

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 43**

BY SENATOR BOSO

[ Introduced February 8, 2017; referred  
to the Committee on Energy, Industry and Mining; and then  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §22C-9-4 of the Code of West Virginia, 1931, as amended, relating  
2 to restricting the Oil and Gas Conservation Commission's authority to regulate setback  
3 and spacing between deep wells; prohibiting the commission from establishing spacing  
4 restrictions on wells that are operated by the same operator; limiting setbacks from unit  
5 boundaries between different operators; limiting the spacing between the wells of different  
6 operators; and, to the extent spacing and setback limits are controlled by the commission,  
7 limiting the distances that may be established to only those between the producing  
8 portions of horizontal wells and not the entire well bore.

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

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

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

**§22C-9-4. Oil and Gas Conservation Commissioner and Commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.**

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

11 commissioner and as chair of the commission.

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

26 (c) The commission shall meet at such times and places as shall be designated by the  
27 chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the  
28 commission upon the written request of two members or upon the written request of the oil and  
29 gas conservation commissioner or the chief of the office of oil and gas. Notification of each  
30 meeting shall be given in writing to each member by the chair at least fourteen calendar days in  
31 advance of the meeting. Three members of the commission, at least two of whom are appointed  
32 members, shall constitute a quorum for the transaction of any business.

33 (d) The commission shall pay each member the same compensation as is paid to  
34 members of the Legislature for their interim duties as recommended by the citizens legislative  
35 compensation commission and authorized by law for each day or portion thereof engaged in the  
36 discharge of official duties and shall reimburse each member for actual and necessary expenses

37 incurred in the discharge of official duties.

38 (e) The commission is hereby empowered and it is the commission's duty to execute and  
39 carry out, administer and enforce the provisions of this article in the manner provided herein.  
40 Subject to the provisions of section three of this article, the commission has jurisdiction and  
41 authority over all persons and property necessary therefor. The commission is authorized to make  
42 such investigation of records and facilities as the commission deems proper. In the event of a  
43 conflict between the duty to prevent waste and the duty to protect correlative rights, the  
44 commission's duty to prevent waste shall be paramount.

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

47 (1) Regulate the spacing of deep wells: Provided, That the commission may not regulate  
48 or establish minimum well setback or spacing between deep wells operated by the same operator,  
49 regardless of whether there are unit boundaries between or crossed by those wells: *Provided,*  
50 *however,* That the commission may not require spacing of more than eight hundred feet between  
51 horizontal wells operated by different operators or require a well setback of more than four  
52 hundred feet from a unit boundary that divides operators: *Provided further,* That spacing and  
53 setback distances may only be established for the horizontal producing portions of horizontal deep  
54 wells;

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

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

63 (4) Serve as technical advisor regarding oil and gas to the Legislature, its members and  
64 committees, to the chief of office of oil and gas, to the Division of Environmental Protection and  
65 to any other agency of state government having responsibility related to the oil and gas industry.

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

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

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

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

71 (1) Propose legislative rules;

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

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

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

NOTE: The purpose of this bill is to restrict the Oil and Gas Conservation Commission's authority to regulate setback and spacing between deep wells. The bill prohibits the commission from establishing spacing restrictions on wells that are operated by the same operator. The bill limits setbacks from unit boundaries between different operators. The bill limits the spacing between the wells of different operators. To the extent spacing and setback limits are controlled by the commission, the bill limits the distances that may be established to only those between the producing portions of horizontal wells, not the entire well bore.

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