AN ACT

Designating certain activity by the Delaware River Basin Commission as the exercise of the power of eminent domain that entitles the owners of the property in question to appropriate and just compensation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Delaware River Basin Commission Eminent Domain Activity Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Ban." A prohibition on high-volume hydraulic fracturing within the basin enacted and implemented pursuant to a resolution of the commission dated September 13, 2017. The term includes any other resolution or action of the commission or executive director that has the same or similar effect,
regardless of when adopted or taken, to prohibit or substantially limit high volume hydraulic fracturing within the basin.

"Basin." The area of drainage into the Delaware River and its tributaries, including the Delaware Bay, as defined in the compact.


"Executive director." The Executive Director of the Delaware River Basin Commission.

"Impacted county." Any of the following:

(1) Carbon County.
(2) Lackawanna County.
(3) Luzerne County.
(4) Monroe County.
(5) Pike County.
(6) Wayne County.

Section 3. Legislative findings.

The General Assembly finds that:

(1) The Marcellus and Utica shale gas formations combined are one of the largest, if not the largest, gas play in North America. These formations run through, among other areas, the northeastern part of Pennsylvania, including the following impacted counties: Carbon, Lackawanna, Luzerne, Monroe, Pike and Wayne.

(2) Rights to mineral estates, and, in particular, to oil and gas estates in the impacted counties, have significant value.
(3) The impacted counties are located, in whole or in part, in the basin.

(4) The commission was established pursuant to the compact between the states of Delaware, New Jersey, New York and the Commonwealth of Pennsylvania and the United States of America.

(5) In general, the purpose of the commission is to:

(i) Encourage and provide for the planning, conservation, utilization, development, management and control of the water resources of the basin.

(ii) Provide for cooperative planning and action by the signatory parties of the compact with respect to water resources.

(iii) Apply the principle of equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to political boundaries.

(6) On September 13, 2017, the commissioners by a resolution for the minutes directed the executive director to prepare and publish for public comment a revised set of draft regulations to include a prohibition of high-volume hydraulic fracturing within the basin.

(7) The ban on high-volume hydraulic fracturing in the impacted counties contemplated by the commission will render the oil and gas estates located in the impacted counties worthless and will deprive the owners of these estates of all economically viable use of those estates.

(8) The Commonwealth as well as the other signatory parties have conveyed to the commission certain authority, and section 14.14 of the compact purports to provide to the
commission certain rights and powers regarding condemnation
and condemnation proceedings with respect to a "project" or a
"facility."

(9) Section 14.14(c) of the compact also provides that
any taking must be paid for by the commission and not by the
signatory parties.

(10) The ban on hydraulic fracturing in the impacted
counties contemplated by the commission constitutes a taking
of the property of the owners of the oil and gas estates in
the impacted counties.

(11) The commission has only the authority expressly
granted to it by the compact. The signatory parties and their
subdivisions retain such authority as has not been
specifically granted to the commission.

(12) The Commonwealth has not delegated to the
commission the ability to determine what activity constitutes
a "taking."

(13) While the General Assembly does not desire by this
act to determine whether the commission has the authority to
exercise the powers of eminent domain in this instance and
does not seek to prevent any lawful and authorized action of
the commission to achieve its purposes, the General Assembly
seeks to establish that the ban on hydraulic fracturing in
the impacted counties contemplated by the commission
constitutes a taking of the property of the owners of the oil
and gas estates in the impacted counties.

Section 4. Designation of condemnation.

A ban by the commission that affects lands in an impacted
county shall be deemed to have rendered the oil and gas estates,
including, but not limited to, the oil and gas estates located
in the impacted counties, worthless and will deprive the owners
of the estates of all economically viable use of the oil and gas
estates.

Section 5. Legal effect of ban.

A ban under section 4 shall constitute a taking by the
commission of the property of the owners of the oil and gas
estates in the impacted counties, and the owners shall be
entitled to be paid appropriate and just compensation by the
commission, in accordance with law, as a remedy for the taking.

Section 6. Effective date.

This act shall take effect immediately.