

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2102

BY DELEGATE FLEISCHAUER

[Introduced January 9, 2019; Referred
to the Committee on Energy then the Judiciary.]

1 A BILL to amend and reenact §22-6A-8, §22-6A-10 and §22-6A-12 of the Code of West Virginia,
2 1931, as amended; to amend said code by adding thereto a new section, designated §22-
3 6A-12a; and to amend and reenact §22-6B-3, §22-6B-5 and §22-6B-7 of said code, all
4 relating generally to horizontal well control standards; changing an elective obligation to a
5 mandatory one; requiring notice in certain instances be sent to the occupants of residential
6 property; prohibiting the limit of disturbance of a well site to be closer than 1,500 feet of
7 an occupied dwelling; providing that a notice include certain information; establishing
8 standards relating to air, noise, light and dust; permitting landowners be compensated for
9 any decrease in the values of the land for its highest and best use; requiring the notice of
10 a claim be also provided to an occupant of residential structure on the property; and
11 establishing a statute of limitations for claims being filed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

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

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

3 (b) No permit may be issued less than 30 days after the filing date of the application for
4 any well work except plugging or replugging; and no permit for plugging or replugging may be
5 issued less than five days after the filing date of the application except a permit for plugging or
6 replugging a dry hole: *Provided*, That if the applicant certifies that all persons entitled to notice of
7 the application under the provisions of §22-6A-10(b) of this code have been served in person or
8 by certified mail, return receipt requested, with a copy of the well work application, including the
9 erosion and sediment control plan, if required, and the well plat, and further files written
10 statements of no objection by all such persons, the secretary may issue the well work permit at
11 any time.

12 (c) Prior to the issuance of any permit, the secretary shall ascertain from the Executive
13 Director of Workforce West Virginia and the Insurance Commissioner whether the applicant is in
14 default pursuant to the provisions of §21A-2-6c of this code, and in compliance with §23-2-5 of
15 this code, with regard to any required subscription to the Unemployment Compensation Fund or
16 mandatory Workers' Compensation insurance, the payment of premiums and other charges to
17 the fund, the timely filing of payroll reports and the maintenance of adequate deposits. If the
18 applicant is delinquent or defaulted, or has been terminated by the executive director or the
19 Insurance Commissioner, the permit may not be issued until the applicant returns to compliance
20 or is restored by the executive director or the Insurance Commissioner under a reinstatement
21 agreement: *Provided*, That in all inquiries the Executive Director of Workforce West Virginia and
22 the Insurance Commissioner shall make response to the Department of Environmental Protection
23 within fifteen calendar days; otherwise, failure to respond timely is considered to indicate the
24 applicant is in compliance and the failure will not be used to preclude issuance of the permit.

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

- 29 (1) The proposed well work will constitute a hazard to the safety of persons;
30 (2) The plan for soil erosion and sediment control is not adequate or effective;
31 (3) Damage would occur to publicly owned lands or resources; or
32 (4) The proposed well work fails to protect fresh water sources or supplies.

33 (e) In addition to the considerations set forth in §22-6A-10(d) of this code, in determining
34 whether a permit should be issued, issued with conditions, or denied, the secretary shall
35 determine that:

- 36 (1) The well location restrictions of §22-6A-12 of this code have been satisfied, unless the
37 requirements have been waived by written consent of the surface owner or the secretary has
38 granted a variance to the restrictions, each in accordance with §22-6A-12 of this code;

39 (2) The water management plan submitted to the secretary, if required by ~~subdivision (e),~~
40 ~~section seven of this article~~ §22-6A-7(e) of this code, has been received and approved.

41 (f) The secretary shall promptly review all written comments filed by persons entitled to
42 notice pursuant to §22-6A-10(b) of this code. If after review of the application and all written
43 comments received from persons entitled to notice pursuant to §22-6A-10(b) of this code, the
44 application for a well work permit is approved, and no timely objection has been filed with the
45 secretary by the coal operator operating coal seams beneath the tract of land, or the coal seam
46 owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, or made by
47 the secretary under the provisions of §22-6A-10, and §22-6A-11 of this code, the permit shall be
48 issued, with conditions, if any. This section does not supersede the provisions of §22-6A-7 or
49 §22-6A-5(a)(6) through §22-6A-5(a)(9) of this code.

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

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

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

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

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

63 (5) Protect the quantity and the quality of water in surface and groundwater systems both
64 during and after drilling operations and during reclamation by: (A) Withdrawing water from surface
65 waters of the state by methods deemed appropriate by the secretary, so as to maintain sufficient

66 in-steam flow immediately downstream of the withdrawal location. In no case shall an operator
67 withdraw water from ground or surface waters at volumes beyond which the waters can sustain;
68 (B) casing, sealing or otherwise managing wells to keep returned fluids from entering ground and
69 surface waters; (C) conducting oil and gas operations so as to prevent, to the extent possible
70 using the best management practices, additional contributions of suspended or dissolved solids
71 to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess
72 of requirements set by applicable state or federal law; and (D) registering all water supply wells
73 drilled and operated by the operator with the Office of Oil and Gas. All drinking water wells within
74 1,500 feet of a water supply well shall be flow and quality tested by the operator upon request of
75 the drinking well owner prior to operating the water supply well. The secretary shall propose
76 legislative rules to identify appropriate methods for testing water flow and quality.

77 (6) In addition to the other requirements of this subsection, an operator proposing to drill
78 any horizontal well requiring the withdrawal of more than 210,000 gallons in a 30-day period shall
79 have the following requirements added to its permit:

80 (A) Identification of water withdrawal locations. Within 48 hours prior to the withdrawal of
81 water, the operator shall identify to the department the location of withdrawal by latitude and
82 longitude and verify that sufficient flow exists to protect designated uses of the stream. The
83 operator shall use methods deemed appropriate by the secretary to determine if sufficient flow
84 exists to protect designated uses of the stream.

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

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

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

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

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

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

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

100 (I) The quantity of water transported;

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

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

103 (iii) The information maintained pursuant to this subdivision shall be available for
104 inspection by the department along with other required permits and records and maintained for
105 three years after the water withdrawal activity.

106 (iv) This subdivision is intended to be consistent with and does not supersede, revise,
107 repeal or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.* or §22-26-1 *et seq.* of this code and
108 does not revise, repeal or otherwise modify the common law doctrine of riparian rights in West
109 Virginia law.

110 (i) The secretary shall mail a copy of the permit as issued or a copy of the order denying
111 a permit to any person entitled to submit written comments pursuant to §22-6A-11(a) of this code
112 and who requested a copy.

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

§22-6A-10. Notice to property owners.

1 (a) Prior to filing a permit application, the operator shall provide notice of planned entry on
2 to the surface tract to conduct any plat surveys required pursuant to this article. Such notice shall
3 be provided at least seven days but no more than forty-five days prior to such entry to: (1) The

4 surface owner of such tract; (2) to any owner or lessee of coal seams beneath such tract that has
5 filed a declaration pursuant to §22-6-36 of this code; and (3) any owner of minerals underlying
6 such tract in the county tax records. The notice shall include a statement that copies of the state
7 Erosion and Sediment Control Manual and the statutes and rules related to oil and gas exploration
8 and production may be obtained from the secretary, which statement shall include contact
9 information, including the address for a web page on the secretary's website, to enable the surface
10 owner to obtain copies from the secretary.

11 (b) No later than the filing date of the application, the applicant for a permit for any well
12 work or for a certificate of approval for the construction of an impoundment or pit as required by
13 this article shall deliver, by personal service or by registered mail or by any method of delivery
14 that requires a receipt or signature confirmation, copies of the application, the erosion and
15 sediment control plan required by §22-6A-7 of this code, and the well plat to each of the following
16 persons:

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

19 (2) The owners of record of the surface tract or tracts overlying the oil and gas leasehold
20 being developed by the proposed well work, if the surface tract is to be used for roads or other
21 land disturbance as described in the erosion and sediment control plan submitted pursuant to
22 §22-6A-7(c) of this code;

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

25 (4) The owners of record of the surface tract or tracts overlying the oil and gas leasehold
26 being developed by the proposed well work, if the surface tract is to be used for the placement,
27 construction, enlargement, alteration, repair, removal or abandonment of any impoundment or pit
28 as described in §22-6A-9 of this code;

29 (5) Any surface owner or water purveyor who is known to the applicant to have a water
30 well, spring or water supply source located within 1,500 feet of the center of the well pad which is

31 used to provide water for consumption by humans or domestic animals; and

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

34 (c) (1) If more than three tenants in common or other coowners of interests described in
35 §22-6A-10(b) of this code hold interests in the lands, the applicant may serve the documents
36 required upon the person described in the records of the sheriff required to be maintained
37 pursuant to §11A-1-8 of this code plus the occupant of any residential structure on the property.

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

40 (d) With respect to surface landowners identified in §22-6A-10(b) of this code or water
41 purveyors identified in §22-6A-10(b)(5) of this code, notification shall be made on forms and in a
42 manner prescribed by the secretary sufficient to identify, for those persons, the rights afforded
43 them under §22-6A-11, and §22-6A-12 of this code, and the opportunity for testing their water
44 well.

45 (e) Prior to filing an application for a permit for a horizontal well under this article, the
46 applicant shall publish in the county in which the well is located or is proposed to be located a
47 Class II legal advertisement as described in §59-3-2 of this code, containing notice of the public
48 website required to be established and maintained pursuant to §22-6A-21 of this code and
49 language indicating the ability of the public to submit written comments on the proposed permit,
50 with the first publication date being at least ten days prior to the filing of the permit application.
51 The secretary shall consider, in the same manner required by §22-6A-8(f), and §22-6A-11(c)(1)
52 of this code, written comments submitted in response to the legal advertisement received by the
53 secretary within thirty days following the last required publication date: *Provided*, That such
54 parties submitting written comments pursuant to this subsection are not entitled to participate in
55 the processes and proceedings that exist under §22-6-15, §22-6-17 or §22-6-40 of this code, as
56 applicable and incorporated into this article by §22-6A-5 of this code.

57 (f) Materials served upon persons described in §22-6A-10(b) of this code shall contain a

58 statement of the time limits for filing written comments, who may file written comments, the name
59 and address of the secretary for the purpose of filing the comments and obtaining additional
60 information, and a statement that the persons may request, at the time of submitting written
61 comments, notice of the permit decision and a list of persons qualified to test water.

62 (g) Any person entitled to submit written comments to the secretary pursuant to §22-6A-
63 11(a) of this code, shall also be entitled to receive from the secretary a copy of the permit as
64 issued or a copy of the order modifying or denying the permit if the person requests receipt of
65 them as a part of the written comments submitted concerning the permit application.

66 (h) The surface owners described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-
67 10(b)(4) of this code, and the coal owner, operator or lessee described in §22-6A-10(b)(3) of this
68 code is also entitled to receive notice within seven days but no less than two days before
69 commencement that well work or site preparation work that involves any disturbance of land is
70 expected to commence.

71 (i) Persons entitled to notice pursuant to §22-6A-10(b) of this code may contact the
72 department to ascertain the names and locations of water testing laboratories in the subject area
73 capable and qualified to test water supplies in accordance with standard accepted methods. In
74 compiling that list of names the department shall consult with the state Bureau for Public Health
75 and local health departments.

76 (j) (1) Prior to conducting any seismic activity for seismic exploration for natural gas to be
77 extracted using horizontal drilling methods, the company or person performing the activity shall
78 provide notice to Miss Utility of West Virginia Inc. and to all surface owners, coal owners and
79 lessees, and natural gas storage field operators on whose property blasting, percussion or other
80 seismic-related activities will occur.

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

83 (3) The notice shall also include a reclamation plan in accordance with the erosion and
84 sediment control manual that provides for the reclamation of any areas disturbed as a result of

85 the seismic activity, including filling of shotholes used for blasting.

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

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

1 (a) Wells may not be drilled within 250 feet measured horizontally from any existing water
2 well or developed spring used for human or domestic animal consumption. ~~The center of well~~
3 ~~pads may not be located within six hundred twenty-five~~ The limit of disturbance of a well site may
4 not be closer than 1,500 feet of an occupied dwelling structure, or a building 2,500 square feet or
5 larger used to house or shelter dairy cattle or poultry husbandry. This limitation is applicable to
6 those wells, developed springs, dwellings or agricultural buildings that existed on the date a notice
7 to the surface owner of planned entry for surveying or staking as provided in §22-6A-10 of this
8 code was provided or a notice of intent to drill a horizontal well as provided in §22-6A-16(b) of this
9 code if the notice includes the same statement required for the notice in §22-6A-10 of this code
10 that copies of the state Erosion and Sediment Control Manual and the statutes and rules related
11 to oil and gas exploration and production may be obtained from the secretary was provided,
12 whichever occurs first, and to any dwelling under construction prior to that date. This limitation
13 may be waived by written consent of the surface owner transmitted to the department and
14 recorded in the real property records maintained by the clerk of the county commission for the
15 county in which such property is located. Furthermore, the well operator may be granted a
16 variance by the secretary from these distance restrictions upon submission of a plan which
17 identifies the sufficient measures, facilities or practices to be employed during well site
18 construction, drilling and operations. The variance, if granted, shall include terms and conditions
19 the department requires to ensure the safety and protection of affected persons and property.
20 The terms and conditions may include insurance, bonding and indemnification, as well as
21 technical requirements.

22 (b) No well pad may be prepared or well drilled within 100 feet measured horizontally from
23 any perennial stream, natural or artificial lake, pond or reservoir, or a wetland, or within 300 feet

24 of a naturally reproducing trout stream. No well pad may be located within 1,000 feet of a surface
25 or ground water intake of a public water supply. The distance from the public water supply as
26 identified by the department shall be measured as follows:

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

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

31 (3) For a groundwater source, the distance shall be measured from the wellhead or spring.
32 The department may, in its discretion, waive these distance restrictions upon submission of a plan
33 identifying sufficient measures, facilities or practices to be employed during well site construction,
34 drilling and operations to protect the waters of the state. A waiver, if granted, shall impose any
35 permit conditions as the secretary considers necessary.

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

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

43 (e) The secretary shall, by December 31, 2012, report to the Legislature on the noise,
44 light, dust and volatile organic compounds generated by the drilling of horizontal wells as they
45 relate to the well location restrictions regarding occupied dwelling structures pursuant to this
46 section. Upon a finding, if any, by the secretary that the well location restrictions regarding
47 occupied dwelling structures are inadequate or otherwise require alteration to address the items
48 examined in the study required by this subsection, the secretary shall have the authority to
49 propose for promulgation legislative rules establishing guidelines and procedures regarding
50 reasonable levels of noise, light, dust and volatile organic compounds relating to drilling horizontal

51 wells, including reasonable means of mitigating such factors, if necessary.

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

1 (a) This section does not apply to or affect any well work permitted for a horizontal well
2 prior to the enactment of this section, or to permit applications pending prior to the effective date
3 of this section. However, the secretary has the authority granted him or her pursuant to §22-6A-
4 2(b)(5) of this code and other applicable provisions of this code.

5 (b) The operator shall set up continuous real-time monitoring of air, noise, dust and
6 particulates at the residence or other point of impact that is closest or most likely to be impacted
7 by the well work, including traffic associated with the site. The operator shall continuously monitor
8 those parameters in real time. If there is a five percent chance or greater that the monitored levels
9 could exceed any of the required parameters as determined by continuous process control
10 analysis during any running 24-hour averaging period, the operator shall implement the best
11 available control technology available to limit the levels. The monitored levels need to be
12 continuously available by wireless or other transmission to those persons or entities within 1,500
13 feet of the limit of disturbance who request it. When levels exceed parameters, alerts shall be
14 sent to those persons or entities. The data shall be available to the public for study. Unless
15 altered by legislative rule, the parameters are:

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

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

18 (3) For dust, the national ambient air quality standard level for a 24-hour period and no
19 visible dust on residences or crops.

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

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

26 (d) Notwithstanding the provisions of §22-6A-12a(a) of this code if, after completion of well
 27 work, production or production facilities cause a violation of the standards set out in §22-6A-
 28 12a(b) of this code at a residence, then the operator shall implement the best available control
 29 technology available to limit the levels that violate the standards.

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

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

1 (a) The oil and gas developer is obligated to pay the surface owner compensation for:
 2 (1) Lost income or expenses incurred as a result of being unable to dedicate land actually
 3 occupied by the driller's operation, or to which access is prevented by the drilling operation, to the
 4 uses to which it was dedicated prior to commencement of the activity for which a permit was
 5 obtained, measured from the date the operator enters upon the land and commences drilling
 6 operations until the date reclamation is completed;
 7 (2) The market value of crops, including timber, destroyed, damaged or prevented from
 8 reaching market;
 9 (3) Any damage to a water supply in use prior to the commencement of the permitted
 10 activity;
 11 (4) The cost of repair of personal property up to the value of replacement by personal
 12 property of like age, wear and quality; and
 13 (5) The diminution in value, if any, of the ~~surface lands~~ entire surface tract and other
 14 property after completion of the surface disturbance done pursuant to the activity for which the
 15 permit was issued determined according to the market value of the ~~actual use made thereof by~~
 16 ~~the surface owner~~ land for its highest and best use that could be made of the land immediately
 17 prior to the commencement of the permitted activity.
 18 The amount of damages may be determined by any formula mutually agreeable between
 19 the surface owner and the oil and gas developer.

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

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

§22-6B-5. Notification of claim.

1 Any surface owner, to receive compensation under §22-6B-3 of this code, shall notify the
 2 oil and gas developer of the damages sustained by the person within two years after the date that
 3 the oil and gas developer files notice that final reclamation is commencing under §22-6A-14 of
 4 this code. The notice of reclamation shall be given to surface owners by registered or certified
 5 mail, return receipt requested, and is complete upon mailing. If more than three tenants in
 6 common or other coowners hold interests in the lands, the oil and gas developer may give the
 7 notice to the person described in the records of the sheriff required to be maintained pursuant to
 8 §11A-1-8 of this code or publish in the county in which the well is located ~~or to be located a Class~~
 9 ~~II legal advertisement as described in section two, article three, chapter fifty-nine of this code,~~
 10 ~~containing the notice and information the secretary prescribes by rule~~ plus the occupant of any
 11 residential structure on the property.

§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
 2 settlement of compensation within 75 days after the date the notification of claim was mailed
 3 under §22-6B-5 of this code, the surface owner may either: (A) Within 80 days after the notification
 4 mail date either (i) Bring or within two years after the date that the oil and gas developer files
 5 notice that final reclamation is commencing under §22-6A-14 of this code bring an action for
 6 compensation in the circuit court of the county in which the well is located; or (ii) (B) within 80
 7 days after the notification mail date elect instead, by written notice delivered by personal service

8 or by certified mail, return receipt requested, to the designated agent named by the oil and gas
9 developer under the provisions of §22-6A-7 of this code, to have his, her or its compensation
10 finally determined by binding arbitration pursuant to §55-10-1 *et seq.* of this code.

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

15 (b) The compensation to be awarded to the surface owner shall be determined by a panel
16 of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the
17 party's notice of election under this section to the oil and gas developer; the second arbitrator
18 shall be chosen by the oil and gas developer within 10 days after receipt of the notice of election;
19 and the third arbitrator shall be chosen jointly by the first two arbitrators within 20 days thereafter.
20 If they are unable to agree upon the third arbitrator within 20 days, then the two arbitrators shall
21 immediately submit the matter to the court under the provisions of §55-10-1 of this code, so that,
22 among other things, the third arbitrator can be chosen by the judge of the circuit court of the
23 county in which the surface estate lies.

24 (c) The following persons are considered interested and may not be appointed as
25 arbitrators: Any person who is personally interested in the land on which horizontal drilling is being
26 performed or has been performed, or in any interest or right therein, or in the compensation and
27 any damages to be awarded therefor, or who is related by blood or marriage to any person having
28 such personal interest, or who stands in the relation of guardian and ward, master and servant,
29 principal and agent, or partner, real estate broker, or surety to any person having such personal
30 interest, or who has enmity against or bias in favor of any person who has such personal interest
31 or who is the owner of, or interested in, the land or the oil and gas development of the land. A
32 person is not considered interested or incompetent to act as arbitrator by reason of being an
33 inhabitant of the county, district or municipal corporation in which the land is located, or holding

34 an interest in any other land therein.

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

40 (e) Each party shall pay the compensation of the party's arbitrator and one half of the
41 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 no closer than 1,500 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 a heading or the present law and underscoring indicates new language that would be added.