

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

Senate Bill 770 (Senator Edwards)
 Education, Health, and Environmental Affairs

Business Occupations - Landmen - Registration

This bill prohibits a person from acting, offering to act, or holding himself or herself out as a “landman” in Maryland unless registered with the Department of Labor, Licensing, and Regulation (DLLR). Accordingly, the bill requires DLLR to establish and maintain a “landman” registry. Registration fees and associated penalties accrue to the Oil and Gas Fund administered by the Maryland Department of the Environment (MDE).

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Special fund revenues for the Oil and Gas Fund increase minimally beginning in FY 2013 from initial registration fees. Future year revenues reflect additional registrants in FY 2014 and continued biennial registration renewal fees. General fund expenditures increase by \$34,300 in FY 2013 for DLLR to implement a registration system and provide necessary staff. Future year expenditures reflect annualization and inflation. Additional general fund expenditures for legal services by DLLR may be needed to handle consumer complaints and disciplinary proceedings against registered landmen.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	-	-	-	-	-
GF Expenditure	\$34,300	\$30,400	\$32,300	\$33,700	\$35,200
Net Effect	(\$34,300)	(\$30,400)	(\$32,300)	(\$33,700)	(\$35,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: “Landman” means a person that in the scope of the person’s business (1) acquires or manages petroleum, natural gas, or mineral interests; (2) performs title or contract functions related to the exploration, exploitation, or disposition of petroleum, natural gas, or mineral interests; (3) negotiates for the acquisition or divestiture of petroleum, natural gas, or mineral rights, including land rights for a pipeline; or (4) negotiates business agreements that provide for the exploration or development of petroleum, natural gas, or minerals.

An application to DLLR for initial registration as a landman must include specified personal and professional information in addition to a \$100 two-year registration fee. DLLR must register an applicant that meets the bill’s specified conditions. A registrant may renew the registration for an additional two-year term under specified conditions, including a \$100 renewal fee. A registration is nontransferable. A registrant must notify DLLR within 10 days of any specified changes.

DLLR may deny a registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty on a registrant under specified conditions; however, DLLR must provide an applicant or a registrant notice and opportunity to request a hearing in accordance with the Administrative Procedure Act.

A person who unknowingly (but willfully) violates the bill is subject to specified civil penalties. A person who knowingly and willfully violates the law is subject to specified criminal penalties. Civil and criminal penalties recovered by the State are payable to the Oil and Gas Fund; civil penalties collected by a local government are paid to the local government.

Current Law: Landmen are not required to be registered or licensed to do business in the State.

Chapter 383 of 2010 established an Oil and Gas Fund to support MDE’s administration of a regulatory program that oversees the drilling, development, production, and storage of oil and gas wells in the State. MDE must collect fees and deposit them to the fund for (1) the issuance and renewal of a permit to drill a well for exploration, production, or underground storage of gas or oil; and (2) the production of gas or oil wells installed after October 1, 2010. Fees must be set at a rate necessary to effectively regulate and monitor the oil and gas industry in the State. MDE advises that the regulations to establish such fees have been drafted but are being held pending the work of the Marcellus Shale Safe Drilling Initiative and related studies. In addition to those fees, the fund consists of specified fines and bond forfeitures, funds appropriated by the General Assembly, and any other funds. However, the fund received no revenue and made no expenditures

during fiscal 2011, and it had no balance at the close of fiscal 2011. A person who violates a permit or a provision of the gas and oil laws is guilty of a misdemeanor and is subject to a fine of up to \$1,000 per day for each day of the offense, not to exceed a total fine of \$50,000, with costs imposed at the discretion of the court.

Background:

Landmen

Landmen are the business arm of the petroleum and mineral industry. In general, landmen's responsibilities include meeting with landowners and negotiating leases on behalf of companies seeking to mine or drill on a plot of land. Legislative Services is unaware of a specific state or national landman licensing program at this time, though some states require a real estate broker license for certain functions of the general landman profession. The American Association of Professional Landmen, a large professional organization of approximately 12,000 landmen that is based in Texas, offers two levels of certification for its members, which require coursework, field experience, and an examination. However, a certification is not required to perform the duties of a landman; it acts simply as a signal of professional competency to prospective employers. The issue of whether or not to license landmen has been debated in many states, including Texas, where a similar bill (HB 1405) was introduced but not passed in 2009.

Marcellus Shale Formation

The Marcellus Shale formation is a geologic feature in the Appalachian Range which has recently attracted significant attention from the energy industry for its rich natural gas deposits contained within 117 counties in seven states. Geologists have long known about the natural gas resources contained within the formation but had considered the gas to be not economically recoverable until the recent development of new drilling technologies including horizontal drilling and high-volume hydraulic fracturing, which have led to a boom in domestic energy production in the United States.

The Marcellus Shale primarily underlies New York, Ohio, Pennsylvania, Virginia, West Virginia, and Western Maryland, with a negligible share also found in Kentucky. Production wells have been drilled in New York, Ohio, Pennsylvania, and West Virginia, and several companies have expressed interest in drilling into the formation in Maryland. In Maryland, the formation is located in Allegany, Garrett, and Washington counties; however, the only anticipated areas of gas production are in Garrett and Western Allegany counties. Applications for permits to produce gas from the Marcellus Shale in Maryland using horizontal drilling and high-volume hydraulic fracturing were first filed in 2010. As of December 2011, MDE has received seven permit applications, of which only two are still active.

General Regulation of Oil and Gas Development

In Maryland, MDE is authorized to issue permits for oil and gas exploration and production and is required to coordinate with the DNR in its evaluation of the environmental assessment of any proposed oil or gas well. Specifically, a person must obtain a permit from MDE before drilling a well for the exploration, production, or underground storage of gas or oil in Maryland. A permit is also required for the disposal of any product of a gas or oil well. An applicant who wants to extract gas from the Marcellus Shale may also be required to apply for a number of other State permits, such as a water appropriation permit or a National Pollutant Discharge Elimination System permit.

Among other things, current oil and gas regulations outline application requirements and procedures, criteria for permit approval, drilling and operating requirements and permit conditions, and requirements for the plugging of an oil or gas well upon abandonment or ending of operation. Current regulations apply to all gas wells in Maryland and are not specific to the practice of hydraulic fracturing. However, under current law, MDE has broad authority to impose conditions on permits to protect the State's natural resources and to provide for public safety. Further, MDE may deny a permit based on a substantial threat to public safety or a risk of significant adverse environmental impact.

Although MDE regulates gas exploration and production, the regulations were written prior to the use of hydraulic fracturing and have not been revised since 1993. Further, MDE advises that a complete understanding of the risks of hydraulic fracturing and consensus about how to protect against those risks is lacking. Due to these concerns, a number of bills were introduced during the 2011 session that would have required further study and the development of regulations prior to the issuance of a permit for gas exploration and production from the Marcellus Shale. None of the bills was enacted, however.

Marcellus Shale Safe Drilling Initiative

In response to the failure of legislation in the 2011 session, Governor Martin O'Malley established the Marcellus Shale Safe Drilling Initiative by Executive Order 01.01.2011.11 in June 2011 to ensure that, if drilling for natural gas from the Marcellus Shale proceeds in Maryland, it is done in a way that protects public health, safety, natural resources, and the environment. The executive order directs MDE and DNR to assemble and consult with an advisory commission in the study of specific topics related to horizontal drilling and hydraulic fracturing in the Marcellus Shale.

Specifically, the executive order tasks MDE and DNR, in consultation with the advisory commission, with conducting a three-part study and reporting findings and

recommendations. The completed study will include (1) findings and related recommendations regarding sources of revenue and standards of liability for damages caused by gas exploration and production; (2) recommendations for best practices for all aspects of natural gas exploration and production in the Marcellus Shale in Maryland; and (3) findings and recommendations regarding the potential impact of Marcellus Shale drilling in Maryland. Part I of the study, a report on findings and recommendations regarding sources of revenue and standards of liability, was released in December 2011. Parts II and III of the study are expected to be completed by August 1, 2012, and August 1, 2014, respectively.

State Fiscal Effect: MDE advises that several companies have leased over 100,000 acres of land in Maryland for drilling into the Marcellus Shale formation. According to land records data from Garrett County, which have recently been examined by the county to avoid double-counting of leases, there are 691 recorded leases or memoranda of leases, representing 126,927 acres. Similar data could not be obtained from Allegany County, although the extent of oil or gas leasing activity is expected to be relatively low in Allegany County. Additionally, some leases may not have been recorded, but they may be recorded in the future. Even with this known level of leasing activity, the exact number of persons required to register with DLLR under the bill cannot be reliably estimated at this time; however, Legislative Services believes the number is likely to be 50 or fewer and depends largely on whether or not landmen from surrounding states choose to register in the State. MDE advises that registration may not begin until fiscal 2015, as landmen wait for the Marcellus Shale Advisory Commission's final report in 2014. Legislative Services disagrees with this assessment and notes that, under the bill, any practicing landmen would be immediately required to register with DLLR to conduct any landman-related business in the State.

For illustrative purposes only, if DLLR registers 25 landmen in fiscal 2013, special fund revenues for the Oil and Gas Fund increase by \$2,500. Out-year revenues reflect 25 additional initial registrations in fiscal 2014, and continued biennial registration renewal. Revenues from civil penalties and fines levied against landmen cannot be reliably estimated at this time, but Legislative Services does not anticipate the amount to be significant.

General fund expenditures increase by \$34,273 in fiscal 2013, which accounts for a 120-day start-up delay from the bill's June 1, 2012 effective date. This estimate reflects the cost of hiring one half-time administrative specialist to oversee the registration of landmen and respond to consumer inquiries. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	0.5
Salary and Fringe Benefits	\$19,996
One-time Programming Expense	10,000
Other Operating Expenses	<u>4,227</u>
Total FY 2013 State Expenditures	\$34,273

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. This estimate does not include unspecified costs associated with legal services in the event of consumer complaints, which are not expected to be significant, but may strain DLLR's limited staff resources.

Additional Comments: Legislative Services notes that the bill does not offset the cost of regulation in the budget of the regulator, DLLR, as registration fees and any associated civil penalties accrue to the Oil and Gas Fund within MDE. This is inconsistent with statutory provisions that require most occupational and professional regulatory programs to recover, through fees, the direct and indirect costs associated with the regulation of an occupation or profession.

Additional Information

Prior Introductions: None.

Cross File: HB 744 (Delegate Beitzel) - Economic Matters and Environmental Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Department of the Environment; Texas Legislature; American Association of Professional Landmen; Department of Legislative Services

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