

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1040 (Delegate Mizeur, *et al.*)  
Environmental Matters

---

Environment - Gas and Oil Leases - Recordation

---

This bill requires a person that holds a gas or an oil lease to record the lease in the land records of the county in which the land affected by the lease is located. The bill prohibits the recording of a memorandum of lease instead of recording the lease in its entirety.

---

Fiscal Summary

**State Effect:** Special fund revenues increase minimally beginning in FY 2013 for the Circuit Court Real Property Records Improvement Fund due to the requirement to record an oil or gas lease. State expenditures are not materially affected.

**Local Effect:** Local government revenues increase minimally beginning in FY 2013 due to the collection of additional recordation fees and surcharges by land record offices of the circuit courts. Workloads may increase for court clerks, particularly in Allegany and Garrett counties, to process any additional oil or gas leases being recorded, although it is assumed that any additional workload can be handled with existing resources.

**Small Business Effect:** Minimal.

---

Analysis

**Current Law:** As a general rule of property law, no estate of inheritance or freehold, declaration or limitation of use, estate of more than seven years, or deed may pass or take effect unless the deed granting it is executed and recorded. This requirement generally does not apply to a lease for an initial term of up to seven years. If a lease that is required to be recorded is not recorded, the lease is valid and effective between the original parties, against their creditors, and against and for the benefit of specified persons

claiming by, through, or under an original party. In lieu of recording a lease, a memorandum of lease containing specified information may be recorded.

## **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, the Maryland Department of the Environment (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.

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.

**State Revenues:** Special fund revenues increase for the Circuit Court Real Property Records Improvement Fund to the extent that the bill's requirement to record an oil or gas lease results in a greater number of leases being recorded. Presumably, the majority of oil and gas leases are currently recorded as it is to the benefit of the contracting parties to record their interest. Thus, any increase in special fund revenues is anticipated to be minimal.

Created by Chapter 327 of 1991, the Circuit Court Real Property Records Improvement Fund consists of surcharges assessed on instruments recorded in the land records and the financing statement records, document copying revenues, and accumulated interest revenue. The nonlapsing fund supports all personnel and operating costs within the land records offices of the clerks of the circuit court. It further supports the maintenance costs of the Electronic Land Records Online Imagery System and its website for making images accessible to the public. The Budget Reconciliation and Financing Act of 2011 (Chapter 397) increased the surcharge on all recordable instruments that supports the fund, from \$20 to \$40, for fiscal 2012 through 2015.

**Local Revenues:** Local government revenues increase minimally due to the collection of additional recordation fees and surcharges by land record offices. This increase in revenues is the result of additional leases that are recorded under the bill's requirement and due to the greater amount that may be charged for a lease than for a memorandum of lease. Recordation fees are generally based on the length of the instrument being recorded, and a memorandum of lease is generally shorter than a lease. However, as noted above, it is assumed that most leases have already been recorded or would be even in the absence of this bill. Thus, any increase in local revenues is anticipated to be minimal.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 1, 2012  
mlm/lgc

---

Analysis by: Evan M. Isaacson

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510