

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1033

(Delegate Mizeur, *et al.*)

Environmental Matters

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Environment - Gas and Oil Leasing Agent - Notice to Landowner

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This bill requires a “leasing agent” to provide a written notice describing the rights of the landowner before presenting to the landowner a lease for the right to drill a well for the exploration, production, or underground storage of gas or oil. Included in the notice must be the landowner’s rights to contact an attorney and to negotiate the terms of the lease. The Maryland Department of the Environment (MDE) may adopt additional requirements for the notice by regulation. Failure to provide the notice may be grounds for the denial of a permit for the drilling of a well for the exploration, production, or underground storage of gas or oil.

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Fiscal Summary

**State Effect:** Assuming the notice of landowner rights required by the bill does not result in a material reduction in the amount of land available for future oil or gas development, the bill is not anticipated to significantly impact State tax revenues, as discussed below. MDE can develop any additional regulations authorized by the bill and review permits for compliance with the bill’s notice requirements with existing resources.

**Local Effect:** Assuming the notice of landowner rights required by the bill does not result in a material reduction in the amount of land available for future oil or gas development, the bill is not anticipated to significantly impact local government tax revenues, as discussed below.

**Small Business Effect:** Potential meaningful impact on small business leasing agents and any small business engaged in gas or oil well drilling and related services to the extent that the bill results in any change in the demand for their services. Potential meaningful beneficial impact on small business landowners to the extent that greater information regarding their rights results in the execution of more favorable leases.

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## Analysis

**Bill Summary:** A “leasing agent” is a person that contacts a landowner for the purpose of leasing mineral rights for the exploration, production, or underground storage of gas or oil in the State; it includes a landman.

### **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 oil or gas in Maryland. A permit is also required for the disposal of any product of an oil or gas 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.

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.

### *Efforts to Inform Property Owners of Impact of Gas Leases on Property Rights*

In October 2011, the Office of the Attorney General released tips for landowners considering leasing their property for natural gas drilling. Tips include investigating the value of leasing rights in the area, ensuring that rights to develop other minerals are not included in the lease unless accounted for in the value, reviewing and understanding the impact of royalty payment deductions, determining responsibility for environmental and other damages that may arise, and seeking legal counsel to understand the effect of the lease on other legal restrictions appurtenant to the property. In addition, the Attorney General warned landowners that signing a mineral rights lease could conflict with some requirements of their federally approved home or farm mortgage. To ensure their homes and farms remain safe from legal entanglements, landowners should always check with their bank or mortgage lender before entering into a mineral rights lease.

**State/Local Fiscal Effect:** Legislative Services advises that it is unclear whether or how the bill might impact the future development of the State's shale gas deposits, and consequently, revenues derived from such development. Generally, additional regulatory restrictions could create a disincentive for the energy industry to engage in gas resource development in Maryland. However, it is not likely that informing landowners of their legal rights will result in a significant reduction in the amount of land leased for development of gas or oil resources. Any impact on the future extraction of shale gas resources in the State would directly affect future severance tax revenues in Allegany County, and to a greater extent, Garrett County; other sources of State and local revenue from general economic activity may also be indirectly impacted. The State does not currently impose a severance tax on oil or gas production.

**Additional Comments:** The bill specifies that a leasing agent must provide a written notice describing the rights of the *landowner* before presenting an oil or gas lease. However, in many instances the owner of a mineral estate is not the same person as the landowner.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Garrett and Washington counties, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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