

**H. B. 3013**

(By Delegates Fleischauer, Manchin, Perdue, Pushkin, Guthrie,  
Fluharty and Skinner)

[Introduced February 24, 2015; referred to the  
Committee on Energy then the Judiciary.]

A BILL to amend and reenact §22-6A-8, §22-6A-10 and §22-6A-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §22-6A-12a; and amend and reenact §22-6B-3, §22-6B-5 and §22-6B-7 of said code, all relating generally to horizontal well control standards; changing an elective obligation to a mandatory one; requiring notice in certain instances be sent to the occupants of residential property; prohibiting the limit of disturbance of a well site to be closer than fifteen hundred feet of an occupied dwelling; providing that a notice include certain information; establishing standards relating to air, noise, light and dust; permitting landowners be compensated for any decrease in the values of the land for its highest and best use; requiring the notice of a claim be also provided to an occupant of residential structure on the property; and establishing a statute of limitations for claims being filed.

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

That §22-6A-8, §22-6A-10 and §22-6A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated

1 §22-6A-12a; and that §22-6B-3, §22-6B-5 and §22-6B-7 of said code be amended and reenacted,  
2 all to read as follows:

3 **ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.**

4 **§22-6A-8. Review of application; issuance of permit; performance standards; copy of permits**  
5 **to county assessor.**

6 (a) The secretary shall review each application for a well work permit and shall determine  
7 whether or not a permit is issued.

8 (b) No permit may be issued less than thirty days after the filing date of the application for  
9 any well work except plugging or replugging; and no permit for plugging or replugging may be  
10 issued less than five days after the filing date of the application except a permit for plugging or  
11 replugging a dry hole: *Provided*, That if the applicant certifies that all persons entitled to notice of  
12 the application under the provisions of subsection (b), section ten of this article have been served in  
13 person or by certified mail, return receipt requested, with a copy of the well work application,  
14 including the erosion and sediment control plan, if required, and the well plat, and further files  
15 written statements of no objection by all such persons, the secretary may issue the well work permit  
16 at any time.

17 (c) Prior to the issuance of any permit, the secretary shall ascertain from the Executive  
18 Director of Workforce West Virginia and the Insurance Commissioner whether the applicant is in  
19 default pursuant to the provisions of section six-c, article two, chapter twenty-one-a of this code, and  
20 in compliance with section five, article two, chapter twenty-three of this code, with regard to any  
21 required subscription to the Unemployment Compensation Fund or mandatory Workers'  
22 Compensation insurance, the payment of premiums and other charges to the fund, the timely filing

1 of payroll reports and the maintenance of adequate deposits. If the applicant is delinquent or  
2 defaulted, or has been terminated by the executive director or the Insurance Commissioner, the  
3 permit may not be issued until the applicant returns to compliance or is restored by the executive  
4 director or the Insurance Commissioner under a reinstatement agreement: *Provided*, That in all  
5 inquiries the Executive Director of Workforce West Virginia and the Insurance Commissioner shall  
6 make response to the Department of Environmental Protection within fifteen calendar days;  
7 otherwise, failure to respond timely is considered to indicate the applicant is in compliance and the  
8 failure will not be used to preclude issuance of the permit.

9 (d) The secretary may cause such inspections to be made of the proposed well work location  
10 as necessary to assure adequate review of the application. The permit may not be issued, or ~~may~~  
11 shall be conditioned including conditions with respect to the location of the well and access roads  
12 prior to issuance if the director determines that:

13 (1) The proposed well work will constitute a hazard to the safety of persons;

14 (2) The plan for soil erosion and sediment control is not adequate or effective;

15 (3) Damage would occur to publicly owned lands or resources; or

16 (4) The proposed well work fails to protect fresh water sources or supplies.

17 (e) In addition to the considerations set forth in subsection (d) of this section, in determining  
18 whether a permit should be issued, issued with conditions, or denied, the secretary shall determine  
19 that:

20 (1) The well location restrictions of section twelve of this article have been satisfied, unless  
21 the requirements have been waived by written consent of the surface owner or the secretary has  
22 granted a variance to the restrictions, each in accordance with section twelve of this article;

1           (2) The water management plan submitted to the secretary, if required by subdivision (e),  
2 section seven of this article, has been received and approved.

3           (f) The secretary shall promptly review all written comments filed by persons entitled to  
4 notice pursuant to subsection (b), section ten of this article. If after review of the application and all  
5 written comments received from persons entitled to notice pursuant to subsection (b), section ten of  
6 this article, the application for a well work permit is approved, and no timely objection has been filed  
7 with the secretary by the coal operator operating coal seams beneath the tract of land, or the coal  
8 seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, or made  
9 by the secretary under the provisions of section ten and eleven of this article, the permit shall be  
10 issued, with conditions, if any. This section does not supersede the provisions of section seven or  
11 subdivisions (6) through (9), subsection (a), section five of this article.

12           (g) Each permit issued by the secretary pursuant to this article shall require the operator at  
13 a minimum to:

14           (1) Plug all wells in accordance with the requirements of this article and the rules  
15 promulgated pursuant thereto when the wells become abandoned;

16           (2) With respect to disposal of cuttings at the well site, all drill cuttings and associated  
17 drilling mud generated from horizontal well sites shall be disposed of in an approved solid waste  
18 facility, or if the surface owner consents, the drill cuttings and associated drilling mud may be  
19 managed on-site in a manner approved by the secretary;

20           (3) Grade, terrace and plant, seed or sod the area disturbed that is not required in production  
21 of the horizontal well where necessary to bind the soil and prevent substantial erosion and  
22 sedimentation;

1           (4) Take action in accordance with industry standards to minimize fire hazards and other  
2 conditions which constitute a hazard to health and safety of the public;

3           (5) Protect the quantity and the quality of water in surface and groundwater systems both  
4 during and after drilling operations and during reclamation by: (A) Withdrawing water from surface  
5 waters of the state by methods deemed appropriate by the secretary, so as to maintain sufficient  
6 in-stream flow immediately downstream of the withdrawal location. In no case shall an operator  
7 withdraw water from ground or surface waters at volumes beyond which the waters can sustain; (B)  
8 casing, sealing or otherwise managing wells to keep returned fluids from entering ground and surface  
9 waters; (C) conducting oil and gas operations so as to prevent, to the extent possible using the best  
10 management practices, additional contributions of suspended or dissolved solids to streamflow or  
11 runoff outside the permit area, but in no event shall the contributions be in excess of requirements  
12 set by applicable state or federal law; and (D) registering all water supply wells drilled and operated  
13 by the operator with the Office of Oil and Gas. All drinking water wells within one thousand five  
14 hundred feet of a water supply well shall be flow and quality tested by the operator upon request of  
15 the drinking well owner prior to operating the water supply well. The secretary shall propose  
16 legislative rules to identify appropriate methods for testing water flow and quality.

17           (6) In addition to the other requirements of this subsection, an operator proposing to drill any  
18 horizontal well requiring the withdrawal of more than two hundred ten thousand gallons in a thirty  
19 day period shall have the following requirements added to its permit:

20           (A) Identification of water withdrawal locations. Within forty-eight hours prior to the  
21 withdrawal of water, the operator shall identify to the department the location of withdrawal by  
22 latitude and longitude and verify that sufficient flow exists to protect designated uses of the stream.

1 The operator shall use methods deemed appropriate by the secretary to determine if sufficient flow  
2 exists to protect designated uses of the stream.

3 (B) Signage for water withdrawal locations. All water withdrawal locations and facilities  
4 identified in the water management plan shall be identified with a sign that identifies that the  
5 location is a water withdrawal point, the name and telephone number of the operator and the permit  
6 numbers(s) for which the water withdrawn will be utilized.

7 (C) Recordkeeping and reporting. For all water used for hydraulic fracturing of horizontal  
8 wells and for flowback water from hydraulic fracturing activities and produced water from  
9 production activities from horizontal wells, an operator shall comply with the following record  
10 keeping and reporting requirements:

11 (h) For production activities, the following information shall be recorded and retained by the  
12 well operator:

13 (I) The quantity of flowback water from hydraulic fracturing the well;

14 (II) The quantity of produced water from the well; and

15 (III) The method of management or disposal of the flowback and produced water.

16 (ii) For transportation activities, the following information shall be recorded and maintained  
17 by the operator:

18 (I) The quantity of water transported;

19 (II) The collection and delivery or disposal locations of water; and

20 (III) The name of the water hauling company.

21 (iii) The information maintained pursuant to this subdivision shall be available for inspection  
22 by the department along with other required permits and records and maintained for three years after

1 the water withdrawal activity.

2 (iv) This subdivision is intended to be consistent with and does not supersede, revise, repeal  
3 or otherwise modify articles eleven, twelve or twenty-six of this chapter and does not revise, repeal  
4 or otherwise modify the common law doctrine of riparian rights in West Virginia law.

5 (i) The secretary shall mail a copy of the permit as issued or a copy of the order denying a  
6 permit to any person entitled to submit written comments pursuant to subsection (a), section eleven  
7 of this article and who requested a copy.

8 (j) Upon the issuance of any permit pursuant to the provisions of this article, the secretary  
9 shall transmit a copy of the permit to the office of the assessor for the county in which the well is  
10 located.

11 **§22-6A-10. Notice to property owners.**

12 (a) Prior to filing a permit application, the operator shall provide notice of planned entry on  
13 to the surface tract to conduct any plat surveys required pursuant to this article. Such notice shall be  
14 provided at least seven days but no more than forty-five days prior to such entry to: (1) The surface  
15 owner of such tract; (2) to any owner or lessee of coal seams beneath such tract that has filed a  
16 declaration pursuant to section thirty-six, article six, chapter twenty-two of this code; and (3) any  
17 owner of minerals underlying such tract in the county tax records. The notice shall include a  
18 statement that copies of the state Erosion and Sediment Control Manual and the statutes and rules  
19 related to oil and gas exploration and production may be obtained from the secretary, which  
20 statement shall include contact information, including the address for a web page on the secretary's  
21 website, to enable the surface owner to obtain copies from the secretary.

22 (b) No later than the filing date of the application, the applicant for a permit for any well

1 work or for a certificate of approval for the construction of an impoundment or pit as required by this  
2 article shall deliver, by personal service or by registered mail or by any method of delivery that  
3 requires a receipt or signature confirmation, copies of the application, the erosion and sediment  
4 control plan required by section seven of this article, and the well plat to each of the following  
5 persons:

6 (1) The owners of record of the surface of the tract on which the well is or is proposed to be  
7 located;

8 (2) The owners of record of the surface tract or tracts overlying the oil and gas leasehold  
9 being developed by the proposed well work, if the surface tract is to be used for roads or other land  
10 disturbance as described in the erosion and sediment control plan submitted pursuant to subsection  
11 (c), section seven of this article;

12 (3) The coal owner, operator or lessee, in the event the tract of land on which the well  
13 proposed to be drilled is located is known to be underlain by one or more coal seams;

14 (4) The owners of record of the surface tract or tracts overlying the oil and gas leasehold  
15 being developed by the proposed well work, if the surface tract is to be used for the placement,  
16 construction, enlargement, alteration, repair, removal or abandonment of any impoundment or pit  
17 as described in section nine of this article;

18 (5) Any surface owner or water purveyor who is known to the applicant to have a water well,  
19 spring or water supply source located within one thousand five hundred feet of the center of the well  
20 pad which is used to provide water for consumption by humans or domestic animals; and

21 (6) The operator of any natural gas storage field within which the proposed well work activity  
22 is to take place.



1 (c) (1) If more than three tenants in common or other co-owners of interests described in  
2 subsection (b) of this section hold interests in the lands, the applicant may serve the documents  
3 required upon the person described in the records of the sheriff required to be maintained pursuant  
4 to section eight, article one, chapter eleven-a of this code plus the occupant of any residential  
5 structure on the property.

6 (2) Notwithstanding any provision of this article to the contrary, notice to a lien holder is not  
7 notice to a landowner, unless the lien holder is the landowner.

8 (d) With respect to surface landowners identified in subsection (b) or water purveyors  
9 identified in subdivision (5), subsection (b) of this section, notification shall be made on forms and  
10 in a manner prescribed by the secretary sufficient to identify, for those persons, the rights afforded  
11 them under sections eleven and twelve of this article, and the opportunity for testing their water well.

12 (e) Prior to filing an application for a permit for a horizontal well under this article, the  
13 applicant shall publish in the county in which the well is located or is proposed to be located a Class  
14 II legal advertisement as described in section two, article three, chapter fifty-nine of this code,  
15 containing notice of the public website required to be established and maintained pursuant to section  
16 twenty-one of this article and language indicating the ability of the public to submit written  
17 comments on the proposed permit, with the first publication date being at least ten days prior to the  
18 filing of the permit application. The secretary shall consider, in the same manner required by  
19 subsection (f), section eight of this article and subdivision one, subsection (c), section eleven of this  
20 article, written comments submitted in response to the legal advertisement received by the secretary  
21 within thirty days following the last required publication date: *Provided*, That such parties  
22 submitting written comments pursuant to this subsection are not entitled to participate in the

1 processes and proceedings that exist under sections fifteen, seventeen or forty, article six of this  
2 chapter, as applicable and incorporated into this article by section five of this article.

3 (f) Materials served upon persons described in subsection (b) of this section shall contain a  
4 statement of the time limits for filing written comments, who may file written comments, the name  
5 and address of the secretary for the purpose of filing the comments and obtaining additional  
6 information, and a statement that the persons may request, at the time of submitting written  
7 comments, notice of the permit decision and a list of persons qualified to test water.

8 (g) Any person entitled to submit written comments to the secretary pursuant to subsection  
9 (a), section eleven of this article, shall also be entitled to receive from the secretary a copy of the  
10 permit as issued or a copy of the order modifying or denying the permit if the person requests receipt  
11 of them as a part of the written comments submitted concerning the permit application.

12 (h) The surface owners described in subdivisions (1), (2) and (4), subsection (b) of this  
13 section, and the coal owner, operator or lessee described in subdivision (3) of that subsection is also  
14 entitled to receive notice within seven days but no less than two days before commencement that  
15 well work or site preparation work that involves any disturbance of land is expected to commence.

16 (i) Persons entitled to notice pursuant to subsection (b) of this section may contact the  
17 department to ascertain the names and locations of water testing laboratories in the subject area  
18 capable and qualified to test water supplies in accordance with standard accepted methods. In  
19 compiling that list of names the department shall consult with the state Bureau for Public Health and  
20 local health departments.

21 (j) (1) Prior to conducting any seismic activity for seismic exploration for natural gas to be  
22 extracted using horizontal drilling methods, the company or person performing the activity shall

1 provide notice to Miss Utility of West Virginia Inc. and to all surface owners, coal owners and  
 2 lessees, and natural gas storage field operators on whose property blasting, percussion or other  
 3 seismic-related activities will occur.

4 (2) The notice shall be provided at least three days prior to commencement of the seismic  
 5 activity.

6 (3) The notice shall also include a reclamation plan in accordance with the erosion and  
 7 sediment control manual that provides for the reclamation of any areas disturbed as a result of the  
 8 seismic activity, including filling of shotholes used for blasting.

9 (4) Nothing in this subsection decides questions as to whether seismic activity may be  
 10 secured by mineral owners, surface owners or other ownership interests.

11 **§22-6A-12. Well location restrictions.**

12 (a) Wells may not be drilled within two hundred fifty feet measured horizontally from any  
 13 existing water well or developed spring used for human or domestic animal consumption. ~~The center~~  
 14 ~~of well pads may not be located within six hundred twenty-five~~ The limit of disturbance of a well  
 15 site may not be closer than fifteen hundred feet of an occupied dwelling structure, or a building two  
 16 thousand five hundred square feet or larger used to house or shelter dairy cattle or poultry husbandry.  
 17 This limitation is applicable to those wells, developed springs, dwellings or agricultural buildings  
 18 that existed on the date a notice to the surface owner of planned entry for surveying or staking as  
 19 provided in section ten of this article was provided or a notice of intent to drill a horizontal well as  
 20 provided in subsection (b), section sixteen of this article if the notice includes the same statement  
 21 required for the notice in section ten of this article that copies of the state Erosion and Sediment  
 22 Control Manual and the statutes and rules related to oil and gas exploration and production may be

1 obtained from the secretary was provided, whichever occurs first, and to any dwelling under  
2 construction prior to that date. This limitation may be waived by written consent of the surface  
3 owner transmitted to the department and recorded in the real property records maintained by the  
4 clerk of the county commission for the county in which such property is located. Furthermore, the  
5 well operator may be granted a variance by the secretary from these distance restrictions upon  
6 submission of a plan which identifies the sufficient measures, facilities or practices to be employed  
7 during well site construction, drilling and operations. The variance, if granted, shall include terms  
8 and conditions the department requires to ensure the safety and protection of affected persons and  
9 property. The terms and conditions may include insurance, bonding and indemnification, as well  
10 as technical requirements.

11 (b) No well pad may be prepared or well drilled within one hundred feet measured  
12 horizontally from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland, or  
13 within three hundred feet of a naturally reproducing trout stream. No wellpad may be located within  
14 one thousand feet of a surface or ground water intake of a public water supply. The distance from  
15 the public water supply as identified by the department shall be measured as follows:

16 (1) For a surface water intake on a lake or reservoir, the distance shall be measured from the  
17 boundary of the lake or reservoir.

18 (2) For a surface water intake on a flowing stream, the distance shall be measured from a  
19 semicircular radius extending upstream of the surface water intake.

20 (3) For a groundwater source, the distance shall be measured from the wellhead or spring.  
21 The department may, in its discretion, waive these distance restrictions upon submission of a plan  
22 identifying sufficient measures, facilities or practices to be employed during well site construction,

1 drilling and operations to protect the waters of the state. A waiver, if granted, shall impose any  
2 permit conditions as the secretary considers necessary.

3 (c) Notwithstanding the foregoing provisions of this section, nothing contained in this section  
4 prevents an operator from conducting the activities permitted or authorized by a Clean Water Act  
5 Section 404 permit or other approval from the United States Army Corps of Engineers within any  
6 waters of the state or within the restricted areas referenced in this section.

7 (d) The well location restrictions set forth in this section shall not apply to any well on a  
8 multiple well pad if at least one of the wells was permitted or has an application pending prior to the  
9 effective date of this article.

10 (e) The secretary shall, by December 31, 2012, report to the Legislature on the noise, light,  
11 dust and volatile organic compounds generated by the drilling of horizontal wells as they relate to  
12 the well location restrictions regarding occupied dwelling structures pursuant to this section. Upon  
13 a finding, if any, by the secretary that the well location restrictions regarding occupied dwelling  
14 structures are inadequate or otherwise require alteration to address the items examined in the study  
15 required by this subsection, the secretary shall have the authority to propose for promulgation  
16 legislative rules establishing guidelines and procedures regarding reasonable levels of noise, light,  
17 dust and volatile organic compounds relating to drilling horizontal wells, including reasonable means  
18 of mitigating such factors, if necessary.

19 **§22-6A-12a. Air, noise, light and dust standards.**

20 (a) This section does not apply to or affect any well work permitted for a horizontal well  
21 prior to the enactment of this section, or to permit applications pending prior to the effective date of  
22 this section. However, to this section the secretary has the authority granted him or her pursuant to

1 subdivision (5), subsection (b) section two of this article and other applicable provisions of this code.

2 (b) The operator shall set up continuous real-time monitoring of air, noise, dust and  
3 particulates at the residence or other point of impact that is closest or most likely to be impacted by  
4 the well work, including traffic associated with the site. The operator shall continuously monitor  
5 those parameters in real time. If there is a five percent chance or greater that the monitored levels  
6 could exceed any of the required parameters as determined by continuous process control analysis  
7 during any running twenty-four hour averaging period, the operator shall implement the best  
8 available control technology available to limit the levels. The monitored levels need to be  
9 continuously available by wireless or other transmission to those persons or entities within fifteen  
10 hundred feet of the limit of disturbance who request it. When levels exceed parameters, alerts shall  
11 be sent to those persons or entities. The data shall be available to the public for study. Unless  
12 altered by legislative rule, the parameters are:

13 (1) For noise during site construction, 70 dBA average an hour.

14 (2) For noise at all other times, 55 dBA at any time.

15 (3) For dust, the national ambient air quality standard level for a twenty-four hour period and  
16 no visible dust on residences or crops.

17 (4) For air, the minimal risk levels for chronic (three hundred sixty-five days or more)  
18 exposure of organic compounds set by the Agency for Toxic Substances and Disease Registry of the  
19 Centers for Disease Control and Prevention of the United States Department of Health and Human  
20 Services.

21 (c) No light from artificial illumination, flares or other sources shall shine directly on any  
22 residence or livestock or structure containing livestock.

1        (d) Notwithstanding the provisions of subsection (a) of this section if, after completion of  
 2 well work, production or production facilities cause a violation of the standards set out in subsection  
 3 (b) of this section at a residence, then the operator shall implement the best available control  
 4 technology available to limit the levels that violate the standards.

5 **ARTICLE 6B. OIL AND GAS HORIZONTAL WELL PRODUCTION DAMAGE**  
 6 **COMPENSATION.**

7 **§22-6B-3. Compensation of surface owners for drilling operations.**

8        (a) The oil and gas developer is obligated to pay the surface owner compensation for:

9        (1) Lost income or expenses incurred as a result of being unable to dedicate land actually  
 10 occupied by the driller's operation, or to which access is prevented by the drilling operation, to the  
 11 uses to which it was dedicated prior to commencement of the activity for which a permit was  
 12 obtained, measured from the date the operator enters upon the land and commences drilling  
 13 operations until the date reclamation is completed;

14        (2) The market value of crops, including timber, destroyed, damaged or prevented from  
 15 reaching market;

16        (3) Any damage to a water supply in use prior to the commencement of the permitted activity;

17        (4) The cost of repair of personal property up to the value of replacement by personal  
 18 property of like age, wear and quality; and

19        (5) The diminution in value, if any, of the ~~surface lands~~ entire surface tract and other property  
 20 after completion of the surface disturbance done pursuant to the activity for which the permit was  
 21 issued determined according to the market value of the ~~actual use made thereof by the surface owner~~  
 22 land for its highest and best use that could be made of the land immediately prior to the

1 commencement of the permitted activity.

2           The amount of damages may be determined by any formula mutually agreeable between the  
3 surface owner and the oil and gas developer.

4           (b) Any reservation or assignment of the compensation provided in this section apart from  
5 the surface estate except to a tenant of the surface estate is prohibited.

6           (c) In the case of surface lands owned by more than one person as tenants in common, joint  
7 tenants or other coownership, any claim for compensation under this article shall be for the benefit  
8 of all co-owners. The resolution of a claim for compensation provided in this article operates as a  
9 bar to the assertion of additional claims under this section arising out of the same drilling operations.

10 **§22-6B-5. Notification of claim.**

11           Any surface owner, to receive compensation under section three of this article, shall notify  
12 the oil and gas developer of the damages sustained by the person within two years after the date that  
13 the oil and gas developer files notice that final reclamation is commencing under section fourteen,  
14 article six-a of this chapter. The notice of reclamation shall be given to surface owners by registered  
15 or certified mail, return receipt requested, and is complete upon mailing. If more than three tenants  
16 in common or other coowners hold interests in the lands, the oil and gas developer may give the  
17 notice to the person described in the records of the sheriff required to be maintained pursuant to  
18 section eight, article one, chapter eleven-a of this code or publish in the county in which the well is  
19 located ~~or to be located a Class II legal advertisement as described in section two, article three,~~  
20 ~~chapter fifty-nine of this code, containing the notice and information the secretary prescribes by rule~~  
21 plus the occupant of any residential structure on the property.

22 **§22-6B-7. Rejection; legal action; arbitration; fees and costs.**



1           (a) (1) Unless the oil and gas developer has paid the surface owner a negotiated settlement  
2 of compensation within seventy-five days after the date the notification of claim was mailed under  
3 section five of this article, the surface owner may either: (A) Within eighty days after the notification  
4 mail date either (i) Bring or within two years after the date that the oil and gas developer files notice  
5 that final reclamation is commencing under section fourteen, article six-a of this chapter bring an  
6 action for compensation in the circuit court of the county in which the well is located; or (ii) (B)  
7 within eighty days after the notification mail date elect instead, by written notice delivered by  
8 personal service or by certified mail, return receipt requested, to the designated agent named by the  
9 oil and gas developer under the provisions of section seven, article six-a of this chapter, to have his,  
10 her or its compensation finally determined by binding arbitration pursuant to article ten, chapter  
11 fifty-five of this code.

12           (2) Settlement negotiations, offers and counter-offers between the surface owner and the oil  
13 and gas developer are not admissible as evidence in any arbitration or judicial proceeding authorized  
14 under this article, or in any proceeding resulting from the assertion of common law remedies.

15           (b) The compensation to be awarded to the surface owner shall be determined by a panel of  
16 three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the party's  
17 notice of election under this section to the oil and gas developer; the second arbitrator shall be  
18 chosen by the oil and gas developer within ten days after receipt of the notice of election; and the  
19 third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If  
20 they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators shall  
21 immediately submit the matter to the court under the provisions of section one, article ten, chapter  
22 fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of

1 the circuit court of the county in which the surface estate lies.

2 (c) The following persons are considered interested and may not be appointed as arbitrators:

3 Any person who is personally interested in the land on which horizontal drilling is being performed  
4 or has been performed, or in any interest or right therein, or in the compensation and any damages  
5 to be awarded therefor, or who is related by blood or marriage to any person having such personal  
6 interest, or who stands in the relation of guardian and ward, master and servant, principal and agent,  
7 or partner, real estate broker, or surety to any person having such personal interest, or who has  
8 enmity against or bias in favor of any person who has such personal interest or who is the owner of,  
9 or interested in, the land or the oil and gas development of the land. A person is not considered  
10 interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district  
11 or municipal corporation in which the land is located, or holding an interest in any other land therein.

12 (d) The panel of arbitrators shall hold hearings and take testimony and receive exhibits  
13 necessary to determine the amount of compensation to be paid to the surface owner. However, no  
14 award of compensation may be made to the surface owner unless the panel of arbitrators has first  
15 viewed the surface estate in question. A transcript of the evidence may be made but is not required.

16 (e) Each party shall pay the compensation of the party's arbitrator and one half of the  
17 compensation of the third arbitrator, or each party's own court costs as the case may be.

NOTE: The purpose of this bill is to change an elective obligation to a mandatory one. The bill requires notice in certain instances to the occupants of residential property. The bill prohibits the disturbance of a well site be not closer than fifteen hundred feet of an occupied dwelling. The bill provides notices include certain information. The bill establishes standards relating to air, noise, light

and dust. The bill permits landowners be compensated for any decrease in the values of the land for its highest and best use. The bill requires the notice of a claim be also provided to an occupant of residential structure on the property. The bill establishes a statute of limitations for claims being filed.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§22-6A-12a is new; therefore, it has been completely underscored.