

HOUSE BILL 1123

M3

2lr3206
CF SB 636

By: **Delegate Mizeur**

Introduced and read first time: February 10, 2012

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 16, 2012

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
24 evidence; stating certain legislative findings and intent; defining a certain term;

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 providing for the construction of this Act; and generally relating to ~~damage~~
 2 contamination caused by certain activities of gas exploration 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~~ SOURCES ~~AND TO~~**
 16 **~~RESULT IN OTHER DAMAGE TO LANDOWNERS~~ IN THE VICINITY OF A GAS WELL;**
 17 **AND**

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

22 **(i) THE WATER SUPPLY ~~WELL~~ SOURCE IS WITHIN ~~2,640~~**
 23 **2,500 FEET OF THE VERTICAL WELLBORE; AND**

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

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

1 14-110.2.

2 (A) IN THIS SECTION, "WATER SUPPLY SOURCE" MEANS A WELL,
 3 SPRING, SPRING-FED POND, RESERVOIR, STREAM, OR ANY OTHER SOURCE OF
 4 WATER USED FOR DRINKING OR FOR LIVESTOCK.

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

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

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

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

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

18 ~~(1)~~ ~~REPLACE~~ 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~~
 2 ~~PRESUMPTIVE IMPACT AREA FOUND BY THE DEPARTMENT TO HAVE BEEN~~
 3 ~~DAMAGED AS A RESULT OF THE DRILLING OR OPERATION OF A GAS WELL SHALL~~
 4 ~~BE 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 OWNER ~~FOR OTHER~~
 19 ~~DAMAGE~~, AS PROVIDED IN THIS SECTION, IF THE PERMITTEE DEMONSTRATES
 20 TO THE DEPARTMENT BY CLEAR AND CONVINCING EVIDENCE THAT:

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

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

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

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

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

35 (2) THE LANDOWNER REFUSES PERMISSION.

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

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

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

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

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

11 **(2)** THE PRESUMPTION MAY BE REBUTTED BY CLEAR AND
12 CONVINCING EVIDENCE.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.