

# SENATE BILL 636

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2lr1821  
CF HB 1123

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By: **Senator Frosh**

Introduced and read first time: February 3, 2012

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 1, 2012

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## 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~~  
16 ~~property owner under certain circumstances; authorizing the permittee to avoid~~  
17 ~~restoration under certain circumstances; prohibiting the Department from~~  
18 ~~requiring a permittee to replace a water supply ~~or repair~~ or compensate an~~  
19 ~~owner for other damage under certain circumstances; requiring authorizing the~~  
20 ~~Department to adopt certain regulations; establishing that a certain~~  
21 ~~presumption of causation does not apply under certain circumstances; providing~~  
22 ~~that a certain presumption of causation applies in certain civil actions;~~  
23 ~~providing that the presumption may be rebutted by clear and convincing a~~  
24 ~~preponderance of the evidence; stating certain legislative findings and intent;~~  
25 ~~defining a certain term; providing for the construction of this Act; and generally~~

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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.



1 relating to ~~damage~~ contamination caused by certain activities of gas exploration  
2 or production.

3 BY adding to  
4 Article – Environment  
5 Section 14-110.1 ~~and 14-110.2~~  
6 Annotated Code of Maryland  
7 (2007 Replacement Volume and 2011 Supplement)

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

10 **Article – Environment**

11 **14-110.1.**

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

13 ~~(1) IN CERTAIN REGIONS OF THE STATE ACTIVITIES RELATING TO~~  
14 ~~EXPLORATION FOR OR PRODUCTION OF GAS FROM DEEP SHALE DEPOSITS HAVE~~  
15 ~~THE POTENTIAL TO CONTAMINATE WATER SUPPLY WELLS AND TO RESULT IN~~  
16 ~~OTHER DAMAGE TO LANDOWNERS IN THE VICINITY OF A GAS WELL; AND~~

17 ~~(2) IT IS REASONABLE TO PRESUME THAT ACTIVITIES OF GAS~~  
18 ~~EXPLORATION AND PRODUCTION ARE THE CAUSE OF CONTAMINATION OF A~~  
19 ~~WATER SUPPLY WELL WITH METHANE OR OTHER POLLUTANTS AND OTHER~~  
20 ~~DAMAGE IF:~~

21 ~~(i) THE WATER SUPPLY WELL IS WITHIN 2,640 FEET OF~~  
22 ~~THE VERTICAL WELLBORE; AND~~

23 ~~(ii) THE CONTAMINATION OCCURS WITHIN 365 DAYS OF~~  
24 ~~THE LAST EVENT OF WELL DRILLING, COMPLETION, OR HYDRAULIC~~  
25 ~~FRACTURING.~~

26 ~~(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROTECT~~  
27 ~~AFFECTED PROPERTY OWNERS IN AREAS OF THE STATE WHERE DEEP SHALE~~  
28 ~~DEPOSITS, INCLUDING THE MARCELLUS SHALE AND THE UTICA SHALE, ARE~~  
29 ~~FOUND BY ESTABLISHING PRESUMPTIVE IMPACT AREAS AROUND GAS WELLS~~  
30 ~~AND REQUIRING THE DEPARTMENT TO ADMINISTER A PROGRAM REQUIRING~~  
31 ~~PERMITTEES TO REPAIR DAMAGE OR COMPENSATE AFFECTED PROPERTY~~  
32 ~~OWNERS IN THOSE AREAS.~~

33 ~~14-110.2.~~

1           **(A)** **IN THIS SECTION, "WATER SUPPLY" MEANS A SOURCE OF WATER**  
2 **USED FOR DRINKING OR OTHER DOMESTIC PURPOSE OR FOR AGRICULTURE,**  
3 **INCLUDING LIVESTOCK.**

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

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

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

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

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

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

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

27           ~~**(D)**~~ **(E)**       **A WATER SUPPLY WITHIN A PRESUMPTIVE IMPACT AREA THAT**  
28 **NO LONGER YIELDS POTABLE WATER AS A RESULT OF THE DRILLING OR**  
29 **OPERATION OF A GAS WELL SHALL BE CONSIDERED TO BE REPLACED**  
30 **ADEQUATELY BY A PERMITTEE IF THE PERMITTEE PROVIDES FOR THE**  
31 **AFFECTED PROPERTY OWNER A NEW OR RETROFITTED WELL OR OTHER**  
32 **ALTERNATIVE WATER SUPPLY THAT IS CAPABLE OF YIELDING POTABLE WATER**  
33 **EQUAL TO THE VOLUME USED OR NEEDED BY THE PROPERTY OWNER BEFORE**  
34 **THE ~~DAMAGE TO~~ CONTAMINATION OF THE WATER SUPPLY.**

1       ~~(E) (F) (1) REAL OR PERSONAL PROPERTY WITHIN A PRESUMPTIVE~~  
 2 ~~IMPACT AREA FOUND BY THE DEPARTMENT TO HAVE BEEN DAMAGED AS A~~  
 3 ~~RESULT OF THE DRILLING OR OPERATION OF A GAS WELL SHALL BE~~  
 4 ~~CONSIDERED TO BE REPAIRED ADEQUATELY BY A PERMITTEE IF THE~~  
 5 ~~PERMITTEE RETURNS THE DAMAGED PROPERTY TO ITS CONDITION BEFORE~~  
 6 ~~THE DAMAGE.~~

7       ~~(2) IF THE DAMAGED REAL OR PERSONAL PROPERTY IS NOT~~  
 8 ~~CAPABLE OF BEING RESTORED TO ITS CONDITION BEFORE THE DAMAGE, THE~~  
 9 ~~PERMITTEE SHALL COMPENSATE THE OWNER OF THE REAL OR PERSONAL~~  
 10 ~~PROPERTY MONETARILY BY THE DIFFERENCE BETWEEN THE FAIR MARKET~~  
 11 ~~VALUE OF THE PROPERTY AS THE PROPERTY WOULD EXIST BUT FOR THE~~  
 12 ~~DAMAGE AND THE FAIR MARKET VALUE OF THE PROPERTY AS A RESULT OF THE~~  
 13 ~~DAMAGE.~~

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

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

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

24       (2) THE CONTAMINATION ~~OR DAMAGE~~ EXISTED BEFORE THE  
 25 COMMENCEMENT OF ACTIVITIES ALLOWED BY THE PERMIT AND WAS NOT  
 26 WORSENERD BY THOSE ACTIVITIES.

27       ~~(G) (H)~~ THE DEPARTMENT ~~SHALL~~ MAY ADOPT REGULATIONS TO  
 28 IMPLEMENT THIS SECTION.

29       ~~(H) (I)~~ THE PRESUMPTION OF CAUSATION ESTABLISHED UNDER THIS  
 30 SECTION DOES NOT APPLY TO CONTAMINATION OF A WATER SUPPLY ~~WELL~~ IF:

31       (1) THE PERMIT APPLICANT REQUESTS THE PERMISSION OF THE  
 32 ~~LANDOWNER~~ PROPERTY OWNER TO SAMPLE AND TEST THE WATER SUPPLY  
 33 WELL BEFORE COMMENCEMENT OF ACTIVITIES AND TO PROVIDE THE  
 34 ~~LANDOWNER~~ PROPERTY OWNER WITH A COMPLETE COPY OF THE TEST  
 35 RESULTS; AND

1                   **(2) THE ~~LANDOWNER~~ PROPERTY OWNER REFUSES PERMISSION.**

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

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

6                                   **(I) A PROCEEDING FOR JUDICIAL REVIEW UNDER § 14-117**  
7 **OF THIS SUBTITLE;**

8                                   **(II) AN ACTION FOR AN INJUNCTION UNDER § 14-118 OF**  
9 **THIS SUBTITLE; OR**

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

12                   **(2) THE PRESUMPTION MAY BE REBUTTED BY ~~CLEAR AND~~**  
13 **~~CONVINCING~~ A PREPONDERANCE OF THE EVIDENCE.**

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.