



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 827

PRINTERS NO. 928

PRIME SPONSOR: Fritz

### COST / (SAVINGS)

FUND	FY 2018/19	FY 2019/20
General Fund	See Fiscal Impact	See Fiscal Impact

**SUMMARY:** House Bill 827, Printer's Number 928, establishes the "Delaware River Basin Eminent Domain Activity Act."

**ANALYSIS:** This bill creates the "Delaware River Basin Eminent Domain Activity Act" to establish that the ban on hydraulic fracturing in impacted counties constitutes a taking of the property of the owners of the oil and gas estates. Owners of the oil and gas estates in the impacted counties are entitled to just compensation by the Delaware River Basin Commission (DRBC) by depriving the owners of all economically viable use of the oil and gas estates.

Section 5 of the bill states that the legal effect of the ban shall constitute a taking by the commission of the property of the owners of the oil and gas estates in the impacted counties. Owners shall be entitled to be paid appropriate and just compensation by the Commission, in accordance with law, as a remedy for the taking.

The bill also defines several terms such as "ban" which is "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." Impacted counties, under this bill, include the following: Carbon County; Lackawanna County; Luzerne County; Monroe County; Pike County; and Wayne County.

This legislation would take effect immediately upon enactment.

**FISCAL IMPACT:** Enactment of this legislation will have no adverse impact on Commonwealth funds. Pennsylvania is a signatory member of the commission and has historically paid dues toward the commission's operations per the compact agreement. For example, the General Fund appropriation for Pennsylvania's dues to the DRBC was \$217,000 for FY 2018-19.

In the event the DRBC maintains the ban on hydraulic fracturing and is required to make payments related to any potential takings, it is expected these costs would not be borne by the

Commonwealth and remain the financial responsibility of DRBC. The Compact prohibits the commission from making Pennsylvania responsible for its debts under Section 12.3. This section states that *“the commission shall have no power to pledge the credit of any signatory party, or of any county or municipality, or to impose any obligation for payment of the bonds upon the signatory party or any county or municipality.”*

Per the authority of the Delaware River Basin Compact (United States: Public Law 87-328, Approved September 27, 1961, 75 Statutes at Large 688), the commission is also empowered to address this under its condemnation proceedings language per Section 14.4 (c) as follows: *(c) any award or compensation for the taking of property pursuant to this article shall be paid by the commission, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.* It should be noted that there is legal precedence from various State and Federal Court decisions on regulatory takings, as well as interstate compacts.

Any future costs to the commission would have to be determined on a case-by-case basis with each individual property impacted by the decision. Each individual landowner would have to provide proof of valuation of the resource and the economic effect the regulation has on the owner’s property and potential investment. The final determination of any payments required by the DRBC would likely result after all administrative processes are exhausted through the commission and potential litigation and discovery of each case.

**PREPARED BY:** Jeffrey Clukey  
House Appropriations Committee (R)

**DATE:** May 14, 2019

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*