

HOUSE BILL 1204

M3

2lr2541
CF SB 798

By: **Delegates Mizeur, Holmes, Bobo, Carr, Frick, Frush, Healey, Hubbard, Hucker, Luedtke, McHale, McIntosh, Morhaim, Niemann, Reznik, B. Robinson, S. Robinson, Stein, F. Turner, and Washington**

Introduced and read first time: February 10, 2012

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **The Marcellus Shale Safe Drilling Study Fee**

3 FOR the purpose of altering the amount of a certain performance bond; authorizing
4 the Department of the Environment to adopt certain regulations to alter the
5 minimum amount of a certain performance bond; requiring certain owners of a
6 certain gas interest in certain areas of the State to file a certain notice with the
7 Department in accordance with certain requirements; requiring certain owners
8 of a certain gas interest in certain areas of the State to pay to the Department a
9 certain amount of money on or before certain dates under certain
10 circumstances; establishing certain grounds for the denial of a certain permit;
11 requiring the Department to deposit certain funds and penalties in the Oil and
12 Gas Fund; requiring a certain amount of money in the Oil and Gas Fund to be
13 used for a certain study; requiring the Department to make a certain refund
14 under certain circumstances; authorizing the Department to impose a certain
15 administrative penalty under certain circumstances; authorizing the
16 Department to use certain funds for certain purposes; authorizing the
17 Department and the Department of Natural Resources to enter into certain
18 agreements for certain purposes; providing for the application of certain
19 provisions of law; making stylistic changes; defining certain terms; altering
20 certain definitions; and generally relating to gas and oil wells and gas interests.

21 BY repealing and reenacting, with amendments,
22 Article – Environment
23 Section 14–102, 14–111(a) and (b), 14–116, 14–117, 14–118, 14–122, and 14–123
24 Annotated Code of Maryland
25 (2007 Replacement Volume and 2011 Supplement)

26 BY adding to
27 Article – Environment

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 14–113.1 and 14–120.1
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

Preamble

WHEREAS, The Marcellus Shale is an underground rock formation that contains natural gas and underlies New York, Pennsylvania, Ohio, West Virginia, and Western Maryland; and

WHEREAS, Hydraulic fracturing is a method of extracting natural gas from shale formations by injecting large quantities of water, sand, and chemicals at high pressure deep into the ground, fracturing the rock, releasing the natural gas, and allowing it to flow to the well; and

WHEREAS, Exploration for and production of natural gas from shale formations in neighboring states have resulted in water, livestock, and crop contamination, well blowouts, fires, severe injuries and fatalities, releases of methane and drilling wastes, and forest fragmentation; and

WHEREAS, In 2011, the U.S. Environmental Protection Agency (EPA) reported drinking water contamination in Wyoming and the occurrence of earthquakes in Ohio associated with the storage of natural gas drilling wastes from wells drilled using the natural gas extraction method known as hydraulic fracturing; and

WHEREAS, The U.S. Department of Energy, EPA, New York State, and the State of Maryland are individually studying the economic and environmental impacts of the natural gas drilling method known as hydraulic fracturing; and

WHEREAS, In March 2011, the Maryland House of Delegates passed House Bill 852 which would have required the Maryland Department of the Environment (MDE) and the Department of Natural Resources (DNR) to jointly convene an advisory commission and undertake a study of the extraction of natural gas from shale formations in the State; and

WHEREAS, In June 2011, the Governor signed an executive order establishing the Marcellus Shale Safe Drilling Initiative to assist State policymakers and regulators in determining whether and how gas production from the Marcellus Shale in Maryland can be accomplished without unacceptable risks of adverse impacts to public, health, safety, and the environment; and

WHEREAS, the Marcellus Shale Safe Drilling Initiative study is being implemented by MDE and DNR, in consultation with an advisory commission established under the June 2011 executive order; and

WHEREAS, The Maryland Marcellus Shale Safe Drilling Initiative study is required to be completed by August 2014; and

1 WHEREAS, Part I of the Maryland Marcellus Shale Safe Drilling Initiative
2 study was issued in December 2011 and recommended, in part, the General Assembly
3 impose a per acre fee on gas leases to fund the studies required under the June 2011
4 executive order; and

5 WHEREAS, Completion of the Maryland study is dependent on funding for
6 DNR and MDE; and

7 WHEREAS, The revenue requirements of DNR and MDE are outlined in Part I
8 of the Report of the Marcellus Shale Safe Drilling Initiative study; and

9 WHEREAS, The critical funding for DNR and MDE will support the study of
10 baseline requirements, including regional water quality and quantity, assessing
11 specific stream data, and gathering regional mapping and survey data; and

12 WHEREAS, DNR and MDE report that at least 2 years of study for the baseline
13 requirements is necessary to fully understand the magnitude of variations caused by
14 different weather and seasonal events; and

15 WHEREAS, Any unused funds will fund State research relating to the practice
16 of hydraulic fracturing for natural gas in shale formations and the release of methane
17 and other hydrocarbons into the atmosphere, and also the relationship of this drilling
18 method to climate change concerns; and

19 WHEREAS, Lacking a dedicated funding source, the study required by the
20 Maryland Marcellus Shale Safe Drilling Initiative will fail to be completed; now,
21 therefore,

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

24 **Article – Environment**

25 14–102.

26 (a) In this subtitle the following words have the meanings indicated.

27 (b) “Coalbed methane” means methane and any other gaseous substance
28 occurring in or produced from a coal seam or related, associated, or adjacent rock
29 materials.

30 (c) “County” includes Baltimore City unless otherwise indicated.

31 (d) “Department” means the Department of the Environment.

1 (e) "Field" means the general area [underlaid] **UNDERLAIN** by one or more
2 pools.

3 (f) "Fund" means the Oil and Gas Fund.

4 (g) "Gas" means all natural gas, **NATURAL GAS LIQUIDS**, and other fluid
5 hydrocarbons, not defined as oil, which are produced from a natural reservoir.

6 **(G-1) (1) "GAS INTEREST" MEANS THE RIGHT TO EXPLORE FOR GAS ON,
7 OR PRODUCE GAS FROM, REAL PROPERTY.**

8 **(2) "GAS INTEREST" DOES NOT INCLUDE A FEE SIMPLE INTEREST
9 IN THE SURFACE RIGHTS OF REAL PROPERTY REGARDLESS OF WHETHER THE
10 FEE INTEREST INCLUDES THE MINERAL RIGHTS.**

11 **(G-2) "MARCELLUS SHALE" MEANS A MIDDLE DEVONIAN-AGE,
12 BLACK, LOW-DENSITY, CARBONACEOUS SHALE THAT:**

13 **(1) OCCURS THROUGHOUT THE ALLEGHENY PLATEAU REGION
14 OF THE NORTHERN APPALACHIAN BASIN; AND**

15 **(2) UNDERLIES PARTS OF GARRETT COUNTY, ALLEGANY
16 COUNTY, AND WASHINGTON COUNTY.**

17 **(G-3) "NATURAL GAS LIQUIDS" MEANS COMPONENTS OF NATURAL
18 GAS THAT ARE LIQUID AT THE SURFACE IN FIELD FACILITIES OR
19 GAS-PROCESSING PLANTS.**

20 (h) "Oil" means crude petroleum oil and other hydrocarbons, regardless of
21 gravity, which are produced at the wellhead in liquid form, except **NATURAL GAS**
22 **LIQUIDS OR** liquid hydrocarbons known as distillate or condensate recovered or
23 extracted from gas.

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

27 (j) "Person" means [any individual, corporation, association, partnership,
28 receiver, trustee, executor, administrator, guardian, fiduciary, or other representative
29 of any kind]:

30 **(1) THE FEDERAL GOVERNMENT, THE STATE, A COUNTY, A
31 MUNICIPAL CORPORATION, OR ANY OTHER POLITICAL SUBDIVISION OF THE
32 STATE, OR ANY OF THEIR UNITS;**

1 **(2) AN INDIVIDUAL, A RECEIVER, A TRUSTEE, A GUARDIAN, AN**
2 **EXECUTOR, AN ADMINISTRATOR, A FIDUCIARY, OR A REPRESENTATIVE OF ANY**
3 **KIND; OR**

4 **(3) A PARTNERSHIP, A FIRM, AN ASSOCIATION, A PUBLIC OR**
5 **PRIVATE CORPORATION, OR ANY OTHER ENTITY.**

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

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

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

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

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

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

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

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

23 14–111.

24 (a) Every holder of a permit to drill for gas or oil shall:

25 (1) Submit a completion report on forms to be supplied by the
26 Department within 30 days after the drilling of a well has been completed;

27 (2) Submit cutting samples at the request of the Department;

28 (3) Notify the Department when a well is about to be abandoned;

29 (4) Seal and plug the well in a manner approved by the Department;

(5) Post a performance bond to the State in the amount [not to exceed \$100,000] **OF AT LEAST \$50,000** for each [oil or gas] **GAS OR OIL** well, [and not to exceed \$500,000 as a blanket bond for all of the permit holder's oil or gas wells,] with good and sufficient surety, as provided in subsection (d)(1) of this section, conditioned upon compliance with the provisions of this subtitle, **INCLUDING PROPER SEALING AND PLUGGING OF THE GAS OR OIL WELL AND RECLAMATION OF THE SITE;**

(6) Obtain and keep in effect liability insurance coverage in [an] **THE** amount [not less than] **OF AT LEAST \$300,000** for each person and \$500,000 for each occurrence or accident to pay damages for injury to persons or damage to property caused by the drilling, production operations, or plugging of all of the permit holder's gas or oil wells in the State; and

(7) Notify the Department of the location of the equipment required by regulation for the prevention and containment of gas leaks and oil spills.

(b) The Department may adopt regulations to increase the [minimum]:

(1) MINIMUM AMOUNT OF THE PERFORMANCE BOND REQUIRED UNDER SUBSECTION (A)(5) OF THIS SECTION; AND

(2) MINIMUM amounts of liability insurance coverage under subsection (a)(6) of this section.

14-113.1.

(A) THIS SECTION APPLIES TO A GAS INTEREST IN REAL PROPERTY THAT:

(1) IS LOCATED IN AN AREA OF THE STATE UNDERLAIN BY THE MARCELLUS SHALE; AND

(2) WAS ACQUIRED AFTER JANUARY 1, 2007, AND BEFORE AUGUST 1, 2014, OR BEFORE COMPLETION OF THE STUDY REQUIRED UNDER EXECUTIVE ORDER 01.01.2011.11 ISSUED ON JUNE 6, 2011, BY THE GOVERNOR, WHICHEVER IS EARLIER.

(B) ON OR BEFORE JULY 1, 2012, OR WITHIN 30 DAYS AFTER ACQUIRING THE GAS INTEREST, WHICHEVER IS LATER, AN OWNER THAT ACQUIRES A GAS INTEREST FOR THE PURPOSE OF DRILLING FOR NATURAL GAS SHALL FILE A NOTICE WITH THE DEPARTMENT IDENTIFYING:

(1) EACH PARCEL, DESCRIBED BY METES AND BOUNDS, ON WHICH THE OWNER HAS A GAS INTEREST;

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

3 (3) A MAP SHOWING THOSE PARCELS.

4 (C) (1) (I) EACH OWNER OF A GAS INTEREST THAT WAS ACQUIRED
5 AFTER JANUARY 1, 2007, AND BEFORE JULY 1, 2012, SHALL PAY TO THE
6 DEPARTMENT A FEE IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS
7 PARAGRAPH.

8 (ii) 1. ON OR BEFORE AUGUST 1, 2012, OR WITHIN 60
9 DAYS AFTER ACQUIRING THE GAS INTEREST, WHICHEVER IS LATER, EACH
10 OWNER OF A GAS INTEREST SHALL PAY TO THE DEPARTMENT A FEE IN AN
11 AMOUNT EQUAL TO \$10 PER ACRE OF THE TOTAL ACREAGE REPORTED UNDER
12 SUBSECTION (B) OF THIS SECTION.

13 2. ON OR BEFORE AUGUST 1, 2013, EACH OWNER OF
14 A GAS INTEREST SHALL PAY TO THE DEPARTMENT A FEE IN AN AMOUNT EQUAL
15 TO \$10 PER ACRE OF THE TOTAL ACREAGE REPORTED UNDER SUBSECTION (B)
16 OF THIS SECTION.

17 (2) EACH OWNER OF A GAS INTEREST THAT WAS ACQUIRED
18 AFTER JULY 1, 2012, SHALL PAY TO THE DEPARTMENT AN ANNUAL FEE ON OR
19 BEFORE AUGUST 1, OR WITHIN 60 DAYS AFTER ACQUIRING THE GAS INTEREST,
20 WHICHEVER IS LATER, IN AN AMOUNT EQUAL TO \$10 PER ACRE OF THE TOTAL
21 ACREAGE REPORTED UNDER SUBSECTION (B) OF THIS SECTION.

22 (3) EXCEPT AS PROVIDED IN SUBSECTION (I)(3) OF THIS
23 SECTION, A FEE MAY NOT BE ASSESSED AFTER AUGUST 1, 2014, OR AFTER THE
24 COMPLETION OF THE STUDY REQUIRED UNDER EXECUTIVE ORDER
25 01.01.2011.11 ISSUED ON JUNE 6, 2011, BY THE GOVERNOR, WHICHEVER IS
26 EARLIER.

27 (D) FAILURE TO FILE THE NOTICE REQUIRED UNDER SUBSECTION (B)
28 OF THIS SECTION WHEN DUE, OR FAILURE TO PAY THE AMOUNT REQUIRED
29 UNDER SUBSECTION (C) OF THIS SECTION WHEN DUE, MAY BE GROUNDS FOR
30 DENIAL OF A PERMIT TO EXPLORE FOR OR PRODUCE GAS FROM FORMATIONS
31 UNDER THE PARCEL.

32 (E) AN OWNER MAY NOT PASS THE PAYMENT OF FEES REQUIRED UNDER
33 SUBSECTION (C) OF THIS SECTION TO, OR RECOVER THE FEES FROM, THE
34 PERSON THAT OWNS THE SURFACE RIGHTS OF THE PROPERTY.

1 **(F) IF THE FEE UNDER SUBSECTION (C) OF THIS SECTION HAS BEEN**
2 **PAID TO THE DEPARTMENT, THE FEE MAY NOT BE ASSESSED AGAINST AN**
3 **OWNER THAT SUBSEQUENTLY ACQUIRES A GAS INTEREST IN THAT PARCEL.**

4 **(G) THE DEPARTMENT SHALL DEPOSIT THE MONEY COLLECTED UNDER**
5 **THIS SECTION INTO THE FUND ESTABLISHED IN § 14-122 OF THIS SUBTITLE.**

6 **(H) A PERSON THAT VIOLATES THIS SECTION IS SUBJECT TO THE**
7 **ENFORCEMENT MECHANISMS PROVIDED IN §§ 9-334 THROUGH 9-340 OF THIS**
8 **ARTICLE.**

9 **(I) (1) AFTER AUGUST 1, 2014, OR AFTER COMPLETION OF THE**
10 **STUDY REQUIRED UNDER EXECUTIVE ORDER 01.01.2011.11 ISSUED ON JUNE 6,**
11 **2011, BY THE GOVERNOR, WHICHEVER IS EARLIER, THE DEPARTMENT SHALL**
12 **COMPARE THE ACTUAL COSTS OF THE STUDY WITH THE MONEY COLLECTED**
13 **UNDER SUBSECTION (B) OF THIS SECTION.**

14 **(2) IF THE ACTUAL COST OF THE STUDY IS LESS THAN THE**
15 **AMOUNT PAID UNDER SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT**
16 **SHALL REFUND THE DIFFERENCE, PRORATED BY ACREAGE, TO THE OWNERS**
17 **WHO PAID A FEE.**

18 **(3) IF THE ACTUAL COST OF THE STUDY IS MORE THAN THE**
19 **AMOUNT PAID UNDER SUBSECTION (C) OF THIS SECTION, EACH OWNER THAT**
20 **FILED A NOTICE UNDER SUBSECTION (B) OF THIS SECTION SHALL PAY, WITHIN**
21 **90 DAYS AFTER WRITTEN NOTIFICATION BY THE DEPARTMENT, AN AMOUNT**
22 **DETERMINED BY THE DEPARTMENT, PRORATED BY ACREAGE, TO FULLY FUND**
23 **THE COST OF THE STUDY.**

24 14-116.

25 **(A) Any person adversely affected by any rule, regulation, determination, or**
26 **order of the Department may within 15 days after its effective date apply to the**
27 **Department in writing for a rehearing. The application shall be acted upon within 15**
28 **days after its filing. The rehearing, if granted, shall be held promptly.**

29 **(B) THIS SECTION DOES NOT APPLY TO ANY ACTION OF THE**
30 **DEPARTMENT AUTHORIZED UNDER § 14-113.1 OF THIS SUBTITLE.**

31 14-117.

32 **(a) Except as provided in § 14-105 of this subtitle, any person aggrieved by**
33 **any action of the Department may apply to the circuit court of the county in which the**

1 person resides or the well is located for review of its decision. Any other interested
2 party may intervene. The Department may become a party to the appeal. The case
3 shall be docketed at once but may not take precedence over any other civil cause,
4 action, or proceeding on the docket. The court shall hear the proceedings de novo,
5 determine all matters of law and fact without a jury, and render its decision
6 approving, setting aside, or modifying the Department's action.

7 (b) Any party aggrieved by the final decision of the court may appeal to the
8 Court of Special Appeals.

9 (C) THIS SECTION DOES NOT APPLY TO ANY ACTION OF THE
10 DEPARTMENT AUTHORIZED UNDER § 14-113.1 OF THIS SUBTITLE.

11 14-118.

12 (A) Upon application of the Department, verified by oath or affirmation, the
13 circuit court of the county where the well is located, sitting in equity, may by
14 injunction enforce compliance with, or restrain the violation of any order, notice, rule
15 or regulation made under the provisions of this subtitle or restrain the violation or
16 attempted violation of any of the provisions of this subtitle.

17 (B) THIS SECTION DOES NOT APPLY TO ANY VIOLATION OCCURRING
18 UNDER § 14-113.1 OF THIS SUBTITLE.

19 14-120.1.

20 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT
21 MAY IMPOSE AN ADMINISTRATIVE PENALTY ON A PERSON THAT FAILS TO FILE
22 THE NOTICE REQUIRED UNDER § 14-113.1(A) OF THIS SUBTITLE WHEN DUE, OR
23 FAILS TO PAY THE AMOUNT REQUIRED UNDER § 14-113.1(B) OF THIS SUBTITLE
24 WHEN DUE.

25 (B) A PENALTY IMPOSED ON A PERSON UNDER THIS SECTION SHALL BE:

26 (1) UP TO \$10,000 PER DAY, CALCULATED FROM THE DATE ON
27 WHICH COMPLIANCE IS REQUIRED; AND

28 (2) ASSESSED WITH CONSIDERATION GIVEN TO:

29 (I) THE SIZE OF THE PARCEL;

30 (II) THE EXTENT TO WHICH THE EXISTENCE OF THE
31 VIOLATION WAS KNOWN TO THE VIOLATOR BUT UNCORRECTED BY THE
32 VIOLATOR; AND

1 **(III) THE EXTENT TO WHICH THE CURRENT VIOLATION IS**
2 **PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION**
3 **COMMITTED BY THE VIOLATOR.**

4 **(C) AN OWNER MAY NOT PASS THE PAYMENT OF ADMINISTRATIVE**
5 **PENALTIES IMPOSED UNDER THIS SECTION TO, OR RECOVER THE PENALTIES**
6 **FROM, THE PERSON THAT OWNS THE SURFACE RIGHTS OF THE PROPERTY.**

7 **(D) THE DEPARTMENT SHALL DEPOSIT THE PENALTIES COLLECTED**
8 **UNDER THIS SECTION INTO THE FUND ESTABLISHED IN § 14-122 OF THIS**
9 **SUBTITLE.**

10 14-122.

11 (a) There is an Oil and Gas Fund.

12 (b) The Fund consists of:

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

14 **(2) MONEY COLLECTED BY THE DEPARTMENT UNDER § 14-113.1**
15 **OF THIS SUBTITLE;**

16 **[(2)] (3)** Funds appropriated by the General Assembly for deposit to
17 the Fund;

18 **[(3)] (4)** Fines and bond forfeitures collected by the Department in
19 accordance with this subtitle that exceed the amount necessary to restore a site; **[and]**

20 **(5) ADMINISTRATIVE PENALTIES COLLECTED UNDER § 14-120.1**
21 **OF THIS SUBTITLE; AND**

22 **[(4)] (6)** Any additional money made available from any sources,
23 public or private, for the purposes for which the Fund has been established.

24 (c) (1) The Fund is a special, nonlapsing fund that is not subject to §
25 7-302 of the State Finance and Procurement Article.

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

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

1 14–123.

2 (A) [The] SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE
3 Department shall use money in the Fund solely to administer and implement
4 programs to oversee the drilling, development, production, and storage of oil and gas
5 wells, and other requirements related to the drilling of oil and gas wells, including all
6 costs incurred by the State to:

7 (1) Review, inspect, and evaluate monitoring data, applications,
8 licenses, permits, analyses, and reports;

9 (2) Perform and oversee assessments, investigations, and research;

10 (3) Conduct permitting, inspection, and compliance activities; and

11 (4) Develop, adopt, and implement regulations, programs, or
12 initiatives to address risks to public safety, human health, and the environment
13 related to the drilling and development of oil and gas wells, including the method of
14 hydrofracturing.

15 (B) ANY MONEY DEPOSITED IN THE FUND IN ACCORDANCE WITH §
16 14–113.1 OF THIS SUBTITLE SHALL BE USED BY THE DEPARTMENT TO PAY FOR
17 THE STUDY REQUIRED UNDER EXECUTIVE ORDER 01.01.2011.11 ISSUED ON
18 JUNE 6, 2011, BY THE GOVERNOR.

19 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the
20 Environment may use the money collected under § 14–113.1 of this Act to reimburse
21 the Department of the Environment and the Department of Natural Resources for
22 past expenditures relating to the study required under Executive Order 01.01.2011.11
23 issued on June 6, 2011, by the Governor.

24 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding §
25 13–107 of the State Finance and Procurement Article, the Department of the
26 Environment and the Department of Natural Resources may enter into sole source
27 agreements for goods or services in order to expedite completion of the study required
28 under Executive Order 01.01.2011.11 issued on June 6, 2011, by the Governor.

29 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 June 1, 2012.