

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

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2011 OCT 21 PM 3:41

ANSCHUTZ EXPLORATION CORPORATION,

*Petitioner-Plaintiff,*

For a Judgment Pursuant to Articles 78 and 3001 of the  
Civil Practice Law and Rules,

*-against-*

TOWN OF DRYDEN and TOWN OF DRYDEN TOWN  
BOARD,

*Respondents-Defendants.*

AFFIDAVIT OF  
MAHLON R. PERKINS

Index No. 2011-0902

RJI No. 2011-0499-M

Hon. Phillip R. Rumsey

STATE OF NEW YORK: SS:  
COUNTY OF TOMPKINS:

Mahlon R. Perkins, being duly sworn, deposes and says as follows:

1. I am the attorney for the Respondents-Defendants in the above captioned matter.
2. I have been the attorney for the Town of Dryden since 1980. Prior to that time I was acting attorney for the town.
3. I make this affidavit in support of the Respondents-Defendants' motion for summary judgment declaring that certain amendments to the town's Zoning Ordinance are effective, valid and constitutional.
4. Attached hereto are copies of the Verified Petition and Complaint of the Petitioner-Plaintiff and the Verified Answer for the Respondents-Defendants.
5. The facts in this matter are undisputed.
6. Petitioner-Plaintiff commenced this hybrid Article 78 proceeding and action for a

declaratory judgment to determine the effect, validity and constitutionality of the Zoning Amendments.

7. The case is essentially about one issue: whether the provisions of ECL 23-0303(2) trump the land use control powers given to towns in Town Law 261. The Petitioner-Plaintiff claims these provisions preempt any attempt by the town to prohibit the use of land in the town for oil and natural gas exploration and extraction.

8. The Town of Dryden first adopted a Zoning Ordinance in 1969. Since its adoption, the operative language in Section 500(1) of the Zoning Ordinance has remained unchanged. See Affidavits of Sibley Stewart, Henry M. Slater and Bambi L. Avery.

9. Section 500(1) provides that no land or building in the town could be used or occupied unless in conformance with all the regulations for the zone in which use occurs.

10. At no time has the Zoning Ordinance listed natural gas exploration or extraction as a permitted use of land, or as a use allowed by a special use permit. See Avery Affidavit.

11. The town was never aware, until after the fact, that any exploratory wells for natural gas were proposed, permitted or drilled until late 2009. See Stewart and Slater Affidavits. Indeed, it was only after the exploratory wells had been drilled, plugged or abandoned that such use of land in the town was made known to the town.

12. At no time since the adoption of Zoning Ordinance did any one, including the Petitioner-Plaintiff, inquire of the town whether land in the town could be used for natural gas exploration and extraction.

13. Based on renewed interest in the recovery of natural gas from the Marcellus and Utica Shale formations, and the controversy surrounding the existing technology for recovering the natural gas, the Town undertook a review of its Zoning Ordinance to determine whether land in the Town

could be used for natural gas exploration or extraction. The resolution which adopted the Zoning Amendment recites in the first four paragraphs:

“WHEREAS, the Town of Dryden Zoning Ordinance provides “No land or building shall hereafter be used or occupied and no building or part thereof shall hereafter be enlarged or its use altered unless such action is in conformance with all the regulations specified for the zone in which said action occurs and any special regulations pertinent thereto”; and

WHEREAS, no Town of Dryden zoning district regulations permit, as an allowed use or use allowed by special permit, an outdoor factory or outdoor heavy industrial use such as are associated with natural gas exploration, extraction, treatment, storage, and the transportation of natural gas and natural gas exploration and production wastes; and

WHEREAS, it is the intent of the Town Board by this amendment to the Town of Dryden Zoning Ordinance to clarify that natural gas exploration and extraction and the associated uses of land for outdoor factories and the heavy industrial uses associated therewith, including treatment, storage and transportation of natural gas exploration and production wastes, have not been, and are not permitted uses of land under the Town of Dryden Zoning Ordinance; and

WHEREAS, it is the further intent of the Town Board by this amendment of the Zoning Ordinance to clarify for the public, landowners and town officials that the use of land in the Town of Dryden for outdoor factories and for the exploration and extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and production wastes is prohibited within the Town;”

14. Petitioner-Plaintiff should not now be surprised that the Zoning Ordinance is being interpreted to prohibit the use of land for natural gas exploration and extraction. Petitioner-Plaintiff

is deemed to know the law and could have ascertained the local zoning regulations prior to its investment.

15. As can be seen from the introductory language in the recitals in the Resolution, the intent of the Resolution was to clarify the existing Zoning Ordinance prohibitions against outdoor factories and outdoor heavy industrial uses.

16. Petitioner-Plaintiff has submitted the Affidavit of Gregory H. Sovas in support of their position that ECL 23-0303(2) preempts all local ordinances. Mr. Sovas is a former employee of DEC, and is now an oil and gas industry consultant.

17. Mr. Sovas' affidavit lacks real probative value to determining the intent of the legislature in adopting ECL 23-0303(2).

18. First, it is a post-enactment statement by a member of the executive branch. Second, it contains multiple examples of hearsay. Mr. Sovas states he was told about the 1963 law. He also relates a post-enactment conversation. Third, when construing a statute, the court may not consider post-enactment statements of a deceased senator, even one who sponsored the 1981 Amendment. Fourth, in Mr. Sovas' affidavit he opines that, "There was no question about legislative intent..." It is up to the Court to determine the intent of the legislature. His statements 30 years after the 1981 Amendment carry no weight.

19. Attached to this affidavit is the bill jacket for S 6455-B, the New York State Senate bill which was ultimately passed by the legislature and approved by the governor as Chapter 846 of the laws of 1981. This bill includes the 1981 Amendment to ECL 23-0303(2). The bill jacket is 34 pages and there is only one mention of preemption in one sentence which is 23 words long and contained in a Budget Report on Bills from the Division of Budget. The only mention is in a Summary of Provisions which states: "The existing and amended oil and gas law would supersede all

local laws or ordinances regulating the oil, gas, and solution mining industries.” That is the entire mention of the issue and it generally recites the language in the bill.


20. The only question before the Court is a question of law involving the interpretation of the express supersession clause in ECL 23-0303(2).

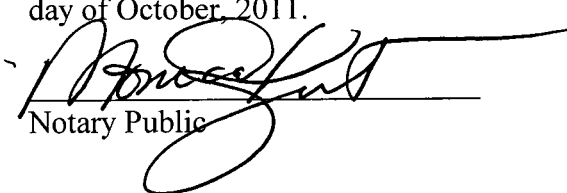
21. Zoning Ordinances are cloaked with a strong presumption of constitutionality rebuttable only upon a demonstration of unconstitutionality beyond a reasonable doubt.

22. The Petitioner-Plaintiff has failed to rebut the strong presumption of validity and constitutionality of the Zoning Amendments.

23. For the reasons in the accompanying Memorandum of Law, I respectfully request that the Court grant the Respondents-Defendants’ motion to dismiss that part of the Verified Petition and Complaint which seeks relief under CPLR Article 78 and grant the Respondents-Defendants’ summary judgment declaring the Zoning Amendments effective, valid and constitutional.

24. No previous application for the relief requested herein has been made.

  
\_\_\_\_\_  
Mahlon R. Perkins

Sworn to before me this 21<sup>st</sup>  
day of October, 2011.  
  
\_\_\_\_\_  
Notary Public

MONICA KNIGHT  
Notary Public, State of New York  
No. 01KN6109554  
Qualified in Tompkins County  
Commission Expires May 10, 2012

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

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2011 SEP 16 PM 1:50

ANSCHUTZ EXPLORATION CORPORATION,

*Petitioner-Plaintiff,*

*-against-*

For a Judgment Pursuant to Articles 78 and 3001  
of the Civil Practice Law and Rules,

TOWN OF DRYDEN and TOWN OF DRYDEN  
TOWN BOARD,

*Respondents-Defendants.*

**VERIFIED PETITION  
AND COMPLAINT**

Index No.: 2011-0902

Petitioner-Plaintiff Anschutz Exploration Corporation (“Anschutz”), by their attorneys,  
The West Firm PLLC, for its Verified Petition and Complaint, allege as follows:

**NATURE OF PROCEEDING**

1. Anschutz brings this special proceeding pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) and a plenary action for declaratory judgment pursuant to CPLR Article 3001, to declare illegal, null and void (1) Resolution No. 126 of 2011, entitled “Resolution in Support of Adopting Amendments (the “Zoning Amendments”) to the Town of Dryden Zoning Ordinance (the “Zoning Ordinance”) Clarifying the Town’s Prohibition of Natural Gas Exploration and Extraction, a Resolution of the Town of Dryden” (hereinafter the “Resolution”), which was adopted by unanimous vote and effective on August 19, 2011, (2) the Zoning Amendment adopted by the Resolution, and (3) the Zoning Ordinance to the extent that it is interpreted to ban or regulate oil and gas exploration and development in the Town of Dryden. Anschutz further seeks injunctive relief pursuant to Article 63 of the CPLR enjoining

Respondents-Defendants from implementation and enforcement of the Resolution, the Zoning Amendment and the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas exploration, development and production in the Town Dryden (“Town”).

2. The Resolution amends the long-standing Zoning Ordinance of the Town and prohibits all oil and gas exploration and extraction activities in the Town. The Resolution’s vast definition of “natural gas and/or petroleum exploration” includes, “geologic or geophysical activities related to the search for natural gas, petroleum, or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits. The Resolution broadly defines “natural-gas and/or petroleum extraction” as “the digging or drilling of a well for the purposes of exploring for, developing, or producing natural gas, petroleum or other subsurface hydrocarbons.”

3. As a result of the Resolution, the long-standing Zoning Ordinance has been amended to include a new Section 2104 entitled “Prohibited Uses” (the Zoning Amendment). The Zoning Amendment codifies the Resolution and provides that oil and gas extraction, development and other related activities are prohibited in the Town.

4. The Resolution purports to clarify the Zoning Ordinance, irrespective of the Zoning Amendment, to interpret the Zoning Ordinance to prohibit oil and gas extraction, development, and other related activities notwithstanding the fact that the Zoning Ordinance has never been interpreted to that effect.

5. Upon information and belief, natural gas development and other related activities has been previously undertaken in the Town without any assertion by the Town that the Zoning Ordinance is applicable to such activities.

### **PARTIES**

6. Anschutz is a driller and developer of oil and natural gas wells, registered to do business within the State of New York, and with a principal place of business at 555 Seventeenth Street, Denver, Colorado. Anschutz is the owner, as the successor by merger with Ansbro Petroleum Company, LLC, of oil and gas leases covering approximately 22,200 acres in the Town which authorize Anschutz to, among other things, explore for, develop, and produce natural gas from their lease holdings. Anschutz has invested approximately \$5,100,000.00 in acquiring its leasehold position in the Town and in developing the acreage by, among other things, conducting seismic evaluations and other geological assessments.

7. The Resolution, Zoning Amendment and Zoning Ordinance (to the extent that it is applied to ban, restrict or regulate oil and gas extraction, development, production and related activities) prevent Anschutz from developing its leased acreage. It will, therefore, have lost its investment in acquiring its oil and gas leases in the Town and developing the acreage covered by the oil and gas leases through geological assessments as well as a loss in development opportunity by being prevented from drilling in an area believed to be prospective for Marcellus and Utica shales. As a result, Anschutz has been aggrieved.

8. Respondent-Defendant, Town of Dryden ("Town") is a New York municipality located in Tompkins County.



9. Respondent-Defendant, Town of Dryden Town Board is the entity authorized in the Town to, among other things, make final decisions which affect the entire Town, amend the Zoning Ordinance, and enact local laws for the Town.

### **JURISDICTION AND VENUE**

10. Pursuant to CPLR § 506(b), Anschutz commences this action in Tompkins County, the county within which the oil and gas leases at issue are located, and the county in which the Respondents-Defendants took the challenged action.

11. This Court has jurisdiction pursuant to CPLR § 7803(2)-(3) because Respondents-Defendants' determination to adopt the Resolution was in excess of their jurisdiction. The Court also has jurisdiction pursuant to CPLR § 3001 to render declaratory relief declaring the Resolution, the Zoning Amendment and the Zoning Ordinance (to the extent that it is applied to ban, restrict or regulate oil and gas development, production and related activities) illegal, null and void and preempted by State law. This Court also has jurisdiction pursuant to CPLR 63 to grant injunctive relief necessary to implement the relief requested herein.

### **FACTS**

12. On August 2, 2011, Respondents-Defendants held a Special Town Board Meeting to adopt amendments to the Zoning Ordinance, expressly prohibiting oil and gas exploration and extraction. There, Respondents-Defendants unanimously passed the Resolution.

13. Upon information and belief, the Respondents-Defendants published the Resolution on August 9, 2011.

14. Pursuant to section 264 of New York's Town Law, the Resolution took effect on August 19, 2011.

15. In the Resolution, Respondents-Defendants declare that exploration and extraction of oil and gas and the storage, transfer, treatment or disposal of oil and gas exploration and production wastes is prohibited within the Town.

16. The Resolution further declares that any local, state, or federal permit would be deemed invalid if contrary to the Zoning Ordinance as amended.

17. In particular, the Resolution amended the Zoning Ordinance, adding in relevant part:

**Section 2104. Prohibited Uses**

1) Prohibition against the Exploration for or Extraction on Natural Gas and/or Petroleum.

No land in the Town shall be used: to conduct any exploration for natural gas and/or petroleum; to drill any well for natural gas and/or petroleum; to transfer, store, process or treat natural gas and/or petroleum; or to dispose of natural gas and/or petroleum exploration or production wastes; or to erect any derrick, building, or other structure; or to place any machinery or equipment for any such purposes.

2) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Materials.

No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production materials.

3) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Waste.

No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production wastes.

4) Prohibition against Natural Gas and/or Petroleum Support Activities.

No land in the Town shall be used for natural gas and/or petroleum support activities.

5) Invalidation of Permits.

No permit issued by any local, state or federal agency, commission or board for a use which would violate the prohibitions of this section or of this Ordinance shall be deemed valid within the Town.

18. Respondents-Defendants assert authority under Town Law §§ 261, 262, 264 and 265 to pass the Resolution, amend the Zoning Ordinance, interpret the Zoning Ordinance to prohibit oil and gas extraction, development, production and related activities and “prohibit the exploration and extraction of natural gas and or petroleum and the storage, treatment or disposal of natural gas exploration and production wastes within the Town[.]”

**FIRST CLAIM FOR RELIEF AND CAUSE OF ACTION  
(EXPRESS PREEMPTION)**

19. Anschutz repeats and realleges the allegations set forth in paragraphs 1 through 18 as if fully set forth herein.

20. New York’s Oil, Gas and Solution Mining Law, as amended in 1981, supersedes all local ordinances relating to natural-gas drilling, subject only to two limited exceptions for the exercise of jurisdiction by local governments: local roads and property taxes.

21. Pursuant to Section 23-0303(2) of New York’s Environmental Conservation Law (“ECL”):

The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.

22. The Oil, Gas and Solution Mining Law, therefore, expressly preempts not only inconsistent local legislation, but also *any* local law which attempts to regulate oil and gas

extraction, exploration and development, as the Legislature clearly intended State law to supersede all local ordinances in the area of oil and gas regulation, including zoning.

23. The New York Department of Environmental Conservation (“DEC”)’s current Generic Environmental Impact Statement (“1992 GEIS”) that applies to New York’s oil and gas program confirms this intent wherein it specifies that the Legislature was concerned that local ordinances regulating oil and gas extraction, exploration and development might result in conflicting laws and recognized the need for technically-sound regulation, difficult at the local level.

24. By reason of the foregoing, Respondents-Defendants acted without and in excess of jurisdiction.

25. Anschutz has no adequate remedy at law.

26. By reason of the foregoing, Anschutz is entitled to a determination that the Resolution, the Zoning Amendment and any attempt to interpret the Zoning Ordinance to ban, restrict or regulate oil and gas extraction, exploration, development and related activities are preempted by Article 23 of the ECL and, therefore, are invalid, unlawful and unenforceable.

**SECOND CLAIM FOR RELIEF AND CAUSE OF ACTION  
(CONFLICT PREEMPTION)**

27. Anschutz repeats and realleges the allegations set forth in paragraphs 1 through 26 as if fully set forth herein.

28. Where a State concern is involved, the Legislature has the exclusive power to enact laws. A local government may not exercise its police power by adopting a local law inconsistent with any constitutional or general law, and the legislature shall restrict adoption of said law.

29. Pursuant to Article 23 of the ECL, the Legislature intended to preempt local regulation, including zoning, of the oil and gas industry. It further intended to “prevent waste,” provide for the “greater ultimate recovery of oil and gas” and protect the correlative rights of all owners, including landowners. ECL § 23-0301.

30. In furtherance of these objectives, New York State has adopted an extensive regulatory program detailing the location of wells, the spacing of well units, the participation of landowners and detailed requirements to protect public health, safety and welfare.

31. The Resolution, Zoning Amendment and Zoning Ordinance (to the extent that it is interpreted to ban, restrict or regulate oil and gas extraction, exploration and development) prohibit what is authorized under State law; namely, the exploration and development of oil and gas in the entire state.

32. The Resolution, Zoning Amendment and Zoning Ordinance (to the extent that it is interpreted to ban, restrict or regulate oil and gas extraction, exploration and development) conflict with Article 23 of the ECL and further frustrate the purpose and policy objectives of the statutory and regulatory scheme administered by the State of New York.

33. By reason of the foregoing, Respondents-Defendants acted without and in excess of jurisdiction.

34. Anschutz has no adequate remedy at law.

35. By reason of the foregoing, Anschutz is entitled to a determination that the Resolution, the Zoning Amendment and the Zoning Ordinance (to the extent that it is interpreted to ban, restrict or regulate oil and gas extraction, exploration and development) are preempted by Article 23 of the ECL and, therefore, are invalid, unlawful and unenforceable.

**THIRD CLAIM FOR RELIEF AND CAUSE OF ACTION  
(INJUNCTION)**

36. Anschutz repeats and realleges the allegations set forth in paragraphs 1 through 35 as if fully set forth herein.

37. Respondents-Defendants have acted in violation of Anschutz's rights by adopting the Resolution and are threatening and about to further act in violation of Anschutz's rights by implementing and enforcing the Resolution, the Zoning Amendment and the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas extraction, exploration and development in the Town.

38. Anschutz is entitled to injunctive relief pursuant to Article 63 of the CPLR enjoining Respondents-Defendants from implementation and enforcement of the Resolution, the Zoning Amendment and the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas extraction, exploration and development in the Town.

39. Anschutz has no adequate remedy at law.

WHEREFORE, Anschutz respectfully requests that the Court issue an Order:

1. determining that Respondents-Defendants' adoption of the Resolution was without and/or in excess of jurisdiction;
2. declaring the Resolution to be invalid, unlawful and unenforceable;
3. declaring the Zoning Amendment (Section 2104) to be invalid, unlawful and unenforceable;
4. declaring that any attempt to interpret the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas extraction, exploration, development or related activities is invalid, unlawful and unenforceable;



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

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ANSCHUTZ EXPLORATION CORPORATION,

*Petitioner-Plaintiff*

*-against-*

For a Judgment Pursuant to Articles 78 and 3001  
of the Civil Practice Law and Rules,

Index No: \_\_\_\_\_

TOWN OF DRYDEN and TOWN OF DRYDEN  
TOWN BOARD,

*Respondents-Defendants*

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**NOTICE OF PETITION  
and  
VERIFIED PETITION AND COMPLAINT**

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**THE WEST FIRM**

A PROFESSIONAL LIMITED LIABILITY COMPANY

**Attorneys And Counselors At Law**

677 Broadway, 8<sup>th</sup> Floor

Albany, New York 12207-2996

Telephone (518) 641-0500

Facsimile (518) 615-1500



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

ANSCHUTZ EXPLORATION CORPORATION,

*Petitioner-Plaintiff,*

For a Judgment Pursuant to Articles 78 and 3001 of the  
Civil Practice Law and Rules,

*-against-*

TOWN OF DRYDEN and TOWN OF DRYDEN TOWN  
BOARD,

*Respondents-Defendants.*

VERIFIED ANSWER

Index No. 2011-0902

RJI No. 2011-0499-M

Hon. Phillip R. Rumsey

Respondents-Defendants, as and for the answer to the Verified Petition and Complaint, respectfully allege as follows with respect to the numbered paragraphs of the Verified Petition and Complaint:

Paragraph 1. Admit the allegations of Paragraph 1 but state that the correct title of the "Resolution" is "Resolution in Support of Adopting Amendments to the Town of Dryden Zoning Ordinance Clarifying the Town's Prohibition of Natural Gas Exploration and Extraction." A copy of the Resolution is found in Volume I of the record.

Paragraph 2. Admit.

Paragraph 3. Admit.

Paragraph 4. Admit the purpose of the Resolution and deny the rest of the allegations of this paragraph.

Paragraph 5. Lack knowledge or information sufficient to form a belief as to the allegations of this paragraph.

Paragraph 6. Admit that Anschutz is a driller and developer of natural gas wells and the allegations as to its status and principal place of business, and lack knowledge or information sufficient to form a belief as to the rest of the allegations of this paragraph.

Paragraph 7. Admit that Anschutz is prevented from using the surface of land in the Town of Dryden to develop its leased acreage, and lack knowledge or information sufficient to form a belief as to the rest of the allegations of this paragraph.

Paragraph 8. Admit that the Town of Dryden is a New York municipal corporation in Tompkins County.

Paragraph 9. Admit, except states that its decisions and the Zoning Ordinance does not affect the villages of Dryden and Freeville.

Paragraph 10. Admit.

Paragraph 11. Admit that this Court has personal and subject matter jurisdiction of the Respondents-Defendants.

Paragraph 12. Admit.

Paragraph 13. Admit the publication of a Notice of Adoption of Amendments to the Zoning Ordinance on August 9, 2011.

Paragraph 14. Deny that the Resolution took effect on August 19, 2011, and state that the Resolution took effect immediately.

Paragraph 15. Admit that Zoning Amendments prohibit the activities stated.

Paragraph 16. Admit that Zoning Amendments deem permits without vested rights invalid.

Paragraph 17. Admit the substance of the quoted material.

Paragraph 18. Admit.

Paragraph 19. Admit only so much of this paragraph as has been heretofore been admitted.

Paragraph 20. Deny.

Paragraph 21. Admit.

Paragraph 22. Deny.

Paragraph 23. Lack knowledge or information sufficient to form a belief as to whether the 1992 GEIS prepared by an administrative agency confirms the intent of the Legislature.

Paragraph 24. Deny.

Paragraph 25. Admit.

Paragraph 26. Deny.

Paragraph 27. Admit only so much of this paragraph as has heretofore been admitted.

Paragraph 28. Deny.

Paragraph 29. Deny the first sentence of this paragraph that regulation in the form of zoning is preempted by Article 23 of the Environmental Conservation Law (ECL). Admit that among the declaration of policy in ECL 23-0301 are the quoted excerpts.

Paragraph 30. Admit.

Paragraph 31. Deny that the Zoning Amendments prohibit the exploration and development of oil and gas in the entire state and allege the effect of the Zoning Amendment and the Zoning Ordinance is limited to the Town of Dryden, exclusive of the villages of Dryden and Freeville.

Paragraph 32. Deny.

Paragraph 33. Deny.

Paragraph 34. Admit.

Paragraph 35. Deny.

Paragraph 36. Admit only so much of this paragraph as has been heretofore been admitted.

Paragraph 37. Deny the allegation that the Respondents-Defendants have acted in violation of Anschutz's rights.

Paragraph 38. Deny.

Paragraph 39. Admit.

Paragraph 40. Respondents-Defendants deny each and every allegation of the Verified Petition and Complaint not herein specifically admitted.

**AS AND FOR A COMPLETE DEFENSE  
TO THE CPLR ARTICLE 78 PROCEEDING**

41. The Resolution adopts an amendment to the Zoning Ordinance (The Petitioner-Plaintiff so alleges in the Verified Petition and Complaint and Respondents-Defendants admit those allegations.)

42. The adoption of the Zoning Amendments is a legislative act given its general applicability, indefinite duration and formal adoption.

43. A challenge to a legislative act cannot be pursued in a CPLR Article 78 proceeding.

44. That part of the Verified Petition and Complaint which seeks judgment pursuant to CPLR Article 78 should be dismissed.

**AS AND FOR A SECOND DEFENSE**

45. The Zoning Amendments confirm what have been the zoning regulations in the Town of Dryden since the original Zoning Ordinance was adopted in 1969.

46. At no time since 1969 has a heavy industry, outdoor factory or natural gas drilling been a permitted use of land in the Town of Dryden.

47. The Zoning Amendments do not relate to the regulation of the actual operation and process of oil and gas mining and as such is not in conflict with, or preempted by, ECL Article 23.

**AS AND FOR A THIRD DEFENSE**

48. Respondents-Defendants repeat and reallege paragraphs 45-47 as if fully set forth herein.

49. The Zoning Amendment does not relate to the regulation of the oil and gas industry but to an entirely different subject matter and purpose, to wit: land use control.

**AS AND FOR A FOURTH DEFENSE**

50. Respondents-Defendants repeat and reallege paragraphs 45-49 as if fully set forth herein.

51. Statute of Local Government 10(b) grants to the town the power to adopt, amend and repeal zoning regulations. Town Law 261 provides that for the purpose of promoting the

health, safety, morals, or the general welfare of the community the Town Board is empowered by ordinance to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence or other purposes.

52. The power to adopt and amend zoning regulations is the power to regulate the use of land within the town.

53. The New York State Department of Environmental Conservation (DEC) regulates the granting of drilling permits and well siting, including the drilling, casing, operation, plugging and re-plugging of wells and reclamation of surrounding land, not whether the use of land for such purposes is permitted under local land use regulations.

54. DEC is not a land use agency and the regulatory scheme in ECL Article 23, Title 3 does not address land use reserved to local governments.

55. The power to regulate land use through the zoning power has been delegated to the Town.

56. The power of the town to regulate the use of land is not preempted or superseded by ECL 23-0303(2).

#### **AS AND FOR A FIFTH DEFENSE**

57. Respondents-Defendants repeat and reallege paragraphs 45-56 as if fully set forth herein.

58. The Zoning Amendments do not directly regulate the oil and gas industry since they regulate land use generally and as such have only an incidental effect on the oil and gas industry.

**AS AND FOR A SIXTH DEFENSE**

59. Respondents-Defendants repeat and reallege paragraphs 45-58 as if fully set forth herein.

60. The enactment of the Zoning Amendments was a legislative act.

61. As a legislative act, the Zoning Amendments are entitled to a strong presumption of constitutionality and validity, rebuttable only upon a demonstration of unconstitutionality beyond a reasonable doubt.

62. Petitioner-Plaintiff has failed to rebut the presumption of validity and constitutionality.

**AS AND FOR A DEFENSE TO THE THIRD CLAIM  
FOR RELIEF AND CAUSE OF ACTION (INJUNCTION)**

63. Respondents-Defendants repeat and reallege paragraphs 45-62 as if fully set forth herein.

64. Petitioner-Plaintiff has no DEC permits to drill any natural gas wells in the Town of Dryden.


65. Therefore, with respect to this claim and cause of action, Petitioner-Plaintiff does not have standing to request an injunction.

66. Petitioner-Plaintiff is not irreparably damaged since it is only prohibited from using land in the Town of Dryden for natural gas exploration and extraction. Petitioner-Plaintiff

is not prohibited from obtaining oil and gas from sub-surface formations underlying the land in the Town of Dryden.

WHEREFORE, Respondents-Defendants respectfully request that the Petition which requests relief under CPLR Article 78 be dismissed and that the Court grant the Respondents-Defendants judgment declaring the Amendments to the Zoning Ordinance effective, valid and constitutional, and that the Respondents-Defendants be awarded their costs and disbursements.

Dated October 21, 2011

  
\_\_\_\_\_  
MAHLON R. PERKINS, P.C.  
Attorneys for Respondents-Defendants  
11 South Street  
P. O. Box 27  
Dryden, New York 13053



VERIFICATION

STATE OF NEW YORK: SS:  
COUNTY OF TOMPKINS:

MARY ANN SUMNER being duly sworn, deposes and says that she is the Town Supervisor and a Respondent-Defendant in the within matter; that deponent has read the foregoing Verified Answer and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matter deponent believes it to be true.

  
MARY ANN SUMNER

Sworn to before me this 21st  
day of October, 2011.



Notary Public

MAHLON R. PERKINS  
NOTARY PUBLIC, State of New York  
No. 4695632  
Qualified in Tompkins County  
Commission Expires 6/30/2014

APPROVAL # 99

REC. FILED  
7/27/81

CHAPTER 846 31 1/2 BILL  
LAWS OF 19 81

SENATE BILL 6455-B

ASSEMBLY BILL

S. 6455-B

A. 8475-B

1981-1982 Regular Sessions

# SENATE-ASSEMBLY

May 5, 1981

IN SENATE—Introduced by Sen. PRESENT—read twice and ordered printed, and when printed to be committed to the Committee on Energy—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of M. of A. D. B. Walsh)—read once and referred to the Committee on Environmental Conservation—reported and referred to the Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—reported and referred to the Committee on Rules—Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the state finance law, the environmental conservation law, the real property tax law, the agriculture and markets law and the tax law, in relation to promoting the development of oil and gas resources in New York and regulating the activity of the industry; repealing provisions of the environmental conservation law relating thereto and making appropriations to the department of environmental conservation and the state board of equalization and assessment for carrying out certain provisions of this act

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Bill compiled by

DATE RECEIVED BY GOVERNOR. 7/27

ACTION MUST BE TAKEN BY: 8/7

GOVERNOR'S ACTION:

DATE

JUN 27 1981

Memorandum No

1981

SENATE

The Senate Bill  
 by Mr. **PRESENT**  
 Entitled: "

Calendar No. 1822

Senate No. 6455-B  
 Assem. Rept. No. \_\_\_\_\_

6455-A - 6 PRESENT

An act to amend the state finance law, the environmental conservation law, the real property tax law, the agriculture and markets law and the tax law, in relation to promoting the development of oil and gas resources in New York and regulating the activity of the industry, repealing provisions of the environmental conservation law relating thereto and making appropriations to the department of environmental conservation and the state board of equalization and assessment for carrying out certain provisions of this act

"... on the third time

No. 1 (THREE DAY MESSAGE OF GOVERNOR)

The President put the question whether the Senate would agree to final passage of said bill, and the facts which necessitate an immediate vote thereon having been certified by the Governor, the same being upon the desks of the members in final form, it was decided in the affirmative, a majority of all the members elected voting in favor thereof and three-fifth being present as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	12	Mr. Ackerman			52	Mr. Kehoe	
	47	Mr. Anderson			15	Mr. Knorr	
	49	Mr. Auer			2	Mr. Lack	
	16	Mr. Babbush			1	Mr. LaValle	
	45	Mr. Barclay			29	Mr. Leichter	EXCUSED
	18	Mr. Bartosiewicz			8	Mr. Levy	
	23	Mr. Beatty	EXCUSED		50	Mr. Lombardi	
	9	Mrs. Berman			24	Mr. Marchi	
	33	Mr. Bernstein			5	Mr. Marino	
	28	Mr. Bogues			19	Mr. Markowitz	
	41	Mr. Bruno			55	Mr. Masiello	
	7	Mr. Caemmerer	EXCUSED		21	Mr. Mega	
	34	Mr. Calandra			30	Mrs. Mendez	
	25	Mr. Connor			42	Mr. Nolan	
	48	Mr. Cook			27	Mr. Ohrenstein	
	60	Mr. Daly			17	Mr. Owens	
	46	Mr. Donovan			11	Mr. Padavan	
	6	Mr. Dunne			53	Mr. Perry	
	54	Mr. Eckert			36	Mr. Pisani	
	44	Mr. Farley			57	Mr. Present	
	59	Mr. Floss			39	Mr. Rolison	
	35	Mr. Flynn			31	Mr. Ruiz	EXCUSED
	32	Mr. Galiber			40	Mr. Schermerhorn	
	56	Mr. Gallagher			51	Mr. Smith	
	14	Mr. Gazzara			22	Mr. Solomon	
	13	Mr. Gold			43	Mr. Stafford	
	37	Mrs. Goodhue			3	Mr. Trunzo	
	26	Mr. Goodman			58	Mr. Volker	
	20	Mr. Halperin			10	Mr. Weinstein	
	4	Mr. Johnson			38	Mrs. Winikow	

AYES 55  
 NAYS 1

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

NEW YORK STATE ASSEMBLY

REPRINT NO: 001  
DATE: 07/07/11

DATE: 07/03/1981  
TIME: 05:59:58 PM

BILL: S0435-D(09473-B)

R.R. NO: 1062 SPONSOR: PRESENT

AN ACT TO AMEND THE STATE FINANCE LAW, THE ENVIRONMENTAL CONSERVATION LAW, THE PENAL PROPERTY TAX LAW, THE AGRICULTURE AND MARKETS LAW AND THE TAX LAW, IN RELATION TO PROMOTING THE DEVELOPMENT OF OIL AND GAS RESOURCES IN NEW YORK AND REGULATING THE ACTIVITY OF THE INDUSTRY; REPEALING PROVISIONS OF THE ENVIRONMENTAL CONSERVATION LAW RELATING THERETO AND MAKING APPROPRIATIONS TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE STATE BOARD OF EQUALIZATION AND REDISTRIBUTION FOR CARRYING OUT CERTAIN PROVISIONS OF THIS ACT

YEA	ABRAMSON, E*	YEA	HAWLEY, RS	YEA	PILLITTERE, JT*
YEA	BARBARO, FJ*	NAY	HEALEY, PS	NAY	PRESCOTT, DW
NAY	BEHAN, JL	YEA	HEVESI, AG*	YEA	PROUD, G*
ABS	BIANCHI, IW*	YEA	HINCHEY, HD*	NAY	RAPPLE, EA, CD
YEA	BOYLE, ID, TS*	YEA	HIRSCH, SF*	NAY	RATH, DE
YEA	BRAGMAN, HJ*	YEA	HOBLOCK, NJ	NAY	REILLY, JN
YEA	BRANCA, JRM	YEA	HOCHBERG, GJM*	NAY	RETTALIATA, AP
NAY	BURROWS, BW	ELS	HOWARD, LT	NAY	RIFORD, LS
YEA	BUSH, HE	EXP	FOOT, HE*	YEA	ROBACH, RJ*
YEA	BUTLER, DJ*	YEA	JACOBS, RS*	YEA	ROBLES, VL*
NAY	CASALE, J*	YEA	JENKINS, AJ*	YEA	RUGGIERO, RS*
NAY	CHESSPOUNT	YEA	JOHNSON, CRM*	YEA	RYAN, AM
NAY	COCHRANE, JC	YEA	KEANE, RJ*	NAY	SALAND, SM
YEA	COHEN, DL*	YEA	KELLEHER, MW	YEA	SANDERS, S*
YEA	CONNELLY, EA*	YEA	KENNEDY, RL	YEA	SCHIMMINGER, RL*
YEA	CONNERS, RJ*	NV	KIDDER, REM	YEA	SCHMIDT, FD*
YEA	COOKE, AT	NAY	KISOR, RM	NAY	SEARS, WR
YEA	DANATO, AP	YEA	KOPPELL, GOX*	YEA	SEMINERIO, AS*
NAY	DANDREA, RA	YEA	KREMER, AJ*	YEA	SERRANO, JE*
YEA	DANIELS, GL*	NAY	KUHL, JR	YEA	SHAFFER, GS*
YEA	DAVIS, GK	YEA	LAFAYETTE, IC*	YEA	SHEFFER, JB
YEA	DEARIE, JC*	YEA	LANE, CD	YEA	SIEGEL, MA*
YEA	DEL TORO, AX*	NAY	LARKIN, WJ	YEA	SILVER, S*
NAY	DICARLO, DL	YEA	LASHER, HL*	YEA	SIWEK, CA
YEA	DUGAN, EC*	YEA	LENTOL, JR*	NAY	SKELOS, DG
YEA	EMERY, JL	YEA	LEVY, E	YEA	SMOLER, H*
YEA	ENGEL, EL*	YEA	LEWIS, W*	NAY	SPANO, NA
YEA	ESPOSITO, JA	YEA	LIPSCHUTZ, GEX*	YEA	STAVISKY, LP*
YEA	EVE, AO*	YEA	LOPRESTO, JG	YEA	STEPHENS, WH
YEA	FARRELL, HD*	YEA	MACNEIL, HS	NAY	STRANIERE, RA
YEA	FELDMAN, D*	NAY	MADISON, GH	YEA	SULLIVAN, EC*
YEA	FERRIS, J*	YEA	MARCHISELLI, VA*	YEA	SULLIVAN, FM
NAY	FINNEGAN, WB*	NAY	MAZZA, GR	YEA	SULLIVAN, PM
NAY	FLACK, JT	YEA	MCCABE, JW*	YEA	TALLON, JR*
EXP	FLANAGAN, JJ	NAY	MILLER, MM	NAY	TALOMIE, FG
YEA	FOOT, TR*	YEA	MILLER, MH*	YEA	VANN, A*
YEA	FOSSIEL, JS	YEA	MONTANO, AM	YEA	VELELLA, GJ
YEA	FRIEDMAN, G*	NAY	MORAHAN, TP	YEA	VIGGIANO, PM*
YEA	GOLDSTEIN, P*	YEA	MURPHY, NJ*	YEA	WALSH, DB*
YEA	GORSKI, DA*	YEA	MURTAUGH, JB*	YEA	WALSH, SP*
YEA	GOTTFELD, RN*	YEA	NADLER, J*	YEA	WAPPEN, GE
YEA	GRASSER, WJ*	YEA	NAPLE, JF	YEA	WEINSTEIN, HE*
YEA	HANN, J*	YEA	NEMLAGER, MM*	NV	WENDE, CC
YEA	HARRIS, J*	YEA	NIEMI, L*	YEA	WERTZ, G*
YEA	HART, J*	YEA	NOFTZ, LP	YEA	WERTZ, PC
YEA	HAGUE, J*	YEA	ONILE, J*	YEA	WILSON, DE*
YEA	HANSEN, J*	YEA	ORLANDO, OF*	YEA	WINTER, GH
YEA	HANSEN, J*	NV	PAROLINE	YEA	WOLFE, WL*
YEA	HANSEN, J*	YEA	PARSONS, J*	YEA	ZIMMERMAN, J*
YEA	HANSEN, J*	YEA	PERI, J*	YEA	ZIMMERMAN, J*

YEAS: 112

NAYS: 12

CONTROL: 0310011

CERTIFICATION: \_\_\_\_\_

LEGEND: YEA=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT, EXP=EXCUSED FOR LEGISLATIVE BUSINESS, EXP=EXCUSED FOR OTHER REASONS.

MEMORANDUM

TITLE OF BILL:

JUL 09 RECD

AN ACT to amend the state finance law, the environmental conservation law, the real property tax law, the agriculture and markets law and the tax law, in relation to promoting the development of oil and gas resources in New York and regulating the activity of the industry; repealing provisions of the environmental conservation law relating thereto and making appropriations to the department of environmental conservation and the state board of equalization and assessment for carrying out certain provisions of this act.

PURPOSE OF THE BILL:

To promote the growth, development and proper regulation of oil and natural gas resources in New York State by:

- a) establishing new fees to fund additional regulatory personnel for the industry and to provide a fund to pay for past and future problems which resulted by the industry's activities.
- b) establish a uniform method of real property taxation for oil and natural gas lands.
- c) clarify the impact of oil and natural gas development for farmers who have committed their lands to Agricultural District Treatment.
- d) create an advisory board to advise Commissioner on oil and natural gas matters.

SUMMARY OF PROVISIONS:

Oil and Gas Fund—A nonlapsing revolving oil and gas fund is established, with a ceiling of \$1.5 million, to be used as a liability fund to replace current bonding requirements, to compensate local governments for damages related to oil and gas activities and to plug old wells. The fund is to be supported by a \$100 fee on all new oil and gas wells drilled.

Oil, Gas and Solution Mining Regulation and Reclamation Fee—A new fee based on the number of feet drilled is established, to be used for costs incurred by the Department of Environmental Conservation in providing services to and regulating the industry. An additional fee of \$50 for a Natural Gas Policy Act determination is also created.

Consolidating Spacing Statutes—Current law distinguishes between old oil and gas fields (drilled before 1963) and new fields (drilled after 1963). Spacing in old fields has essentially been unregulated. Recent drilling activity has caused a need for standardized spacing depending on the formation being drilled. Oil fields established prior to 1981 are exempt.

Advisory Board—An eleven-member advisory board is established within the Department to advise the Commissioner on the administration of the fund and on implementing policies related to the oil and gas industry.

Real Property Taxation—Local governments are authorized to levy a real property tax on oil and natural gas based upon production. The State Board of Equalization and Assessment is directed to establish this standard by rule and regulation consistent with the guidelines established by this law. The Agricultural Districts Law is also amended to clarify the effect of gas or oil production in such areas.

Tax Law—Sales taxes are currently not being imposed on drilling operations. This would clarify and make more specific that exemption.

JUSTIFICATION:

Due to the energy crisis, the Governor and Legislature have made it clear that it is important to promote the development of domestic energy supplies, including NYS's resources of oil and natural gas. The recent growth of drilling in the State has exceeded the capacity

of DEC to effectively regulate and service the industry. The industry will benefit from the expeditious handling of permits and improved regulation and it is therefore equitable that the industry provide increased support for the services it requires.

The law regulating oil and gas development has not been significantly revised since its inception in 1963. In order to better regulate and service the industry a number of revisions such as the elimination of old fields/new fields distinction are necessary. The Advisory Board, changes in the Tax Law and clarification of the Real Property Tax Law, as it applies to oil and natural gas, will provide incentives for continued growth and development of this industry in New York.

FISCAL IMPLICATIONS:

A first instance appropriation of \$250,000 is made to DEC to begin an expanded program. An additional appropriation of \$125,000 is made to the State Board of Equalization and Assessment for the purpose of staffing an oil and gas evaluation unit. The State's annual appropriation to the Bureau of Mineral Resources for the program will continue at \$250,000 and the new fees will generate \$450,000 to \$650,000 in new revenues.

PREVIOUS LEGISLATIVE HISTORY:

None.

EFFECTIVE DATE:

Thirty days after becoming law.

STATE OF NEW YORK  
EXECUTIVE CHAMBER

MEMORANDUM

S 6455-B



July 9, 1981

To: John J. McGoldrick  
From: Francis J. Murray, Jr. *fm*  
Subject: Oil and Gas, S. 6455-B/A. 8475-B

JUL 09 REVO

S. 6455-B/A. 8475-B incorporates many of the proposals contained in Governor Program Bills 6, 8, and 9. I recommend that the Governor sign this bill.

The bill has three main purposes. First, it imposes fees on the oil, gas and solution mining industries to finance a substantial portion of DEC's regulatory program in this area. Secondly, it revises and updates many of DEC's present regulations governing the leasing of lands and the operations of the oil, gas and solution mining industries. Thirdly, it codifies specific offenses under the oil, gas and solution mining law and authorizes the imposition of administrative, civil and criminal sanctions.

It should be noted that the bill does suspend DEC's current open-ended authority to require operators to obtain liability bonds to cover the costs of plugging a well once it is withdrawn from production. However, the bill does permit DEC to require individual bonds up to \$2,000 per well up to a blanket bond of \$15,000. It also provides that current bonds must remain in effect. Most importantly, DEC retains the authority to require higher bonds for "bad actors," Lake Erie, deep wells, and wells which pose extraordinary environmental hazards.

In his approval message, I recommend that the Governor discuss both the underground injection control (UIC) program and state tax policy of the oil and gas industry.

More specifically, the Governor should state that this legislation does not contain sufficient funds for the DEC to assume regulatory responsibility for the federal UIC program. Our policy has been that if the State does assume delegation of the UIC program, the industry benefitted by this assumption must bear any administrative costs. Both the industry and the legislature acknowledged as much during negotiations on this legislation. Consequently, the Governor should make this understanding explicit in his approval message. If the State does assume regulatory responsibility for UIC, additional legislation will be necessary next year.

Secondly, I understand that some concern has been expressed about the sales tax exemption contained in section 24. It should be understood that this provision was agreed upon in return for the legislature deleting two more costly and onerous tax amendments dealing with depletion allowance and federal tax preference treatment.

In this context, I recommend that in his approval message, the Governor should direct the State Energy Office and the Department of Taxation and Finance to review state taxing policy regarding the oil and gas industries and to recommend to the Governor within 90/120 days revisions in the tax law which would stimulate oil and gas development, consistent with the State's fiscal plan and resources.

CC: Mr. Michael J. Del Giudice



Possible insert for approval message on A. 8475-B

The sales tax exemption provided under this bill is not wholly consistent with intent or with existing production exemptions under the tax. I am requesting the Department of Taxation and Finance and the Division of the Budget to work with the bill's sponsors and other interested parties to prepare appropriate revisions of that provision for consideration at the . . . . session of the Legislature.

5. Possible objections:

( ) The amendment made by section 24 of the bill, to Tax Law section 1115(a) (12), represents a unique and questionable expansion of the sales tax production exemption. It would exempt from State sales and use tax, virtually all vehicles and equipment used in oil, gas and solution mining and in the distribution of the resulting product for sale to commercial purchasers. It appears to fail to recognize that much of the cited equipment is already exempt under the current provisions. For this special class of producer, it would extend the current exemption to equipment and vehicles used in the distribution of the product to first sales point. The breadth of the proposed exemption would set strong precedent for comparable exemptions for other producers, whose activities are no less essential to the health and well-being of the State than the miners. Thus, it would not only result in an unbudgeted State revenue loss in the current and coming years, but also set the stage for far more severe revenue losses.

It is this office's understanding that the sales tax exemption may go far beyond its intended effect (which relates to the activities of contract riggers, etc.) and that corrective language to satisfy that intent without violating the general scope of the production exemption is being considered. Taxation and Finance Counsel Participation in any such revision would be crucial to effective revision.



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

JUL 27 1981

MEMORANDUM filed with Senate Bill Number 6455-B, entitled:

"AN ACT to amend the state finance law, the environmental conservation law, the real property tax law, the agriculture and markets law and the tax law, in relation to promoting the development of oil and gas resources in New York and regulating the activity of the industry; repealing provisions of the environmental conservation law relating thereto and making appropriations to the department of environmental conservation and the state board of equalization and assessment for carrying out certain provisions of this act"

CHAPTER 846

APPROVAL # 99

A P P R O V E D

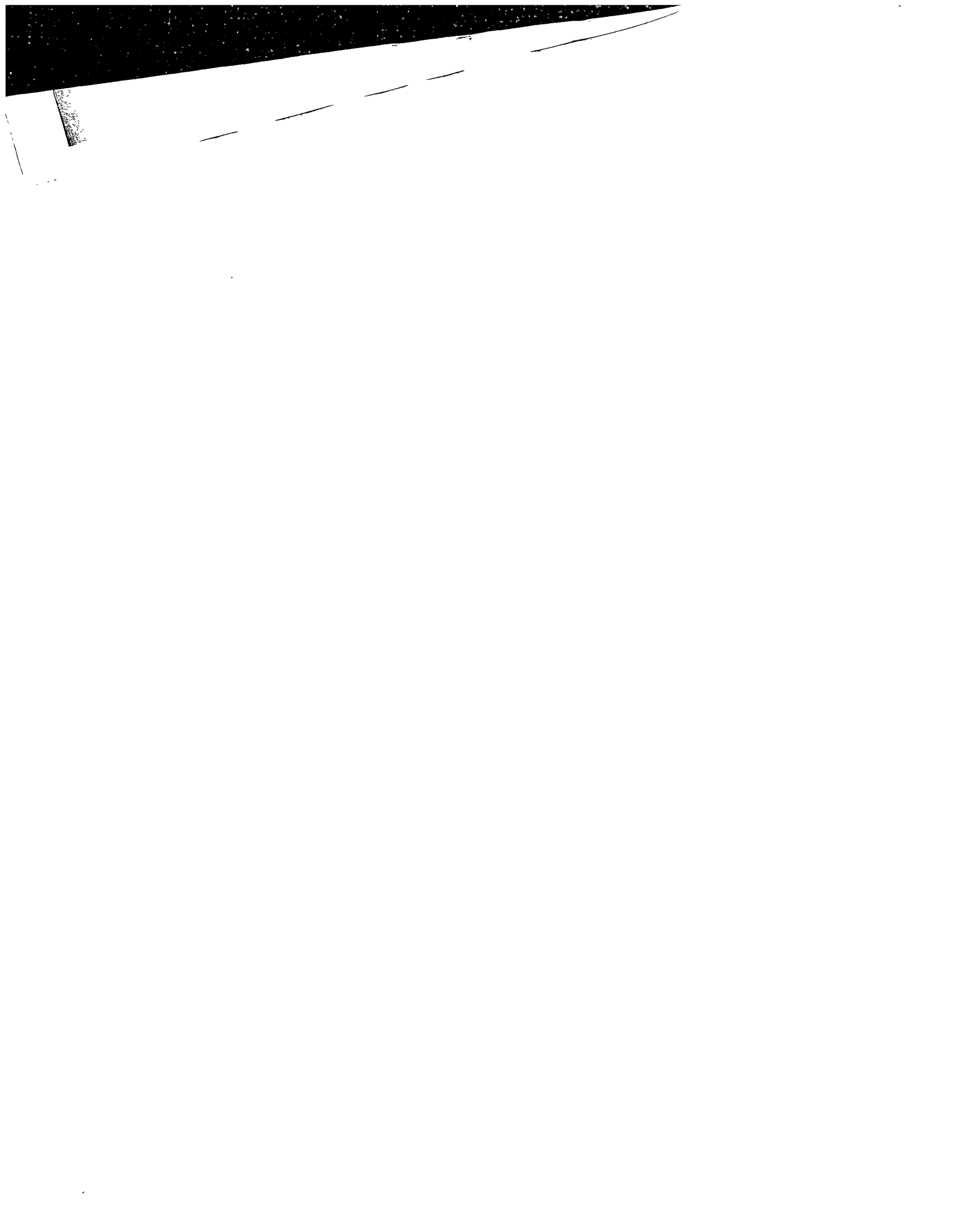
This bill, which is part of my 1981 Legislative Program, amends various provisions of Article 23 of the Environmental Conservation Law to provide an efficient and effective oil, gas and solution mining regulatory program in the Department of Environmental Conservation. Further, to support this expanded regulatory program, the bill imposes a reclamation fee on oil, gas and solution mining operators and amends the State Finance Law to establish an Oil and Gas Fund to receive reclamation fee moneys and fines assessed under Article 23.

In recognition of the possible adverse environmental impact of oil and gas development, the bill provides moneys from the fund to be used to pay for the plugging of abandoned wells and the abatement of dangerous oil and gas-related incidents. Moreover, the bill, while limiting the maximum bond which the Department of Environmental Conservation may require of a well operator, provides the Department with the authority to require higher bonds with respect to wells in Lake Erie or which pose extraordinary environmental hazards.

The bill also ensures compliance with the regulatory provisions by consolidating and strengthening the enforcement provisions of Article 23. In addition to the administrative and civil penalties provided in existing law, the bill provides for the imposition of criminal penalties for violations of the Article.

The bill amends the Real Property Tax Law to clarify the taxable status of oil and gas development rights and amends the Tax Law to provide an exemption from sales and use taxes for equipment used by the first commercial purchaser in oil, gas and solution mining activities.

In view of the revitalization of oil and gas development in New York State, the Department of Environmental Conservation is unable, with existing funding and powers, to fulfill its regulatory responsibilities under the Environmental Conservation Law. This bill amends the existing law to increase funding,



provide an updated regulatory program, and grant the Department of Environmental Conservation additional enforcement powers necessary to enable it to provide for the efficient, equitable and environmentally safe development of the State's oil and gas resources.

I am concerned, however, about the bill in two respects. I am advised that in the event the State assumes regulatory responsibility for the federal underground injection control program, which is anticipated, the legislation must be amended to increase the funding level of the Department's regulatory program. I also am advised that the sales tax exemption in the bill may inadvertently extend beyond existing production exemptions and be inconsistent with the State's fiscal plan. Therefore, I have requested the State Energy Office and the Department of Taxation and Finance to review State tax policy regarding the oil and gas industries and to recommend revisions in the Tax Law which would stimulate oil and gas development without jeopardizing the State's fiscal plan and resources.

The bill is approved.

S-6455 B

TEN DAY BILL  
BUDGET REPORT ON BILLS

Session Year: 1981

SENATE

Introduced by:  
Senator Present

ASSEMBLY

No. S 6455-B

No.

Law: Environmental Conservation Sections:

DIVISION OF THE BUDGET RECOMMENDATION ON THE ABOVE BILL: Approve if language is included in the Governor's approval message to seek a chapter amendment to remove an apparent unintended revenue loss as a result of this bill.

Approve:  Veto: \_\_\_\_\_ No Objection: \_\_\_\_\_ No Recommendation: \_\_\_\_\_  
(see above)

1. Subject and Purpose: This bill would provide for an expanded oil, gas and solution mining regulation program funded by charges on the industries involved.
2. Summary of Provisions: The State Finance Law would be amended by the creation of an "oil and gas fund" which is a non-lapsing, revolving fund. The fund would receive fines and penalties received from violations of the oil, gas, and solution mining law; and receive revenues from a new \$100 fee for the drilling of each new well. Moneys in the fund would be appropriated by the Legislature and allocated by the Director of the Budget on a certificate for the following purposes:
  - ..To pay for plugging and abandoning of wells which have not been properly plugged and abandoned according to the existing oil, gas and solution mining law.
  - ..To pay up to one-half of the plugging and abandonment costs for wells drilled prior to October 1, 1963 and for which such proper plugging and abandonment is determined by the Commissioner of the Department of Environmental Conservation to correct an "existing hazard to health, life, property or will abate an unacceptable environmental impact.
  - ..To pay for the abatement or prevention of adverse effects of drilling activities which are a danger to the public health, safety, or general welfare.

The fund would be limited to \$1.5 million. The Commissioner, in consultation with the Director of the Budget would reduce fees for any fiscal year in which the fund would be expected to exceed \$1.5 million. The Comptroller would be allowed to invest any moneys in the fund and credit any interest earned to the fund. The fund would be allowed to be used to mitigate any "unforeseen adverse public safety or environmental conditions" as a result of regulated oil, gas, or solution mining activities.

Provisions for local governments to receive reimbursement from the oil and gas fund for repairing damages to municipal land or properties would be established.

The existing and amended oil and gas law would supersede all local laws or ordinances regulating the oil, gas, and solution mining industries.

Date: \_\_\_\_\_ Examiner: \_\_\_\_\_

Disposition: \_\_\_\_\_ Chapter No. \_\_\_\_\_ Veto No. \_\_\_\_\_

Local property tax laws, however, would remain unaffected.

The existing exemption of pre-1963 wells from State regulation is removed. Various technical and procedural changes are included to make the regulatory process consistent with technological changes in the well drilling industries.

Bonding requirements are removed for permitted, new wells except for wells drilled in Lake Erie. However, financial security requirements are created to replace the bonding requirement.

A mining advisory board is created to advise and assist the Department of Environmental Conservation and other State agencies on activities related to the oil and gas, and solution mining industries.

New spacing requirements are established to conform with existing practices. A new Title 19 is established creating an oil, gas and solution mining fee based upon the depth of the well drilled. New administrative, civil and criminal sanctions are created to enforce the new regulations.

A First Instance appropriation of \$250,000 is provided to the Department of Environmental Conservation and a State Purposes-Regular appropriation of \$125,000 is provided to the State Board of Equalization and Assessment (E & A). The E and A appropriation is for creating an oil and gas valuation unit.

This bill would take effect thirty days after it becomes law.

3. Legislative History: Various oil and gas proposals have been submitted in recent years. This is the first one to be forwarded to the Governor for signature.
4. Arguments in Support:

This bill revises and updates the existing 1963 law regulating the oil and gas industry. Since 1963 many changes have occurred in this industry including increased demand for oil and gas, higher prices, and new recovery techniques. These changes are reflected in various technical provisions of the bill.

The new drilling fee allows for the industry to internalize the regulatory costs required by it. This limits State Purposes-Regular expenditure for such regulation. The fee will support a larger staff to perform the permitting, inspecting and monitoring required under law. Because of the increased drilling activity in recent years the existing regulatory staff has not been able to adequately respond to the increased workload. Allowing for the oil and gas fund to pay for the capping and replugging of abandoned wells reduces health, safety and environmental problems created by such wells. This ensures that the industry responsible for such problems pays for their remediation.

Leasing of State lands would also be affected by this bill and would provide for increased revenues to the State from such development activities.

5. Possible objections: The structure of the drilling fee would not support as large a regulatory staff as the Department would originally have preferred. The anticipated revenues, however, would support an adequate program.

There are no provisions in the bill regulating underground injections of liquids. Such injections are used for enhancing the recovery of mined liquids or gas or for disposal of waste liquids. Because such practices, if not done properly, can cause groundwater contamination, undue erosion, the creation of sinkholes or other problems the Department had wanted this included in the bill. The removal of bonding requirements for new wells may be argued as encouraging drilling by persons not financially able to pay for mitigation of safety, health, or environmental side effects, should they occur. The bill, however, does empower the Department to develop financial guidelines to ensure that companies are capable of responding to such problems.

Setting a higher drilling fee, other than the \$100 fee established by this bill, would allow for a larger number of abandoned wells to be capped per year. Of the approximately 3,000 abandoned wells in the State only about fifty will be able to be capped per year based on the \$100 fee.

The amendment made by section 24 of the bill, to Tax Law section 1115(a) (12), represents a unique and questionable expansion of the sales tax production exemption. It would exempt from State sales and use tax, virtually all vehicles and equipment used in oil, gas and solution mining and in the distribution of the resulting product for sale to commercial purchasers. It appears to fail to recognize that much of the cited equipment is already exempt under the current provisions. For this special class of producer, it would extend the current exemption to equipment and vehicles used in the distribution of the product to first sales point. The breadth of the proposed exemption would set strong precedent for comparable exemptions for other producers, whose activities are no less essential to the health and well-being of the State than the miners. Thus, it would not only result in an unbudgeted State revenue loss in the current and coming years, but also set the stage for far more severe revenue losses.

It is this office's understanding that the sales tax exemption may go far beyond its intended effect (which relates to the activities of contract riggers, etc.) and that corrective language to satisfy that intent without violating the general scope of the production exemption is being considered. Taxation and Finance Counsel participation in any such revision would be crucial to effective revision.



6. Other State Agencies Interested: The State Board of Equalization and Assessment and the Department of Taxation and Finance would be interested.
7. Known Position of Others: The oil and gas industries in New York support this bill.
8. Budget Implications: It is anticipated that the \$250,000 First Instance appropriation to ENCON will be expended this fiscal year and paid by the end of fiscal year 1983-84. The \$125,000 State Purposes-Regular appropriation for the State Board of Equalization and Assessment is anticipated to be expended this year and a similar level of appropriation will be required in future years.

The sales tax production exemption provided in Section 24 of the bill is estimated to result in a revenue loss of \$3-5 million annually. This is deemed a significant revenue loss. This is understood to be an unintended effect of the bill. The recommendation section contains a condition that measures be taken to remove this impact.

9. Recommendation: Approval is recommended if the following language is inserted in the Governor's approval message to initiate actions to remove the unintended revenue loss as a result of Section 24 of this bill.

The sales tax exemption provided under this bill is not wholly consistent with intent or with existing production exemptions under the tax. I am requesting the Department of Taxation and Finance and the Division of the Budget to work with the bill's sponsors and other interested parties to prepare appropriate revisions of this chapter for consideration when the Legislature reconvenes.

Approval is recommended because this bill internalizes the oil and gas industry regulatory costs in the industry itself; provides an industry supported method of capping and properly closing existing and future abandoned wells which pose health, safety and environmental problems; will provide revenue to the State from the development of oil and gas on State lands; and updates the existing 1963 law to take into account changes in the drilling industry since then.



8-6455-B



STATE OF NEW YORK  
DEPARTMENT OF LAW  
TWO WORLD TRADE CENTER  
NEW YORK, N. Y. 10047

ROBERT ABRAMS  
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

JUL 16 1981

Re: Senate 6455-B

This bill, among other things, would establish in the custody of the comptroller an oil and gas fund which would be used to pay for reclamation expenses associated with the plugging of oil, gas or other wells which were abandoned but not plugged. The fund would consist of up to \$1.5 million dollars, derived from penalties, fines and other sums recovered for violations of the oil, gas and solution mining law in Article 23 of the Environmental Conservation Law as well as a fee of \$100 for each new well drilled. The bill would take effect on the thirtieth day after becoming law.

A bill covering some of the same matters was introduced last year, S. 9989, A. 12179, but died in committee.

I have no legal objection to the bill.

Dated: JUL 16 1981

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert Abrams".

ROBERT ABRAMS  
Attorney General

S-6455.B



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
ALBANY, NEW YORK  
12236

EDWARD V. REGAN  
STATE COMPTROLLER

July 13, 1981

The Honorable John G. McGoldrick  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

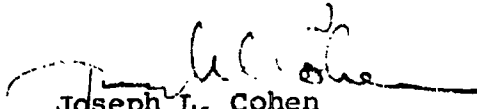
JUL 13 1981

Dear Mr. McGoldrick:

We have reviewed the following bills and have no objection to their enactment:

SENATE	SENATE	ASSEMBLY
313	5045	5049
1294-A	5420-A	8721
1515	5819	9001
1739	6455-B	
1910	6456	
2184-B	6851	
2321-B	6855	
2543	6859	
3395	6869	
4194	6947-A	
4210-A	7068	
4684-A	7023	
4795		

Very truly yours,

  
Joseph L. Cohen  
Deputy Counsel

JLC:jd

## Memorandum



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
DIVISION OF EQUALIZATION AND ASSESSMENT

July 22, 1981

TO: Robert L. Beebe

FROM: William J. Ryan

SUBJECT: Senate Bill No. 6455-B  
By: Sen. Present

This bill would amend the State Finance Law, Environmental Conservation Law, Agriculture and Markets Law, Tax Law and the Real Property Tax Law and is intended to insure that the State's resources of oil and gas are developed in a proper manner. This memorandum, however, will discuss only those sections concerning the taxable status and valuation of oil and gas rights.

These rights are deemed personal property for all purposes except taxation (General Construction Law, §39) and are therefore assessible for purposes of real property taxation (Real Property Tax Law, §102(12)(a); In re Hazelwood Oil Co., 195 App.Div. 73, 185 N.Y.S. 809).

In 4 Op.Counsel SBEA No. 77 we discussed problems associated with the separate assessment and valuation of these rights. We noted that an assessor could not be compelled to separately assess the rights from the land whether in production or inactive. We also noted that whereas rights in "unproved prospective lands" might have little more than nominal value, rights in "proved lands" which are either producing or proved to contain oil or gas may have considerable value which may be measured on the basis of several objective criteria.

In 7 Op.Counsel SBEA No. 20, we held that the leasing of mineral rights for the purposes of oil and natural gas exploration has no immediate impact on the exempt status of land entitled to an agricultural exemption (Agriculture and Markets Law, §§301, 305) but that the exercise of these rights resulting in a conflicting use would constitute a conversion for purposes of that exempt statute. Bill sections 22 and 23 codify this opinion by specific amendments to the Agriculture and Markets Law.

Robert L. Beebe  
Page 2  
July 22, 1981

Bill section 19 adds a new title 5 to Article 5 of the Real Property Tax Law and governs the assessment and valuation of oil and gas rights in production. It is important to note at the outset that oil and gas rights not in production continue to be subject to existing law as is described in 4 Op.Counsel SBEA No. 77. As to oil and gas rights in production, new title 5 mandates the separate assessment of the rights and the land and provides a specific methodology for the valuation of the rights. This uniform Statewide valuation methodology will be implemented pursuant to rules promulgated by the State Board. This will eliminate the uncertainty which presently exists throughout the State. That is, the criteria presently used in the valuation of these rights may differ substantially among the numerous assessing units within the State. In contrast, new title 5 requires that an economic approach be utilized for purposes of valuation thereby eliminating this uncertainty. The new statute introduces several new terms including "economic unit" which includes the oil and gas rights, the oil and gas itself, and the equipment and fixtures necessary to extract and collect the oil and gas for sale to a commercial purchaser. Another new term which is introduced is "unit of production value" which is determined by the State Board by use of a discounted net cash flow approach reflecting depreciation, depletion, income and other taxes, additional capital investment required, royalty interests not retained by the producer and other costs. There is specific provision that in determining the unit of production value, the rate of capitalization shall not be less than 15%. In determining discounted net cash flow, the State Board is specifically authorized to require owners or operators of commercial producing gas or oil wells to submit statements of income and expenses related to the "economic units." The rules establishing the methodology for determining unit of production values are required to include a description of the economic data to be compiled, the methods of their compilation and a delineation of the process to be followed in applying discounted cash flow methodology. These rules are specifically required to take into account and reflect varying economic and operating conditions and characteristics.

The new statute provides specified taxable status dates for purposes of valuation dependent upon the date required by law for filing of the final assessment roll of each

Robert L. Beebe  
Page 3  
July 22, 1981

assessing unit. This will provide sufficient time for the compilation of the data, the determination of the values and the certification thereof to the assessors in a timely manner. Assessors are required to compute and determine the assessed valuation of oil and gas rights in accordance with rules promulgated by the State Board on the basis of the appropriate unit of production values certified by the State Board.

Specific provision is made that prior to production, a lease or other conveyance of oil and gas rights in land which is otherwise entitled to exemption from taxation shall not be considered dispositive by the assessor in determining whether that land is used exclusively for an exempt purpose. Also, specific provision is made that the production of oil and gas by the owner of the land for personal, non-commercial purposes shall not be considered dispositive in determining whether the land is used exclusively for an exempt purpose.

Bill section 20 amend Real Property Tax Law, section 906(2) to add persons assessed for oil and gas rights to the existing list of entities which are required to be shown on a statement to be delivered by the clerk of the board of supervisors to the county treasurer upon completion of the tax rolls as being liable for taxes or special ad valorem levies. Bill section 21 amend Real Property Tax Law, section 930(1) to add persons assessed for oil and gas rights to the entities which may pay taxes directly to the county treasurer.

I find no technical defects in this bill as it relates to real property assessment and taxation.

98475-B



WILLIAM D. HASSETT, JR.  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF COMMERCE  
99 WASHINGTON AVENUE  
ALBANY, NEW YORK 12245

John J. Kelliher  
Deputy Commissioner & Counsel  
(518) 474-4102

TEN-DAY BILL MEMO

JUL 06 1981

July 6, 1981

TO: JOHN G. MCGOLDRICK  
COUNSEL TO THE GOVERNOR

FROM: John J. Kelliher, Counsel  
Department of Commerce

SUBJECT: Assembly 8475-B

RECOMMENDATION: No Objection

The Department of Commerce has no objection to this bill which would amend various titles of law in relation to promoting the development of oil and gas resources in New York State.

JJK  
J. J. K.

JR

S-6455

A-8795



WILLIAM D. HASSETT, JR.  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF COMMERCE  
99 WASHINGTON AVENUE  
ALBANY, NEW YORK 12245

John J. Kelliher  
Deputy Commissioner & Counsel  
(518) 474-4102

TEN-DAY BILL MEMO

July 16, 1981

JUL 16 1981

TO: JOHN G. McGOLDRICK  
COUNSEL TO THE GOVERNOR.

FROM: John J. Kelliher, Counsel  
Department of Commerce

SUBJECT: Senate 6455-B (Present)

RECOMMENDATION: No Objection

The Department of Commerce has no objection to this bill which amends the State Finance Law, Environmental Conservation Law, and the Real Property Tax Law in relation to regulation of the oil and gas industry, establishing pertinent fees, and permitting real property taxes on oil and gas lands.

It is our understanding that this bill, a revised Governor's program bill, represents a compromise measure which resulted from negotiations by the Legislature, Department of Environmental Conservation, and industry members.

JK  
J. J. K.



LR

C-846 S-6455-B



STATE OF NEW YORK  
DEPARTMENT OF  
TAXATION AND FINANCE  
ALBANY, NEW YORK 12227

JUL 27 1981

JAMES H. TULLY, JR.  
COMMISSIONER OF TAXATION AND FINANCE  
PRESIDENT TAX COMMISSION

July 27, 1981

The Honorable Hugh L. Carey  
Governor of New York  
State Capitol  
Albany, NY 12224

Dear Governor Carey:

Re: Senate Bill No. 6455-B

You have asked for my comments on the above bill which is before you for executive action.

This bill would amend various sections of the State Finance Law, the Environmental Conservation Law, the Real Property Tax Law, the Agriculture and Markets Law and the Tax Law to promote the development of oil and gas resources in New York and to regulate the activities of the industry. Among its provisions, the bill would amend the State Finance Law to establish the Oil and Gas Fund to pay for reclamation expenses associated with the plugging and abandonment of oil, gas or solution mining wells, to compensate local government for damages to municipal property and to act as a liability fund to replace current bonding requirements.

The bill would amend the Environmental Conservation Law to create the New York State Oil, Gas and Solution Mining Advisory Board to advise the Commissioner of Environmental Conservation and other State agencies on activities and policies relating to these industries.

This bill would amend the Real Property Tax Law to authorize the levy, by local governments, of a real property tax on oil and natural gas based upon production.

July 27, 1981

The Agriculture and Markets Law would be amended by the bill to clarify the effect of gas or oil production in areas committed to Agricultural District Treatment.

Of utmost importance to this Department is section 24 of the bill which would amend section 1115(a)(12) of the Tax Law. This section presently exempts from sales and use tax machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property for sale by various processes including refining, mining and extracting. The amendment proposed by this bill section would extend this exemption to include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas and solution mining activities to the point of sale to the first commercial purchaser.

Section 528.13(b) of the Sales and Use Tax Regulations promulgated by the Tax Commission provides that the exemption granted by section 1115(a)(12) of the Tax Law applies only to machinery and equipment used directly and predominantly in the production phase. The term "production" is defined to include the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale. Machinery and equipment used in the distribution phase do not qualify for this exemption. Thus, machinery or equipment used to transport the finished product from the production site is not presently included within the manufacturer's exemption under section 1115(a)(12) of the Tax Law.

The amendment proposed by this bill, which would exempt pipe, pipeline, vehicles and certain other equipment used in the distribution of products of oil, gas and solution mining industries to the point of sale to the first commercial purchaser, would grant a select group of industries special treatment. By granting this special exemption to the oil and gas industries, other New York industries would be treated unfairly. Therefore, this

Hon. Hugh L. Carey

-3-

July 27, 1981

amendment will almost certainly lead other industries to seek similar exemptions from the sales and use taxes for the purchase and use of equipment used in their particular mode of distribution of their products. The resulting fiscal consequences to this State would be very significant.

Therefore, I would recommend that executive approval of this bill be conditioned upon the sponsor agreeing to cooperate in an effort to have the bill amended in certain respects. I think the sponsor should be asked to agree to assist in an effort to have the law amended by deleting the provisions of the bill added by section 24.

Sincerely,



JAMES H. TULLY, JR.  
Commissioner

JK

C-846

5-6455

A-8475



DAVID GASKELL  
SECRETARY OF THE BOARD

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
STATE BOARD OF EQUALIZATION AND ASSESSMENT

ROBERT L. BEEBE  
COUNSEL

AGENCY BUILDING #4 - EMPIRE STATE PLAZA  
ALBANY, NEW YORK 12223

July 23, 1981

Hon. John G. McGoldrick  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

JUL 23 RECD

Dear Mr. McGoldrick:

Re: Senate Bill No. 6455-B  
By: Sen. Present

The attached memorandum summarizes the real property tax provisions of the above-captioned bill. As you know, these provisions were added to the original Governor's Program bill as a result of legislative concern for current assessment practices relating to oil and gas leases. We concur in this concern; difficult situations either exist or may soon occur in counties such as Chautauqua, Rensselaer, Albany and Saratoga.

We believe the assessment program which would be established by this bill would be a substantial positive effort in the improvement of the administration of assessments of this type of real property. The appropriation in bill section 26 would enable us to recruit the necessary personnel and develop the capitalized income methodology required by the bill in a timely fashion.

We presume that the amended bill remains acceptable as a Program proposal, and subject to the recommendation of the Department of Environmental Conservation, we recommend that the bill be approved.

Very truly yours,  
  
Robert L. Beebe

Attachment:  
Memorandum dated July 22, 1981

cc: David Gaskell, Executive Director  
Members of the State Board of  
Equalization and Assessment

~~LR~~ LR

6455-B



*to Jesse*

GERALD CUMMINS  
CHAIRMAN

LEGAL DEPARTMENT

LOUISE M. SUNSHINE  
VICE CHAIRMAN

ROBERT J. FARRELL  
GENERAL COUNSEL

CHARLES T. LANIGAN  
TREASURER

NEW YORK STATE THRUWAY AUTHORITY

JUL 13 1981

200 SOUTHERN BOULEVARD  
POST OFFICE BOX 189  
ALBANY, NEW YORK 12201

JAMES A. MARTIN  
EXECUTIVE DIRECTOR

PHONE (518) 449-1750

July 10, 1981

John G. McGoldrick, Esq.  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

Re: Senate 6455-B by Senator Present

Dear Mr. McGoldrick:

The above bill is before the Governor for executive action and you have asked for our comments and recommendation with respect thereto.

This bill would amend the State Finance Law, the Environmental Conservation Law, the Real Property Tax Law, the Agriculture and Markets Law and the Tax Law relative to promotion of the development of oil and gas resources within New York State. The Authority offers no comment with respect to this bill.

This act would take effect 30 days after it became law.

Sincerely,

*Robert J. Farrell*

ROBERT J. FARRELL  
General Counsel

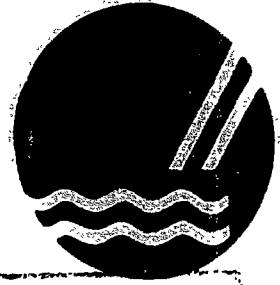
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W-6455-B

New York State Environmental Facilities Corporation  
50 Wolf Road, Albany, N.Y. 12205 / (518) 457-4100

Robert F. Flacke  
Chairman

Terence P. Curran, P.E.  
Executive Director



July 9, 1981

JUL 10 1981

Hon. John G. McGoldrick  
Counsel to the Governor  
Executive Chamber  
Albany, N.Y.

Dear Judge McGoldrick:

Re: Senate Bill #5109-B; Assembly #7185-B  
Senate Bill #3787; Assembly #5049  
Senate Bill #7048  
Senate Bill #6921  
✓ Senate Bill #6455-B; Assembly #8475-B  
Senate Bill #5578-A

EFC has no objection to the subject bills.

Very truly yours,

Joseph A. Cutro  
Counsel

JAC:vj

LA

Department of Environmental Conservation

July 6, 1981

SENATE 6455B

Introduced by Senator Present

JUL 07 Recd

RECOMMENDATION: Approval

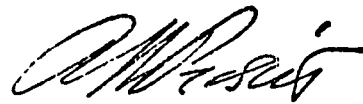
STATUTES INVOLVED: E.C.L. Article 23, Titles 1,3,5,7,13 and 15; 19(new); State Finance Law Section 83-a(new); Real Property Tax Law Title 5(new); Sections 906.2; 930.1; Agriculture and Markets Law Sections 305.1(d) and 306.2

EFFECTIVE DATE: 30 days after becoming law

DISCUSSION: This bill incorporates provisions from Governor's Program Bills 6,8 and 9 (A. 6925, 6927 and 6928). A number of changes would be made in the statute that were not sought in the program bills. These include:

- imposition of a permit fee structure rather than a severance tax
- limitations on the amount of money available for plugging old field wells and the manner in which such funds may be expended
- compensation payments to localities are authorized for damages to public property arising from oil and gas activities
- establishment of an Oil, Gas and Solution Mining Advisory Board

Despite these changes, the bill contains the majority of the elements originally sought in the program bills, and is thus legislation which the Department desires to see enacted. A copy of a detailed memo explaining the legislation is attached.



General Counsel / Deputy Commissioner

S-6455B

JR

# NEW YORK STATE SCHOOL BOARDS ASSOCIATION

119 Washington Avenue, Albany, New York 12210 • (518) 466-3474



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Counsel
  - HARVEY MANDELKEIN  
Deputy Counsel
  - NOELMAN H. GROSS  
Associate Counsel

July 22, 1981

The Honorable John G. McGoldrick  
Counsel to the Governor  
Executive Chambers  
The Capitol  
Albany, New York 12224

Dear Mr. McGoldrick:

There is before Governor Carey S 6455-B by Senator Present, a bill dealing with the development of oil and gas resources in New York State.

Among its other provisions, this bill permits public entities, including school districts, to obtain an exemption from well spacing requirements in order to drill on school property for natural gas (§§8 and 9, pages 12 and 13 of the bill).

Several school districts which have ascertained that such drilling would be economically sound have applied for drilling permits but would be unable to obtain them unless a provision for a variance from well spacing requirements is enacted.

For these reasons, we support this bill and recommend that it be signed.

Very truly yours,

*Stanley L. Raub*  
STANLEY L. RAUB  
Executive Director

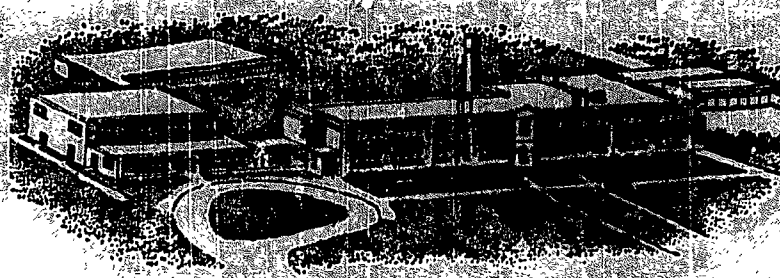
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C-844  
**ELBA CENTRAL SCHOOL**

**ELBA, N. Y. 14058**

**SAMUEL F. GIANSANTE, Superintendent**  
**REYBURN W. CAMPBELL, Sr., Elem. Prin.**  
**ALLAN R. CROWE, High School Principal**  
**LORNE G. HORTON, Clerk**  
**SARAH H. PANK, Treasurer**



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**ROBERT ZIPPEL**

July 31, 1981

Mr. John G. McGoldrick  
Council to the Governor  
Executive Chambers  
The Capital  
Albany, New York 12224

Dear Sir:

May I take this opportunity to express the unqualified support of the Board of Education of the Elba Central School District for Senate Bill 6455-B which would permit schools to obtain variances in order to drill for natural gas.

This District has already completed a feasibility study which indicates a 95% chance that natural gas is present on school owned property which is comprised of approximately 37 acres. The District has not been able to drill for gas because of restrictions on well spacing requirements.

Since this bill has been passed by both the Assembly and the Senate and is now in the hands of the Governor for his signature, we urge him to sign this legislation in order that we, together with other school districts in the state, might be able to take advantage of the energy saving fuels resulting from drilling for natural gas.

Thank you for the opportunity to express my views.

Sincerely yours,

*S. F. Giansante*

S. F. Giansante  
Superintendent of Schools

SFG:vs

LK - -



# NEW YORK GAS GROUP

SUITE 4120 • 500 FIFTH AVENUE • NEW YORK, N. Y. 10036 • 212 354-4790

July 14, 1981

HAROLD S. WALKER, JR.  
Executive Director

The Honorable John G. McGoldrick  
Executive Chamber  
State Capitol  
Albany, N.Y. 12224

### MEMBERS

- The Brooklyn Union Gas Company
- Central Hudson Gas and Electric Corp.
- Columbia Gas of N. Y., Inc.
- Consolidated Edison Co. of N. Y., Inc.
- Conning Natural Gas Corporation
- Long Island Lighting Company
- National Fuel Gas Distribution Corp.
- New York State Electric and Gas Corp.
- Niagara Mohawk Power Corp.
- Orange and Rockland Utilities, Inc.
- The Pavilion Natural Gas Company
- Rochester Gas and Electric Corporation
- St. Lawrence Gas Company Inc.
- Syracuse Suburban Gas Company, Inc.

Dear Mr. McGoldrick:

Thank you for your message regarding S.6455B/A.8475B which arrived here July 10.

This omnibus bill regarding development of oil and gas resources in New York State has the general support of the member companies of the New York Gas Group. The bill seems desirable for the following reasons:

1. It is comprehensive and gives oil and gas people a single guide to the changes made in a number of state laws which impinge upon oil and gas development.
2. It appears that the fees and charges imposed are intended to reimburse the state for the cost of carrying out the programs mentioned. In this regard, it would be well to caution that the development of oil and gas resources in New York is best carried on with a minimum of taxes, fees, charges and regulatory hurdles. To the extent that the foregoing become burdensome, the state will surely see the diminution of development of oil and gas reserves.
3. The interesting concept of oil and gas rights has been resolved upon a basis of application of such a charge after production has begun.

The foregoing are our reasons for support. I wish to take this opportunity again to remind you and the legislature that the oil and gas resources of the state are modest indeed. By definition then, exploration and production is at best a marginal activity—albeit an important one to the gas industry in the state. An attempt, therefore, to change the emphasis of this revenue producing bill from the purposes stated to a means of making up for short falls in other sources

Honorable John G. McGoldrick

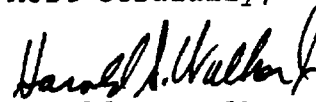
Page 2

July 14, 1981

of state income is quite likely to result in the non-development of oil and gas resources in New York State. This would be unfortunate because it would inevitably mean loss of jobs, a shakier gas industry (particularly production) and increased dependence on imported oil.

We are sure, however, that continuation of the very positive commitment of the Governor and the Legislature to industry/government cooperation will serve to steer a course between the Scylla of uncontrolled development and the Charibdis of failure to develop important reserves.

Most cordially,



Harold S. Walker, Jr., CAE  
Executive Director

HSW:mg

cc: Charles A. Wood

LR

J-6455-B

NEW YORK STATE  
- ASSOCIATION OF -  
COUNTY DIRECTORS  
OF  
REAL PROPERTY TAX SERVICES

JUL 22 1981

July 21, 1981

Hon. John G. McGoldrick  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, NY 12224

RE: S6455-B/A8475-B

Dear Mr. McGoldrick:

This letter is in response to your present inquiry concerning the above legislation recently passed by both houses of the Legislature and now before the Governor for executive action.

Please be advised that the New York State Association of County Directors of Real Property Tax Services supports this legislation.

Please call on our office if we can be of any further assistance.

Sincerely,

*George C. Fox*

George C. Fox  
Real Property Tax Director  
St. Lawrence County

*Abe Seldin*

Abe Seldin, Chairman  
Real Property Tax, Board of Assessors  
Nassau County

/jm