

New York Public Law #1
DRAFT — June 2014 — DRAFT

This bill was conceived and drafted May 2011 by SPAN (Sovereign People’s Action Network of Ulster and Greene Counties) — Mark DeNat, Mary Finneran, Richard Grossman, Linda Leeds, Mary MacArthur, Joan Walker-Wasylyk, and Jay Wenk — with Carl Arnold, Kate Bartholomew, Gusti Bogok, Suzannah Glidden, Jack Ossont, and Maura Stephens representing themselves and several grassroots groups, joining together as FBNY (FrackBustersNY) in August 2011. It was redrafted July 2012, January 2013 and June 2014.

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

Sponsors:

BILL TEXT:
STATE OF NEW YORK

2014–2015 Regular Sessions
IN ASSEMBLY/SENATE
_____, 2014

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 hydraulic fracturing technology for the purpose of extracting “natural” gas (methane), oil, or other carbon fuels is destructive to public health, to the environment, to communities, to economic stability and jobs, to representative government, and to the fundamental integrity of the body politic.

Section 2 Definitions

§2a. The term “hydraulic fracturing,” also referred to as “fracking,” means all the processes involved in mapping, leasing, exploring, testing, developing, promoting, drilling, extracting, disposing, processing, storing, transporting, and distributing (including exporting) fossil fuels derived from and/or related to unconventional drilling. In this law, fracking shall also include the processes of extracting, transporting, storing, distributing, and using proppants, such as silica (frack sand), and all chemicals and other additives when used in the process of unconventional fossil fuel mining; all water extraction, transportation, and commingling with other substances for use in these processes; and all shipping, sequestration, attempted “decontamination,” or disposing of solid, slurry, and/or fluid wastes, or residues from these processes.

§2b. The term “corporation” here refers to a legal construct — more precisely, a legal fiction — created under the laws of New York State or another state or another nation, and 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 or any nation, and any other business entity that possesses New York State-conferred limited liability rights for its shareholders.

“Corporation” also applies to any legal construct, as defined above, contracted by another corporate entity to carry out any aspect of fracking or related activity. All participant corporate entities will be responsible, to the extent of the law, for liabilities of 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

To protect the health, safety, and welfare of all species, including humans, along with the lands, waters, communities, and economies of the state, the people of New York State declare fracking, and all activities that enable or are related to fracking, to be criminal offenses. This declaration is made also to protect existing non-extractive industries, businesses, and jobs, and to ensure the viability of these same industries, businesses, and jobs in the future.

Section 4 Actions subject to this law

A human person (except in §4e below), a corporation, or other entity is guilty of the crime of fracking if he, she, or it

§4a. spends money or arrays technical equipment anywhere in New York State to locate, study, or extract by fracking any of oil, gas, or other carbon fuels;

§4b. imports into or transports through any portion of New York State any fracking-related materials, including wastes;

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

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

§4e. advertises, markets, or disseminates information to the public or to public officials that promotes fracking by print, electronic, or oral means, or engages 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 New York State judiciary.

Section 6 Penalties

§6a. It shall be a Class C felony for any corporation, corporate officer, or manager, syndicate, New York State entity, New York State official (elected or appointed), local government entity, or local government official (elected or appointed) to engage in fracking or related industrial activities as delineated above. Any of the aforementioned persons or entities found guilty of fracking or related activity shall be sentenced to imprisonment and made to pay a monetary fine. The prison term shall be fixed by the court and shall be not less than five years or greater than twenty years. The minimum period must be fixed by the court and specified in the sentence. Any corporation found guilty of fracking shall be subject to penalty as described in **Section 7**. 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 during 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 description, as defined in **§2b**, 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, chief counsel, other chief officers, 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 above-mentioned officers must be found guilty of complicity and of criminal negligence, sentenced to imprisonment, and fined at minimum the amount of one million US dollars for each offense as specified in this law.

§7b. Revocation of charter. If any corporation of any description, as defined in **§2b**, 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, as defined in **§2b**, that has been chartered in another state or another 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. These assets will be sold at auction, with proceeds going to the New York State treasury.

§7d. Government agents or representatives. Any agent or representative of any New York State entity, agency, or instrumentality, or any municipality, town, city or county entity, agency, instrumentality, authority, commission, or official (elected or appointed) who 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, plus 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 Attorney General of New York State shall consult with grassroots fracking opposition, fossil-fuel opposition, and climate action organizations on strategy, tactics, and crucial decisions in defense of this law. Such organizations shall have no financial connections with fracking-related extractive industries. New York State shall appeal all trial losses to a higher court, and persist in appeals to the highest court in the land.

Dated: June 2014