

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 766 (Senator Edwards)

Education, Health, and Environmental Affairs

Environmental Matters

Business Occupations - Oil and Gas Land Professionals - Registration

This bill requires a person operating as a “land professional” in the State to be registered with the Department of Labor, Licensing, and Regulation (DLLR) and issued a registration certificate by the department.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: No impact in FY 2013. General fund revenues increase minimally beginning in FY 2014 from registration fees. Future year revenues reflect initial and renewal registration fees. General fund expenditures for DLLR increase by \$21,500 in FY 2014 for the department to implement a registration system and to provide necessary contractual staff. Future year expenditures reflect annualization, inflation, and the elimination of one-time costs. Assuming 50 or fewer individuals are registered under the bill, DLLR can handle the out-year requirements of the registration system with existing resources. Additional general fund expenditures for staffing or programming services by DLLR may be needed if significantly more individuals than anticipated register under the bill. The bill’s penalty provisions are not anticipated to materially affect State finances.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	-
GF Expenditure	\$21,500	-	-	-	-
Net Effect	(\$21,500)	\$0	\$0	\$0	\$0

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: “Land professional” means a person that, acting on the person’s own behalf or on behalf of a prospective lessee or buyer, negotiates with a property owner for the acquisition of mineral rights in oil or gas in the State. It does not include a person that negotiates for the acquisition or divestiture of a lessee’s interest in an existing lease for mineral rights in oil or gas. “Mineral rights in oil or gas” means property rights, including an oil or gas lease, that allow the holder of the rights to enter onto or under the property of another person for the extraction of crude oil, natural gas, or the constituents of crude oil or natural gas.

A person may not operate as a land professional in the State unless the person registers with DLLR and is issued a registration certificate by the department. Before obtaining any mineral rights in oil or gas from a property owner, a land professional must provide proof to the property owner that the person is registered as a land professional in the State.

DLLR must establish a means for providing the public access to relevant information related to land professionals registered under the bill and must adopt regulations that:

- establish a registration form for the initial and renewal registration of a land professional;
- set fees for the issuance of an initial and renewal registration;
- provide for the assignment of a registration number and the issuance of a registration certificate to each registered land professional; and
- establish any other requirements and procedures necessary to implement the bill.

A person must register as a land professional by submitting an initial registration application and an initial registration fee. DLLR must assign a registration number and issue a registration certificate to each person that submits the form and pays the fee – there are no exclusions specified in the bill. A registration is valid for two years and may be renewed for an additional two-year term if the registrant submits a renewal application to DLLR and pays a renewal fee set by the department.

A violation of any provision in the bill is a misdemeanor and is subject to a minimum penalty of a \$500 fine and a maximum penalty of a \$1,000 fine. Enhanced penalties exist for a second or subsequent violation of the bill. Penalty revenue accrues to the general fund.

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

Chapter 383 of 2010 (HB 72) established an Oil and Gas Fund to support the Maryland Department of the Environment's (MDE) 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.

Background: "Land professionals," or 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. 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 course work, 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, and Ohio, where a similar bill (HB 493) was introduced but not passed in 2012.

General Regulation of the Oil and Gas Industry

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 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. For additional information on hydraulic fracturing and the State's natural gas resources, including the Marcellus Shale Safe Drilling Advisory Commission Legislative Committee's recommendation to register landmen, see the **Appendix – High-volume Hydraulic Fracturing in the Marcellus Shale**.

State Fiscal Effect: The number of persons required to register with DLLR under the bill cannot be reliably estimated at this time; however, the Department of Legislative Services believes the number is likely to be 50 or fewer and depends largely on whether or not land professionals from surrounding states choose to register in the State.

DLLR advises that, because the bill does not require ongoing oversight of land professionals registered under the bill, it would likely set the initial and renewal registration fee at \$50. *For illustrative purposes only*, if DLLR registers 25 land professionals in fiscal 2014, general fund revenues increase by \$1,250.

General fund expenditures increase by \$21,500 in fiscal 2014, which accounts for a 30-day start-up delay from the bill's June 1, 2013 effective date. This estimate reflects

the cost of hiring one contractual half-time administrative specialist to oversee the initial implementation of the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate assumes that DLLR can meet the bill's requirement to provide public access to relevant registrant information by posting a list of registrants on its website, rather than through the creation of an online searchable database.

Contractual Position	0.5
Salary and Fringe Benefits	\$17,482
Other Operating Expenses	<u>4,038</u>
Total FY 2014 State Expenditures	\$21,520

Future year expenditures reflect annualization, inflation, and the elimination of one-time costs. Assuming 50 or fewer individuals are registered under the bill, DLLR can handle the out-year requirements of the registration system with existing resources. Additional general fund expenditures for staffing or programming services by DLLR may be needed if a significantly larger number of individuals registers under the bill. The typical programming expense for a modification of DLLR's electronic licensing system is \$10,000. Programming expenses could also increase by \$10,000 if the intent of the bill is to require a searchable database for land professional registrants. The bill's penalty provisions are not anticipated to materially affect State finances.

Additional Information

Prior Introductions: A similar bill, HB 744 of 2012, received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 770, received a hearing from the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: HB 828 (Delegate Beitzel) - Environmental Matters.

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

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Appendix – High-volume Hydraulic Fracturing in the Marcellus Shale

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. 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 natural gas from the Marcellus Shale in Maryland using horizontal drilling and high-volume hydraulic fracturing were first filed with the Maryland Department of the Environment (MDE) in 2010. According to MDE, however, all of the permit applications that had been filed have since been withdrawn.

Concerns Regarding High-volume Hydraulic Fracturing

As the use of hydraulic fracturing has increased, so has concern about its potential impacts. MDE has advised 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. In April 2012, EPA adopted a final rule to address air emissions from hydraulic fracturing, and in December 2012, EPA released a progress report on its comprehensive study of hydraulic fracturing impacts on water resources. 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.

Marcellus Shale Safe Drilling Initiative

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 the Department of Natural Resources (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 for damages caused by gas exploration and production, was released in December 2011. The findings and recommendations of the report led to the introduction of several bills during the 2012 legislative session; the General Assembly passed only one of the bills, however. Chapter 703 of 2012 (HB 1123) established a presumptive impact area applicable to areas around a deep shale gas deposit well for which MDE has issued a gas exploration or production permit. In a presumptive impact area, it is presumed that contamination of a “water supply” was caused by the activities of gas exploration or production. The bills that failed would have, among other things:

- established a State-level severance tax on gas production;
- created a revenue source for the ongoing study of the Marcellus Shale Safe Drilling Initiative;
- established gas or oil lease recordation requirements to facilitate public access among the land records;
- required a landman (a person whose responsibilities include meeting with landowners and negotiating leases on behalf of companies seeking to mine or drill on a plot of land) to register with the Department of Labor, Licensing, and Regulation; and
- increased the amount of performance bond coverage that a holder of a permit to drill for gas or oil must maintain.

The other two parts of the required study are (1) a report with recommendations for best practices for all aspects of natural gas exploration and production in the Marcellus Shale in Maryland and (2) a final report with findings and recommendations relating to the impact of Marcellus Shale drilling, including possible contamination of groundwater, handling and disposal of wastewater, environmental and natural resources impacts, impacts to forests and important habitats, greenhouse gas emissions, and economic impacts. A draft of the best practices report has been delayed twice and is currently expected to be released in spring 2013. The final best practices report is still expected to be completed by August 1, 2013, and the final report for the third part of the study is expected by August 1, 2014.

The Marcellus Shale Safe Drilling Initiative study has been hampered to some extent by a lack of funding. Legislation failed in the 2011 and 2012 sessions that would have provided the estimated funding needed to fully research all initially planned aspects of the study. To date, the failure to establish a funding source for the study has resulted in the need by MDE, DNR, and the advisory commission to identify other sources of funding and to reduce the scale of the study. However, the Governor’s proposed

fiscal 2014 budget includes a \$1.5 million fiscal 2013 deficiency appropriation in MDE and DNR to support research required by the executive order. The proposed general funds would be used to support stream sampling, economic analysis, a review of the potential impacts of gas extraction on public health, and the establishment of baseline data for groundwater, surface water, and air in Western Maryland.

Marcellus Shale Safe Drilling Advisory Commission Legislative Committee

In September 2012, the Marcellus Shale Safe Drilling Advisory Commission established a legislative committee to recommend legislative proposals to the advisory commission for consideration prior to the 2013 session. The commission considered 10 topics for potential legislative proposals and the legislative committee ultimately recommended four proposals: (1) a surface owner protection act; (2) financial assurance requirements, such as performance bonds or environmental impairment liability insurance; (3) the registration of landmen; and (4) the establishment of a severance tax on gas production.