And I'm
23 sure, probably in the next 50 years, there will be
24 some other things that we are not anticipating today.
25 But I think in terms of looking at this problem today

1 and trying to come up with some kind of a reasonable
2 solution and direction as to how the County Assessors
3 should approach this, that these two bills, they both
4 do a nice job of that.

5 REPRESENTATIVE PICKETT:

6 And, Mr. Chairman, I have just one more.
7 Some of the dollars from these rollback taxes go to
8 the Department of Preservation; is that true? And
9 what might we be giving up here?

10 MR. WOLFF:

11 I'll let Doug answer that being that he
12 probably knows the number.

13 MR. WOLFGANG:

14 Yeah. The interest penalty on the
15 rollback goes into the Department of Preservation
16 Program. It's six percent interest. It's supposed to
17 be simple interest per year and that goes into the
18 Easement Purchase Program. Those counties that don't
19 have Clean and Green, that money goes to the
20 Commonwealth and we distribute it through our annual
21 fund right to the counties that participate in
22 farmland preservation. But, if the county has both
23 Clean and Green and farmland preservation, they use
24 those dollars locally.

25 CHAIR:

1 Other questions on my left? No?

2 MR. DAVIDSON:

3 Just a follow-up. You mentioned that, I
4 wasn't aware that not every county has Clean and
5 Green. Do you know roughly how many don't?

6 MR. WOLFF:

7 According to our last record, there was
8 about 56 counties that have Clean and Green. And, of
9 course, the counties that don't have Clean and Green
10 are the ones that haven't had needs for the
11 assessment. Franklin County and Bedford are
12 undergoing reassessment. Now, Lebanon County, for
13 instance, that's the actual market value would be less
14 than the current day use value. So, there would
15 really be no incentive in this case.

16 REPRESENTATIVE HOUGHTON:

17 Luzerne County has just went under
18 reassessment there now.

19 MR. WOLFF:

20 Correct.

21 REPRESENTATIVE HOUGHTON:

22 They are now putting a Clean and Green
23 program in place there.

24 CHAIR:

25 Representative Kessler?

1 REPRESENTATIVE KESSLER:

2 You mentioned the six percent. Is that
3 six percent calculated on the reduction in the
4 assessment, which in turn is a reduction of the
5 property tax, and how many years does that go into
6 effect?

7 MR. WOLFF:

8 Yeah. It goes it's a seven-year rollback
9 tax penalty. So, it goes back seven years and the
10 interest is supposed to be six percent simple
11 interest, the interest on each year's worth of
12 rollback, the difference between what the property
13 would have paid had it not been Clean and Green versus
14 the rural benefit that they receive by being in the
15 program. That's a maximum of seven years. That, you
16 know, provided they've been enrolled at least that
17 time.

18 REPRESENTATIVE KESSLER:

19 So if somebody was in Clean and Green for
20 ten years of royalties ---?

21 MR. WOLFF:

22 Only go back seven years. Yep.

23 REPRESENTATIVE KESSLER:

24 Okay.

25 CHAIR:

1 All right. Joining us today is
2 Representative Garth Everett. Garth, of course,
3 represents Lycoming County as well. Garth, we welcome
4 you to join us.

5 REPRESENTATIVE EVERETT:

6 I didn't want to interrupt the Secretary.
7 And, I'm sorry for being late. Mr. Secretary, you may
8 have covered this in your presentation. Out in
9 Western Pennsylvania where we've had shallow wells for
10 years and years and years, how do they get into Clean
11 and Green?

12 MR. WOLFF:

13 Well, the Clean and Green Law is actually
14 silent on the issue, so it's been handled as a county-
15 by-county assessment. The county assessor or the
16 county Board of Commissioners basically has made that
17 decision in each county. So I'm not sure exactly what
18 the history has been out there. Probably a variety, I
19 don't know, Rob, you probably has an update on that
20 too in terms of how that is looking in Western
21 Pennsylvania.

22 MR. DAVIDSON:

23 Generally speaking, we have not imposed
24 it.

25 MR. WOLFF:

1 Not imposed a rollback.

2 CHAIR:

3 We thank you for your testimony. We
4 appreciate you being here today. Thank you.

5 MR. WOLFF:

6 Thank you. My pleasure.

7 CHAIR:

8 While Representative Everett's joining us
9 up here, let us call on the next presenter. From the
10 County Commissioner's Association of Pennsylvania we
11 have Doug Hill, who is the Executive Director. And I
12 understand that Lycoming County Board of Commissioners
13 Chairwoman Rebecca Burke is going to join us as well.

14 MS. BURKE:

15 Thank you. Good afternoon. My name is
16 Rebecca Burke and I am Chair of the Lycoming County
17 Board of Commissioners. I also serve as Chair of the
18 Assessment and Taxation Committee of the County
19 Commissioners' Association of Pennsylvania as well as
20 co-Chair of the CCAP Natural Gas Task Force. Joining
21 me today is CCAP Executive Director Doug Hill.

22 CCAP is a non-profit, non-partisan
23 association providing legislative and regulatory
24 representation, education, research, insurance,
25 technology and other services on behalf of the

1 Commonwealth's 67 counties. I want to thank
2 Representative Hanna and Representative Mirabito for
3 the opportunity to give the House Agriculture and
4 Rural Affairs Committee the county's perspective on
5 Clean and Green as it relates to oil and gas and
6 windmills, as well as local revenues from natural gas.

7 CCAP testified before this committee last
8 summer indicating our support for an amendment to the
9 Clean and Green statute that would allow
10 preferentially assessed lands to be used for oil and
11 gas development, but would clearly define when a
12 change of use has occurred that would cause part of
13 the tract to be ineligible for preferential
14 assessment. At that time, we talked about existing
15 language in the law allowing Clean and Green lands to
16 be used for cell towers, with rollback applied on the
17 leased portion and fair market value adjusted
18 accordingly. Preferential assessment for the land
19 that is not leased is not affected.

20 At the time, we identified the cell tower
21 language as a model, but we have continued to flush
22 out these discussions among our CCAP policy committees
23 and the Assessors Association of Pennsylvania because,
24 while is it a starting point, the two are really very
25 different. In the case of oil and gas, large amounts

1 of land are leased for the right to access the
2 minerals below. And particularly in the case of the
3 Marcellus wells where horizontal drilling occurs,
4 surfaces of entire properties may not be disturbed,
5 and the land above can continue to be farmed while
6 minerals are extracted from the earth below.

7 Some counties in Pennsylvania have moved
8 ahead to address this issue under the parameters of
9 the existing law. Their reasons and defensible
10 approach is consistent with the statute today. That
11 is, that a violation occurs when the land is leased
12 for a commercial purpose. Obviously, rollback
13 penalties are significant when entire properties are
14 re-valued based on their fair market value rather than
15 their use value. Bradford County is one of the
16 counties that has been actively enforcing Clean and
17 Green as it stands today. When they issued their
18 first violations, commissioners report that all
19 rollback penalties were paid on time, and that in more
20 than 75 percent of the cases, the rollback was paid by
21 the company who had leased those preferentially
22 assessed properties to develop oil and gas.

23 However, most of Pennsylvania's counties
24 have not moved forward to enforce the existing law,
25 anticipating that the General Assembly would amend the

1 law to make it more fair to property owners. A
2 majority of our members believe that where lands can
3 continue to be used, uninterrupted, for agriculture,
4 agricultural reserve and forest reserve, those lands
5 should remain in preferential assessment.
6 Consequently, they have hesitated to move forward
7 while this issue is under discussion, and in a
8 demonstration of their willingness to contribute to
9 the conversation, the members of CCAP made Clean and
10 Green a priority issue for 2009.

11 There are two bills that have been
12 introduced in the House to address oil and gas on
13 Clean and Green lands, which have been referred to
14 this Committee. First, House Bill 208, sponsored by
15 Representative Godshall, allows portions of Clean and
16 Green land to be used for oil and gas drilling, and
17 extractions to a maximum of one acre. We do have
18 reservations about this bill. Acreage caps, such as
19 the one in place for cell towers are incompatible with
20 oil and gas operations. Unlike cell tower sites, the
21 size of the affected area for oil and gas sites can
22 vary considerable, and it's conceivable that there
23 could be multiple wells on one property.

24 House Bill 1394 was recently introduced
25 by Representative Houghton. We believe that this bill

1 has the fundamental components of a workable solution,
2 although we have reservations as drafted. Its
3 strength really is that it addresses oil and gas, as
4 well as the extraction of coal bed methane. Loss of
5 preferential assessment and rollback taxes would be
6 imposed on land associated with development of those
7 resources, including associated facilities such as
8 roads and compressor stations. Fair market value
9 would be adjusted on portions of the land, not the
10 entire preferentially assessed parcel. There are no
11 acreage caps, and instead the provisions are applied
12 to the areas that are actually disturbed.

13 That said, we do have several differences
14 of opinion on House Bill 1394. First, we believe that
15 the loss of preferential assessment should be applied
16 to any area disturbed for oil and gas development, not
17 just the area that ultimately cannot be restored.
18 From an equity standpoint, even though part of the
19 well pad can eventually be restored, the land should
20 still be used for activities that violate the spirit
21 and intent of the Clean and Green covenant.

22 Therefore, we believe that the entire
23 area impacted by drilling, as identified by the
24 erosion and sedimentation plan, should be violated
25 with loss of preferential assessment and rollback

1 imposed. The E&S plan would define the area for which
2 violation is applied and the value adjusted.
3 Ultimately, if the land is restored, and the surface
4 owner subsequently returns the land to a use that
5 qualifies for preferential assessment under Clean and
6 Green, then the portion that is restored to an
7 eligible use can be re-enrolled. This approach is
8 also supported by the Assessors Association of
9 Pennsylvania.

10 We also oppose language in House Bill
11 1394 that appears to prohibit counties from assessing
12 rollback penalties on wells that are in existence
13 prior to the effective date of the Act. To explain,
14 we need to differentiate two circumstances the bill
15 addresses. The first is where the well existed prior
16 to the land being enrolled in Clean and Green. We can
17 agree that the prohibition against a look-back on
18 these sites is appropriate.

19 The second circumstance is the one where
20 our disagreement lies. This is the situation where
21 the county felt it unfair, despite the clear
22 requirement of law, to violate the entire parcel for
23 the violation. The bill appears to prevent these
24 counties from using the provisions of the bill to
25 equitably violate the well site if the well is in

1 place prior to the Act's effective date. This
2 penalizes counties that have been diligently holding
3 off their legislative solution that will result in
4 greater fairness for landowners, and it is also unfair
5 to landowners. Proponents argue that counties cannot
6 look back indefinitely to impose rollback and fair
7 market value on well sites that have been in existence
8 for a long time. Although we do not have a specific
9 suggestion today to address those concerns, it is
10 significant, and we would be interested in working
11 with the bill's sponsors to establish a fair and
12 equitable solution.

13 We have been asked to address House Bill
14 984, which deals with windmills on Clean and Green
15 property. Similar language is contained in House Bill
16 1394. We support House Bill 984, with one minor
17 change, suggesting that the language requiring
18 accessibility is not necessary and should be deleted
19 from the legislations. Otherwise, we agree with its
20 provisions, which require rollback and market value to
21 be adjusted on the plot actually leased for a
22 windmill, and the remainder of the property that is
23 not leased stays in Clean and Green.

24 Finally, we would like to address our
25 overarching interest in local revenue from Marcellus

1 Shale. My colleagues and I have approached the Clean
2 and Green issue for oil and gas in a manner that may
3 seem counter-intuitive from a revenue perspective.
4 Admittedly, rollback taxes on entire properties leased
5 for oil and gas development would generate significant
6 revenues for counties, municipalities, school
7 districts, and also the farmland preservation program.
8 There is a need for local revenue from oil and gas
9 development, but we are advocating a more equitable
10 approach. Counties' oil and gas assessment priority,
11 embodied in House Bill 10, will reduce the burden on
12 existing property taxpayers, and improve tax equity in
13 Pennsylvania.

14 Counties are responsible to maintain the
15 assessment rolls, and in doing so, assess all
16 categories of property, including residential,
17 commercial, tax exempt and mineral properties. In
18 2002, in the Independent Oil and Gas Association
19 versus Fayette County, the Supreme Court ruled that
20 counties cannot assess oil and gas, because the
21 ability to assess these minerals is not specifically
22 granted in the county assessment law. Since that
23 time, oil and gas interests have been escaping
24 taxation. This was a major change to the assessment
25 system, because prior to the court decision, counties

1 have had a long history of assessing oil and gas, as
2 documented by court cases from the early 1900s.

3 Counties have sought legislations to
4 reverse this Supreme Court ruling from the time of the
5 court decision. However, the matter now takes on new
6 urgency as oil and gas development rapidly expands.
7 The industry brings economic development and jobs, and
8 represents an area of potential growth in a time of
9 economic slowdown. Counties are excited about the
10 opportunities, but these benefits are also no
11 different from what small local businesses and large
12 corporations from inside and outside Pennsylvania
13 bring to the state's overall economy. What is
14 different is that all of these other business
15 interests pay a share of the property tax, whereas the
16 oil and gas industry does not, because the Supreme
17 Court has created a legal loophole that currently
18 allows them to be exempt from this responsibility.

19 Any time one segment of property is
20 excluded from taxation, the burden of provision of
21 local government services falls to the remainder of
22 the taxpayers. The fundamental basis of the property
23 tax system is that everyone who owns property, whether
24 an individual, a retailer, a mineral producer, a
25 manufacturer, is a member of the community and derives

1 benefit, directly or indirectly, from that community.
2 Property taxes are one mechanism to share the fiscal
3 cost of providing core community services in some
4 nominal proportion to the ability to pay. As the law
5 stands today, all other property owners are carrying
6 the tax responsibility that should be borne by for-
7 profit oil and gas developers. Simply stated, our
8 efforts are about assuring that oil and gas producers
9 pay their fair share of the property tax.

10 CCAP argues that the Supreme Court's
11 decision is unfair to residential and commercial
12 property owners, as well as developers of other
13 minerals including coal and limestone, all of which
14 contribute to a share of the local property tax base.
15 The issue is one of fairness, equity and of oil and
16 gas companies paying their fair share. Local
17 residents and businesses, including farmers who
18 already bear a large share of the property tax burden,
19 should not be forced to shoulder an inequitable
20 portion of the tax burden due to what counties believe
21 to be an errant court ruling. We would ask the
22 members of the committee to support restoration of oil
23 and gas assessment.

24 I thank you for your attention today and
25 your visit to Lycoming County. And if you have

1 questions, Doug and I will be glad to answer them.

2 CHAIR:

3 Thank you. Let me start by addressing
4 House Bill 10. That is not the subject of today's
5 hearing, but it certainly warrants comment. We
6 appreciate your testimony on it. It, again, affects
7 taxation of Marcellus Shale and, of course, the
8 legislation that's introduced here today and we're
9 taking testimony on also affects that as well. So
10 they are relevant. And I think it would be
11 appropriate, I know the number of us that
12 Representative Mirabito and myself are both co-
13 sponsors of House Bill 10 and supporters about it.
14 And I know I suspect others at the table are as well.
15 But that legislation, unfortunately, was referred to a
16 different committee. I would be more than happy to
17 move that legislation if we had it before this
18 committee.

19 Having said that, I want to go back to
20 the beginning of your testimony. You mentioned that
21 in counties where the current law has been enforced
22 that, at least I think you indicated in one county
23 about 75 percent of the rollback taxes were actually
24 paid the company that leased the ground. Am I correct
25 that there's nothing in the law that requires that?

1 That likely is a result of the original lease
2 agreement?

3 MS. BURKE:

4 You are correct. That's correct.

5 CHAIR:

6 And in addition, are you aware, did the
7 company agree to pay the additional taxes in the
8 future or just the rollback taxes?

9 MS. BURKE:

10 We're not aware of that.

11 CHAIR:

12 Thank you. Other questions?

13 Representative Keller?

14 REPRESENTATIVE KELLER:

15 Thank you, Mr. Chairman. In your
16 testimony, your second page, you talked about the
17 preferential assessment on rollback imposed on the
18 full area where the E&S are, and then bringing it
19 back. Could you elaborate on that just a little bit
20 of what your thought was in that process in itself?

21 MS. BURKE:

22 Well, the suggestion is, is to use the
23 E&S plots as the rollback area. And then, after the
24 wells developed --- because that's where the
25 conservancy will be, as part of the E&S plan --- and

1 as the well is completed, then the area would be
2 reduced based on primarily where, what they call the
3 Christmas tree or the compressor station, where that's
4 located. And then, that acreage that was used to get
5 the well there could be enrolled in Clean and Green.

6 REPRESENTATIVE KELLER:

7 Do you have any idea of how long a period
8 of time we're talking, because I'm thinking that the
9 logistics of now we are, now we're not. You know?

10 MS. BURKE:

11 Generally, in Lycoming County, it does
12 not appear to be a long time, and I think part of that
13 thought process is that the companies that are here
14 and they are leasing, it's critical to them to get gas
15 to market. They've made a very large investment in
16 the Marcellus, and the sooner they can get there, the
17 more they'll reap the benefits for their own bottom
18 line. But the wells in our area, once the earth
19 disturbance takes place, it moves rather quickly. It
20 would not be years, generally speaking.

21 REPRESENTATIVE KELLER:

22 Well, my only concern with that is the
23 time period that once you're out of Clean and Green,
24 back in Clean and Green, with preferential treatment,
25 and when it can flow through the County Assessment

1 Office, there could be a gap of a time period there
2 for that landowner. That's my concern. You know, we
3 have it restored back to the original piece, but
4 there's a waiting period until it actually falls into
5 the sequence of the taxation again. So I had a
6 little ---.

7 MS. BURKE:

8 It certainly had begun after the fact.
9 I'm very biased, but I know my Assessor's Office would
10 be right on top of it. And they are here by the way.
11 But it could be done after the fact, once the --- with
12 the exception of when companies come in and disturb
13 the land and then do not drill. That would be a
14 problem. But with the E&S standards in place, you
15 know, the assessments could be done upon everything
16 being tucked back in, possibly.

17 REPRESENTATIVE KELLER:

18 Thank you very much.

19 CHAIR:

20 Representative Mirabito?

21 REPRESENTATIVE MIRABITO:

22 Commissioner Burke, do you have, in terms
23 of the cost the counties are going to forego for what
24 gain did the, you know, gases which were assessed on a
25 property, do you have any numbers by way of example

1 that you could share in terms of how that would help
2 the local taxpayers? I mean, in your experience or
3 your experience at CCAP.

4 MS. BURKE:

5 Do you mean the gas interests, or the
6 effect of the rollback?

7 REPRESENTATIVE MIRABITO:

8 Well, again, in the second part of your
9 testimony dealing with the House Bill 10?

10 MS. BURKE:

11 The actual numbers for ---?

12 REPRESENTATIVE MIRABITO:

13 Yeah.

14 MS. BURKE:

15 Yeah, I do not. Do you have it there
16 with you to read it? I need to have a look at that.

17 REPRESENTATIVE MIRABITO:

18 Well, can you give a description
19 generally? Is it significant? Is it ---?

20 MS. BURKE:

21 I would suggest that it would probably be
22 very significant, however, to my knowledge, there has
23 not been an economic impact study done as what's done
24 in the Barnett by the Paratin (phonetic) group.
25 Although, I do believe Penn State is working on that.

1 REPRESENTATIVE MIRABITO:

2 And that, of course, would relieve the
3 pressure on the property tax owners?

4 MS. BURKE:

5 Absolutely.

6 CHAIR:

7 Not to just jump in, but one small school
8 district in Centre County, Donegal Area School
9 District, I believe has calculated that House Bill 10
10 would generate roughly an additional million dollars
11 in property tax in that district, and that's one of
12 five school districts in Centre County. So it is
13 significant.

14 MS. BURKE:

15 And it would affect all of the taxing
16 authorities, you know. It would affect the township
17 authorities, the school districts, as well as the
18 town.

19 REPRESENTATIVE MIRABITO:

20 And I would point out that one million
21 dollars equates to, I think, either three or four
22 million of taxes in that school district.

23 REPRESENTATIVE HOUGHTON:

24 Mr. Chairman, I have a couple ---.

25 CHAIR:

1 Tom, before I come to you, I think I had
2 Representative Pickett next. Sorry. I'm sorry.

3 REPRESENTATIVE PICKETT:

4 Thank you, Mr. Chair. The --- I realize
5 that the bill regarding the assessments is not our
6 subject today. It's hard to stay away from it a
7 little bit. And in looking at that, it doesn't
8 necessarily present itself as an either/or. There are
9 two different looks at tax angles; the rollback tax on
10 the Clean and Green and an ongoing assessment. And
11 has there been any consideration in studying that
12 you've done within CCAP to consider the producer,
13 hence the oil company be the one to pay the rollback
14 taxes?

15 MS. BURKE:

16 Yeah. We have not --- or we're not
17 prepared to make a recommendation. It would
18 certainly, many --- I think some of the challenges
19 associated were early on when the rush was on. There
20 are property owners that entered into lease
21 agreements, perhaps, without counsel. And some of
22 those rollback taxes or assessed taxes could be
23 addressed in the lease, however, we don't have --- we
24 won't establish a preference who would pay it from a
25 municipal, a county or a school district. You know,

1 we generally aren't real concerned about who pays it
2 as much as that it gets paid. So if the legislation
3 grants that the industry is responsible for those
4 leases that do not have it in it, or it would override
5 those leases, that would certainly work also.

6 REPRESENTATIVE PICKETT:

7 Thank you, Commissioner. I have been
8 told in an unofficial manner that a tremendous number
9 of the leases do have it written and that the company
10 would be the one to pay the rollback taxes, and have
11 been aware of them having already paid it in many
12 cases where they didn't have it in the lease. They
13 simply paid it as a damage to the owner of the
14 property. In looking a little further at the
15 Marcellus Shale that is so new, I'm not sure any of us
16 can really picture what we will be 10, 15, 20 years
17 from now, but there will be, I am certain, a lot of
18 properties with a lot of wells on them, or at least
19 several wells on them.

20 There's one in Susquehanna County now I
21 am familiar with that has ten wells and a compressor
22 station on it. When we start carving that property up
23 to leave it in Clean and Green, not in Clean and
24 Green, roads leading to all of these various wells
25 would have to be inspected and tended to and so forth.

1 But it gets rather complex to decide what to do with
2 Clean and Green and I think I'm only stating what I
3 stated in the beginning; Clean and Green is complex.
4 I don't know. I don't think I gave you a question
5 there, but I'm just, you know, as we review how we
6 want to lay this out, there are just so many things to
7 consider.

8 MS. BURKE:

9 We agree whole-heartedly that not only
10 Clean and Green, but the entire reassessment law is
11 challenging. Although, I think the majority of the
12 county departments are well qualified to deal with it
13 accordingly.

14 CHAIR:

15 Representative Houghton?

16 REPRESENTATIVE HOUGHTON:

17 Thank you, Mr. Chairman. Commissioner
18 Burke, thank you for your testimony. I just have a
19 question. I understand your concerns. I have a
20 question about E&S concern and specifically in terms
21 of the application of different counties' E&S plans.
22 For instance, the sediment trap can be converted
23 rather easily after the disturbance of the earth. So
24 I'm just concerned that the legislation is trying to
25 get too specific with E&S and making E&S boundaries

1 applicable here. I'm just concerned about the
2 forcibility of dealing with individuals of 67
3 counties, and each county may have different E&S
4 requirements in terms of the boundaries where the
5 super silt fence is, where the silt fence is, where a
6 certain sed basin is. So, I'm just concerned about
7 passing legislation that --- and then trying to find a
8 way to make it apply to different counties that have
9 incredibly different requirements under the E&S
10 reports.

11 MS. BURKE:

12 It's our understanding that DEP will be
13 the coordinator of the E&S now, so potentially, they
14 will have consistency throughout the state. If it's
15 state regulated, then they are assuming that
16 responsibility.

17 REPRESENTATIVE HOUGHTON:

18 I have heard some complaints from County
19 Commissioners about that.

20 MS. BURKE:

21 You'll note, I didn't endorse it, I just
22 said that's how it is.

23 REPRESENTATIVE HOUGHTON:

24 I forgot about that.

25 CHAIR:

1 Do we have other questions? We thank
2 you. That's been very helpful and informative. Our
3 next presenter is Attorney Lester Greevy. I
4 understand that Attorney Greevy specializes in using
5 oil and gas. Attorney Greevy?

6 ATTORNEY GREEVY:

7 Thank you, Chairman Hanna, Representative
8 Rick Mirabito and Representative Everett and other
9 Honorable Committee Members. My name is Les Greevy.
10 The last time I was on this stage was June 1961 when I
11 received my high school diploma.

12 Thank you for inviting us, our office
13 Greevy and Associates, myself and Dale Tice have
14 represented hundreds of landowners all across the
15 state with gas issues; leasing issues, royalty issues,
16 right-of-way issues, Clean and Green issues. I
17 probably reviewed a thousand leases all over the
18 state. We literally get phone calls from our clients
19 all over the State, advising of the problems or the
20 issues that they are facing as this Marcellus Play
21 evolves. You have written testimony from us, and I'm
22 not going to read that, but just make a couple of
23 references.

24 The Constitution of Pennsylvania in
25 Article Eight, Section Two, gives the Legislature the

1 authority to establish the standards and
2 qualifications for tax reductions for farm and
3 forestland. They have given you the authority to do
4 that. The Clean and Green statute itself Act 5490 sub
5 E, does not allow the assessors to make any changes in
6 the eligibility requirements or conditions of
7 enrollment in Clean and Green.

8 I suppose the rulers look at a law,
9 particularly a tax, they ask two questions; one, is it
10 fair? And two, is it being uniformly applied. We
11 know that currently Clean and Green in the
12 Commonwealth of Pennsylvania is not being uniformly
13 applied. In Lycoming County, if there were a well,
14 there would be no rollback. In Bradford County, if
15 there were a well built, the whole property would be
16 rolled back.

17 We have a case in Bradford County, an
18 estate on which about 507 acres, based upon an old
19 lease, not a very remunerative lease, a well was
20 drilled on the very southern edge of that property
21 line. And the direction of the drill was south, away
22 from it. This is a Trenton Black River well. I'm not
23 sure if you can see this well, but the green would be
24 the property line. The spot right there in the very
25 southern end of it is the well. And the yellow is the

1 direction of the drill, away from it. The direction
2 is long enough that assuming that that is a Trenton
3 Black River well or even a Marcellus. Now, assuming
4 that you don't drill any other wells in any other
5 directions, that property is not going to receive any
6 royalty at all, and yet the rollback is \$47,000,
7 \$47,000 rollback. We have that on appeal in Bradford
8 County.

9 We see the Constitution of Pennsylvania
10 and Uniformity Clause, in particularly the cases
11 interpreting the Uniformity Clause that's saying that
12 taxation should be uniform throughout, across the
13 Commonwealth. We see that rollback, that \$47,000
14 rollback as a tremendous penalty, a complete change in
15 the way it would have happened if that landowner had
16 been in Lycoming County. And we see that, and we see
17 the Equal Protection Clause of the 14th Amendment of
18 the United States Constitution, where states are
19 required to treat every citizen equal.

20 We agree with Dr. Wolff that the House
21 Bill 1394, it looks like a pretty good bill. We are
22 neither for nor against taxation of oil and gas wells.
23 We are for uniform taxation of oil and gas wells. And
24 we say to you, the landowners say to you, the
25 Legislature, help us. Let's make this uniform. Let's

1 make it so that we all understand it and so we're all
2 treated equally.

3 As we deal more and more with this
4 Marcellus Play as it matures, we're going to be seeing
5 more royalty checks, we're going to be seeing more
6 royalty issues, and we're going to be seeing division
7 orders coming out telling the landowner what his
8 actual interest in the well is. And if we look at
9 other states that have dealt with this longer than we
10 have --- Texas would be a good example --- we see the
11 Legislatures addressing what information has to be
12 given a landowner by the gas company in the division
13 order so that we can determine whether or not his
14 percentage is actually being computed correctly. We
15 see the Legislature dealing with run checks or royalty
16 check stubs describing what information is required to
17 be put on that check stub so that the landowner, the
18 royalty owner can determine whether or not he is being
19 paid properly.

20 That is not on the agenda today. I
21 mention it because I think it is an area where in the
22 future, there may be some problems, and I think that
23 the Legislature may want to be looking at those.
24 That's pretty much what I had to say. I'll be happy
25 to answer any questions you have. And, again, thanks

1 for inviting me back.

2 CHAIR:

3 Thank you, Attorney Greevy. Let me start
4 the case that you cited. That is on appeal?

5 ATTORNEY GREEVY:

6 Yes, sir.

7 CHAIR:

8 And has the local court ruled on it at
9 this point?

10 ATTORNEY GREEVY:

11 No. The local court has not ruled on it.
12 We're just in the first stage of appeal to the
13 Commissioners. I just referred --- Mr. Tice handled
14 that, I think, one day last week.

15 CHAIR:

16 Would it be your expectation that --- it
17 certainly strikes me that you pointed out a violation
18 between the violation of the Uniformity Clause. But I
19 guess the questions becomes, which county is violating
20 it?

21 ATTORNEY GREEVY:

22 I understand that the Uniformity Clause
23 talks about uniformity within the territory boundaries
24 of the taxing body. I understand that. But when you
25 read all of the cases, the Supreme Court cases, they

1 talk about across the spectrum. And the 14th
2 Amendment of the United States Constitution certainly
3 talks about it across the spectrum.

4 CHAIR:

5 All right. So it would be your
6 expectation that this legislation can resolve the
7 issue that's come up here with Bradford County versus
8 the way Lycoming County leases?

9 ATTORNEY GREEVY:

10 It would certainly be my hope. And if
11 you do pass the legislation, we would certainly like
12 you to put in a provision that deals with assessments
13 that have already occurred, because now we have
14 created another unfairness. Just because you got
15 drilled first, you got assessed. And if you got
16 drilled next year, you didn't get assessment. And,
17 you know, we're looking for uniformity. That would be
18 our expectation.

19 CHAIR:

20 Thank you. Other questions?
21 Representative Grucela?

22 REPRESENTATIVE GRUCELA:

23 Thank you, Mr. Chairman. Mr. Greevy,
24 with the map that you passed out, I have a question.
25 So your client was on the southern end paying the

1 rollback tax?

2 ATTORNEY GREEVY:

3 My client was the person that was
4 outlined in Green ---

5 REPRESENTATIVE GRUCELA:

6 Green?

7 ATTORNEY GREEVY:

8 --- the northern part. Right in the very
9 southern border, right on the line almost, they
10 drilled the well.

11 REPRESENTATIVE GRUCELA:

12 Then you had a yellow line going through
13 two other property owners?

14 ATTORNEY GREEVY:

15 That yellow line is the drill bore, the
16 directional drill.

17 REPRESENTATIVE GRUCELA:

18 Right.

19 ATTORNEY GREEVY:

20 Only the guy in green gets a rollback
21 tax.

22 REPRESENTATIVE GRUCELA:

23 That was going to be my question. The
24 other two didn't pay any rollback taxes?

25 ATTORNEY GREEVY:

1 That's correct.

2 REPRESENTATIVE GRUCELA:

3 Part B of my question, do they get any
4 royalties?

5 ATTORNEY GREEVY:

6 They're getting all of the royalties.

7 REPRESENTATIVE GRUCELA:

8 Thank you.

9 CHAIR:

10 Representative Everett's next, but I'll
11 actually exercise the Chairman's prerogative and hold
12 up that last question. Why is that? Why would all of
13 the royalties go to the neighboring properties versus
14 the property where the well site is located?

15 ATTORNEY GREEVY:

16 The area that the well is drained, and
17 this is a directional drill. It's not a horizontal
18 drill where they crack across the site, but it's a
19 directional drill. So they're only going to crack
20 pretty much at the bottom. So the area that that's
21 going to drain is going to be figured based upon the
22 bottom hole. And if you drew a circle that contained
23 640 acres around that bottom hole, you would not get
24 to the property that was drilled upon. You wouldn't
25 get there. Almost all, assuming the 640-acre

1 production unit, assuming a circular production unit,
2 all of the royalties are going to somebody other than
3 the person on whose property the well was drilled.
4 That's called pay zone, where are the royalties. Even
5 if you drilled a horizontal well, you may drill a
6 horizontal well, and then out, if you're boundary
7 ended here and they didn't start cracking until
8 further out, you would not be in the pay zone and may
9 not be receiving royalties.

10 CHAIR:

11 Is that pay zone a product of the
12 Pennsylvania Law or a product of the lease?

13 ATTORNEY GREEVY:

14 No. It's a product of geology. The
15 geologists will tell where, what area's being drained.

16 CHAIR:

17 Thank you. I'm sorry. Representative
18 Everett, you were next.

19 REPRESENTATIVE EVERETT:

20 Asked and answered.

21 CHAIR:

22 Representative Pickett?

23 REPRESENTATIVE PICKETT:

24 Thank you, Mr. Chairman. Mr. Greevy, I
25 have been told that in a lot of leases, I'm sorry I

1 can't say how many, but the landowner has siting
2 privileges in that lease. Have you found that to be
3 true?

4 ATTORNEY GREEVY:

5 Ma'am, I've drew an awful lot of leases
6 and I try to get it in every one that I draw. But on
7 this particular lease that we're talking about, it was
8 one of the older leases, earlier leases, before folks
9 started coming to lawyers, and that lease does not
10 have site approval privileges.

11 REPRESENTATIVE PICKETT:

12 Okay. So it's kind of an anomaly, if you
13 will, that lease? It's not one of the normal leases
14 that you run across?

15 ATTORNEY GREEVY:

16 It's not within the normal leases for the
17 past year or so, but it's very normal for any times
18 prior to 2008.

19 REPRESENTATIVE PICKETT:

20 Okay. When you talk about uniformity in
21 taxation, I lived for many, many years understanding
22 that Clean and Green had to be uniform, had to be the
23 same statewide. If the County was in, they were in
24 for the way the state law read and that's the way it
25 was. And, a few years ago, I think we may have made a

1 dent in that belief by saying that the choice of the
2 base acre was the county's choice, whichever way they
3 considered that base acre, either preferential or not
4 preferential. Would that lead us to a way where
5 counties could decide how they want to handle this
6 individually?

7 ATTORNEY GREEVY:

8 Ma'am, I do not believe so. I believe
9 subsection E of the Act of 5490 says that the
10 assessors cannot, they are prohibited from imposing
11 eligibility requirements or conditions that are not
12 within the act. I think when the Legislature gave
13 them the ability to choose the base acre, then that
14 was the direct authority for them to do that. But
15 what we're talking about now, whether or not to
16 assess. What are the criteria for in or out? I don't
17 think the assessors have that authority.

18 REPRESENTATIVE PICKETT:

19 That was just one of the things I was
20 watching, because I have another interest in Clean and
21 Green and that's the minimum acreage that's allowed in
22 Clean and Green. So, I was kind of watching that base
23 acre to see if it was going to get challenged. To my
24 knowledge, it hasn't been challenged yet. It's not
25 been state uniform across?

1 ATTORNEY GREEVY:

2 Not to my knowledge. No.

3 REPRESENTATIVE PICKETT:

4 Okay. Also, I'm wondering if you see if
5 we make the change to make the rollback only on the
6 smaller parcel of land, do you see, other inequities
7 or non-uniform situations, that we are creating with
8 other reasons that people might use part of the Clean
9 and Green for another purpose?

10 ATTORNEY GREEVY:

11 I think if you read down through a lot of
12 the history of the Clean and Green, you find that
13 agricultural types, or farming types businesses, and
14 fruit stands along the road, that type of thing, I
15 think that the department has done a pretty good job
16 sorting out what types of activities are rural,
17 agricultural or farm related and what type of farm.
18 And a great deal of expertise, I believe, in the
19 Department of Agriculture and I think that I don't see
20 that as a large problem. I guess that's what I want
21 to say.

22 REPRESENTATIVE PICKETT:

23 Have you run across instances of stone
24 quarries or shale quarries?

25 ATTORNEY GREEVY:

1 Ma'am, I have not. I have not.

2 REPRESENTATIVE PICKETT:

3 Thank you, Mr. Chairman.

4 CHAIR:

5 Thank you. Representative Kessler?

6 REPRESENTATIVE KESSLER:

7 In reference to your client that we're
8 passing the piece of paper around to, when they came
9 to you the first time, did the drilling company make
10 them aware that if they drill, they may have to go
11 horizontal on someone else's property?

12 ATTORNEY GREEVY:

13 Our claim is actually the estate of the
14 deceased farmer guy. So no one came to us until after
15 the death, after the drilling, after the penalty was
16 --- after the rollback was issued. I really don't
17 have the background. Although, it is my
18 understanding, and Dale, correct me if I'm wrong, that
19 this was an older lease that was --- and there was
20 very little communication at all, probably no
21 communication. I think the decedent had already
22 passed on when the drilling occurred. There wasn't
23 anybody to, you know, to talk to.

24 REPRESENTATIVE KESSLER:

25 So if a client came to you tomorrow with

1 the same situation and said that the well company came
2 and they said that they would drill on their land, but
3 it would have to go onto someone else's property,
4 would you be able to draw up a legal agreement between
5 the person that owned where they're going to drill,
6 and if the people were willing to agree to a legal
7 agreement as far as the royalties are concerned of the
8 other property owner?

9 ATTORNEY GREEVY:

10 All of the right and duties between the
11 gas company, the landowner and the adjoining
12 landowners are going to be set in stone based upon the
13 leases that they signed at the time that they signed
14 those leases. And trying to change those or trying to
15 get the gas company to give you something they don't
16 have to give you is virtually impossible. The rights
17 have been set in concrete at the signing of the lease,
18 which may have been five years ago.

19 REPRESENTATIVE KESSLER:

20 Thank you.

21 CHAIR:

22 Representative Everett?

23 REPRESENTATIVE EVERETT:

24 Les, just to be clear, why don't you
25 explain the horizontal or slant drill that was

1 illustrated on your map that the gas company would
2 have to have a lease with the people that they did the
3 horizontal drilling under that also. They can't just
4 horizontal drill below somebody's land if you don't
5 have a lease for it.

6 ATTORNEY GREEVY:

7 Yeah. The gas company in the
8 Commonwealth of Pennsylvania cannot drill underneath
9 you without having you being leased. They just can't
10 do that. So that gas company has those other parcels
11 under lease. Those other parcels, because they're in
12 the pay zone, are going to get the royalty. It would
13 surprise me very much if the particular parcel got any
14 royalty at all and, if any, it would be a miniscule
15 part because your royalty is based upon your total
16 acreage in the production unit as against the total
17 production unit. And, as you can see, all the
18 production is south of that line.

19 CHAIR:

20 Representative Millard?

21 REPRESENTATIVE MILLARD:

22 Mr. Greevy, just to follow up and for
23 clarification on that map, the parcel in the green is
24 where the physical well structure is?

25 ATTORNEY GREEVY:

1 That's correct.

2 REPRESENTATIVE MILLARD:

3 They are only entitled to the lease on
4 the land; is that correct?

5 ATTORNEY GREEVY:

6 I'm sorry?

7 REPRESENTATIVE MILLARD:

8 They're receiving a lease amount, money
9 for the lease for that land?

10 ATTORNEY GREEVY:

11 That property at some time received a
12 cash bonus payment or a lease payment for the rental
13 of the land. But it's my recollection that was some
14 time ago, and might only have been \$1 or \$2 an acre.

15 REPRESENTATIVE MILLARD:

16 And where the yellow is indicated there,
17 they are also receiving a lease for the land, plus a
18 royalty from its production; is that correct?

19 ATTORNEY GREEVY:

20 That's correct. Yes, sir.

21 REPRESENTATIVE MILLARD:

22 Thank you.

23 CHAIR:

24 Representative Mirabito?

25 REPRESENTATIVE MIRABITO:

1 Can you give us an idea of how many
2 constituents we are talking about who have leases that
3 may be signed ten years ago that, you know, five years
4 ago, two years, if you know?

5 ATTORNEY GREEVY:

6 Probably not very many ten years ago, but
7 there's an awful lot of this county, Lycoming County,
8 your county, that were signed in the early 2000s,
9 particularly signed through the company that was
10 called Keaton Group. Most of those leases have been
11 assigned by Keaton to Sheath and some others. These
12 resources in the northern part of the county, most of
13 those leases were five and five; five year leases with
14 an option in the gas company to renew for an
15 additional five years, so they will continue on into
16 effect for ten years. And most of those leases were
17 for something on the order of \$2 to \$3 an acre, \$1 to
18 \$2 to \$3 an acre a lot, a lot. But, if you drove from
19 Troutman to the Tioga County line, right up 15,
20 everything you saw was under one of those old Keaton
21 leases. That whole section was under one of those old
22 leases.

23 REPRESENTATIVE MIRABITO:

24 Can you give us a little update in what's
25 happened in maybe the last two years or so?

1 ATTORNEY GREEVY:

2 In the last year, starting maybe in the
3 winter, about Christmas or Thanksgiving of 2007 and
4 through all of 2008, when the boom started and there
5 was four or five gas companies competing with each
6 other, both the lawyers who were doing that business,
7 and the consultants who were representing landowners
8 and landowners who formed their own group, found that
9 they were very able to negotiate terms with the gas
10 companies. And some of those terms, of course, were
11 monetary terms, much higher cash bonus payments, up to
12 \$2,500 an acre for five years or less, no options to
13 renew, no pipelines, and many of us were able to
14 negotiate that the gas company had to pay the rollback
15 tax or crack or whatever, any of the agricultures. We
16 were able to negotiate an awful lot of those in and
17 during 2008. That was kind of the hey day. Not
18 everybody went for an attorney, not everybody was in a
19 group, but significant numbers. I don't know, maybe
20 half. I don't know. Something like that. But a
21 significant number. We were able to negotiate that
22 the gas company's going to pay the rollback.

23 CHAIR:

24 Representative Keller?

25 REPRESENTATIVE KELLER:

1 Thank you, Mr. Chairman. As I hear you
2 stating here that the leases are very concrete, there
3 is no changing of anything; right?

4 ATTORNEY GREEVY:

5 Yes, sir. They are contracted. Absent
6 fraud, not going to change.

7 REPRESENTATIVE KELLER:

8 So the leases that have already been
9 entered into, the legislation that we're talking
10 about, really wouldn't affect them; right?

11 ATTORNEY GREEVY:

12 Many leases have been entered into but no
13 drilling has occurred. I'm not sure how you're
14 reading 1394, but the rollback is occurring or is
15 triggered by the drilling, and I don't know why they
16 would not affect the prior leases.

17 REPRESENTATIVE KELLER:

18 Okay. Thank you.

19 CHAIR:

20 Representative Pickett?

21 REPRESENTATIVE PICKETT:

22 Thank you, Mr. Chairman for your
23 indulgence. Mr. Greevy, there are several happenings
24 in my district now where people, groups of people, are
25 buying parts of leases from people. How do you see

1 that play into what we're attempting to do here?

2 ATTORNEY GREEVY:

3 Buying leases or buying shares of leases
4 or parts of leases is a very risky business of perhaps
5 high yield, or perhaps, no yield. I don't want to
6 call it an immoral business, but maybe it is. It's a
7 business that I'm not going to get involved in. How
8 do you value it? Well, people who are strapped for
9 cash may be selling the birthright for cash. I don't
10 like that, but I don't think it has much to do with
11 Clean and Green. You know, it seems that every time
12 it seems that those folks kind of follow the other
13 ways. Not a business I'm interested in being in.

14 REPRESENTATIVE PICKETT:

15 Thanks for your comment.

16 CHAIR:

17 Thank you. I'm sorry. One more question
18 before you're done.

19 ATTORNEY GREEVY:

20 Yes, sir.

21 CHAIR:

22 As I understand it, you pointed out the
23 terms of the leases are the ultimate decision on how
24 wells will be split and how all that is taken care of?

25 ATTORNEY GREEVY:

1 Yes, sir.

2 CHAIR:

3 In other states, there is what's called
4 pooling. Can you give us maybe just 30 seconds on the
5 differences, and Pennsylvania, as I understand it,
6 does not have pooling?

7 ATTORNEY GREEVY:

8 I think what you're talking about is
9 force pooling. There's a couple different pools. The
10 gas --- the leases that are signed with the gas
11 company the right to pool you with other owners in
12 order to create a large enough area to be able to
13 efficiently extract the resource. We like to see a
14 clause in there that says if you're not --- if all of
15 your land isn't in the pool, you get to break yours
16 off.

17 Some states have compulsory pooling, and
18 the Commonwealth of Pennsylvania has compulsory
19 pooling below the Onondaga Horizon, but the Marcellus
20 is not below the Onondaga Horizon. If the gas company
21 is willing to drill near you and their drainage area
22 would include under you, and if they were going to
23 drill a deep well, below the Onondaga at the Trenton
24 Black River well, then they could go to the department
25 and ask you to be force pulled in with them. This has

1 happened very few times.

2 That conservation law of force pooling
3 has been around for well over 20 years and it's
4 probably only been used four or five times. But what
5 happens then, is you, the landowner, get a royalty,
6 minimum royalty during the time the well is paying
7 itself off. And after the well has paid itself off
8 twice, you become a full partner with the gas company.
9 So instead of getting 12 and a half percent, if you
10 had half the acreage, instead of getting half the 12
11 and a half percent, you got half of the 100 percent.
12 And that's why the gas companies don't like to do
13 that. The gas companies will typically make you a
14 very good offer rather than have to force pool you.

15 There is a bill that talks about force
16 pooling or adding the Marcellus to the conservation
17 bill, the conservation law, making the Marcellus well
18 a conservation well that will have force pooling. I'm
19 not --- New York has that. We see some abuses and we
20 see some good out of it. I don't think I have really
21 formed an opinion as to whether or not that's a good
22 idea or maybe I don't even know enough about it to
23 know whether or not that's a good idea.

24 But force pooling certainly gives the
25 landowner a very good bargaining position, even though

1 it's used not very often, it gives the landowner a
2 good bargaining position, because the companies will
3 pay a little more rather than have them in a pool.

4 CHAIR:

5 Any further questions? Representative
6 Grucela?

7 REPRESENTATIVE GRUCELA:

8 I was hesitant to ask this and it may be
9 unanswerable because it might be a matter of privacy.
10 But some of these leases you said from way, way back
11 were at least far enough back before the Marcellus,
12 were \$1 or \$2 an acre?

13 ATTORNEY GREEVY:

14 That's right.

15 REPRESENTATIVE GRUCELA:

16 What are they an acre today, or is that
17 an item that's private and can't be answered? What's
18 it worth today?

19 ATTORNEY GREEVY:

20 We do appraisals. You ask what it's
21 worth today. Well, gas leases are a lot like ---.

22 REPRESENTATIVE MIRABITO:

23 You're writing me a check ---.

24 ATTORNEY GREEVY:

25 They are a lot like lottery tickets. If

1 you're selling the gas lease, you say, you see that
2 \$50,000 right there? That's what it's worth. Okay?
3 If you're buying, you're going to see something
4 different. You're going to look in the back. It says
5 right there, \$2. That's what it cost. But that's not
6 what it's worth either. What it's worth is, if you
7 had all the lottery tickets in one stack and all of
8 the dollars in the other, then it's 1.1 to 4.70,
9 which, I think, is about 42 and a half cents. But you
10 wouldn't pay 42 and a half cents to make 42 and half
11 cents or maybe you hit the lottery and think it's only
12 worth 40 cents. What's the lease worth? I don't
13 know.

14 REPRESENTATIVE GRUCELA:

15 That is a great answer.

16 ATTORNEY GREEVY:

17 But it's probably a lot more than \$2, I
18 can tell you that. If you ever want to get rid of the
19 \$2, just give me a call.

20 CHAIR:

21 We certainly thank you. And you're a
22 wealth of information and you can tell by the number
23 of questions. We certainly appreciate your testimony
24 you've offered. It's been very enlightening. Thank
25 you.

1 ATTORNEY GREEVY:

2 Thank you.

3 CHAIR:

4 I'm going to turn to Representative
5 Mirabito to introduce our next presenters.

6 REPRESENTATIVE MIRABITO:

7 You know, we have had a lot of hearings
8 on the Marcellus Shale, and oftentimes we focus on
9 taxation and economics and so forth. We have the
10 privilege today of having Deb Shivetts here who is the
11 Director of Wise Options at YWCA, because one of the
12 other ways that we want to sort of think about this is
13 the social impact that it's going to cause. It's a
14 great opportunity for us, but there is also whenever
15 we get groups of humans together, we manage to wind up
16 with some problems along the way. So we're hoping
17 that Deb can give us some perspective on that.

18 MS. SHIVETTS:

19 Thank you. Good afternoon, everyone. My
20 name is Deb Shivetts and I am the director of Wise
21 Options program at the YWCA. We're a comprehensive
22 victim service agency, offering services to victims of
23 domestic violence, sexual assault and other violent
24 crimes to citizens of Lycoming County. I'd like to
25 thank the committee and, in particular, Representative

1 Mirabito, for seeking the input of Wise Options as our
2 community prepares for the development of the
3 Marcellus Shale. It's commendable that you are
4 looking beyond the economic impact, to also consider
5 the social impact of this development and assessing
6 whether Lycoming County has the capacity and the
7 infrastructure to support and sustain wide-ranging and
8 life-saving services to all who may need them.

9 While I can't tell you with any accuracy
10 how many victims of crime will turn to our program for
11 help as the result of the population expansion, I can
12 tell you that researchers and sociologists agree that
13 requests for social services are likely to increase as
14 mental health caseloads, crime, divorce, suicide,
15 alcoholism as these increase in a so-called boomtown.
16 In order to plan for the future impact, it's important
17 to understand that the complex needs of victims who
18 represent a diverse cross section of society, and
19 whose circumstances are as varied as their
20 experiences.

21 Much of Lycoming County is rural. This
22 is the most difficult area for us to reach victims, or
23 for victims to be able to reach out to us. In the
24 cases of domestic violence and sexual assault,
25 isolation by the perpetrator is the key to their

1 control. The individuals who turn to us in times of
2 crisis may have disabilities, limited English
3 proficiency or are recent immigrants. They may be
4 dealing with drug, alcohol, mental health issues as a
5 result of protracted abuse. Some domestic violence
6 victims are almost penniless because their abusers
7 have sabotaged their jobs, taken all their money,
8 damaged their credit or ran up huge debts in unpaid
9 bills. Many arrive at our shelter with nothing more
10 than the clothes on their backs and many of their
11 children have witnessed the abuse or also have been
12 abused.

13 The good news for Lycoming County is that
14 we do have a solid foundation on which to enhance and
15 strengthen our resources and services. Wise Options
16 has a long and distinguished record of offering safety
17 and seeking justice for victims of crime across our
18 county. Unfortunately, years of stagnant funding have
19 chipped away at a lot of our infrastructure, which
20 would impede our ability to provide all that's really
21 necessary for safety such as a 24-hour shelter and
22 crisis hotline; clean clothing, toiletries, diapers
23 and other personal items, as well as food to provide
24 three meals a day to shelter residents; services are
25 accessible to persons with disabilities; legal

1 advocates to inform victims of their legal options, to
2 assist them with their court filings and to accompany
3 them to court hearings; medical advocates at the
4 hospitals, which often are our first point of contact
5 with victims to ensure that they receive the treatment
6 for their injuries, appropriate medical care and
7 medicine; housing advocates; trained advocates to
8 guide victims in their efforts to obtain temporary
9 financial assistance; crime victims compensation from
10 the state; skilled staff to work directly with
11 children of battered parents to help them build their
12 resilience and address their specific safety needs;
13 interpreters, translation service; prevention and
14 education initiatives to inform victims that free and
15 confidential help is available, to guide friends and
16 family members on how they can help and to reach out
17 to the next generation, our best hope for breaking the
18 cycle of violence.

19 As a community, it's important to be
20 aware, as the population increases in our county, so
21 to will the need for additional services. The costs
22 for these services will also increase and should be
23 taken into consideration when you're making a plan for
24 the future regarding the development and drilling of
25 the Marcellus Shale.

1 We believe that better days are ahead for
2 Lycoming County, and by coming together and working
3 together, we can create a safe a violent-free
4 community for our current and future residents. Thank
5 you.

6 CHAIR:

7 Thank you, Director Shivetts. Would you
8 take a few questions?

9 MS. SHIVETTS:

10 Sure.

11 CHAIR:

12 Let me start. Your organization and
13 organizations like yours that provide these services,
14 you are aware the testimony and the legislation that
15 we're looking at today is focusing on taxes that
16 ultimately would go to local governments, the
17 counties, townships, boroughs, cities and school
18 districts. Your organization and the organizations
19 that provide these services, are they typically funded
20 by those types of municipal organizations?

21 MS. SHIVETTS:

22 Most of the centers throughout the state,
23 and there are 62 domestic violence centers and 52
24 sexual assault centers, many of them being dual, and
25 some of them taking in different counties, they get, I

1 would say, a small percentage comes from their local
2 governments. Most of our funding comes from State and
3 Federal monies and United Way.

4 CHAIR:

5 Thank you. Other questions?

6 MS. SHIVETTS:

7 Thank you for your time.

8 CHAIR:

9 Representative Mirabito has a question.

10 MS. SHIVETTS:

11 Oh, I'm sorry.

12 REPRESENTATIVE MIRABITO:

13 I've actually been in some public
14 meetings where, I think it was one of the
15 Commissioners noted that a trucker had come to
16 Lycoming County related to the Marcellus Shale, and
17 again, this is --- we have to put this in context.
18 This is not to, you know, say that this is a bad
19 thing, but it's something we should be aware of. But
20 he had accompanied a woman, I guess, and several kids.
21 He left the woman and the kids here and went back to
22 wherever, you know, his trucking and where he came
23 from. Now, that type of situation creates the kind of
24 social needs you are saying; is that right?

25 MS. SHIVETTS:

1 That creates some of the social needs.
2 We also might have people moving into the area who may
3 be in an abusive situation. And the perpetrator of
4 that abuse, by bringing them here, isolates them even
5 more. So they have no friends, they have no family
6 here. So it can cause a problem.

7 REPRESENTATIVE MIRABITO:

8 Also, I don't know if you looked at the
9 amount of itinerant workers that sometimes travel in
10 other boomtowns. Have you had an opportunity to look
11 at that at all?

12 MS. SHIVETTS:

13 Over the years, we have served people
14 that have come in as itinerant workers. It's not a
15 large percentage, but we have had experience with them
16 over the 32 years that Wise Options has been in
17 existence.

18 REPRESENTATIVE MIRABITO:

19 Thank you.

20 MS. SHIVETTS:

21 You're welcome.

22 CHAIR:

23 Anyone else? Then, we thank you.

24 MS. SHIVETTS:

25 Thank you.

1 CHAIR:

2 Our next presenter is from Serene View
3 Farm, Maggie Emery. Maggie?

4 MS. EMERY:

5 Good afternoon. My name is Maggie Emery
6 and I want to thank this committee and Rick Mirabito
7 for giving me the opportunity to voice my opinion
8 regarding House Bill 1394. I live in Plunketts Creek
9 Township, which is a rural township in Lycoming
10 County. I am enrolled in the Clean and Green program.
11 I have 128 acres, 126 acres of preferential
12 assessment. Two acres contain our home and bed and
13 breakfast. We have a five-year gas lease with East
14 Resources, which expires in December of 2011. I do
15 not anticipate being involved with new generation, so
16 my comments will be about the section described for
17 gas drilling operations as proposed in House Bill
18 1394.

19 The current wells that are being drilled
20 in the county are disturbing a very small amount of
21 acreage and erecting minimal structures to be left on
22 the site. Should East Resources choose to drill for
23 gas exploration on my land and builds a well and then
24 caps it, and does not further take gas off the land
25 via transportation lines, then no income is provided

1 to me. Therefore, to require me to pay the rollback
2 taxes and penalties for seven years, and taking the
3 land out of the Clean and Green program, would create
4 quite a financial hardship now and in the future. To
5 have to pay this penalty when such a small portion of
6 land is being disturbed and the use of the land is not
7 basically being changed is, I feel, unfair.

8 I have worked with the gas lease people
9 to provide the utmost protection for my land, to
10 include surrounding water holes, forests and wells.
11 By taking these lands out of the tax preferential
12 program, it will defeat a purpose to keep our rural
13 land pristine and undeveloped. The changes as
14 described and proposed in House Bill 1394 are fair,
15 adequate and fulfills the needs of the original intent
16 of the Clean and Green program. It protects the
17 integrity of the landowner and my original purpose and
18 desire to keep my parcel from development. And
19 therefore, gives me a tax break. Thank you.

20 CHAIR:

21 Maggie, would you take some questions?

22 MS. EMERY:

23 Sure.

24 CHAIR:

25 All right. Do we have questions?

1 Representative Mirabito?

2 REPRESENTATIVE MIRABITO:

3 Do you have an idea how much it would
4 impact you financially?

5 MS. EMERY:

6 I do not.

7 REPRESENTATIVE MIRABITO:

8 Okay. Thank you.

9 CHAIR:

10 Thank you. Any other questions?

11 Representative Everett?

12 REPRESENTATIVE EVERETT:

13 No. I'll just make a statement and then
14 I just would recommend that if any of you want to go
15 fly fishing, you need to stay at Plunketts Creek. She
16 has a wonderful bed and breakfast.

17 MS. EMERY:

18 Thank you. I appreciate the plug.

19 CHAIR:

20 Sounds like a voice of experience.

21 Representative Kessler?

22 REPRESENTATIVE KESSLER:

23 Did you say they did drill a test well?

24 MS. EMERY:

25 No, they have not yet. Not in our area

1 yet.

2 REPRESENTATIVE KESSLER:

3 Okay.

4 MS. EMERY:

5 We're hoping.

6 REPRESENTATIVE KESSLER:

7 Thank you.

8 CHAIR:

9 Representative Keller?

10 REPRESENTATIVE KELLER:

11 Would you be receptive to the fact of the
12 rollback if you started receiving royalties, instead
13 of whenever the drilling took place, but when your
14 royalties were received from it?

15 MS. EMERY:

16 Not really. Honestly, because I don't
17 like the idea of people getting out of this Clean and
18 Green program, because that's what's keeping us rural,
19 keeping our forests and we don't want development in
20 that part of the county, at least I don't. And I
21 think my neighbors feel the same way, that we want to
22 stay rural and quiet and pristine. And if they take
23 us out of it and people start going out of the Clean
24 and Green program, it doesn't matter how much money
25 you have. You only have so much land.

1 CHAIR:

2 Representative Pickett?

3 REPRESENTATIVE PICKETT:

4 Thank you, Mr. Chairman. I'll just
5 comment that these are big discussions in Bradford
6 County and what the Commissioners of Bradford County
7 and I have decided to do at the moment is that when
8 production begins, that's when they present the
9 rollback bill on the property. And at the same time
10 they simultaneously will roll the rest of the land
11 back into Clean and Green so that they lose no time in
12 Clean and Green with the balance of the land. Just
13 for point of comment, that's what they're doing.

14 CHAIR:

15 Thank you. Any other questions? Thank
16 you very much. We appreciate it.

17 MS. EMERY:

18 Thank you.

19 CHAIR:

20 And our final presenter will be today is
21 Joel Rotz. Joel is the Director of State Government
22 Relations for the Pennsylvania Farm Bureau. Joel?

23 MR. ROTZ:

24 Good afternoon, everyone. I know I'm the
25 one everyone's looking forward to because I'm last,

1 and I'll try to keep this short so we have time for
2 questions if you have any. I do have written
3 testimony in front of you. I'm going to skip over a
4 lot of it, but I will read some of our comments
5 specific to the two bills you're considering here
6 today.

7 I do just want to say primarily that,
8 obviously, Pennsylvania Farm Bureau believes that the
9 Clean and Green Act itself has been great for
10 Pennsylvania and certainly great for Pennsylvania
11 Agriculture. We also believe that the General
12 Assembly has historically done a great job in
13 providing reasonably clear direction of the intended
14 statutory interpretation within the act and the
15 statutory provisions and making timely amendments to
16 the act in response to changing circumstances and
17 skewed interpretations that may lead to unreasonable
18 and unfair results. And that's why we're here today
19 and we appreciate that.

20 Specific to House Bill 984, Pennsylvania
21 Farm Bureau is supportive of the intent of the
22 provisions in House Bill 984 to limit the imposition
23 of rollback taxes for the landowner who leases land
24 enrolled in the Clean and Green program for a wind
25 power generation system. However, we believe the

1 provisions should first be broadened to include any
2 alternative energy development system from tier one
3 sources identified in the alternative energy portfolio
4 standards act passing the law last session. These
5 sources would not only include wind generation, but
6 solar, low impact hydropower, geothermal, biological
7 methane fuel cells, coal mine methane and biomass
8 energy generation. Broadening the provision would
9 help encourage more on-farm energy production that is
10 not only environmentally friendly, or green, but also
11 reduces dependence on foreign oil. The use of limited
12 areas of Clean and Green land for alternative energy
13 infrastructure will help satisfy a serious energy need
14 for Pennsylvania without jeopardizing the integrity of
15 the program.

16 Secondly, an important clarification
17 should be established statutorily to provide that the
18 use of the land is still considered primarily
19 agriculture when more than half the energy produced by
20 an alternative energy development system is utilized
21 on the farm operation even though some revenues may be
22 generated by selling energy off of the farm. The
23 addition of this clarification is necessary for
24 determination of when a landowner should be subject to
25 no rollback tax or a limited rollback tax for

1 alternative energy development on Clean and Green
2 lands.

3 Pennsylvania Farm Bureau believes farmers
4 should be allowed to generate alternative sources of
5 energy to help sustain the farming operation without
6 rollback tax consequence. If the generation of
7 alternative energy becomes primarily a source of off-
8 farm income through the sale of that energy, the
9 rollback should occur in similar fashion as to what
10 was established in law relative to cell phone towers
11 on Clean and Green lands.

12 Alternative energy development whose
13 energy is not primarily used on the farm --- how did I
14 end up with that paragraph twice? Anyhow, rollback
15 tax itself should not be assessed until the system is
16 initially generating energy and supplying it to an
17 energy transmission system. The owner should be
18 required to submit a notice of subjection of land to
19 rollback taxes no later than 30 days after alternative
20 energy production and distribution begins to occur.

21 Switching gears to House Bill 1394,
22 again, Pennsylvania Farm Bureau is supportive of the
23 attempt to statutorily clarify in House Bill 1394 the
24 status of land leased for oil and gas, coal bed
25 methane extraction and alternative energy production

1 and what rollback taxes would be imposed on land
2 subject to the activity under the Clean and Green Act.
3 However, we do believe the House Bill 1394 needs to be
4 amended to further clarify the types of pre-production
5 activities that may be performed on Clean and Green
6 land without rollback taxes and to limit and defer
7 assessment of rollback tax to those situations where
8 the actual gas or oil production are occurring.

9 Rollback taxes should not apply to any
10 area in which exploration or extraction activity was
11 performed prior to the effective date of this
12 legislation and rollback taxes were not assessed. Nor
13 should any rollback tax be assessed until substantial
14 production occurs. We consider substantial production
15 to only exist under one of two circumstances. First,
16 in the case where the landowner is the developer of
17 the oil, gas or coal bed methane project, when the
18 landowner begins to extract the oil, gas or methane.
19 In the second case where the landowner has conveyed
20 subsurface rights for oil, gas or coal bed methane
21 development, when the landowner begins to receive
22 royalties or compensation based on the amount of gas,
23 oil or coal bed methane extracted.

24 The owner subject to the assessment of
25 rollback taxes should be required to notify the county

1 assessor no later than 30 days after substantial
2 production begins. A civil penalty could be imposed
3 for non-compliance on landowners subject to rollback
4 taxes who fail to provide timely notice to the county
5 assessor. We are suggesting a \$500 fine or a one half
6 of the rollback taxes due, whichever is less.

7 Pennsylvania Farm Bureau strongly
8 supports limiting the amount of land subject to
9 rollback tax to the specific area, which is utilized
10 once exploration and well development is complete and
11 the land is expected to be restored. Assessment of
12 rollback taxes on these lands should not invalidate
13 the continuation of preferential assessment of other
14 land covered by preferential assessor.

15 Thank you for the opportunity to aptly
16 try to answer any questions you may have.

17 CHAIR:

18 Let's start with Representative Keller.

19 REPRESENTATIVE KELLER:

20 Thank you, Mr. Chairman. When you talk
21 about the fine, who would be receiving that fine money
22 if it so was amended?

23 MR. ROTZ:

24 I would assume whoever receives --- we
25 have existing fines under the current program. I

1 assume it would be no different from where those fines
2 go. You probably could explain that better than I
3 would as fines go.

4 CHAIR:

5 Representative Pickett?

6 REPRESENTATIVE PICKETT:

7 Thank you, Mr. Chairman. Thanks for
8 being here, Joel. The Farm Bureau is certainly an
9 important voice in everything we do in our
10 agricultural business in the state, so I appreciate
11 you being here. Question number one, the intent of
12 Clean and Green, many, many years back and why, why
13 did they build a rollback penalty, and can you comment
14 on that?

15 MR. ROTZ:

16 Yeah. I think it's to give the incentive
17 to stay in the program. The idea of the program was
18 to not only preserve agriculture, preserve open space,
19 preserve lands available to the public and they wanted
20 to make sure that people had the incentive to stay in
21 the program once they were in it.

22 REPRESENTATIVE PICKETT:

23 Thank you. Other underground resources,
24 if we look at assessment or we were talking about
25 rollbacks and that sort of thing, many of our

1 agricultural lands, in particular, have quarries or
2 shale pits on them. Have you looked at that as to how
3 they would be affected by anything we might do?

4 MR. ROTZ:

5 Not in the common text of what we're
6 talking about here today. No, I can't say that we
7 have.

8 REPRESENTATIVE PICKETT:

9 I have a lot of blue stone quarries in
10 the northern county?

11 MR. ROTZ:

12 Right.

13 REPRESENTATIVE PICKETT:

14 They're really concerned about any
15 legislation and wondering how it's going to affect
16 them. So as we go through this, perhaps maybe that's
17 something you could help us look at.

18 MR. ROTZ:

19 I will certainly take that back.

20 REPRESENTATIVE PICKETT:

21 Thank you. Thank you, Mr. Chair.

22 CHAIR:

23 Representative Mirabito?

24 REPRESENTATIVE MIRABITO:

25 You mentioned in the first page that

1 family farms are having a very difficult time, and I
2 think we are all aware of that. Can you paint a
3 picture for us of what the kind of income that people
4 are sustaining themselves on some of these family
5 farms in rural Pennsylvania, if you know?

6 MR. ROTZ:

7 Well, yeah. That's kind of a tough
8 question to answer. It obviously varies greatly from
9 one farm to the next. You know, dairy is certainly a
10 strong backbone of our entire industry in the state.
11 And I can speak generally for dairy right now, the
12 farmers are receiving prices that are 30 to 40 percent
13 lower than they did a year ago, which totally wipes
14 out any profit margin and is putting farmers in a
15 pretty deep hole pretty quickly. And, that's pretty
16 consistent across the board, whether you're a small
17 dairy farmer or large dairy farmer. It's just a
18 difference in the size of the hole you're digging.

19 So yeah, right now it is particularly
20 tough for the dairy industry and, quite frankly, a lot
21 of the other segments of the industry are hurting too
22 with the changing economic times. I think most people
23 don't understand that this downturn in the economy has
24 impacted agriculture just as much, if not more so,
25 than everybody else.

1 A year ago, it was pretty hard to cry too
2 much about what was going out in the farms.
3 Production cost was very high because of high fuel
4 costs, et cetera, but we had a world market thing
5 going with that low value dollar and expanding world
6 economy. And our producers were producing to meet
7 that market, and suddenly that all shut off just like
8 a lot of other things shut off.

9 And so now we still have relatively high
10 cost production. Obviously, food costs have come
11 down. But still, a lot of high production costs out
12 there and no market.

13 CHAIR:

14 Any other questions? Kerry?

15 MS. GOLDEN:

16 Joel, on page six of your testimony you
17 suggest that the fines should be \$500 or one half of
18 the rollback taxes, whichever is less. So it would
19 essentially be \$500 all the time. It will always be a
20 \$500 fine.

21 MR. ROTZ:

22 I'll take your word for it.

23 MS. GOLDEN:

24 Is that what you meant, or did you mean
25 for it to be whichever is more?

1 MR. ROTZ:

2 No, whichever is less is what was meant.

3 CHAIR:

4 All right. Thank you, Joel. We
5 appreciate your testimony.

6 MR. ROTZ:

7 Thank you.

8 CHAIR:

9 That concludes our scheduled testimony.
10 I do want to point out that several folks had
11 contacted the committee in advance of today's hearing
12 and had discussed with staff their interest in
13 presenting information. Primarily, it seemed to
14 address environmental issues pertaining to the
15 Marcellus Shale development. While all of us are very
16 much interested in that, that goes beyond the
17 responsibility of this committee and beyond the
18 legislation that's before us today.

19 However, if those folks are here today,
20 I'm very much interested in meeting with you, seeing
21 the information that you wanted to share with us, and
22 I can assure that we will see that that information is
23 shared with all of our members. I understand Diane is
24 telling me it's already in our packets, at least some
25 of it. But if there are other members of the audience

1 that had information that they would like to share
2 with us, please stay and make it a point to talk to
3 myself or Representative Mirabito or any other member
4 of the panel. And we'll make sure that any of your
5 information is shared with all members of the
6 committee.

7 I want to conclude today's hearing by
8 thanking the Pennsylvania College of Technology. This
9 is certainly a wonderful facility and, I guess, going
10 back to 1961 as a high school graduate, that's a real
11 flashback for you, Attorney Greevy. But it's a
12 beautiful facility. It certainly is and it's worked
13 very well today for our purposes.

14 I also want to thank the members who
15 attended today and staff who worked so hard on
16 preparing everything for today. But I particularly
17 want to thank those of you in the audience who took
18 the time out of your busy schedules to be here today
19 and share in our education process on these pieces of
20 legislation. So with that, Representative Millard, do
21 you have any closing comments?

22 REPRESENTATIVE MILLARD:

23 Just to echo your comments, Mr. Chairman,
24 I do thank everybody for their testimony and for being
25 here today. Thank you.

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CHAIR:

With that, we'll close the hearing.

Thank you.


* * * * *

HEARING CONCLUDED AT 3:00 P.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.



Court Reporter