

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 360

BY SENATOR CLEMENTS

[Originating in the Committee on Energy, Industry,
and Mining; Reported on February 7, 2018]

1 A BILL to amend and reenact §22-6-8 of the Code of West Virginia, 1931, as amended, relating
2 to oil and gas permits not to be on flat well royalty leases; legislative findings and
3 declarations; and permit requirements.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION;
ENFORCEMENT.**

**§22-6-8. Permits not to be on flat well royalty leases; legislative findings and declarations;
permit requirements.**

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas underlying this state is subject to
3 development pursuant to leases or other continuing contractual agreements wherein the owners
4 of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat
5 well royalty basis, in which the royalty is based solely on the existence of a producing well, and
6 thus is not inherently related to the volume of the oil and gas produced or marketed;

7 (2) That continued exploitation of the natural resources of this state in exchange for such
8 wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners
9 of the oil and gas in place, and unreasonably deprives the economy of the State of West Virginia
10 of the just benefit of the natural wealth of this state;

11 (3) That a great portion, if not all, of such leases or other continuing contracts based upon
12 or calling for an annual flat well royalty, have been in existence for a great many years and were
13 entered into at a time when the techniques by which oil and gas are currently extracted, produced
14 or marketed, were not known or contemplated by the parties, nor was it contemplated by the
15 parties that oil and gas would be recovered or extracted or produced or marketed from the depths
16 and horizons currently being developed by the well operators;

17 (4) That while being fully cognizant that the provisions of Section 10, Article I of the United
18 States Constitution and of section 4, article III of the Constitution of West Virginia, proscribe the
19 enactment of any law impairing the obligation of a contract, the Legislature further finds that it is
20 a valid exercise of the police powers of this state and in the interest of the State of West Virginia
21 and in furtherance of the welfare of its citizens, to discourage as far as constitutionally possible
22 the production and marketing of oil and gas located in this state under the type of leases or other
23 continuing contracts described above.

24 (b) In the light of the foregoing findings, the Legislature hereby declares that it is the policy
25 of this state, to the extent possible, to prevent the extraction, production or marketing of oil or gas
26 under a lease or leases or other continuing contract or contracts providing a flat well royalty or
27 any similar provisions for compensation to the owner of the oil and gas in place, which is not
28 inherently related to the volume of oil or gas produced or marketed, and toward these ends, the
29 Legislature further declares that it is the obligation of this state to prohibit the issuance of any
30 permit required by it for the development of oil or gas where the right to develop, extract, produce,
31 or market the same is based upon such leases or other continuing contractual agreements.

32 (c) In addition to any requirements contained in this article with respect to the issuance of
33 any permit required for the drilling, redrilling, deepening, fracturing, stimulating, pressuring,
34 converting, combining, or physically changing to allow the migration of fluid from one formation to
35 another, no such permit shall be hereafter issued unless the lease or leases or other continuing
36 contract or contracts by which the right to extract, produce or market the oil or gas is filed with the
37 application for such permit. In lieu of filing the lease or leases or other continuing contract or
38 contracts, the applicant for a permit described herein may file the following:

39 (1) A brief description of the tract of land including the district and county wherein the tract
40 is located;

41 (2) The identification of all parties to all leases or other continuing contractual agreements
42 by which the right to extract, produce or market the oil or gas is claimed;

43 (3) The book and page number wherein each such lease or contract by which the right to
44 extract, produce or market the oil or gas is recorded; and

45 (4) A brief description of the royalty provisions of each such lease or contract.

46 (d) Unless the provisions of §22-6-8(e) of this code are met, no such permit shall be
47 hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing,
48 stimulating, pressuring, converting, combining, or physically changing to allow the migration of
49 fluid from one formation to another, of an existing oil or gas production well, where or if the right
50 to extract, produce, or market the oil or gas is based upon a lease or leases or other continuing
51 contract or contracts providing for flat well royalty or any similar provision for compensation to the
52 owner of the oil or gas in place which is not inherently related to the volume of oil and gas so
53 extracted, produced, and marketed.

54 (e) To avoid the permit prohibition of §22-6-8(d) of this code, the applicant may file with
55 such application an affidavit which certifies that the affiant is authorized by the owner of the
56 working interest in the well to state that it shall tender to the owner of the oil or gas in place not
57 less than one eighth ~~of the total amount paid to or received by or allowed to the owner of the~~
58 ~~working interest at the wellhead for the oil or gas so extracted, produced or marketed before~~
59 ~~deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such~~
60 ~~oil or gas to be extracted, produced or marketed from the well~~ of the gross proceeds, free from
61 any deductions for post-production expenses, received at the first point of sale to an unaffiliated
62 third-party purchaser in an arm's length transaction for the oil or gas so extracted, produced or
63 marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in
64 place, on all such oil or gas to be extracted, produced or marketed from the well. If such affidavit
65 be filed with such application, then such application for permit shall be treated as if such lease or
66 leases or other continuing contract or contracts comply with the provisions of this section.

67 (f) The owner of the oil or gas in place shall have a cause of action to enforce the owner's
68 rights established by this section.

69 (g) The provisions of this section shall not affect or apply to any lease or leases or other
70 continuing contract or contracts for the underground storage of gas or any well utilized in
71 connection therewith or otherwise subject to the provisions of §22-9-1 *et seq.* of this code.

72 (h) The director shall enforce this requirement irrespective of when the lease or other
73 continuing contract was executed.

74 (i) The provisions of this section shall not adversely affect any rights to free gas.

NOTE: The purpose of this bill is to clarify the royalty owed to a royalty owner in an oil and gas lease.

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

JUDICIARY COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 360—A BILL to amend and reenact §22-6-8 of the Code of West Virginia, 1931, as amended, relating generally to flat well royalty leases; modifying the permit issuance prohibition from one-eighth interest of the total amount paid to or received at the well head for oil and gas extracted to not less than one-eighth of the gross proceeds free from any deduction for post-production expenses; and providing that a permit applicant may file with its application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to tender to the owner of the oil or gas a certain royalty of the gross proceeds, free from certain deductions, received at the first point of sale to an unaffiliated third-party purchaser in an arm's length transaction.