

COMMITTEE SUBSTITUTE

FOR

H. B. 3060

(BY DELEGATE(S) BOGGS, MANCHIN AND MILEY)

(Originating in the House Committee on the Judiciary)

[March 29, 2013]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. OIL AND GAS CONSERVATION.

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

1 (a) Except as provided in subsection (b) of this section, the
2 provisions of this article shall apply to all lands located in this
3 state, however owned, including any lands owned or adminis-
4 tered by any government or any agency or subdivision thereof,
5 over which the state has jurisdiction under its police power. The
6 provisions of this article are in addition to and not in derogation
7 of or substitution for the provisions of article six or six-a, chapter
8 twenty-two of this code.

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

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

12 (2) Any well commenced or completed prior to March 9,
13 1972, unless such well is, after completion (whether such
14 completion is prior or subsequent to that date):

15 (A) Deepened subsequent to that date to a formation at or
16 below the top of the uppermost member of the “Onondaga
17 Group”; or

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

21 (3) Gas storage operations or any well employed to inject
22 gas into or withdraw gas from a gas storage reservoir or any well
23 employed for storage observation; or

24 (4) Free gas rights.

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

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

31 (2) Fix prices of oil or gas.

32 (d) Nothing contained in either this chapter or chapter
33 twenty-two of this code may be construed so as to require, prior
34 to commencement of plugging operations, a lessee under a lease
35 covering a well to give or sell the well to any person owning an
36 interest in the well, including, but not limited to, a respective
37 lessor, or agent of the lessor, nor shall the lessee be required to
38 grant to a person owning an interest in the well, including, but
39 not limited to, a respective lessor, or agent of a lessor, an
40 opportunity to qualify under section twenty-six, article six,

41 chapter twenty-two of this code to continue operation of the
42 well.

**§22C-9-4. Oil and gas conservation commissioner and commission;
commission membership; qualifications of members;
terms of members; vacancies on commission; meet-
ings; compensation and expenses; appointment and
qualifications of commissioner; general powers and
duties.**

1 (a) The “oil and gas conservation commission” shall be
2 composed of five members. The director of the Division of
3 Environmental Protection and the chief of the office of oil and
4 gas shall be members of the commission ex officio. The remain-
5 ing three members of the commission shall be appointed by the
6 Governor, by and with the advice and consent of the Senate, and
7 may not be employees of the Division of Environmental
8 Protection. Of the three members appointed by the Governor,
9 one shall be an independent producer and at least one shall be a
10 public member not engaged in an activity under the jurisdiction
11 of the Public Service Commission or the Federal Energy
12 Regulatory Commission. The third appointee shall possess a
13 degree from an accredited college or university in petroleum
14 engineering or geology and must be a registered professional
15 engineer with particular knowledge and experience in the oil and

16 gas industry and shall serve as commissioner and as chair of the
17 commission.

18 (b) The members of the commission appointed by the
19 Governor shall be appointed for overlapping terms of six years
20 each, except that the original appointments shall be for terms of
21 two, four and six years, respectively. Each member appointed by
22 the Governor shall serve until the members successor has been
23 appointed and qualified. Members may be appointed by the
24 Governor to serve any number of terms. The members of the
25 commission appointed by the Governor, before performing any
26 duty hereunder, shall take and subscribe to the oath required by
27 section 5, article IV of the Constitution of West Virginia.
28 Vacancies in the membership appointed by the Governor shall be
29 filled by appointment by the Governor for the unexpired term of
30 the member whose office is vacant and such appointment shall
31 be made by the Governor within sixty days of the occurrence of
32 such vacancy. Any member appointed by the Governor may be
33 removed by the Governor in case of incompetency, neglect of
34 duty, gross immorality or malfeasance in office. A commission
35 member's appointment shall be terminated as a matter of law if

36 that member fails to attend three consecutive meetings. The
37 Governor shall appoint a replacement within thirty days of the
38 termination.

39 (c) The commission shall meet at such times and places as
40 shall be designated by the chair. The chair may call a meeting of
41 the commission at any time, and shall call a meeting of the
42 commission upon the written request of two members or upon
43 the written request of the oil and gas conservation commissioner
44 or the chief of the office of oil and gas. Notification of each
45 meeting shall be given in writing to each member by the chair at
46 least fourteen calendar days in advance of the meeting. Three
47 members of the commission, at least two of whom are appointed
48 members, shall constitute a quorum for the transaction of any
49 business.

50 (d) The commission shall pay each member the same
51 compensation as is paid to members of the Legislature for their
52 interim duties as recommended by the Citizens Legislative
53 Compensation Commission and authorized by law for each day
54 or portion thereof engaged in the discharge of official duties and
55 shall reimburse each member for actual and necessary expenses
56 incurred in the discharge of official duties.

57 (e) The commission is hereby empowered and it is the
58 commission's duty to execute and carry out, administer and
59 enforce the provisions of this article in the manner provided
60 herein. Subject to the provisions of section three of this article,
61 the commission has jurisdiction and authority over all persons
62 and property necessary therefor. The commission is authorized
63 to make such investigation of records and facilities as the
64 commission deems proper. In the event of a conflict between the
65 duty to prevent waste and the duty to protect correlative rights,
66 the commission's duty to prevent waste shall be paramount.

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

69 (1) Regulate the spacing of deep wells. Notwithstanding the
70 provisions of article six-a, chapter twenty-two of this code, the
71 commission shall regulate the spacing of deep wells drilled as
72 horizontal wells as defined by section four, article six-a, chapter
73 twenty-two of this code: *Provided*, That this authorization shall
74 not apply to any well producing from a formation above the
75 Onondaga Group formation;

76 (2) Make and enforce reasonable rules and orders reasonably
77 necessary to prevent waste, protect correlative rights, govern the

78 practice and procedure before the commission and otherwise
79 administer the provisions of this article;

80 (3) Issue subpoenas for the attendance of witnesses and
81 subpoenas duces tecum for the production of any books, records,
82 maps, charts, diagrams and other pertinent documents, and
83 administer oaths and affirmations to such witnesses, whenever,
84 in the judgment of the commission, it is necessary to do so for
85 the effective discharge of the commission's duties under the
86 provisions of this article; and

87 (4) Serve as technical advisor regarding oil and gas to the
88 Legislature, its members and committees, to the Chief of Office
89 of Oil and Gas, to the Division of Environmental Protection and
90 to any other agency of state government having responsibility
91 related to the oil and gas industry.

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

95 (1) The application conforms to the rules of the commission;
96 and

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

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

99 (1) Propose legislative rules;

100 (2) Approve or deny an application for new well permits, to

101 establish drilling units or special field rules if the conditions set

102 forth in subsection (g) of this section are not met; or

103 (3) Approve or deny an application for the pooling of

104 interests within a drilling unit.

105 (i) Any exception to the field rules or the spacing of wells

106 which does not conform to the rules of the commission, and any

107 application for the pooling of interests within a drilling unit,

108 must be presented to and heard before the commission.

