



# Senate Environmental Resources and Energy Committee

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## Summary Senate Bill 411, P.N.340

**Prime Sponsor: Senator Kasunic**

- Amends Title 27 (Environmental Resources) would limit the treatment liability of entities that choose to utilize acid mine water (AMD) for hydraulic fracturing of oil/gas wells, or other industrial uses.
- A landowner who allows the withdrawal of polluted water from eligible land and water that originates from a mining activity site, or a natural gas operator who withdraws polluted water from eligible land and water that originates from a mining activity site and utilizes the polluted water to hydraulically fracture a conventional or unconventional natural gas well and reuses, recycles and properly disposes of any unutilized hydraulic fracturing waste water *shall be immune* from liability and may raise the protections afforded by this chapter in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability in regard to the eligible land and water or any existing water pollution abatement facilities on the eligible land and water.
- A natural gas operator will only be eligible for the protections and immunities provided under if a written plan of the polluted water withdrawal, utilization and disposal is submitted to and approved by the department.
- The project must meet the following criteria:
  - Reduce, treat or abate the water pollution;
  - Withdraw, divert and use mine drainage or mine pool water from eligible land and water for hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water, with or without treatment, that may or may not be located on eligible lands and water; or
  - Withdraw, divert or use treated mine drainage from a permitted mining activity site for the hydraulic fracturing or other development of a gas well, industrial or other waste supply or other beneficial use of the water.
- A natural gas operator who withdraws polluted water from a mining activity site on eligible land and water for use in hydraulic fracturing natural gas wells shall:
  - Not be deemed to assume legal responsibility or liability for any preexisting water pollution on or hydro geologically connected to the withdrawal site or the use of the water.

- Not be subject to a citizen suit filed under the Clean Streams Law for pollution resulting from withdrawal of polluted water and its subsequent use.
- Nothing in this legislation limits the liability of a natural gas operator who withdraws polluted water for the use in hydraulic fracturing which results in:
  - Injury or damage resulting from the natural gas operator's acts or omissions which are negligent, reckless or constitute gross negligence or willful misconduct.
  - The natural gas operator's unlawful activities.
  - Damage to landowners or other persons which result from a withdrawal of polluted water if the written plan was not provided to and approved by the department.
- A landowner who provides access to the land which results in withdrawals of polluted water for use in hydraulic fracturing shall:
  - Be immune from liability for any injury or damage suffered by a natural gas operator withdrawing polluted water while the natural gas operator or its employee is within the land necessary for withdrawal of the polluted water.
  - Be immune from liability for any injury to or damage suffered by a third party that occurs as a result of an act or omission of a natural gas operator.
  - Be immune from liability for any injury to or damage suffered by a third party which occurs as a result of a withdrawal of the polluted water.
  - Not be deemed to assume legal responsibility for any water pollution resulting from a withdrawal of polluted water from a change in environmental conditions at the mining activity site or any site hydro geologically connected resulting from a withdrawal of polluted water.
  - Not be subject to a citizen suit filed under the Clean Streams Law for pollution resulting from withdrawal of polluted water and its subsequent use.
- A landowner is obligated and assumes liability to warn a natural gas operator of known abnormally dangerous conditions located on the land in the area necessary to withdraw polluted water.
- Nothing in this legislation limits the landowner's liability which results from the withdrawal of polluted which results in:
  - Any injury or damage resulting from the landowner's acts or omissions which are negligent, reckless or constitute gross negligence or willful misconduct.
  - The landowner's unlawful activities.
- Effective date: 60 days.