

SENATE BILL 636

M3

2lr1821

By: **Senator Frosh**

Introduced and read first time: February 3, 2012

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Presumptive Impact Areas – Damage Caused by Gas Wells in**
3 **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
16 property owner under certain circumstances; prohibiting the Department from
17 requiring a permittee to replace a water supply or repair or compensate an
18 owner for other damage under certain circumstances; requiring the Department
19 to adopt certain regulations; establishing that a certain presumption of
20 causation does not apply under certain circumstances; providing that a certain
21 presumption of causation applies in certain civil actions; providing that the
22 presumption may be rebutted by clear and convincing evidence; stating certain
23 legislative findings and intent; providing for the construction of this Act; and
24 generally relating to damage caused by certain activities of gas exploration or
25 production.

26 BY adding to

27 Article – Environment

28 Section 14–110.1 and 14–110.2

29 Annotated Code of Maryland

30 (2007 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Environment**

4 **14-110.1.**

5 **(A) THE GENERAL ASSEMBLY FINDS THAT:**

6 **(1) IN CERTAIN REGIONS OF THE STATE ACTIVITIES RELATING TO**
7 **EXPLORATION FOR OR PRODUCTION OF GAS FROM DEEP SHALE DEPOSITS HAVE**
8 **THE POTENTIAL TO CONTAMINATE WATER SUPPLY WELLS AND TO RESULT IN**
9 **OTHER DAMAGE TO LANDOWNERS IN THE VICINITY OF A GAS WELL; AND**

10 **(2) IT IS REASONABLE TO PRESUME THAT ACTIVITIES OF GAS**
11 **EXPLORATION AND PRODUCTION ARE THE CAUSE OF CONTAMINATION OF A**
12 **WATER SUPPLY WELL WITH METHANE OR OTHER POLLUTANTS AND OTHER**
13 **DAMAGE IF:**

14 **(I) THE WATER SUPPLY WELL IS WITHIN 2,640 FEET OF**
15 **THE VERTICAL WELLBORE; AND**

16 **(II) THE CONTAMINATION OCCURS WITHIN 365 DAYS OF**
17 **THE LAST EVENT OF WELL DRILLING, COMPLETION, OR HYDRAULIC**
18 **FRACTURING.**

19 **(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROTECT**
20 **AFFECTED PROPERTY OWNERS IN AREAS OF THE STATE WHERE DEEP SHALE**
21 **DEPOSITS, INCLUDING THE MARCELLUS SHALE AND THE UTICA SHALE, ARE**
22 **FOUND BY ESTABLISHING PRESUMPTIVE IMPACT AREAS AROUND GAS WELLS**
23 **AND REQUIRING THE DEPARTMENT TO ADMINISTER A PROGRAM REQUIRING**
24 **PERMITTEES TO REPAIR DAMAGE OR COMPENSATE AFFECTED PROPERTY**
25 **OWNERS IN THOSE AREAS.**

26 **14-110.2.**

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

1 **(B) THE PRESUMPTIVE IMPACT AREA SHALL BE IN EFFECT:**

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

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

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

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

11 **(2) ON A DETERMINATION BY THE DEPARTMENT OF PROXIMATE**
12 **CAUSE AFTER THE PERMITTEE HAS RECEIVED NOTICE AND AN OPPORTUNITY TO**
13 **RESPOND AND PROVIDE INFORMATION, PAY MONETARY COMPENSATION TO AN**
14 **AFFECTED PROPERTY OWNER, OR REPAIR ANY PROPERTY DAMAGE CAUSED AS A**
15 **RESULT OF THE DRILLING OR OPERATION OF THE PERMITTEE'S GAS WELL.**

16 **(D) A WATER SUPPLY WITHIN A PRESUMPTIVE IMPACT AREA THAT NO**
17 **LONGER YIELDS POTABLE WATER AS A RESULT OF THE DRILLING OR**
18 **OPERATION OF A GAS WELL SHALL BE CONSIDERED TO BE REPLACED**
19 **ADEQUATELY BY A PERMITTEE IF THE PERMITTEE PROVIDES FOR THE**
20 **AFFECTED PROPERTY OWNER A NEW OR RETROFITTED WELL OR OTHER**
21 **ALTERNATIVE WATER SUPPLY THAT IS CAPABLE OF YIELDING POTABLE WATER**
22 **EQUAL TO THE VOLUME USED OR NEEDED BY THE PROPERTY OWNER BEFORE**
23 **THE DAMAGE TO THE WATER SUPPLY.**

24 **(E) (1) REAL OR PERSONAL PROPERTY WITHIN A PRESUMPTIVE**
25 **IMPACT AREA FOUND BY THE DEPARTMENT TO HAVE BEEN DAMAGED AS A**
26 **RESULT OF THE DRILLING OR OPERATION OF A GAS WELL SHALL BE**
27 **CONSIDERED TO BE REPAIRED ADEQUATELY BY A PERMITTEE IF THE**
28 **PERMITTEE RETURNS THE DAMAGED PROPERTY TO ITS CONDITION BEFORE**
29 **THE DAMAGE.**

30 **(2) IF THE DAMAGED REAL OR PERSONAL PROPERTY IS NOT**
31 **CAPABLE OF BEING RESTORED TO ITS CONDITION BEFORE THE DAMAGE, THE**
32 **PERMITTEE SHALL COMPENSATE THE OWNER OF THE REAL OR PERSONAL**
33 **PROPERTY MONETARILY BY THE DIFFERENCE BETWEEN THE FAIR MARKET**
34 **VALUE OF THE PROPERTY AS THE PROPERTY WOULD EXIST BUT FOR THE**

1 DAMAGE AND THE FAIR MARKET VALUE OF THE PROPERTY AS A RESULT OF THE
2 DAMAGE.

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

6 (F) THE DEPARTMENT MAY NOT REQUIRE A PERMITTEE TO REPLACE A
7 WATER SUPPLY OR REPAIR OR COMPENSATE AN OWNER FOR OTHER DAMAGE,
8 AS PROVIDED IN THIS SECTION, IF THE PERMITTEE DEMONSTRATES TO THE
9 DEPARTMENT BY CLEAR AND CONVINCING EVIDENCE THAT:

10 (1) THE PROXIMATE CAUSE OF THE DAMAGE IS NOT THE RESULT
11 OF ACTIVITIES RELATING TO THE GAS WELL; OR

12 (2) THE CONTAMINATION OR DAMAGE EXISTED BEFORE THE
13 COMMENCEMENT OF ACTIVITIES ALLOWED BY THE PERMIT AND WAS NOT
14 WORSENER BY THOSE ACTIVITIES.

15 (G) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT
16 THIS SECTION.

17 (H) THE PRESUMPTION OF CAUSATION ESTABLISHED UNDER THIS
18 SECTION DOES NOT APPLY TO CONTAMINATION OF A WATER SUPPLY WELL IF:

19 (1) THE PERMIT APPLICANT REQUESTS THE PERMISSION OF THE
20 LANDOWNER TO SAMPLE AND TEST THE WATER SUPPLY WELL BEFORE
21 COMMENCEMENT OF ACTIVITIES AND TO PROVIDE THE LANDOWNER WITH A
22 COMPLETE COPY OF THE TEST RESULTS; AND

23 (2) THE LANDOWNER REFUSES PERMISSION.

24 (I) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT ANY COMMON
25 LAW REMEDIES AVAILABLE TO A PROPERTY OWNER.

26 (J) (1) THE PRESUMPTION OF CAUSATION ESTABLISHED UNDER THIS
27 SECTION SHALL APPLY IN:

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

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

1 **(III) A CIVIL ACTION FOR DAMAGES OR EQUITABLE RELIEF**
2 **BROUGHT BY A PROPERTY OWNER AGAINST A PERMITTEE.**

3 **(2) THE PRESUMPTION MAY BE REBUTTED BY CLEAR AND**
4 **CONVINCING EVIDENCE.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2012.