

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 82

BY SENATORS SMITH, BALDWIN, HAMILTON, JEFFRIES,

WOELFEL, MAYNARD, AND FACEMIRE

[Introduced January 8, 2020; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §22-10A-1, §22-10A-2, §22-10A-3, §22-10A-4, §22-10A-5, §22-10A-6, §22-
 3 10A-7, §22-10A-8, §22-10A-9, and §22-10A-10, all relating to creating the Orphan Oil and
 4 Gas Well Prevention Act; providing for a short title; providing for legislative findings and
 5 declarations; providing for restrictions to permit oil and natural gas wells, certain
 6 prohibitions, and requiring plugging assurance requirements; providing for limitations on
 7 the transfer of wells; providing for responsibility of previous operators to plug transferred
 8 wells; providing for different methods for operators to provide plugging assurance of wells,
 9 including for wells not producing in paying quantities; providing administrative and
 10 management responsibilities for the Chief of the Office of Oil and Gas and the State
 11 Treasurer regarding plugging assurance funds; providing clarifications regarding the
 12 duties of mineral and surface owners; providing for rule-making authority and severability;
 13 and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10A. ORPHAN WELL PREVENTION.

§22-10A-1 Short title.

1 This article shall be known as the “Orphan Oil and Gas Well Prevention Act”.

§22-10A-2. Legislative findings and declarations.

1 (a) The Legislature declares it to be the public policy of this state and in the public interest
 2 that an oil or gas well that is no longer in use must be plugged in order to:

3 (1) Prevent the well from leaking oil or natural gas into the environment and polluting the
 4 air, surface, subsurface, or groundwater or the well allowing for surface pollution to pollute
 5 groundwater;

6 (2) Not jeopardize the ability to safely and economically produce from coal seams and
 7 other oil and natural gas bearing seams through which the well bore passes;

8 (3) Prevent devaluation of the surface estate due to the existence of the well or

9 environmental pollution or the risk thereof associated with the well; and

10 (4) Clarify the state of title regarding previous leases by mineral owners which are no
11 longer held by production by the well.

12 (b) The Legislature finds that thousands of oil and natural gas wells in West Virginia no
13 longer have a responsible operator and do not have sufficient reclamation bonds in any form or
14 other available funds for plugging and reclamation, and so those wells have in effect become
15 orphaned. This situation leaves the effort and expense of plugging the orphaned wells only to the
16 state or to anyone with resources and an interest under §22-10-3(c) and §22-10-7 of this code.

17 (c) The Legislature also finds that new requirements under the law are needed to plug
18 orphan wells and to prevent more wells from becoming orphaned due to considerations for the
19 public health, property rights, environmental concerns, and future developmental concerns.

§22-10A-3. Restrictions for permitting; prohibitions; plugging assurance requirements.

1 (a) Notwithstanding any other provision of this code, no permit shall be issued for a new
2 well, the application for which permit is filed after December 31, 2020, unless the operator has
3 furnished plugging assurance for that well pursuant to §22-10A-6 of this code.

4 (b) Notwithstanding any other provision of this code, no permit shall be issued for a new
5 well, the application for which permit is filed after December 31, 2020, unless the operator has
6 furnished plugging assurance pursuant to §22-10A-6 of this code for all wells which the operator
7 is required to have plugging assurance under this article.

8 (c) Operators shall provide plugging assurance pursuant to §22-10A-6 of this code for any
9 well that is not producing in paying quantities on or after the effective date of this article. The Chief
10 of the Office of Oil and Gas shall determine whether a well is producing in paying quantities
11 pursuant to the provisions of §22-10A-6(b)(4)(B) of this code.

§22-10A-4. Limitations on well transfer.

1 Notwithstanding any other provisions of this code, no assignment or transfer after the
2 effective date of this article by the owner or operator of a well shall relieve the assignor or

3 transferor of the obligation and liability for plugging wells under this code until plugging assurance
4 is furnished pursuant to §22-10A-6 of this code: *Provided*, That no plugging assurance shall be
5 required if a well is providing free gas to a residence or farm facility: (1) The operator furnishes
6 to the Chief of the Office of Oil and Gas a current certification from an owner or occupant of the
7 residence or farm facility that the well is providing free gas, and (2) the well is not causing pollution
8 on the surface, subsurface, or groundwater, or otherwise a creating a present risk to public safety
9 of persons or property.

§22-10A-5. Responsibility of previous operators.

1 Notwithstanding any other provisions of this code, if a well has been transferred to a new
2 operator and thereafter needs to be plugged because it is polluting the environment and if the
3 Chief of the Office of Oil and Gas determines that the cause of the pollution was a violation of law
4 or negligence by a previous operator during the time that operator was responsible for the well,
5 then the previous operator shall be responsible and liable to plug the well.

§22-10A-6. Estimated plugging costs; methods for providing plugging assurance;
management of funds.

1 (a) The Chief of the Office of Oil and Gas shall set an estimated future plugging cost for
2 each type of well based upon:
3 (1) The date the well was drilled;
4 (2) The engineering design of the well;
5 (3) The formation or formations from which it is producing;
6 (4) The expected amount of time during which the well will produce in paying quantities;
7 (5) An estimated rate of inflation of the cost of plugging;
8 (6) The administrative costs to the State Treasurer and the Office of Oil and Gas to
9 administer the program, which the State Treasurer is authorized to deduct from the well plugging
10 funds and pay the costs to the Treasure's banking services account and to an Office of Oil and
11 Gas account; and

12 (7) Any other relevant and necessary data at the discretion of the Chief of the Office of Oil
13 and Gas.

14 The operator may contest an estimated future plugging cost established by the Chief of
15 the Office of Oil and Gas using certified estimates from registered professional engineers in
16 conjunction with other licensed professionals knowledgeable in the fields of petroleum
17 engineering and finance who have experience with reservoir development, well operation,
18 maintenance, and plugging.

19 (b) When plugging assurance is required by this article, the assurance may be satisfied
20 by one of the following:

21 (1) Bonding. - A single well bond which meets the requirements of the Office of Oil and
22 Gas as determined by the State Treasurer and which is equal to the estimated future plugging
23 cost for the well: *Provided*, That self-bonding is prohibited.

24 (2) Cash or collateral. - A deposit of cash or collateral with the State Treasurer which
25 meets the requirements of the Office of Oil and Gas and is equal to the estimated future plugging
26 cost for the well.

27 (3) Escrow account. – The operator may establish and make payments into an escrow
28 account with the State Treasurer for estimated future plugging costs. The State Treasurer shall
29 establish the escrow account when requested by the operator and shall accept and deposit
30 payments therein. Payments to the escrow account shall require proportionately higher payments
31 during initial production and decrease as production declines. The payment schedule into the
32 escrow account for the estimated future plugging costs for the well shall be determined by the
33 Chief of the Office of Oil and Gas in consultation with the State Treasurer considering the following
34 criteria:

35 (A) Production estimates made by the Chief of the Office of Oil and Gas;

36 (B) Estimated prices for the product from recognized futures exchanges or other estimates
37 made by the Chief of the Office of Oil and Gas;

38 (C) Estimated future plugging costs; and

39 (D) Earnings and discount rates estimated by the State Treasurer.

40 (4)(A) Staggered assurance payments. – For wells that are not producing in paying
41 quantities on or before December 31, 2020, and not providing free gas to a residence or farm
42 facility: (i) The operator furnishes to the Chief of the Office of Oil and Gas a current certification
43 from an owner or occupant of the residence or farm facility that the well is providing free gas; and
44 (ii) the well is not causing pollution on the air, surface, subsurface, or groundwater, or otherwise
45 a creating a present risk to public safety of persons or property, if an operator chooses to provide
46 plugging assurance in cash or collateral, an operator may furnish plugging assurance at a rate of
47 20 percent of the estimated future plugging cost for the well for five years: *Provided*, That the
48 operator demonstrates to the satisfaction of the Chief of the Office of Oil and Gas that an unjust
49 hardship to an operator will occur as a result of the financial responsibility requirements of this
50 section.

51 (B) In order for an operator to demonstrate that a well is not producing in paying quantities,
52 the operator may use:

53 (i) Estimated costs to produce, process, and transport the oil and natural gas from wells
54 in categories established by the Chief of the Office of Oil and Gas and published gas market
55 prices from sources approved by the Chief of the Office of Oil and Gas; or

56 (ii) Audited statements of the operator's relevant costs for the well and actual sales
57 documentation acceptable to the Chief of the Office of Oil and Gas.

58 (c) If the operator posts plugging assurance in the form of cash or collateral, the State
59 Treasurer shall hold the funds in an account in the State Treasury and shall invest the funds with
60 the West Virginia Board of Treasury Investments. All interest or other earnings in excess of the
61 estimated future plugging cost shall be paid yearly to the operator by the State Treasurer.

62 The funds to plug the well, for which the escrow account was established, shall be paid
63 by the State Treasurer to the operator or to the contractor or contractors selected by the operator

64 to plug the well once the Chief of the Office of Oil and Gas certifies that the well has been plugged
 65 according to all lawful requirements. Excess funds and earnings in excess of actual plugging costs
 66 may be credited toward future assurance payments for other wells or shall be refunded to the
 67 operator within 60 days of plugging certification by the Chief of the Office of Oil and Gas.

68 State Treasurer is authorized to deduct the costs incurred to administer the program by
 69 the State Treasurer and by the Office of Oil and Gas once a year after providing notice and a
 70 summary of the incurred costs to the operator and pay the costs to the Treasurer’s banking
 71 services account and to an Office of Oil and Gas account.

§22-10A-7. Rules.

1 On or before July 1, 2020, the Secretary of the Department of Environmental Protection
 2 may promulgate emergency legislative rules in accordance with the provisions of §29A-3-15 of
 3 this code. The Secretary of the Department of Environmental Protection shall propose legislative
 4 rules for promulgation in accordance with the requirements of the Secretary of State and the
 5 provisions of chapter 29A of this code to otherwise effectuate the purposes of this article.

§22-10A-8. Severability clause.

1 The provisions of this article are severable and accordingly, if any part of this article is
 2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity
 3 of the remaining provisions of this article.

§22-10A-9. Duties of mineral and surface owners.

1 Nothing in this article shall be interpreted or deemed to require a well to be plugged by a
 2 mineral owner or surface owner.

§22-10A-10. Effective Date.

1 This article shall take effect upon passage.

NOTE: The purpose of this bill is to create the Orphan Oil and Gas Well Prevention Act; providing for a short title; providing for legislative findings and declarations; providing for restrictions to permit oil and natural gas wells, certain prohibitions, and requiring plugging

assurance requirements; providing for limitations on the transfer of wells; providing for responsibility of previous operators to plug transferred wells; providing for different methods for operators to provide plugging assurance of wells including for wells not producing in paying quantities; providing administrative and management responsibilities for the Chief of the Office of Oil and Gas and the State Treasurer regarding plugging assurance funds; providing clarifications regarding the duties of mineral and surface owners; providing for rule-making authority and severability; and providing an effective date.

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