

HB0852/680112/1

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL 852
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “prohibiting” in line 3 down through “Shale” in line 7 and substitute “requiring the Department of the Environment and the Department of Natural Resources jointly to convene a certain Advisory Commission; providing for the membership of the Advisory Commission; requiring the Department of the Environment and the Department of Natural Resources jointly to undertake a certain study in accordance with certain requirements; requiring the Department of the Environment and the Department of Natural Resources jointly to make a draft of a certain report available under certain circumstances; requiring the Advisory Commission to make certain recommendations; requiring the Department of the Environment and the Department of Natural Resources jointly to publish a certain report in accordance with certain requirements; prohibiting the Department of the Environment from issuing a certain permit under certain circumstances; requiring certain owners of a certain gas interest to file a certain notice with the Department of the Environment in accordance with certain requirements; requiring certain owners to pay to the Department of the Environment a certain amount of money under certain circumstances; establishing certain grounds for the denial of a certain permit, subject to a certain exception; requiring the Department of the Environment to deposit certain funds in the Oil and Gas Fund; requiring the Department of the Environment to make a certain refund under certain circumstances; authorizing certain funds to be deposited in the Oil and Gas Fund; requiring a certain amount of money to be used to pay for a certain study; authorizing the Department of the Environment to enter into certain agreements for goods and services under certain circumstances”; in line 11, after “Section” insert “14-102 and”; in line 16, after “14-107.1” insert “and 14-107.2”; and after line 18, insert:

“BY repealing and reenacting, with amendments,

(Over)

Article - Environment
Section 14-122
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)".

AMENDMENT NO. 2

On page 1, after line 21, insert:

"14-102.

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Coalbed methane" means methane and any other gaseous substance occurring in or produced from a coal seam or related, associated, or adjacent rock materials.
- (c) "County" includes Baltimore City unless otherwise indicated.
- (d) "Department" means the Department of the Environment.
- (e) "Field" means the general area underlaid by one or more pools.
- (f) "Fund" means the Oil and Gas Fund.
- (g) "Gas" means all natural gas and other fluid hydrocarbons, not defined as oil, which are produced from a natural reservoir.
- (h) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, except liquid hydrocarbons known as distillate or condensate recovered or extracted from gas.

(i) “Owner” means the person who has the right to drill into and produce from a pool, or to store in a pool, and appropriate the oil or gas the person produces or stores either for the person or others.

(j) “Person” means any individual, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind.

(k) “Pool” means an underground reservoir containing a common accumulation of oil, gas, or both.

(l) “Producer” means the owner of a well capable of producing oil, gas, or both.

(m) “Product” means any commodity produced in its natural state by an oil or gas well.

(n) (1) “Production” means the act or process of producing oil or gas from a natural reservoir.

(2) “Production” does not include the sale or distribution of oil or gas.

(o) (1) “Underground storage” means the storing of gas or oil in a geological stratum beneath the surface of the earth.

(2) “Underground storage” includes the injection of gas or oil into and withdrawal from an underground storage reservoir and any other operation necessary for or convenient to the storage of gas or of oil.

(p) “Underground storage reservoir” means the stratum and subsurface area that are used or are to be used for or in connection with the underground storage of gas or of oil.”.

On page 2, strike in their entirety lines 16 through 18, inclusive, and substitute:

“(2) “EPA HYDRAULIC FRACTURING RESEARCH STUDY” MEANS THE STUDY BY THE OFFICE OF RESEARCH AND DEVELOPMENT AT THE U.S. ENVIRONMENTAL PROTECTION AGENCY ON THE RELATIONSHIP BETWEEN HYDRAULIC FRACTURING AND DRINKING WATER THAT MAY BE DEVELOPED AND IMPLEMENTED BEGINNING IN 2011, WITH INITIAL RESEARCH PRODUCTS AVAILABLE BY THE END OF 2012.”.

AMENDMENT NO. 3

On pages 3 and 4, strike beginning with line 3 on page 3 down through line 28 on page 4, inclusive, and substitute:

“(B) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL CONVENE AN ADVISORY COMMISSION THAT SHALL INCLUDE REPRESENTATIVES OF LOCAL GOVERNMENTS, THE SCIENCE AND ENGINEERING COMMUNITIES, INDUSTRY GROUPS, ENVIRONMENTAL ORGANIZATIONS, BUSINESSES AND PRIVATE CITIZENS WHO RESIDE IN THE WESTERN MARYLAND REGION, AND ANY OTHER STATE AGENCIES OR OTHER PERSONS THE AGENCIES DETERMINE NECESSARY.

(C) (1) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL UNDERTAKE A STUDY OF THE EXTRACTION OF NATURAL GAS FROM SHALE FORMATIONS IN THE STATE, INCLUDING THE MARCELLUS SHALE FORMATION.

(2) IN DESIGNING AND UNDERTAKING THE STUDY, THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY

SHALL CONSULT, AS APPROPRIATE, OTHER STATE AGENCIES, OTHER STATES IN THE REGION, AND FEDERAL AGENCIES.

(3) THE STUDY SHALL INCLUDE A REVIEW OF THE RESULTS OF THE EPA HYDRAULIC FRACTURING RESEARCH STUDY, ENVIRONMENTAL IMPACT STATEMENTS OF THE STATE OF NEW YORK, THE DELAWARE RIVER BASIN COMMISSION, AND OTHER AVAILABLE STUDIES OF POTENTIAL IMPACTS TO THE PUBLIC HEALTH, SAFETY, ENVIRONMENT, OR NATURAL RESOURCES.

(4) THE STUDY SHALL ADDRESS:

(i) THE RISK OF CONTAMINATION OF GROUNDWATER AND SURFACE WATER BY FRACTURING FLUIDS AND GAS;

(ii) THE RISKS OF CONTAMINATION OF, OR NEGATIVE IMPACTS TO, WATER AND OTHER NATURAL RESOURCES FROM THE TRANSPORTATION, STORAGE, AND HANDLING OF LIQUIDS, INCLUDING FRACTURING FLUIDS;

(iii) THE RISKS OF CONTAMINATION OR NEGATIVE IMPACTS TO WATER AND OTHER NATURAL RESOURCES FROM THE HANDLING AND DISPOSAL OF FLOW BACK AND OTHER WASTEWATER AND WASTES;

(iv) THE LONG-TERM AVAILABILITY OF WATER RESOURCES TO SUPPORT HYDRAULIC FRACTURING ACTIVITIES;

(v) INCREASED FOREST AND HABITAT FRAGMENTATION AND OTHER ENVIRONMENTAL IMPACTS DUE TO THE CONSTRUCTION OF DRILLING PLATFORMS, GATHERING LINES, TRANSMISSION PIPELINES, AND OTHER NECESSARY INFRASTRUCTURE;

(Over)

(VI) INCREASED RISKS OF TRAFFIC ACCIDENTS AND DAMAGE TO ROADS AND BRIDGES FROM TRUCK TRAFFIC;

(VII) LONG-TERM IMPACTS TO LOCAL LAND USE PATTERNS AND THE CHARACTER OF RURAL AREAS AND TOWNS;

(VIII) THE ADEQUACY OF LOCAL EMERGENCY RESPONSE CAPABILITIES;

(IX) IMPACTS TO STATE RESOURCES AND RECREATION LANDS;

(X) THE PROJECTED POSITIVE AND NEGATIVE ECONOMIC IMPACT OF HYDRAULIC FRACTURING ACTIVITIES TO THE REGION AND THE STATE;

(XI) THE DESIRABILITY OF ENACTING A STATE-LEVEL SEVERANCE TAX TO GENERATE REVENUES FOR RESEARCH, REMEDIATION, AND OTHER ACTIVITIES RELATING TO HYDRAULIC FRACTURING;

(XII) THE ESTABLISHMENT OF AN INDUSTRY-FUNDED ESCROW ACCOUNT TO FUND THE COST OF REMEDIATION AND REGULATORY ENFORCEMENT;

(XIII) THE AVAILABLE METHODS FOR DISPOSAL OF FLOW BACK AND OTHER WASTEWATER AND WASTES CONTAINING RADIOACTIVE MATERIALS;

(XIV) WELL CONSTRUCTION STANDARDS, INCLUDING CONSTRUCTION METHODS AND MATERIALS USED; AND

(XV) ANY OTHER ISSUES IDENTIFIED BY THE ADVISORY COMMISSION.

(D) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL MAKE A DRAFT REPORT BASED ON THE STUDY REQUIRED UNDER SUBSECTION (C) OF THIS SECTION:

(1) PUBLICLY AVAILABLE; AND

(2) OPEN TO PUBLIC COMMENT ON THE REPORT BEFORE ITS FINAL PUBLICATION.

(E) THE ADVISORY COMMISSION SHALL MAKE RECOMMENDATIONS TO THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES ON:

(1) CONDITIONS THAT SHOULD BE INCLUDED IN PERMITS FOR HYDRAULIC FRACTURING IN THE MARCELLUS SHALE; AND

(2) APPROPRIATE CHANGES, IF ANY, THAT SHOULD BE MADE TO STATE LAW AND REGULATIONS GOVERNING HYDRAULIC FRACTURING IN THE MARCELLUS SHALE.

(F) ON OR BEFORE AUGUST 1, 2013, THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL PUBLISH A FINAL REPORT, INCLUDING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS, IF

ANY, FOR STATUTORY OR REGULATORY CHANGES, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

(G) NOTWITHSTANDING THE PROVISIONS OF §§ 5-204 AND 14-105 OF THIS ARTICLE, UNTIL THE PUBLICATION OF THE FINAL REPORT, THE DEPARTMENT MAY NOT ISSUE A PERMIT UNDER § 14-104 OF THIS TITLE FOR WELL DRILLING THAT MAY INVOLVE THE HYDRAULIC FRACTURING OF A FORMATION:

(1) UNLESS INFORMATION BECOMES AVAILABLE DURING THE COURSE OF THE STUDY SUFFICIENT TO DEMONSTRATE THAT THE EXTRACTION OF NATURAL GAS FROM SHALE FORMATIONS IN THE STATE CAN BE ACCOMPLISHED WITHOUT ADVERSE IMPACT TO HUMAN HEALTH, NATURAL RESOURCES, OR THE ENVIRONMENT; AND

(2) UNTIL AT LEAST 45 DAYS AFTER THE DEPARTMENT NOTIFIES THE GENERAL ASSEMBLY OF ITS INTENTION TO ISSUE SUCH A PERMIT.

14-107.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “GAS INTEREST” MEANS THE RIGHT TO EXPLORE FOR GAS ON, OR PRODUCE GAS FROM, REAL PROPERTY.

(3) “INTEREST” DOES NOT INCLUDE A FEE SIMPLE INTEREST IN THE SURFACE RIGHTS OF REAL PROPERTY REGARDLESS OF WHETHER THE FEE INTEREST INCLUDES THE MINERAL RIGHTS.

(B) ON OR BEFORE JULY 1, 2011, OR WITHIN 30 DAYS AFTER ACQUIRING THE GAS INTEREST, WHICHEVER IS LATER, AN OWNER THAT ACQUIRES A GAS INTEREST IN REAL PROPERTY IN GARRETT COUNTY OR ALLEGANY COUNTY AFTER JANUARY 1, 2007, FOR THE PURPOSE OF DRILLING FOR NATURAL GAS SHALL FILE A NOTICE WITH THE DEPARTMENT IDENTIFYING:

(1) EACH PARCEL, BY PARCEL NUMBER OR OTHER LEGAL DESCRIPTION, ON WHICH THE OWNER HAS A GAS INTEREST IN GARRETT COUNTY OR ALLEGANY COUNTY;

(2) A STATEMENT OF THE TOTAL ACREAGE OF THOSE PARCELS;
AND

(3) A MAP SHOWING THOSE PARCELS.

(C) (1) ON OR BEFORE AUGUST 1, 2011, OR WITHIN 30 DAYS AFTER NOTIFICATION BY THE DEPARTMENT, WHICHEVER IS LATER, EACH OWNER THAT FILES A NOTICE UNDER SUBSECTION (B) OF THIS SECTION SHALL PAY TO THE DEPARTMENT, AS A FEE FOR CALENDAR YEAR 2011, AN AMOUNT EQUAL TO \$10 PER ACRE OF THE TOTAL ACREAGE REPORTED.

(2) ON OR BEFORE AUGUST 1, 2012, OR WITHIN 30 DAYS AFTER NOTIFICATION BY THE DEPARTMENT, WHICHEVER IS LATER, EACH OWNER THAT FILES A NOTICE UNDER SUBSECTION (B) OF THIS SECTION SHALL PAY TO THE DEPARTMENT, AS A FEE FOR CALENDAR YEAR 2012, AN AMOUNT EQUAL TO \$10 PER ACRE OF THE TOTAL ACREAGE REPORTED.

(3) EXCEPT AS PROVIDED IN SUBSECTION (G)(3) OF THIS SECTION, A FEE MAY NOT BE ASSESSED UNDER THIS SECTION AFTER CALENDAR YEAR 2012.

(D) (1) THIS SUBSECTION DOES NOT APPLY TO AN OWNER THAT DEMONSTRATES, TO THE SATISFACTION OF THE DEPARTMENT, GOOD CAUSE FOR THE FAILURE TO MEET THE REQUIREMENTS UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION.

(2) FAILURE TO FILE THE NOTICE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION WHEN DUE, OR FAILURE TO PAY THE AMOUNTS REQUIRED UNDER SUBSECTION (C) OF THIS SECTION WHEN DUE, MAY BE GROUNDS FOR DENIAL OF A PERMIT TO EXPLORE FOR OR PRODUCE GAS FROM FORMATIONS UNDER THE PARCEL.

(E) AN OWNER MAY NOT PASS THE PAYMENT OF COSTS REQUIRED UNDER SUBSECTION (C) OF THIS SECTION THROUGH TO, OR RECOVER THEM FROM, THE PERSON WHO OWNS THE SURFACE RIGHTS OF THE PROPERTY.

(F) THE DEPARTMENT SHALL DEPOSIT THE MONEY COLLECTED UNDER THIS SECTION IN THE OIL AND GAS FUND.

(G) (1) ON ISSUANCE OF THE FINAL REPORT DESCRIBED IN § 14-107.1 OF THIS SUBTITLE, THE DEPARTMENT SHALL COMPARE THE ACTUAL COSTS OF THE STUDY WITH THE MONEY PAID BY PERSONS THAT FILE A NOTICE UNDER SUBSECTION (B) OF THIS SECTION.

(2) IF THE ACTUAL COST OF THE STUDY IS LESS THAN THE AMOUNT PAID UNDER SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT

SHALL REFUND THE DIFFERENCE, PRORATED BY ACREAGE, TO THE OWNERS WHO PAID A FEE.

(3) IF THE ACTUAL COST OF THE STUDY IS MORE THAN THE AMOUNT PAID UNDER SUBSECTION (C) OF THIS SECTION, EACH OWNER THAT FILED A NOTICE UNDER SUBSECTION (B) OF THIS SECTION SHALL PAY, WITHIN 30 DAYS AFTER NOTIFICATION BY THE DEPARTMENT, AN AMOUNT DETERMINED BY THE DEPARTMENT, PRORATED BY ACREAGE, TO FULLY FUND THE COST OF THE STUDY.

14-122.

(a) There is an Oil and Gas Fund.

(b) The Fund consists of:

(1) Fees collected by the Department under § 14-105 of this subtitle;

(2) MONEY COLLECTED BY THE DEPARTMENT UNDER § 14-107.2 OF THIS SUBTITLE;

[(2)] (3) Funds appropriated by the General Assembly for deposit to the Fund;

[(3)] (4) Fines and bond forfeitures collected by the Department in accordance with this subtitle that exceed the amount necessary to restore a site; and

[(4)] (5) Any additional money made available from any sources, public or private, for the purposes for which the Fund has been established.

(Over)

(c) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) Notwithstanding any law to the contrary, unused money in the Fund may not revert to the General Fund.

(d) The Fund shall be maintained and administered by the Department in accordance with the provisions of this subtitle and any regulations the Department adopts.

(E) EXCEPT AS PROVIDED IN § 14-107.2(G)(2) OF THIS SUBTITLE, ANY MONEY DEPOSITED IN THE FUND UNDER § 14-107.2 OF THIS SUBTITLE SHALL BE USED BY THE DEPARTMENT TO PAY FOR THE STUDY REQUIRED UNDER § 14-107.1 OF THIS SUBTITLE.”

AMENDMENT NO. 4

On page 4, after line 28, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding § 13-107 of the State Finance and Procurement Article, the Department of the Environment may enter into sole source agreements for goods or services in order to expedite completion of the study required under § 14-107.1 of the Environment Article, as enacted by Section 1 of this Act.”;

and in line 29, strike “2.” and substitute “3.”.