

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3060**

4 (By Delegates Boggs, Manchin and Miley)

5
6 (Originating in the House Committee on the Judiciary)

7
8 [March 29, 2013]

9
10 A BILL to amend and reenact §22C-9-3 and §22C-9-4 of the Code of
11 West Virginia, 1931, as amended, all relating to authorizing
12 the Oil and Gas Conservation Commission to regulate horizontal
13 deep wells.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §22C-9-3 and §22C-9-4 of the Code of West Virginia, 1931,
16 as amended, be amended and reenacted, all to read as follows:

17 **ARTICLE 9. OIL AND GAS CONSERVATION.**

18 **§22C-9-3. Application of article; exclusions.**

19 (a) Except as provided in subsection (b) of this section, the
20 provisions of this article shall apply to all lands located in this
21 state, however owned, including any lands owned or administered by
22 any government or any agency or subdivision thereof, over which the
23 state has jurisdiction under its police power. The provisions of
24 this article are in addition to and not in derogation of or
25 substitution for the provisions of article six or six-a, chapter

1 twenty-two of this code.

2 (b) This article shall not apply to or affect:

3 (1) Shallow wells other than those utilized in secondary
4 recovery programs as set forth in section eight of this article;

5 (2) Any well commenced or completed prior to March 9, 1972,
6 unless such well is, after completion (whether such completion is
7 prior or subsequent to that date):

8 (A) Deepened subsequent to that date to a formation at or
9 below the top of the uppermost member of the "Onondaga Group"; or

10 (B) Involved in secondary recovery operations for oil under an
11 order of the commission entered pursuant to section eight of this
12 article;

13 (3) Gas storage operations or any well employed to inject gas
14 into or withdraw gas from a gas storage reservoir or any well
15 employed for storage observation; or

16 (4) Free gas rights.

17 (c) The provisions of this article shall not be construed to
18 grant to the commissioner or the commission authority or power to:

19 (1) Limit production or output, or prorate production of any
20 oil or gas well, except as provided in subdivision (6), subsection
21 (a), section seven of this article; or

22 (2) Fix prices of oil or gas.

23 (d) Nothing contained in either this chapter or chapter
24 twenty-two of this code may be construed so as to require, prior to
25 commencement of plugging operations, a lessee under a lease

1 covering a well to give or sell the well to any person owning an
2 interest in the well, including, but not limited to, a respective
3 lessor, or agent of the lessor, nor shall the lessee be required to
4 grant to a person owning an interest in the well, including, but
5 not limited to, a respective lessor, or agent of a lessor, an
6 opportunity to qualify under section twenty-six, article six,
7 chapter twenty-two of this code to continue operation of the well.

8 **§22C-9-4. Oil and gas conservation commissioner and commission;**
9 **commission membership; qualifications of members;**
10 **terms of members; vacancies on commission; meetings;**
11 **compensation and expenses; appointment and**
12 **qualifications of commissioner; general powers and**
13 **duties.**

14 (a) The "oil and gas conservation commission" shall be
15 composed of five members. The director of the Division of
16 Environmental Protection and the chief of the office of oil and gas
17 shall be members of the commission ex officio. The remaining three
18 members of the commission shall be appointed by the Governor, by
19 and with the advice and consent of the Senate, and may not be
20 employees of the Division of Environmental Protection. Of the
21 three members appointed by the Governor, one shall be an
22 independent producer and at least one shall be a public member not
23 engaged in an activity under the jurisdiction of the Public Service
24 Commission or the Federal Energy Regulatory Commission. The third

1 appointee shall possess a degree from an accredited college or
2 university in petroleum engineering or geology and must be a
3 registered professional engineer with particular knowledge and
4 experience in the oil and gas industry and shall serve as
5 commissioner and as chair of the commission.

6 (b) The members of the commission appointed by the Governor
7 shall be appointed for overlapping terms of six years each, except
8 that the original appointments shall be for terms of two, four and
9 six years, respectively. Each member appointed by the Governor
10 shall serve until the members successor has been appointed and
11 qualified. Members may be appointed by the Governor to serve any
12 number of terms. The members of the commission appointed by the
13 Governor, before performing any duty hereunder, shall take and
14 subscribe to the oath required by section 5, article IV of the
15 Constitution of West Virginia. Vacancies in the membership
16 appointed by the Governor shall be filled by appointment by the
17 Governor for the unexpired term of the member whose office is
18 vacant and such appointment shall be made by the Governor within
19 sixty days of the occurrence of such vacancy. Any member appointed
20 by the Governor may be removed by the Governor in case of
21 incompetency, neglect of duty, gross immorality or malfeasance in
22 office. A commission member's appointment shall be terminated as
23 a matter of law if that member fails to attend three consecutive
24 meetings. The Governor shall appoint a replacement within thirty
25 days of the termination.

1 (c) The commission shall meet at such times and places as
2 shall be designated by the chair. The chair may call a meeting of
3 the commission at any time, and shall call a meeting of the
4 commission upon the written request of two members or upon the
5 written request of the oil and gas conservation commissioner or the
6 chief of the office of oil and gas. Notification of each meeting
7 shall be given in writing to each member by the chair at least
8 fourteen calendar days in advance of the meeting. Three members of
9 the commission, at least two of whom are appointed members, shall
10 constitute a quorum for the transaction of any business.

11 (d) The commission shall pay each member the same compensation
12 as is paid to members of the Legislature for their interim duties
13 as recommended by the Citizens Legislative Compensation Commission
14 and authorized by law for each day or portion thereof engaged in
15 the discharge of official duties and shall reimburse each member
16 for actual and necessary expenses incurred in the discharge of
17 official duties.

18 (e) The commission is hereby empowered and it is the
19 commission's duty to execute and carry out, administer and enforce
20 the provisions of this article in the manner provided herein.
21 Subject to the provisions of section three of this article, the
22 commission has jurisdiction and authority over all persons and
23 property necessary therefor. The commission is authorized to make
24 such investigation of records and facilities as the commission
25 deems proper. In the event of a conflict between the duty to

1 prevent waste and the duty to protect correlative rights, the
2 commission's duty to prevent waste shall be paramount.

3 (f) Without limiting the commission's general authority, the
4 commission shall have specific authority to:

5 (1) Regulate the spacing of deep wells. Notwithstanding the
6 provisions of article six-a, chapter twenty-two of this code, the
7 commission shall regulate the spacing of deep wells drilled as
8 horizontal wells as defined by section four, article six-a, chapter
9 twenty-two of this code: *Provided, That this authorization shall*
10 not apply to any well producing from a formation above the Onondaga
11 Group formation;

12 (2) Make and enforce reasonable rules and orders reasonably
13 necessary to prevent waste, protect correlative rights, govern the
14 practice and procedure before the commission and otherwise
15 administer the provisions of this article;

16 (3) Issue subpoenas for the attendance of witnesses and
17 subpoenas duces tecum for the production of any books, records,
18 maps, charts, diagrams and other pertinent documents, and
19 administer oaths and affirmations to such witnesses, whenever, in
20 the judgment of the commission, it is necessary to do so for the
21 effective discharge of the commission's duties under the provisions
22 of this article; and

23 (4) Serve as technical advisor regarding oil and gas to the
24 Legislature, its members and committees, to the Chief of Office of
25 Oil and Gas, to the Division of Environmental Protection and to any

1 other agency of state government having responsibility related to
2 the oil and gas industry.

3 (g) The commission may delegate to the commission staff the
4 authority to approve or deny an application for new well permits,
5 to establish drilling units or special field rules if:

6 (1) The application conforms to the rules of the commission;
7 and

8 (2) No request for hearing has been received.

9 (h) The commission may not delegate its authority to:

10 (1) Propose legislative rules;

11 (2) Approve or deny an application for new well permits, to
12 establish drilling units or special field rules if the conditions
13 set forth in subsection (g) of this section are not met; or

14 (3) Approve or deny an application for the pooling of
15 interests within a drilling unit.

16 (i) Any exception to the field rules or the spacing of wells
17 which does not conform to the rules of the commission, and any
18 application for the pooling of interests within a drilling unit,
must be presented to and heard before the commission.