

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2834**

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[Originating in the Committee on Energy, February 12, 2019.]



1 A BILL to amend and reenact §22C-9-4 of the Code of West Virginia, 1931, as amended, relating  
2 to updating and modernizing the minimum spacing provisions for the drilling of horizontal  
3 deep wells, which will allow exploration and production companies to implement evidence  
4 based best practices; establishing no spacing limitations on horizontal deep wells that are  
5 operated by the same operator or different operators pursuant to written agreement;  
6 establishing setbacks from unit boundaries between different operators; establishing the  
7 spacing between the wells of different operators; and limiting certain distances that may  
8 be established to only those between the producing portions of horizontal deep wells and  
9 not the entire well bore.

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

**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~~ is composed of five members.  
2 The ~~director~~ Secretary of the Department of Environmental Protection and the Chief of the Office  
3 of Oil and Gas ~~shall be~~ are members of the commission ex officio. The remaining three members  
4 of the commission shall be appointed by the Governor, by and with the advice and consent of the  
5 Senate, and may not be employees of the Department of Environmental Protection. Of the three  
6 members appointed by the Governor, one shall be an independent producer and at least one  
7 shall be a public member not engaged in an activity under the jurisdiction of the Public Service  
8 Commission or the Federal Energy Regulatory Commission. The third appointee shall possess a  
9 degree from an accredited college or university in petroleum engineering or geology and must be  
10 a registered professional engineer with particular knowledge and experience in the oil and gas  
11 industry and shall serve as 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~~ serves  
15 until the members successor has been appointed and qualified. Members may be appointed by  
16 the 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~~ the appointment shall be made by the Governor  
21 within 60 days of the occurrence of ~~such~~ the vacancy. Any member appointed by the Governor  
22 may be 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 30 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 14 calendar days in advance  
31 of the meeting. Three members of the commission, at least two of whom are appointed members,  
32 ~~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~~ shall execute  
39 and carry out, administer and enforce the provisions of this article in the manner provided ~~herein~~  
40 in this article. Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction  
41 and authority over all persons and property necessary therefor. The commission ~~is authorized to~~  
42 may make ~~such investigation~~ investigations of records and facilities as the commission ~~deems~~  
43 considers proper. In the event of a conflict between the duty to prevent waste and the duty to  
44 protect correlative rights, the commission's duty to prevent waste ~~shall be~~ is paramount.

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

47           (1) Regulate the spacing of deep wells: Provided, That with regard to horizontal deep wells  
48 permitted in accordance with the requirements of §22-6A-1 et seq. of this code to be drilled using  
49 horizontal drilling techniques: (i) The commission may not impose spacing or setback limitations  
50 with regard to the wellhead location, including the vertical or angled portions of a wellbore, other  
51 than the estimated productive interval described in clause (iv) of this subdivision; (ii) the  
52 commission may not impose spacing of greater than 1,000 feet between deep wells operated by  
53 different operators or require a setback of more than 500 feet from a unit boundary or lease that  
54 divides operators; (iii) the commission may not establish minimum well setback or spacing  
55 between deep wells operated by the same operator, or multiple operators who agree in writing to  
56 appropriate deep well spacing intended to increase production efficiencies and limit waste,  
57 regardless of whether there are unit or lease boundaries between or crossed by those wells; and  
58 (iv) for purposes of well setback and spacing provisions only, and not for unit boundaries or  
59 determination of payment of royalties, a horizontal deep well means only the estimated productive  
60 interval, being the perforated length, of a horizontal section of the well bore in the target formation,  
61 as shown on a directional survey, projected vertically to the surface, whether within or outside the  
62 unit or lease boundaries, to calculate a minimum distance between deep wells or the distance  
63 between deep wells and unit or lease boundaries;

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

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

72           (4) Serve as technical advisor regarding oil and gas to the Legislature, its members and  
73 committees, to the Chief of Office of Oil and Gas, to the Department of Environmental Protection  
74 and to any other agency of state government having responsibility related to the oil and gas  
75 industry.

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

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

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

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

81           (1) Propose legislative rules;

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

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

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

88           (j) The commission ~~is hereby empowered and it is the commission's duty to~~ shall execute  
89 and carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code

90 concerning mineral development by covenants for all wells at all depths. The commission has  
91 jurisdiction and authority over all persons and property necessary therefor. The commission is  
92 authorized to make ~~such investigation~~ investigations of records and facilities ~~as~~ the commission  
93 ~~deems~~ considers proper.

NOTE: The purpose of this bill is to update and modernize the minimum spacing requirements for the drilling of horizontal deep wells to recognize changing drilling practices and techniques developed in recent years, which will allow exploration and production companies to implement evidence based best practices. The bill would establish no spacing limitations on wells that are operated by the same operator or operators that agree in writing to specific spacing limitations. It limits setbacks from unit and lease boundaries between different operators and limits the spacing between the wells of different operators. It also limits the distances that may be established to only those between the estimated productive intervals of horizontal deep wells and 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.