
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1189 Session of
2018

INTRODUCED BY BAKER, SCARNATI, YAW, EICHELBERGER, VULAKOVICH,
HUTCHINSON, WAGNER, RESCHENTHALER, FOLMER, VOGEL, BARTOLOTTA,
ALLOWAY, BROOKS, WHITE, REGAN, DiSANTO AND MARTIN,
JUNE 1, 2018

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JUNE 1, 2018

AN ACT

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

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

7 Section 1. Short title.

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

10 Section 2. Definitions.

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

14 "Ban." A prohibition on high-volume hydraulic fracturing
15 within the basin enacted and implemented pursuant to a
16 resolution of the commission dated September 13, 2017. The term
17 includes any other resolution or action of the commission or
18 executive director that has the same or similar effect,

1 regardless of when adopted or taken, to prohibit or
2 substantially limit high volume hydraulic fracturing within the
3 basin.

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

7 "Commission." The Delaware River Basin Commission.

8 "Compact." The Delaware River Basin Compact authorized by
9 the act of July 7, 1961 (P.L.518, No.268), known as the Delaware
10 River Basin Compact.

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

13 "Impacted county." Any of the following:

14 (1) Carbon County.

15 (2) Lackawanna County.

16 (3) Luzerne County.

17 (4) Monroe County.

18 (5) Pike County.

19 (6) Wayne County.

20 Section 3. Legislative findings.

21 The General Assembly finds that:

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

28 (2) Rights to mineral estates, and, in particular, to
29 oil and gas estates in the impacted counties, have
30 significant value.

1 (3) The impacted counties are located, in whole or in
2 part, in the basin.

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

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

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

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

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

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

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

28 (8) The Commonwealth as well as the other signatory
29 parties have conveyed to the commission certain authority,
30 and section 14.14 of the compact purports to provide to the

1 commission certain rights and powers regarding condemnation
2 and condemnation proceedings with respect to a "project" or a
3 "facility."

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

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

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

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

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

27 Section 4. Designation of condemnation.

28 A ban by the commission that affects lands in an impacted
29 county shall be deemed to have rendered the oil and gas estates,
30 including, but not limited to, the oil and gas estates located

1 in the impacted counties, worthless and will deprive the owners
2 of the estates of all economically viable use of the oil and gas
3 estates.

4 Section 5. Legal effect of ban.

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

10 Section 6. Effective date.

11 This act shall take effect immediately.