

HOUSE BILL 1123

M3

(2lr3206)

ENROLLED BILL

— *Environmental Matters/Education, Health, and Environmental Affairs* —

Introduced by **Delegate Mizeur**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Environment – Presumptive Impact Areas – ~~Damage~~ Contamination Caused**
3 **by Gas Wells in Deep Shale Deposits**

4 FOR the purpose of establishing for certain gas well permits a certain presumptive
5 impact area around the gas well; establishing limits on the area and the time
6 period in which a presumptive impact area shall be in effect; requiring the
7 Department of the Environment to consider certain factors in making certain
8 determinations; requiring a permittee to replace a certain water supply ~~and~~
9 ~~repair certain damage or pay monetary compensation to a certain property~~
10 ~~owner in a presumptive impact area~~ under certain circumstances; establishing
11 certain conditions under which a certain water supply within a presumptive
12 impact area shall be considered to be replaced adequately by the permittee;
13 ~~establishing a certain condition under which certain property damage within a~~
14 ~~presumptive impact area shall be considered to be repaired adequately by the~~
15 ~~permittee; requiring a permittee to pay certain compensation to a certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 ~~property owner under certain circumstances;~~ authorizing the permittee to avoid
 2 restoration under certain circumstances; prohibiting the Department from
 3 requiring a permittee to replace a water supply ~~or repair~~ or compensate an
 4 owner ~~for other damage~~ under certain circumstances; ~~requiring~~ authorizing the
 5 Department to adopt certain regulations; establishing that a certain
 6 presumption of causation does not apply under certain circumstances; providing
 7 that a certain presumption of causation applies in certain civil actions;
 8 providing that the presumption may be rebutted by ~~clear and convincing~~ a
 9 preponderance of the evidence; ~~stating certain legislative findings and intent;~~
 10 defining a certain term; providing for the construction of this Act; and generally
 11 relating to ~~damage~~ contamination caused by certain activities of gas exploration
 12 or production.

13 BY adding to

14 Article – Environment
 15 Section 14-110.1 ~~and 14-110.2~~
 16 Annotated Code of Maryland
 17 (2007 Replacement Volume and 2011 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Environment**

21 **14-110.1.**

22 ~~(A) THE GENERAL ASSEMBLY FINDS THAT:~~

23 ~~(1) IN CERTAIN REGIONS OF THE STATE ACTIVITIES RELATING TO~~
 24 ~~EXPLORATION FOR OR PRODUCTION OF GAS FROM DEEP SHALE DEPOSITS HAVE~~
 25 ~~THE POTENTIAL TO CONTAMINATE WATER SUPPLY WELLS SOURCES AND TO~~
 26 ~~RESULT IN OTHER DAMAGE TO LANDOWNERS IN THE VICINITY OF A GAS WELL;~~
 27 ~~AND~~

28 ~~(2) IT IS REASONABLE TO PRESUME THAT ACTIVITIES OF GAS~~
 29 ~~EXPLORATION AND PRODUCTION ARE THE CAUSE OF CONTAMINATION OF A~~
 30 ~~WATER SUPPLY WELL SOURCE WITH METHANE OR OTHER POLLUTANTS AND~~
 31 ~~OTHER DAMAGE IF:~~

32 ~~(i) THE WATER SUPPLY WELL SOURCE IS WITHIN 2,640~~
 33 ~~2,500 FEET OF THE VERTICAL WELLBORE; AND~~

34 ~~(ii) THE CONTAMINATION OCCURS WITHIN 365 DAYS OF~~
 35 ~~THE LAST EVENT OF WELL DRILLING, COMPLETION, OR HYDRAULIC~~
 36 ~~FRACTURING.~~

~~(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROTECT AFFECTED PROPERTY OWNERS IN AREAS OF THE STATE WHERE DEEP SHALE DEPOSITS, INCLUDING THE MARCELLUS SHALE AND THE UTICA SHALE, ARE FOUND BY ESTABLISHING PRESUMPTIVE IMPACT AREAS AROUND GAS WELLS AND REQUIRING THE DEPARTMENT TO ADMINISTER A PROGRAM REQUIRING PERMITTEES TO REPAIR DAMAGE REPLACE CONTAMINATED WATER SUPPLIES SUPPLY SOURCES OR COMPENSATE AFFECTED PROPERTY OWNERS IN THOSE AREAS.~~

~~14-110.2.~~

(A) IN THIS SECTION, "WATER SUPPLY SOURCE" MEANS A WELL, SPRING, SPRING FED POND, RESERVOIR, STREAM, OR ANY OTHER SOURCE OF WATER USED FOR DRINKING OR FOR LIVESTOCK SOURCE OF WATER USED FOR DRINKING OR OTHER DOMESTIC PURPOSE OR FOR AGRICULTURE, INCLUDING LIVESTOCK.

(B) FOR EACH PERMIT THE DEPARTMENT ISSUES UNDER THIS SUBTITLE TO DRILL A WELL FOR THE EXPLORATION OR PRODUCTION OF GAS IN DEEP SHALE DEPOSITS, THERE IS A PRESUMPTIVE IMPACT AREA AROUND THE GAS WELL IN WHICH IT IS PRESUMED THAT CONTAMINATION OF A WATER SUPPLY WELL SOURCE AND OTHER DAMAGE TO REAL OR PERSONAL PROPERTY WERE WAS CAUSED BY THE ACTIVITIES OF GAS EXPLORATION OR PRODUCTION.

~~(B)~~ (C) THE PRESUMPTIVE IMPACT AREA SHALL BE IN EFFECT:

(1) WITHIN A RADIUS OF ~~2,640~~ 2,500 FEET FROM THE VERTICAL WELLBORE; AND

(2) FOR 365 DAYS AFTER THE LAST EVENT OF WELL DRILLING, COMPLETION, OR HYDRAULIC FRACTURING.

~~(C)~~ (D) WITHIN A PRESUMPTIVE IMPACT AREA ESTABLISHED UNDER SUBSECTIONS ~~(A)~~ (B) AND ~~(B)~~ (C) OF THIS SECTION, THE PERMITTEE SHALL:

(1) ~~REPLACE~~ REPLACE, AT NO EXPENSE TO AN OWNER OF REAL PROPERTY IN THE PRESUMPTIVE IMPACT AREA, A WATER SUPPLY THAT IS ~~DAMAGED~~ CONTAMINATED AS A RESULT OF THE PERMITTEE'S DRILLING OR OPERATION OF THE GAS WELL; ~~AND~~

~~(2) ON A DETERMINATION BY THE DEPARTMENT OF PROXIMATE CAUSE AFTER THE PERMITTEE HAS RECEIVED NOTICE AND AN OPPORTUNITY TO RESPOND AND PROVIDE INFORMATION, PAY MONETARY COMPENSATION TO AN~~

1 ~~AFFECTED PROPERTY OWNER, OR REPAIR ANY PROPERTY DAMAGE CAUSED AS A~~
 2 ~~RESULT OF THE DRILLING OR OPERATION OF THE PERMITTEE'S GAS WELL.~~

3 ~~(D)~~ (E) A WATER SUPPLY WITHIN A PRESUMPTIVE IMPACT AREA THAT
 4 NO LONGER YIELDS POTABLE WATER AS A RESULT OF THE DRILLING OR
 5 OPERATION OF A GAS WELL SHALL BE CONSIDERED TO BE REPLACED
 6 ADEQUATELY BY A PERMITTEE IF THE PERMITTEE PROVIDES FOR THE
 7 AFFECTED PROPERTY OWNER A NEW OR RETROFITTED WELL OR OTHER
 8 ALTERNATIVE WATER SUPPLY THAT IS CAPABLE OF YIELDING POTABLE WATER
 9 EQUAL TO THE VOLUME USED OR NEEDED BY THE PROPERTY OWNER BEFORE
 10 ~~THE DAMAGE TO~~ CONTAMINATION OF THE WATER SUPPLY.

11 ~~(E)~~ (F) ~~(1) REAL OR PERSONAL PROPERTY WITHIN A~~
 12 ~~PRESUMPTIVE IMPACT AREA FOUND BY THE DEPARTMENT TO HAVE BEEN~~
 13 ~~DAMAGED AS A RESULT OF THE DRILLING OR OPERATION OF A GAS WELL SHALL~~
 14 ~~BE CONSIDERED TO BE REPAIRED ADEQUATELY BY A PERMITTEE IF THE~~
 15 ~~PERMITTEE RETURNS THE DAMAGED PROPERTY TO ITS CONDITION BEFORE~~
 16 ~~THE DAMAGE.~~

17 ~~(2) IF THE DAMAGED REAL OR PERSONAL PROPERTY IS NOT~~
 18 ~~CAPABLE OF BEING RESTORED TO ITS CONDITION BEFORE THE DAMAGE, THE~~
 19 ~~PERMITTEE SHALL COMPENSATE THE OWNER OF THE REAL OR PERSONAL~~
 20 ~~PROPERTY MONETARILY BY THE DIFFERENCE BETWEEN THE FAIR MARKET~~
 21 ~~VALUE OF THE PROPERTY AS THE PROPERTY WOULD EXIST BUT FOR THE~~
 22 ~~DAMAGE AND THE FAIR MARKET VALUE OF THE PROPERTY AS A RESULT OF THE~~
 23 ~~DAMAGE.~~

24 ~~(3) NOTWITHSTANDING THE OTHER PROVISIONS OF THIS~~
 25 ~~SUBSECTION, THE~~ THE PERMITTEE AND THE PROPERTY OWNER MAY AGREE ON
 26 MONETARY COMPENSATION OR OTHER MITIGATION INSTEAD OF RESTORATION.

27 ~~(F)~~ (G) THE DEPARTMENT MAY NOT REQUIRE A PERMITTEE TO
 28 REPLACE A WATER SUPPLY ~~OR REPAIR~~ OR COMPENSATE AN A PROPERTY OWNER
 29 ~~FOR OTHER DAMAGE~~, AS PROVIDED IN THIS SECTION, IF THE PERMITTEE
 30 DEMONSTRATES TO THE DEPARTMENT BY ~~CLEAR AND CONVINCING A~~
 31 PREPONDERANCE OF THE EVIDENCE THAT:

32 (1) ~~THE PROXIMATE CAUSE OF THE DAMAGE~~ CONTAMINATION IS
 33 NOT THE RESULT OF ACTIVITIES RELATING TO THE GAS WELL; OR

34 (2) THE CONTAMINATION ~~OR DAMAGE~~ EXISTED BEFORE THE
 35 COMMENCEMENT OF ACTIVITIES ALLOWED BY THE PERMIT AND WAS NOT
 36 WORSENERD BY THOSE ACTIVITIES.

1 ~~(G)~~ **(H)** THE DEPARTMENT ~~SHALL~~ MAY ADOPT REGULATIONS TO
2 IMPLEMENT THIS SECTION.

3 ~~(H)~~ **(I)** THE PRESUMPTION OF CAUSATION ESTABLISHED UNDER THIS
4 SECTION DOES NOT APPLY TO CONTAMINATION OF A WATER SUPPLY ~~WELL~~
5 SOURCE IF:

6 (1) THE PERMIT APPLICANT REQUESTS THE PERMISSION OF THE
7 ~~LANDOWNER~~ PROPERTY OWNER TO SAMPLE AND TEST THE WATER SUPPLY
8 ~~WELL SOURCE~~ BEFORE COMMENCEMENT OF ACTIVITIES AND TO PROVIDE THE
9 ~~LANDOWNER~~ PROPERTY OWNER WITH A COMPLETE COPY OF THE TEST
10 RESULTS; AND

11 (2) THE ~~LANDOWNER~~ PROPERTY OWNER REFUSES PERMISSION.

12 ~~(I)~~ **(J)** THIS SECTION MAY NOT BE CONSTRUED TO AFFECT ANY
13 COMMON LAW REMEDIES AVAILABLE TO A PROPERTY OWNER.

14 ~~(J)~~ **(K)** (1) THE PRESUMPTION OF CAUSATION ESTABLISHED
15 UNDER THIS SECTION SHALL APPLY IN:

16 (I) A PROCEEDING FOR JUDICIAL REVIEW UNDER § 14-117
17 OF THIS SUBTITLE;

18 (II) AN ACTION FOR AN INJUNCTION UNDER § 14-118 OF
19 THIS SUBTITLE; OR

20 (III) A CIVIL ACTION FOR DAMAGES OR EQUITABLE RELIEF
21 BROUGHT BY A PROPERTY OWNER AGAINST A PERMITTEE.

22 (2) THE PRESUMPTION MAY BE REBUTTED BY ~~CLEAR AND~~
23 ~~CONVINCING~~ A PREPONDERANCE OF THE EVIDENCE.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 ~~October~~ July 1, 2012.