HB 1172

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1172 (Delegate Mizeur, *et al.*)
Environmental Matters

Environment - Gas and Oil Lease Registry

This bill requires the Maryland Department of the Environment (MDE) to establish and maintain a Gas and Oil Lease Registry. A person that holds a lease that grants gas or oil rights on property in Maryland must register with MDE. MDE must provide a registration form and collect a registration fee of $5 per lease. The registration form must include (1) the name of the owner of the property subject to the lease; (2) all transfers and assignments of ownership of the lease, interests in the lease, and royalties resulting from the lease; and (3) either the tax map and parcel number of the property subject to the lease or the liber and folio number of the property subject to the lease.

Fiscal Summary

State Effect: Special and/or general fund expenditures increase by about $29,300 in FY 2013 for MDE to hire a contractual administrative specialist to implement the registry. General fund revenues increase negligibly beginning in FY 2013 as MDE collects payment of the $5 registration fee from current and future oil or gas lease holders. Special fund revenues increase, assuming MDE assesses permit fees to cover some or all of its costs, as authorized under current law. Future years reflect annualization and inflation and assume that only a part-time contractual employee is needed through FY 2017.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF/SF Rev.	-	-	-	-	-
GF/SF Exp.	$29,300	$16,200	$17,400	$18,100	$18,900
Net Effect	($29,300)	($16,200)	($17,400)	($18,100)	($18,900)

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

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law/Background:

The Marcellus Shale

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.

Concerns Regarding High-volume Hydraulic Fracturing

As the use of hydraulic fracturing has increased, so has concern about its potential impacts. MDE advises that, although accidents are relatively rare, exploration for and production of natural gas in nearby states have resulted in injuries, well blowouts, releases of fracturing fluids, releases of methane, spills, fires, forest fragmentation, road damage, and evidence of water contamination.

In 2010, the U.S. Environmental Protection Agency (EPA) raised several concerns regarding the impact of hydraulic fracturing on water supplies, water quality, and air quality, among other issues, and is currently examining the practice more closely. Other states, academic organizations, environmentalists, and the industry are also conducting research into the impacts of hydraulic fracturing on the public health, safety, and the environment.

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 Department of Natural Resources (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.

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. 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.

MDE's Oil and Gas Division currently oversees about 95 permits. According to MDE, many of the oil and gas sites covered by these permits are not in active production, and no new wells were drilled in fiscal 2011.

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 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. Part I of the study, a report on findings and recommendations regarding sources of revenue and standards of liability, was released in December 2011. The final report is due by August 1, 2014.

Land Records Information in Maryland

Leases, mortgages, and other instruments affecting interests in real property are recorded in the land records offices of various county circuit courts. However, Maryland is unique in that it is one of the few states – in fact, it may be the only state – where the state archives agency is responsible for permanent records from municipal and local governments. Recently, the Maryland Judiciary, the 24 elected Court Clerks of Maryland, and the Maryland State Archives collaborated to develop a new system that provides up to date and open access to all verified land record instruments in Maryland. In addition, the Judiciary is developing the Electronic Land Records Online Imagery eRecording digital imaging and filing system. This tool will allow for all land records instruments to be maintained digitally by court clerks and for users to access land record information via the Internet.

State Fiscal Effect: Special fund expenditures increase by $29,274 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost for MDE to hire one full-time contractual administrative specialist in fiscal 2013 to develop the registration form, process the large number of registrations from existing leaseholders, process fee payments, and review registrations. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Once all current leaseholders have registered, it is assumed that the number of additional registrations submitted on an annual basis decreases significantly. Thus, beginning in fiscal 2014, the contractual position is needed only on a part-time basis and will likely not be needed after fiscal 2017; it is assumed that by then, most leaseholders would already be registered.

	FY 2013	**FY 2014**
Contractual Position	1	0.5
Salary and Fringe Benefits	$25,015	$15,956
Start-up Costs and Operating Expenses	4,259	278
Total FY 2013 and 2014 State Expenditures	**$29,274**	**$16,234**

Future year expenditures reflect a full-year part-time salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Under Chapter 383 of 2010, MDE is required to set and collect permit and production fees related to oil and gas well drilling. Fees must be set at a rate necessary to (1) review, inspect, and evaluate monitoring data, applications, licenses, permits, and other reports; (2) perform and oversee assessments, investigations, and research; (3) conduct permitting, inspection, and compliance activities; and (4) develop and implement regulations to address the risks to public safety, human health, and the environment from oil and gas well drilling and development. 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.

Because MDE has the authority under current law to assess fees to cover its costs related to oil and gas regulatory activities, this analysis assumes that MDE will attempt to recover the costs incurred as a result of this bill from permit applicants. Thus, special fund revenues from permit fees may increase to the same extent as special fund expenditures in each year. However, to the extent MDE is unable to recover all of its costs through the assessment of fees, other special funds or general funds may be needed.

According to land records data from Garrett County, there are 691 existing leases or memoranda of lease, most of which have been recorded since 2005. There are also additional leases that have not been recorded. 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. Thus, while the total number of existing oil and gas leases that may be initially registered under the bill is unknown, it is likely less than 1,000. *For illustrative purposes only*, general fund revenues may increase by about $5,000 in fiscal 2013 if 1,000 leases are registered under the bill that result in the payment of a $5 registry fee. Because the bill does not direct the registration fees to the Oil and Gas Fund, it is assumed that they would be paid into the general fund. In the out-years, general fund revenues increase minimally, as only new lessees register with MDE and pay the $5 fee. At some point, likely in fiscal 2017, most leaseholders will be registered and little additional registration fee revenue will accrue.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett and Washington counties, State Department of Assessments and Taxation, Maryland Department of Planning, Maryland Department of the Environment, Department of Legislative Services

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