

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 409

(Senator Montgomery, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

Environment - Hydraulic Fracturing - Regulations

This bill requires the Maryland Department of the Environment (MDE) to adopt regulations to provide for the hydraulic fracturing of a well for the exploration or production of natural gas by October 1, 2016; the regulations may not take effect until October 1, 2017. A permit to drill a well using hydraulic fracturing may not be issued until October 1, 2017.

Fiscal Summary

State Effect: General/special fund revenues associated with general economic activity decrease to the extent that the bill delays any development of natural gas resources that would occur in the absence of the bill, as discussed below. Expenditures are not materially affected.

Local Effect: Local severance tax revenues and other revenues associated with general economic activity decrease for Allegany and Garrett counties to the extent that the bill's prohibition results in less development of gas resources than would occur in the absence of the bill, as discussed below. Expenditures are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Current Oil and Gas Regulations

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 that wants to extract gas from the Marcellus Shale may also be required to apply for a number of other State environmental permits.

MDE regulates gas exploration and production and 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. However, the MDE oil and gas regulations were written prior to the use of high-volume hydraulic fracturing and, as of February 2015, have not been revised since 1993. These regulations apply to all gas wells in Maryland, are not specific to the practice of hydraulic fracturing, and, in some cases, are incompatible with modern industry practices.

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. Under Chapter 383, MDE is required to set and collect permit and production fees at a rate necessary to, among other things, develop and implement regulations to address the risks to public safety, human health, and the environment from oil and gas well drilling and development.

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 directed MDE and the Department of Natural Resources (DNR) to assemble and consult with an advisory commission. Specifically, the executive order tasked MDE and DNR, in consultation with the advisory commission, with conducting a three-part study and reporting 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. Part II of the study – a

report on best practices – was completed in August 2013 and reflected changes made after consideration of more than 4,000 public comments. This report was based upon work conducted by two experts at the University of Maryland Center for Environmental Science, Appalachian Laboratory, which provided MDE and DNR with a suite of recommendations that have been used or studied in other states. The third and final report required by the executive order was scheduled to be released by August 1, 2014. However, the departments released a draft report on July 11, 2014, and announced that public comments would be accepted through November 17, 2014. A draft of the final report of the Marcellus Shale Safe Drilling Initiative Study was released on November 25, 2014, and contained information from a risk assessment, a public health study, and an economic impact study commissioned by the departments. The final report contained all final findings and recommendations and addressed all remaining issues identified by the executive order.

Ultimately, the departments concluded that the risks to public health and the environment can be adequately managed under a stringent regulatory regime that relies on the best practices identified in their report. MDE subsequently developed such regulations, which were published in the *Maryland Register* on January 9, 2015. MDE advises that it has received more than 100 public comments and is currently reviewing the comments.

The U.S. Environmental Protection Agency, other states, academic and environmental organizations, and the oil and gas industry are also conducting research into the impacts of hydraulic fracturing on public health, safety, and the environment. On December 17, 2014, Governor Andrew M. Cuomo of New York prohibited the practice of high-volume hydraulic fracturing in New York State following the release of a multi-year study conducted by the State's Department of Health that recommended a ban until sufficient information on the risks of the practice became available.

State/Local Fiscal Effect: A moratorium on the extraction of shale gas resources in the State through the use of hydraulic fracturing may directly affect future severance tax revenues in Allegany County, and to a greater extent, Garrett County until fiscal 2018, and potentially for several fiscal years thereafter, as any permit review and exploration and production activities are undertaken; 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 gas production. As noted above, current oil and gas exploration and development regulations are generally inconsistent, and in some cases, incompatible with modern industry practices. Thus, it is unlikely that high-volume hydraulic fracturing occurs in Maryland until the regulations are updated. Even if current regulations are revised, it is unclear whether and when future development may occur, which is dependent on the relative stringency of the final regulatory provisions (including any baseline monitoring periods or similar provisions that prohibit extraction for a certain period of time), as well as future price levels. Currently, there are no permit applications related to hydraulic fracturing pending before MDE.

Small Business Effect: The bill may have a meaningful adverse impact on small businesses engaged in providing services related to hydraulic fracturing and the development of natural gas resources to the extent the bill delays any such development that would otherwise occur in the absence of the bill. The bill may have a meaningful beneficial impact on small businesses in Western Maryland reliant upon tourism to the extent that the development of natural gas resources would impact the levels of tourism in the area; however, any such impact is unclear.

Additional Information

Prior Introductions: None.

Cross File: HB 449 (Delegate Fraser-Hidalgo, *et al.*) - Environment and Transportation.

Information Source(s): Allegany and Garrett counties, Maryland Department of the Environment, New York State Department of Health, Department of Legislative Services

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