

846--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. LIFTON, GLICK, O'DONNELL, GOTTFRIED, MILLER, MILLMAN, SCHIMEL, COLTON, ROSENTHAL, KAVANAGH, ABINANTI, TITONE -- Multi-Sponsored by -- M. of A. COOK, MARKEY, WEISENBERG -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the natural gas exploration and extraction liability act of 2014

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 2014.
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

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

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1 equipment. Such massive scale industrial activity causes excessive
2 noise, disturbs underground water formations, vibrates surrounding
3 structures, and can result in earthquakes. Millions of gallons of this
4 chemically-laced water returns to the surface laden with salt, heavy
5 metals and radioactive elements. This wastewater is often stored in open
6 pits until transported for ultimate disposal. Wildlife and farm animals
7 that have mistaken these pits for freshwater ponds have been killed.
8 Chemicals may evaporate from these pits, contributing to air pollution.
9 Leaks and spills of fracking chemicals from the trucks and waste pits
10 cause contamination of surface waters. The remainder of the fracking
11 fluid remains underground with the possibility of migrating or seeping
12 through fractures in the underground formations, cracks in the well-bore
13 casing, and through abandoned wells to pollute groundwater.

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

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

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

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

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

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

47 TITLE 29

48 NATURAL GAS EXPLORATION AND EXTRACTION LIABILITY

49 SECTION 23-2901. DEFINITIONS.

50 23-2903. STRICT LIABILITY.

51 23-2905. JOINT AND SEVERAL LIABILITY.

52 23-2907. STANDING OF MUNICIPAL CORPORATIONS.

53 23-2909. ELEMENTS OF DAMAGES; TREBLE DAMAGES.

54 23-2911. ATTORNEY FEES.

55 S 23-2901. DEFINITIONS.

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

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

6 2. "PERSON" SHALL MEAN ANY INDIVIDUAL, ASSOCIATION, CORPORATION OR
7 OTHER ENTITY THAT ENGAGES IN NATURAL GAS EXPLORATION, DRILLING,
8 EXTRACTION OR TRANSPORTATION. THE TERM "PERSON" SHALL INCLUDE ANY INDI-
9 VIDUAL, ASSOCIATION, CORPORATION OR OTHER ENTITY THAT OWNS AN INTEREST
10 IN LAND THAT IS SUBJECT TO A LEASE OR OTHER GRANT THAT PERMITS SURFACE
11 RIGHTS, SUB-SURFACE RIGHTS OR BOTH SURFACE AND SUB-SURFACE RIGHTS FOR
12 THE PURPOSE OF NATURAL GAS EXPLORATION, DRILLING, OPERATION OR
13 EXTRACTION UNLESS SAID LEASE OR GRANT WAS EXECUTED PRIOR TO THE EFFEC-
14 TIVE DATE OF THIS TITLE.

15 S 23-2903. STRICT LIABILITY.

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

29 S 23-2905. JOINT AND SEVERAL LIABILITY.

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

34 S 23-2907. STANDING OF MUNICIPAL CORPORATIONS.

35 FOR THE PURPOSES OF THIS TITLE, ALL MUNICIPAL CORPORATIONS, INCLUDING
36 SCHOOL DISTRICTS, SHALL HAVE STANDING TO PURSUE ALL LEGAL REMEDIES FOR
37 DAMAGES PURSUANT TO THIS TITLE.

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

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

41 A. PERSONAL INJURY AND WRONGFUL DEATH;

42 B. PROPERTY DAMAGE;

43 C. REDUCTION IN PROPERTY VALUE;

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

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

46 F. IN THE CASE OF MUNICIPAL CORPORATIONS:

47 (1) DAMAGE TO AND MAINTENANCE OF INFRASTRUCTURE;

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

50 (3) COSTS INCURRED BY EMERGENCY OPERATIONS NECESSITATED BY SUCH ACTIV-
51 ITIES; AND

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

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

1 S 23-2911. ATTORNEY FEES.

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

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