

893

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the natural gas exploration and extraction liability act of 2011

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the natural gas exploration and extraction liability act of 2011.
3 S 2. Legislative findings. 1. The legislature finds that the process
4 used to stimulate natural gas extraction referred to as high volume
5 hydraulic fracturing, also known as "hydro fracturing" and "fracking,"
6 utilizes components that are often toxic, that are non-biodegradable,
7 and that are virtually impossible to remove once they enter the natural
8 environment. Among the chemicals used are volatile organic compounds
9 such as benzene, toluene, ethyl benzene, and xylene. Many of the chemi-
10 cals used in this process are federally listed hazardous substances, and
11 there is only minimal data about the rest. Many of these hazardous chem-
12 icals are known carcinogens and others can cause other life threatening
13 illnesses. As a result of the air and water pollution caused by such
14 exploration and extraction operations people are exposed to endocrine
15 disrupting agents that can cause kidney, liver, heart, blood, and brain
16 damage.
17 2. High volume hydraulic fracturing requires the construction of large
18 well pads (up to five acres) to support the large number of trucks
19 delivering the fracking chemicals, water trucks, pump trucks and other
20 equipment. Such massive scale industrial activity causes excessive
21 noise, disturbs underground water formations, vibrates surrounding
22 structures, and can result in earthquakes. Millions of gallons of this
23 chemically-laced water returns to the surface laden with salt, heavy
24 metals and radioactive elements. This wastewater is often stored in open
25 pits until transported for ultimate disposal. Wildlife and farm animals
26 that have mistaken these pits for freshwater ponds have been killed.
27 Chemicals may evaporate from these pits, contributing to air pollution.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 Leaks and spills of fracking chemicals from the trucks and waste pits
2 cause contamination of surface waters. The remainder of the fracking
3 fluid remains underground with the possibility of migrating or seeping
4 through fractures in the underground formations, cracks in the well-bore
5 casing, and through abandoned wells to pollute groundwater.

6 3. Widespread use of high volume hydraulic fracturing diminishes or
7 destroys the natural beauty of the land, depletes or interferes with the
8 natural sources of water used for domestic and agricultural purposes,
9 disrupts the natural habitat of wildlife, imposes unaffordable costs on
10 municipalities and reduces property values thereby harming both homeown-
11 ers and the municipalities in which such activities are located.

12 4. Tourism is a major industry for much of the Marcellus Shale area.
13 The construction and operation of natural gas wells in such area will
14 have a long term negative effect upon such industry that will result in
15 lost profits and diminished business value and lost revenue to the muni-
16 cipalities where such tourism ventures are located.

17 5. The natural gas industry has embarked upon the procurement in
18 unprecedented numbers of mineral leases from private landowners across a
19 broad section of New York state that overlays the "Marcellus Shale"
20 geological structure for the purpose of utilizing high volume hydraulic
21 fracturing to extract and mine natural gas from the shale. It is not
22 unusual for 40% or more of the land in such areas to be currently under
23 lease (although such land is owned by a small minority of landowners in
24 the region) and, accordingly, the industry is poised to secure billions
25 of dollars in profits from such extraction while potentially causing an
26 even greater amount of damage to non-participating land owners and
27 renters, as well as to municipalities and even visitors to the area.

28 6. The legislature further finds that the use of high volume hydraulic
29 fracturing techniques constitutes a hazardous practice that will result
30 in large scale damages to innocent parties.

31 7. The legislature further finds that landowners who, subsequent to
32 the effective date of this act, enter into or extend leases with natural
33 gas exploration, operation, transportation or extraction entities share
34 responsibility with such entities for all damages shown to be caused by
35 such activities and that all responsible parties be held strictly liable
36 for damages resulting from such activities.

37 S 3. Article 23 of the environmental conservation law is amended by
38 adding a new title 29 to read as follows:

39 TITLE 29

40 NATURAL GAS EXPORTATION AND EXTRACTION LIABILITY

41 SECTION 23-2901. DEFINITIONS.

42 23-2903. STRICT LIABILITY.

43 23-2905. JOINT AND SEVERAL LIABILITY.

44 23-2907. STANDING OF MUNICIPAL CORPORATIONS.

45 23-2909. ELEMENTS OF DAMAGES; TREBLE DAMAGES.

46 23-2911. ATTORNEY FEES.

47 S 23-2901. DEFINITIONS.

48 AS USED IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

49 1. "HIGH VOLUME HYDRAULIC FRACTURING" SHALL MEAN THE USE OF CHEMICALS,
50 WATER AND OTHER SUBSTANCES INJECTED OR PUMPED INTO A NATURAL GAS WELL TO
51 STIMULATE PRODUCTION OF THE WELL IN VOLUMES IN EXCESS OF ONE HUNDRED
52 THOUSAND GALLONS IN A CONTINUOUS TWENTY-FOUR HOUR PERIOD OR IN EXCESS OF
53 TWO HUNDRED FIFTY THOUSAND GALLONS IN ANY CONSECUTIVE THIRTY DAY PERIOD.

54 2. "PERSON" SHALL MEAN ANY INDIVIDUAL, ASSOCIATION, CORPORATION OR
55 OTHER ENTITY THAT ENGAGES IN NATURAL GAS EXPLORATION, DRILLING,
56 EXTRACTION OR TRANSPORTATION. THE TERM "PERSON" SHALL INCLUDE ANY INDI-

1 VIDUAL, ASSOCIATION, CORPORATION OR OTHER ENTITY THAT OWNS AN INTEREST
2 IN LAND THAT IS SUBJECT TO A LEASE OR OTHER GRANT THAT PERMITS SURFACE
3 RIGHTS, SUB-SURFACE RIGHTS OR BOTH SURFACE AND SUB-SURFACE RIGHTS FOR
4 THE PURPOSE OF NATURAL GAS EXPLORATION, DRILLING, OPERATION OR
5 EXTRACTION UNLESS SAID LEASE OR GRANT WAS EXECUTED PRIOR TO THE EFFEC-
6 TIVE DATE OF THIS TITLE.

7 S 23-2903. STRICT LIABILITY.

8 NATURAL GAS EXPLORATION, DRILLING, EXTRACTION BY USE OF HIGH VOLUME
9 HYDRAULIC FRACTURING TECHNIQUES AND TRANSPORTATION OF HYDROFRACTURING
10 CHEMICALS AND WASTE PRODUCTS, HAVING BEEN DEEMED HAZARDOUS ACTIVITIES BY
11 THE LEGISLATURE, ENTAIL STRICT LIABILITY ON THE PART OF ANY PERSON, AS
12 DEFINED IN THIS TITLE, THAT UNDERTAKES SUCH ACTIVITIES IN THE STATE.
13 NEITHER COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE, THE ISSUANCE OF
14 A PERMIT FOR SUCH ACTIVITIES NOR THE EXERCISES OF DUE CARE, SHALL EXCUSE
15 ANY SUCH PERSON FROM LIABILITY FOR PERSONAL, PROPERTY OR OTHER ELEMENTS
16 OF DAMAGE PURSUANT TO THIS TITLE DETERMINED TO BE CAUSED BY SUCH HAZARD-
17 OUS ACTIVITIES. DISTINCTIONS BETWEEN DIRECT AND CONSEQUENTIAL DAMAGE
18 SHALL NOT RELIEVE SUCH PERSON OF ABSOLUTE LIABILITY, SUCH PERSON'S
19 INTENT OR NEGLIGENCE FOR ANY PERSONAL, PROPERTY OR OTHER ELEMENT OF
20 DAMAGE PURSUANT TO THIS TITLE NOTWITHSTANDING.

21 S 23-2905. JOINT AND SEVERAL LIABILITY.

22 THE LIABILITY OF ANY PERSON AS DEFINED IN THIS TITLE SHALL BE JOINT
23 AND SEVERAL WITH THE LIABILITY OF ALL OTHER PERSONS FOUND LIABLE FOR
24 DAMAGES RESULTING FROM THE SAME INCIDENT, EVENT, NATURAL GAS OPERATION,
25 EXPLORATION OR EXTRACTION OR TRANSPORTATION ACTIVITY.

26 S 23-2907. STANDING OF MUNICIPAL CORPORATIONS.

27 FOR THE PURPOSES OF THIS TITLE, ALL MUNICIPAL CORPORATIONS, INCLUDING
28 SCHOOL DISTRICTS, SHALL HAVE STANDING TO PURSUE ALL LEGAL REMEDIES FOR
29 DAMAGES PURSUANT TO THIS TITLE.

30 S 23-2909. ELEMENTS OF DAMAGES; TREBLE DAMAGES.

31 1. IN ALL ACTIONS ARISING FROM THE PROVISIONS OF THIS TITLE, EVIDENCE
32 TENDING TO PROVE THE FOLLOWING ELEMENTS OF DAMAGES SHALL BE ADMISSIBLE:

33 A. PERSONAL INJURY AND WRONGFUL DEATH;

34 B. PROPERTY DAMAGE;

35 C. REDUCTION IN PROPERTY VALUE;

36 D. REDUCTION IN BUSINESS VALUE, LOSS OF PROFITS;

37 E. ALL OTHER DAMAGES CAUSED BY SUCH ACTIVITIES; AND

38 F. IN THE CASE OF MUNICIPAL CORPORATIONS:

39 (1) DAMAGE TO AND MAINTENANCE OF INFRASTRUCTURE;

40 (2) LOSS OF REVENUE DUE TO REAL PROPERTY TAX REDUCTIONS RESULTING FROM
41 SUCH EXPLORATION, DRILLING, EXTRACTION AND TRANSPORTATION ACTIVITIES;

42 (3) COSTS INCURRED BY EMERGENCY OPERATIONS NECESSITATED BY SUCH ACTIV-
43 ITIES; AND

44 (4) ALL OTHER DAMAGES CAUSED BY SUCH ACTIVITIES.

45 2. IN ANY ACTION ARISING PURSUANT TO THIS TITLE, IF THE TRIER OF FACT
46 DETERMINES THAT ANY DEFENDANT ACTED WILLFULLY, MALICIOUSLY OR WITH GROSS
47 NEGLIGENCE, THE COURT SHALL AWARD THREE TIMES THE AMOUNT OF DAMAGES
48 ESTABLISHED BY THE TRIER OF FACT.

49 S 23-2911. ATTORNEY FEES.

50 IN ANY ACTION ARISING PURSUANT TO THIS TITLE, A PLAINTIFF WHO HAS BEEN
51 AWARDED DAMAGES SHALL ALSO RECOVER REASONABLE ATTORNEY FEES AND EXPENSES
52 OF LITIGATION FROM THE DEFENDANTS, JOINTLY AND SEVERALLY.

53 S 4. This act shall take effect on the ninetieth day after it shall
54 have become a law.