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2011-2012 Regular Sessions

I N   S E N A T E

January 6, 2011

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Introduced by Sen. DUANE -- 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  
regulation of the drilling of natural gas resources

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

1     Section 1. Legislative intent. 1. The legislature finds that the proc-  
2     ess used to stimulate natural gas extraction referred to as hydraulic  
3     fracturing utilizes components that are often toxic, that are non-biode-  
4     gradable, and that are virtually impossible to remove once they enter  
5     the natural environment. Thus, they pose such a high level of environ-  
6     mental risk that the policy of the state must be to insure they are  
7     excluded from any area that is significant for public drinking water  
8     resources or any other area that is environmentally sensitive.  
9     2. Natural gas drilling is potentially highly transformative of rural  
10    landscapes, offering economic benefits to many landowners, but threaten-  
11    ing the property values of other local landowners, traditional rural  
12    economic activity, the carrying capacity of local infrastructure, the  
13    natural habitat of wildlife, and the public health and quality of life  
14    of residents in areas where there is natural gas extraction taking  
15    place. Unless these resources are protected in the permitting and regu-  
16    latory processes of the state, the costs of Marcellus shale natural gas  
17    extraction will exceed the benefits and natural gas extraction will  
18    become a fundamentally unfair and divisive process in which the profits  
19    of some are subsidized by the costs to others.  
20    3. The proposed scope of natural gas drilling across the state of New  
21    York will present unprecedented challenges of regulatory oversight.  
22    Funding for such oversight must be sufficient to meet this challenge and  
23    should come from a series of fees paid by the natural gas industry.  
24    Similarly, the natural gas industry should pay for all other costs asso-  
25    ciated with natural gas extraction. Otherwise, natural gas extraction

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

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1 will be unfairly subsidized, either by the New York state taxpayer or  
2 by the impacts on local human and natural resources.

3 4. One of the chief environmental and infrastructure assets of the  
4 state of New York is its drinking water systems, which play a fundamen-  
5 tal role in the economic productivity and public health of the state.  
6 The legislature finds that no risk to these resources and to the public  
7 health of their users is acceptable and that the policy of the state  
8 with respect to the management of shale gas extraction must be one of no  
9 drinking water risk.

10 5. The purpose of this legislation is to insure that the exploitation  
11 of shale natural gas resources is conducted in a manner that is consist-  
12 ent with and supportive of New York state's commitment to sustainabili-  
13 ty, and is consistent with other state economic development, energy and  
14 environmental policies.

15 6. Therefore, in light of the many commitments the state of New York  
16 has made to more sustainable development and the critical role greening  
17 the state's economy will play in the future prosperity of the state, the  
18 only acceptable natural gas extraction practices will be sustainable  
19 ones. This act is intended to ensure that that goal is met.

20 S 2. Article 23 of the environmental conservation law is amended by  
21 adding a new title 29 to read as follows:

22 TITLE 29

23 REGULATION OF NATURAL GAS DRILLING

24 SECTION 23-2901. NATURAL GAS DRILLING; PROHIBITION NEAR WATERSHED.

25 23-2903. DISCLOSURE OF HYDRAULIC FRACTURING MATERIALS.

26 23-2905. PROTECTION OF OTHER ENVIRONMENTAL RESOURCES.

27 23-2907. PROTECTION OF LOCAL RESOURCES.

28 23-2909. WATER WITHDRAWALS.

29 23-2911. ENFORCEMENT AND FINANCIAL SECURITY.

30 23-2913. OTHER PROVISIONS.

31 S 23-2901. NATURAL GAS DRILLING; PROHIBITION NEAR WATERSHED.

32 1. NATURAL GAS DRILLING SHALL NOT BE PERMITTED WITHIN THE NEW YORK  
33 CITY WATERSHED OR AT ANY POINT WITHIN FIVE MILES OF ITS BOUNDARY.

34 2. NATURAL GAS DRILLING SHALL NOT BE PERMITTED WITHIN THE WATERSHED OF  
35 THE DELAWARE RIVER, IN ANY RECHARGE AREA OF A SOLE SOURCE AQUIFER, IN  
36 ANY AREA WHERE GROUNDWATER CONTRIBUTES A SIGNIFICANT BASE FLOW TO  
37 SURFACE WATER SOURCES OF DRINKING WATER, AND IN ANY OTHER AREA WHERE THE  
38 DEPARTMENT SHALL FIND PRESENTS A SIGNIFICANT THREAT OF HYDRAULIC FRAC-  
39 TURING COMPOUNDS ENTERING INTO A SIGNIFICANT SOURCE OF DRINKING WATER.

40 3. NATURAL GAS DRILLING SHALL BE CONDUCTED IN WAYS THAT DO NOT CONTAM-  
41 INATE DRINKING WATER WELLS. IN ANY AREA WHERE NATURAL GAS DRILLING TAKES  
42 PLACE AND CONTAMINATION OF INDIVIDUAL DRINKING WATER WELLS OCCURS, THERE  
43 SHALL BE A PRESUMPTION THAT THE NATURAL GAS DRILLING IS RESPONSIBLE FOR  
44 SUCH CONTAMINATION UNLESS THE NATURAL GAS DRILLER CAN SHOW, BY CLEAR AND  
45 CONVINCING EVIDENCE, THAT SUCH DRILLER IS NOT THE SOURCE OF THE CONTAM-  
46 INATION. UPON RECEIVING A REPORT OF AN INCIDENT OF WELL CONTAMINATION  
47 FROM NATURAL GAS DRILLING, THE DEPARTMENT SHALL INVESTIGATE SUCH REPORT  
48 WITHIN TWENTY-FOUR HOURS AND SHALL HAVE THE AUTHORITY TO ORDER IMMEDIATE  
49 REMEDIAL ACTION, INCLUDING ISSUING IMMEDIATE CEASE AND DESIST ORDERS  
50 WITH RESPECT TO THE DRILLING ACTIVITY. IN THE EVENT THAT THE DEPARTMENT  
51 IS UNABLE TO INVESTIGATE SUCH REPORT WITHIN TWENTY-FOUR HOURS, IT MAY  
52 REQUEST THAT LOCAL OR STATE POLICE AUTHORITIES CONFIRM THE INCIDENT AND  
53 REPORT AND, IF CONFIRMED, SHALL ISSUE A CEASE AND DESIST ORDER TO SUCH  
54 DRILLER UNTIL IT SHALL MAKE SUCH INVESTIGATION AND DETERMINE THE PROPER  
55 COURSE OF INSURING FULL REMEDIATION.

1 4. ANY SPILLS OR PROHIBITED DISCHARGES OF HYDRAULIC FRACTURING  
2 COMPOUNDS SHALL BE IMMEDIATELY REPORTED BY THE NATURAL GAS DRILLER TO  
3 THE DEPARTMENT, WHICH SHALL ESTABLISH PROCEDURES FOR RECORDING AND  
4 REVIEWING SUCH REPORTS AND FOR ORDERING REMEDIAL ACTION TO CONTAIN THE  
5 SPILL AND KEEP THE SPILL OR DISCHARGE INCIDENT FROM BEING REPEATED. THE  
6 DEPARTMENT SHALL HAVE THE AUTHORITY TO IMPOSE FINES FOR FAILURE TO  
7 REPORT SUCH INCIDENTS, TO ORDER IMMEDIATE CLEANUP OF SUCH SPILLS AT THE  
8 EXPENSE OF SUCH DRILLER AND, SHOULD SUCH DRILLER FAIL TO DO SO IN A  
9 TIMELY FASHION, TO ENTER INTO THE DRILLING AREA AND DO THE CLEANUP  
10 ITSELF, AT THE EXPENSE OF SUCH DRILLER. IN ANY INSTANCE WHERE SUCH DRIL-  
11 LER SHALL REFUSE TO CARRY OUT A DEPARTMENT CLEANUP OR REMEDIAL ACTION  
12 ORDER IN A TIMELY AND APPROPRIATE MANNER, THE DEPARTMENT SHALL ORDER ALL  
13 DRILLING ACTIVITY TO CEASE AND DESIST UNTIL SUCH TIME AS THE SPILL HAS  
14 BEEN CLEANED UP AND SUCH DRILLER HAS REMEDIATED THE CONDITIONS OR PRAC-  
15 TICES THAT CAUSED THE SPILL.

16 5. ANY DRILLER OF NATURAL GAS WHO KNOWINGLY ATTEMPTS TO COVER UP A  
17 SPILL OR PROHIBITED DISCHARGE SHALL BE GUILTY OF A CLASS A MISDEMEANOR.  
18 ANY DRILLER OF NATURAL GAS WHO KNOWINGLY DISCHARGES HYDRAULIC FRACTURING  
19 COMPOUNDS INTO THE SURFACE WATERS OF THE STATE SHALL BE GUILTY OF A  
20 CLASS E FELONY.

21 6. NOTHING IN THIS TITLE OR ANY OTHER LAW OR REGULATION SHALL ALTER,  
22 LIMIT, IMPAIR OR OTHERWISE AFFECT THE AUTHORITY OF THE STATE OF NEW  
23 YORK, OR THE AUTHORITY OF THE CITY OF NEW YORK IN THE NEW YORK CITY  
24 WATERSHED, TO TAKE WHATEVER MEASURES ARE NECESSARY UNDER THE LAW TO  
25 PROTECT THE QUALITY AND SAFETY OF THE SOURCES OF THE DRINKING WATERS OF  
26 NEW YORK STATE.

27 S 23-2903. DISCLOSURE OF HYDRAULIC FRACTURING MATERIALS.

28 1. ALL COMPONENTS OF HYDRAULIC FRACTURING MATERIALS SHALL BE DISCLOSED  
29 TO THE DEPARTMENT AT THE TIME OF APPLICATION FOR A WELL PERMIT FOR THE  
30 DRILLING OF NATURAL GAS PURSUANT TO THIS ARTICLE.

31 (A) EMERGENCY HEALTH SITUATION. WHEN A HEALTH PROFESSIONAL DETERMINES  
32 THAT A MEDICAL EMERGENCY EXISTS RELATED TO A HYDRAULIC FRACTURING OPERA-  
33 TION AND THE INGREDIENTS AND SPECIFIC CHEMICAL IDENTITY OF A HYDRAULIC  
34 FRACTURING FLUID IS NECESSARY FOR EMERGENCY OR FIRST-AID TREATMENT, THE  
35 HYDRAULIC FRACTURING OPERATOR SHALL IMMEDIATELY DISCLOSE THE SPECIFIC  
36 CHEMICAL IDENTITY OF A TRADE SECRET CHEMICAL TO THE TREATING HEALTH  
37 PROFESSIONAL, REGARDLESS OF THE EXISTENCE OF A WRITTEN STATEMENT OF NEED  
38 OR A CONFIDENTIALITY AGREEMENT.

39 (B) NON-EMERGENCY HEALTH SITUATION. WHEN A HEALTH PROFESSIONAL OR  
40 GOVERNMENT AGENCY DETERMINES THAT THE INGREDIENTS AND SPECIFIC CHEMICAL  
41 IDENTITY OF A HYDRAULIC FRACTURING FLUID ARE NECESSARY FOR MEDICAL  
42 TREATMENT, AN OPERATOR SHALL DISCLOSE A SPECIFIC CHEMICAL IDENTITY TO A  
43 HEALTH PROFESSIONAL OR GOVERNMENT AGENCY IF A REQUEST HAS BEEN MADE IN  
44 WRITING THAT DESCRIBES WITH REASONABLE DETAIL ONE OR MORE HEALTH OR  
45 SAFETY NEEDS FOR THE INFORMATION AND INCLUDES A DESCRIPTION OF THE  
46 PROCEDURES TO BE USED TO MAINTAIN THE CONFIDENTIALITY OF THE DISCLOSED  
47 INFORMATION. THE HEALTH PROFESSIONAL OR GOVERNMENT AGENCY SHALL AGREE IN  
48 A WRITTEN CONFIDENTIALITY AGREEMENT THAT THE TRADE SECRET INFORMATION  
49 WILL NOT BE USED FOR ANY PURPOSE OTHER THAN THE HEALTH NEEDS ASSERTED  
50 AND SHALL AGREE NOT TO RELEASE THE INFORMATION UNDER ANY CIRCUMSTANCES  
51 OTHER THAN TO A HEALTH PROFESSIONAL OR GOVERNMENT AGENCY.

52 2. NO NATURAL GAS DRILLER MAY CHANGE THE COMPONENTS OR COMPOSITION OF  
53 HYDRAULIC FRACTURING MATERIALS FROM THOSE SPECIFIED IN ITS PERMIT APPLI-  
54 CATION WITHOUT FIRST FILING FOR AND RECEIVING A MODIFICATION OF SUCH  
55 PERMIT.

1 3. THE DEPARTMENT SHALL ESTABLISH A STANDARD FOR THE COMPOSITION OF  
2 HYDRAULIC FRACTURING COMPOUNDS AND REQUIRE NATURAL GAS DRILLERS TO USE  
3 SUCH STANDARD. THE DEPARTMENT SHALL HAVE THE POWER TO PROHIBIT THE USE  
4 OF SPECIFIC CHEMICALS IN THE COMPOSITION OF HYDRAULIC FRACTURING MATERI-  
5 ALS.

6 4. HYDRAULIC FRACTURING LIQUIDS AND LIQUID WASTE FROM DRILLING MAY NOT  
7 BE STORED IN OPEN LAGOONS, BUT MUST BE KEPT IN CORROSION PROOF TANKS.

8 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR ADMINISTRATIVE DETER-  
9 MINATION, HYDRAULIC FRACTURING MATERIAL SHALL BE REGARDED AS HAZARDOUS  
10 WASTE AND TREATED AND DISPOSED OF AS SUCH.

11 6. THE DEPARTMENT SHALL ISSUE REGULATIONS REQUIRING THE TRACKING OF  
12 ALL CHEMICAL COMPONENTS OF HYDRAULIC FRACTURING MATERIALS AND SHALL HAVE  
13 THE POWER TO ENFORCE SUCH REGULATIONS BY APPROPRIATE FINES AND CEASE AND  
14 DESIST ORDERS.

15 S 23-2905. PROTECTION OF OTHER ENVIRONMENTAL RESOURCES.

16 1. DRILLERS OF NATURAL GAS SHALL BE RESPONSIBLE FOR MITIGATING ALL  
17 DAMAGE TO ANY REGULATED ENVIRONMENTAL RESOURCES, INCLUDING BUT NOT  
18 LIMITED TO AIR, WETLANDS, STREAM CORRIDORS, AND ENDANGERED AND THREAT-  
19 ENED SPECIES HABITAT.

20 2. WELL PERMITS FOR THE DRILLING OF NATURAL GAS SHALL NOT BE GRANTED  
21 IN ANY AREA WHERE SUCH DRILLING SHALL ADVERSELY IMPACT THE RECOVERY OF  
22 THREATENED OR ENDANGERED SPECIES OR WHERE IT SHALL DESTROY OR DEGRADE  
23 OTHER UNIQUE NATURAL OR SCENIC RESOURCES. WELL PERMITS FOR THE DRILLING  
24 OF NATURAL GAS SHALL NOT BE GRANTED IN ANY AREA THAT IS DESIGNATED AS  
25 FOREVER WILD UNDER THE STATE CONSTITUTION OR LAWS, IN STATE PARKS, IN  
26 AREAS IDENTIFIED FOR STATE ACQUISITION AND/OR PROTECTION UNDER THE STATE  
27 OPEN SPACE PLAN, OR IN STATE FORESTS AND STATE PARKS.

28 3. APPLICATIONS FOR A WELL PERMIT FOR THE DRILLING OF NATURAL GAS  
29 SHALL INCLUDE AN ASSESSMENT OF ITS IMPACT ON LOCAL BIODIVERSITY  
30 RESOURCES AND A SHOWING THAT SUCH DRILLING SHALL BE WITHIN THE LEASEHOLD  
31 AT THE LOWEST IMPACT POINT ON WILDLIFE. TO MINIMIZE IMPACT THROUGH  
32 EITHER GROUND DISTURBANCE OR TRAFFIC, ALL EFFORTS SHALL BE MADE TO CLUS-  
33 TER WELLS, CENTRALIZE OPERATIONS, AND USE TELEMETRY. IF NECESSARY,  
34 SEASONAL RESTRICTIONS SHALL BE IMPOSED TO PROTECT WILDLIFE BREEDING OR  
35 MIGRATION.

36 4. APPLICATIONS FOR A WELL PERMIT FOR THE DRILLING OF NATURAL GAS  
37 SHALL LIST ALL EXPECTED EMISSIONS OF AIR POLLUTANTS, INCLUDING, BUT NOT  
38 LIMITED TO, ALL GREENHOUSE GASES SUCH AS METHANE. THE DEPARTMENT SHALL  
39 HAVE THE AUTHORITY TO SPECIFY LIMITS ON ALL SUCH AIR EMISSIONS AS A  
40 CONDITION OF GRANTING SUCH PERMIT, TO REQUIRE APPROPRIATE EMISSIONS  
41 MONITORING AND CONTROLS BY THE OPERATOR, AND TO DENY ANY PERMIT WHOSE  
42 OPERATION SHALL BE INCONSISTENT WITH STATE POLICY AND REGULATIONS WITH  
43 RESPECT TO ADDRESSING GLOBAL WARMING.

44 S 23-2907. PROTECTION OF LOCAL RESOURCES.

45 1. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO IMPOSE FEES TO COMPEN-  
46 SATE LOCAL GOVERNMENT FOR ANY COSTS OR IMPACTS IMPOSED UPON SUCH GOVERN-  
47 MENTS AS A RESULT OF DRILLING FOR NATURAL GAS.

48 2. THE DEPARTMENT, IN ITS PERMITTING DECISIONS, SHALL TAKE CARE TO  
49 INSURE THAT NATURAL GAS WELLS ARE SITUATED IN WAYS THAT MAXIMIZE FIELD  
50 PRODUCTIVITY WHILE MINIMIZING IMPACTS ON THE LANDSCAPE. FOR THIS  
51 PURPOSE, THE DEPARTMENT MAY, WITHIN SPECIFIC REGIONAL AREAS, ESTABLISH  
52 PROCEDURES TO REQUIRE PERIODIC BATCH PROCESSING OF PERMIT APPLICATIONS,  
53 INCLUDING MANDATORY DATES FOR APPLICATION SUBMISSION, AND MAY IMPOSE  
54 WELL CLUSTERING, CENTRALIZED OPERATIONS, AND THE USE OF TELEMETRY.

55 3. ALL SITING OF NATURAL GAS DRILLING ACTIVITY SHALL CONFORM TO LOCAL  
56 ZONING.

1 4. ANY PERMIT HOLDER SHALL BE REQUIRED, AT THE END OF ITS DRILLING  
2 OPERATIONS, TO FULLY RESTORE THE DRILL SITE TO ITS PREVIOUS NATURAL  
3 CONDITION. TO ENFORCE THE PROVISIONS OF THIS SUBDIVISION, BEFORE ANY  
4 LAND CLEARING OPERATIONS RELATED TO DRILLING ARE COMMENCED, SUCH PERMIT  
5 HOLDER SHALL FILE WITH THE DEPARTMENT, A NON-REVOCABLE AND BANKRUPTCY  
6 PROOF BOND SUFFICIENT, UNDER REGULATIONS TO BE ISSUED BY THE DEPARTMENT,  
7 TO COVER ALL FORESEEABLE COSTS OF SITE RESTORATION.

8 5. GAS DRILLING OPERATIONS SHALL BE CONDUCTED IN A MANNER THAT SHALL  
9 NOT BURDEN ADJACENT LANDOWNERS AND RESIDENTS. NO NOISE AUDIBLE INDOORS  
10 IN RESIDENCES LOCATED ON ADJACENT PROPERTY SHALL BE PERMITTED BETWEEN  
11 THE HOURS OF 8:00 PM AND 8:00 AM ON WEEKDAYS AND 6:00 PM AND 10:00 AM ON  
12 WEEKENDS. SIMILARLY, NIGHT LIGHTING SHALL NOT BE OBTRUSIVE OR DISRUPTIVE  
13 OF LIFE FOR SUCH ADJACENT LANDOWNERS AND RESIDENTS. THE DEPARTMENT SHALL  
14 ENFORCE THE PROVISIONS OF THIS SUBDIVISION BY APPROPRIATE REGULATIONS  
15 INCLUDING A SYSTEM OF FINES, AND SHALL FURTHER HAVE THE POWER TO ISSUE  
16 CEASE AND DESIST ORDERS TO ENFORCE THESE PROTECTIONS AND PROTECT THE  
17 QUIET ENJOYMENT OF LOCAL RESIDENTS.

18 6. LANDOWNERS FORCED INTO A PRODUCTION POOL SHALL BE ENTITLED TO  
19 RECEIVE THE HIGHEST PAYMENT THAT ANY OTHER POOL MEMBER RECEIVES.

20 7. ANY LANDOWNER WHO ENTERS INTO A CONTRACT OR LEASE TO PERMIT THE  
21 DRILLING FOR NATURAL GAS ON SUCH LANDOWNER'S PROPERTY SHALL HAVE A THIR-  
22 TY DAY RIGHT OF RECISSION WITH RESPECT TO SUCH CONTRACT. DURING SUCH  
23 THIRTY DAY PERIOD, SUCH LANDOWNER MAY CANCEL SUCH CONTRACT OR LEASE AT  
24 ANY TIME WITHOUT PENALTY.

25 8. NO WELL PERMIT FOR THE DRILLING OF NATURAL GAS SHALL BE GRANTED FOR  
26 A PERIOD LONGER THAN TEN YEARS. ANY PERMIT UNDER WHICH ACTUAL NATURAL  
27 GAS EXTRACTION IS NOT UNDERTAKEN WITHIN FIVE YEARS SHALL EXPIRE AND BE  
28 DEEMED NULL AND VOID.

29 9. THE DEPARTMENT, IN CONSULTATION WITH THE ATTORNEY GENERAL, SHALL  
30 ISSUE GUIDANCE DOCUMENTS TO LANDOWNERS, WITH RESPECT TO THEIR RIGHTS  
31 WITH RESPECT TO NATURAL GAS DRILLING CONTRACTS AND LEASES. THE DEPART-  
32 MENT IS HEREBY AUTHORIZED TO REQUIRE STANDARD PROVISIONS IN SUCH  
33 CONTRACTS OR LEASES IN ORDER TO PREVENT UNFAIR TREATMENT OF LANDOWNERS.

34 10. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NATURAL GAS DRILLERS  
35 SHALL BE RESPONSIBLE FOR THE COSTS OF ALL ENVIRONMENTAL DAMAGE WHICH  
36 OCCURRED IN THE PROCESS OF DRILLING FOR AND EXTRACTING NATURAL GAS. THE  
37 DEPARTMENT MAY REQUIRE THE PROVISION OF APPROPRIATE FINANCIAL SECURITY  
38 TO ENSURE LANDOWNERS ARE PROTECTED FROM ANY CONTINGENT LIABILITY. SHOULD  
39 DRILLING ACTIVITY LEAD TO DESIGNATION AS A BROWNFIELD SITE, AS DEFINED  
40 IN SUBDIVISION TWO OF SECTION 27-1405 OF THIS CHAPTER, SUCH DRILLER, NOT  
41 THE LANDOWNER, SHALL BE CONSIDERED TO BE PARTY IN THE CHAIN OF RESPONSI-  
42 BILITY.

43 S 23-2909. WATER WITHDRAWALS.

44 ALL SURFACE OR GROUNDWATER WITHDRAWALS OF MORE THAN FIVE THOUSAND  
45 GALLONS A DAY FOR NATURAL GAS DRILLING PURPOSES, OR MORE THAN ONE  
46 PERCENT OF IN STREAM FLOW, SHALL REQUIRE A PERMIT FROM THE DEPARTMENT.  
47 THE DEPARTMENT SHALL ISSUE REGULATIONS GOVERNING SUCH WITHDRAWALS,  
48 INCLUDING PROVISIONS TO ASSURE THAT WATER WITHDRAWALS ARE LIMITED TO  
49 LEVELS THAT DO NOT HARM STREAM ECOLOGY OR FISHERY RESOURCES.

50 S 23-2911. ENFORCEMENT AND FINANCIAL SECURITY.

51 1. NO PERMIT FOR THE DRILLING OF NATURAL GAS SHALL BE GRANTED IF SUCH  
52 APPLICANT HAS FAILED TO MEET HIS ENVIRONMENTAL AND FINANCIAL OBLIGATIONS  
53 UNDER A PREVIOUS PERMIT OR IF SUCH APPLICANT HAS UNPAID FINANCIAL  
54 LIABILITIES TO EITHER THE STATE, A LOCAL GOVERNMENT OR A PRIVATE LAND-  
55 OWNER.

2. IN DETERMINING WHETHER OR NOT A PERMIT FOR THE DRILLING OF NATURAL GAS SHALL BE GRANTED, THE DEPARTMENT SHALL CONSIDER THE PRIOR RECORD UNDER PREVIOUS PERMITS OF THE APPLICANT. APPLICANTS WHO HAVE SHOWN A PATTERN OF VIOLATION OF PERMIT CONDITIONS OR A LACK OF A PROPER STANDARD OF CARE IN DRILLING OPERATIONS SHALL NOT BE GRANTED A PERMIT.

3. A PERMIT FOR THE DRILLING OF NATURAL GAS SHALL INCLUDE APPLICABLE LEASE DOCUMENTS BETWEEN THE DRILLING COMPANY AND THE LANDOWNER OR LANDOWNERS FOR THE DRILLING SITE FOR WHICH THE APPLICATION IS MADE.

4. A PERMIT APPLICATION SHALL INCLUDE A COMPREHENSIVE HYDROLOGICAL ASSESSMENT OF THE SUBSURFACE STRATA INCLUDING THE POTENTIAL FOR ANY FISSURING THAT WOULD DRAW HYDRAULIC FRACTURING FLUID, NATURAL GAS OR OTHER POLLUTANTS INTO WATER BEARING AQUIFER STRATA.

5. THE DEPARTMENT SHALL PROVIDE FOR UNANNOUNCED INSPECTIONS OF ALL NATURAL GAS DRILLING SITES AND FOR THE PROVISION OF SOIL TESTING TO DETERMINE THE PRESENCE OF UNREPORTED SPILLS.

6. THE DEPARTMENT SHALL REQUIRE THAT ALL CASING CONSTRUCTION BE CARRIED OUT IN THE PRESENCE OF INDEPENDENT QUALITY CONTROL ENGINEERS. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO SPECIFY STANDARDS FOR CASING CONSTRUCTION, INCLUDING COMPOSITION OF CONCRETE AND OTHER TECHNICAL PARAMETERS FOR DEEP WELL CONSTRUCTION TO INSURE MAXIMUM CASING INTEGRITY AND PREVENT LEAKAGE OF HYDRAULIC FRACTURING COMPOUNDS, NATURAL GAS AND OTHER SUBSURFACE MATERIALS INTO WATER BEARING STRATA. THE DEPARTMENT SHALL, OVER THE LIFE OF THE WELL, CARRY OUT PERIODIC INSPECTIONS TO ENSURE THAT CASING INTEGRITY IS MAINTAINED.

S 23-2913. OTHER PROVISIONS.

1. THE STATE COMPTROLLER SHALL ANNUALLY AUDIT ALL ROYALTY PAYMENTS TO THE STATE AND LOCAL GOVERNMENTS, INCLUDING THE GAS PRODUCTION AND SALES FIGURES ON WHICH THEY ARE BASED, AND SHALL HAVE THE AUTHORITY TO REQUIRE APPROPRIATE FISCAL REPORTING AND RECORD KEEPING BY BOTH NATURAL GAS PRODUCERS AND OTHER DEPARTMENTS OF STATE GOVERNMENT CHARGED WITH THEIR SUPERVISION.

2. THE STATE COMPTROLLER SHALL HAVE THE AUTHORITY TO PERIODICALLY AUDIT PAYMENTS MADE UNDER DRILLING CONTRACTS AND LEASES TO PRIVATE LANDOWNERS, INCLUDING THE GAS PRODUCTION AND SALES FIGURES ON WHICH THEY ARE BASED, TO DETERMINE THAT THEY ARE IN COMPLIANCE WITH THE PROVISIONS OF THE CONTRACT OR LEASE AND ALL APPLICABLE LAWS.

3. THE DEPARTMENT SHALL ESTABLISH AN IMPARTIAL TECHNICAL ADVISORY COMMITTEE, WHOSE RESEARCH AND WORK SHALL BE SUPPORTED BY PERMIT FEES, TO REVIEW AND ISSUE GUIDANCE DOCUMENTS ON GAS DRILLING BEST PRACTICES. SUCH COMMITTEE SHALL INCLUDE AT LEAST ONE REPRESENTATIVE FROM THE FOLLOWING INTEREST GROUPS: THE ENVIRONMENTAL COMMUNITY; THE PUBLIC HEALTH COMMUNITY; AND THE GAS DRILLING INDUSTRY, ALONG WITH PERSONS FROM THE DEPARTMENT OR OTHERS THE DEPARTMENT DEEMS APPROPRIATE. THE DEPARTMENT MAY REQUIRE COMPLIANCE WITH SUCH PRACTICES AS A CONDITION OF PERMIT APPROVAL.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made and completed on or before such date.