

DRAFT — AUGUST 2011 — DRAFT

SUMMARY: Amends the penal code to criminalize hydraulic fracturing, or fracking, and related activity, and to subject all persons, corporations and government entities that engage in fracking and related activity to criminal penalties.

Sponsors:

This bill was conceived and drafted by SPAN (Sovereign People’s Action Network of Ulster and Green Counties — (Mark DeNat, Mary Finneran, Richard Grossman, Linda Leeds, Mary MacArthur, Joan Walker-Wasylyk, Jay Wenk) with Carl Arnold, Kate Bartholomew, Gusti Bogok, Suzannah Glidden, Richard Grossman, Jack Ossont and Maura Stephens, representing themselves and several groups from around New York State)

BILL TEXT:

STATE OF NEW YORK

2011–2012 Regular Sessions

IN ASSEMBLY/SENATE

September __, 2011

Multi-Sponsored by:

Introduced by:

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The People of the State of New York declare that use of fracking technology for the purpose of extracting “natural” gas, oil or water, or for any other purpose is destructive to public health; is destructive to the environment, community, economic stability and jobs; is destructive to representative government; and is destructive to the fundamental integrity of the body politic.

Section 2. Definitions

§2a. The term “hydraulic fracturing,” or “fracking,” means all the processes involved in mapping, exploring, developing, drilling, extracting, disposing, processing, storing and distributing fossil fuels via hydraulic-fracture drilling. Fracking shall also include any water extraction used for these processes, and all shipping or disposing of solid or fluid wastes or residues from these processes.

§2b. The term “corporation” means a legal fiction, an artificial entity created under the laws of New York State or another state of the United States, or under the laws of another nation, that is operating in New York State. This term includes any limited partnership, limited liability partnership, business trust or limited liability company organized under the laws of this State or any state of the United States or under the laws of any other nation, and any other business entity that possesses New York State-conferred limited liability attributes for its shareholders.

“Corporation” also applies to any business entity in which one or more owners or partners is a corporation or other artificial entity in law that limits shareholder liability for corporate debt, harm and culpability.

“Corporation” also applies to all categories of nonprofit, not-for-profit and municipal corporations as well as all authorities and commissions.

Section 3. Declaration. The people of New York State, to protect the health, safety and welfare of all species, including humans, along with the lands, waters, communities and economies of New York; to protect existing industry, businesses and jobs; and to ensure the viability of industry, businesses and jobs in the future, declare fracking, and all activities that enable or are related to fracking, to be criminal offenses.

Section 4. Statement of Law. A human person, a legal-fiction corporation or other entity is guilty of the crime of fracking if he, she or it

§4a. spends money or arrays technical equipment to locate, study or extract oil, gas or water through fracking from anywhere in New York State.

§4b. imports fracking-related materials, including fracking wastes, into the State.

§4c. withdraws water from New York State surface water or groundwater for use with fracking in New York State, or for use with fracking in any other state, territory or country.

§4d. owns, possesses or transports fracking paraphernalia anywhere in New York State.

§4e. advertises, markets or disseminates fracking-related information to the public or to public officials by print, electronic or oral means, or pays others to do so.

Section 5. Application of law to entities other than human persons and legal-fiction corporations. This law also applies to any New York State or local government entity, agency, instrumentality or official (elected or appointed), including members of the State judiciary.

Section 6. Penalties

§6a. It shall be a Class C felony for any person, corporation or syndicate, State entity or State employee (elected or appointed) to engage in fracking. Any person found guilty of fracking shall be sentenced to imprisonment and made to pay a monetary fine. Any corporation found guilty of fracking shall be subject to penalty as described in Section 7. The prison term shall be fixed by the court and shall not be less than five years or greater than twenty years. The minimum period must be fixed by the court and specified in the sentence. In no instance shall the monetary fine be less than one million US dollars per violation of this law.

§6b. Article 80 of the penal code ("Fines"), Section 80.00 "Fine for felony," shall be added to as follows:

"1.c.(v) for Class C felony convictions of 'Fracking' and 'Fracking-related activity,' the minimum fine for individuals is one million dollars for each offense."

Section 80.10 "Fines for corporations" shall be added to as follows:

"4. Corporate officers and board members convicted of felony 'Fracking' and 'Fracking-related activity' shall be fined a minimum of one million dollars each for each offense."

§6c. A separate offense shall arise for each day or portion thereof in which any violation of this law occurs, and for each section of this law that is found to be violated.

Section 7. Culpability of corporate officers and directors

§7a. If a corporation of any classification is found guilty of fracking and/or related activity, a court shall assume that all members of the corporation's board of directors (or otherwise-labeled governing board) and the CEO, CFO, president and all vice presidents possessed full knowledge of the crime and are guilty of willful intent. Therefore all members of the board of directors and the abovementioned officers must be found guilty of complicity and of criminal negligence, sentenced to imprisonment and fined at least the minimum amount of one million US dollars each for each offense as specified in this law.

§7b. New York State corporations. If any corporation of any description that has been chartered in New York State is found guilty of fracking or any fracking-related activity, the New York State Attorney General shall immediately begin proceedings to revoke that corporation's charter.

§7c. Corporations chartered outside New York State. If any corporation of any description that has been chartered in another state or nation is found guilty of fracking or fracking-related activity in New York State, the New York State Attorney General shall immediately begin proceedings to revoke said corporation's authority to do business within New York State and to seize all assets this corporation may have within New York State, which will be sold at auction, with proceeds going to the New York State treasury.

§7d. Government employees, agents or representatives. Any employee, agent or representative of any State entity, agency or instrumentality, or any municipality, town, city, or county entity, agency, instrumentality, authority or commission, or official (elected or appointed) that is found guilty of enabling, assisting or encouraging fracking or related activity anywhere within the State of New York shall be liable to the party or parties injured and shall be responsible for paying compensatory and punitive damages, and all costs of litigation.

Section 8. Severability

The provisions of this law are severable. If any section, sentence, part or provision shall be held illegal, invalid or unconstitutional, such a holding shall not affect, impair or invalidate other sections, clauses, sentences, parts or provisions of this law.

Section 9. Charge to New York State officials

Should this law be challenged in New York State or United States courts, New York State elected and appointed officials shall defend this law with diligence, vigor, persistence and determination on behalf of the people of New York State. In such defense, they shall draw upon New York State's financial resources and reserves, and upon the people of New York State's deep human expertise in law, history, jurisprudence and trial defense. The State shall appeal all trial losses to the next highest court, and persist in appeals up to the highest court in the land. The Attorney General of New York State shall consult with grassroots fracking-opposition groups on strategy, tactics and crucial decisions in execution of the defense of this law.