

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2852

FISCAL
NOTE

By Delegate Hansen

[Introduced January 20, 2023; Referred to the
Committee on Energy and Manufacturing then 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 the creation of the Orphan
4 Oil and Gas Well Prevention Act of 2023; preventing oil and gas wells from being orphaned
5 on surface owner's land with no responsible driller or operator with the resources to plug
6 the well; the procedures for prevention of orphaned wells; and requiring plugging money
7 set aside as escrow in the office of the State Treasurer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10A. ORPHAN WELL PREVENTION ACT OF 2023.

§22-10A-1. Short title.

1 This article shall be known as the Orphan Oil and Gas Well Prevention Act of 2023.

§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 does not have any present or future economic use must be plugged in
3 order to:

4 (1) Prevent it from leaking gas up into the air or into groundwater;
5 (2) Prevent it from leaking oil and other liquids out onto the surface;
6 (3) Prevent it from leaking septic, animal waste or other surface or near surface pollution
7 down into groundwater;

8 (4) Preserve the ability to safely and economically produce from coal seams and other oil
9 and gas bearing seams through which the well bore passed;

10 (5) Stop the unnecessary imposition of the well on the surface owners resulting in
11 devaluation of their property arising from the very existence of the well on their surface property
12 together with the risks associated with unplugged wells; and

13 (6) Clarify that any previous lease by a mineral owner is no longer held by production from
14 that well.

15 (b) The Legislature finds that thousands and thousands of gas and oil wells in West
16 Virginia no longer have a responsible operator or have any bond in any form, and so those wells
17 and have in effect become orphaned. With no operator or other person who benefitted from the
18 wells left to plug the wells, this situation leaves the effort and expense of plugging the orphaned
19 wells to the state unless there is some other citizen with the money to do so that has an interest as
20 set out in §22-10-3(c) and §22-10-7 of this code.

(c) The present existence of these orphaned wells has been caused by the inadequacy of current statutes and rules and practices.

23 (d) As a result, therefore, considerations of the health, property rights, environmental
24 concerns, and future developmental concerns need new and further requirements of law to
25 prevent more wells from being orphaned.

§22-10A-3.

New wells.

1 Notwithstanding any other provision of this code to the contrary, no permit may be issued
2 for a new well if the application for the permit is filed after July 1, 2023, unless the operator
3 furnishes plugging money set aside escrow funds with the State Treasurer's Office as required in
4 §22-10A-8 of this code.

§22-10A-4.

Transferred wells.

1 Notwithstanding any other provisions of this code to the contrary, no assignment or transfer
2 after the effective date of this article by the owner or operator of a well shall relieve the assignor or
3 transferor of the obligations and liability under this code until the new operator or owner furnish
4 plugging money set aside escrow required in §22-10A-8 of this code.

§22-10A-5.

Responsibility of previous operators.

1 Notwithstanding any other provisions of this code to the contrary, if a well that has been
2 transferred to a new operator needs to be plugged because it leaks gas into the air or into
3 groundwater or into another formation, or because it leaks oil or other liquids onto the ground or

4 into other formations, or because it causes leaking of septic, animal waste or other surface or near
5 surface contamination into groundwater, or because it causes loss of groundwater, and if the chief
6 of the office of oil and gas determines that the cause of the problem was a violation of law or failure
7 to act as a prudent operator by a previous operator during the time that operator was the
8 responsible operator, then that previous operator shall plug the well if the current operator does
9 not.

§22-10A-6. **Nonproducing wells.**

No new well work permit may be granted to an operator that is the operator of a well that has not been in use for a period of 12 consecutive months, and is therefore a well that is required to be plugged by §22-6-19 of this code, unless the operator furnishes satisfactory proof to the director that there is a bona fide future use for such well pursuant to the rules of the secretary or unless the operator has deposited sufficient set aside plugging money escrow to the Treasurer as required in §22-10A-8 of this code for the well.

§22-10A-7. Wells producing in paying quantities.

1 Notwithstanding any other provisions of this code to the contrary, for a well that produces
2 the amount of oil or gas necessary to pay to produce, process and transport the gas from that well
3 in paying quantities, not including the cost of drilling and completing the well, the operator shall
4 furnish the plugging set aside moneys required in §22-10A-8 of this code in the amount of 15 cents
5 for every MCF of gas produced. A well paying any reduced rate of severance tax as allowed in
6 §11-13A-3a of this code is rebuttably presumed to not be producing in paying quantities. A well
7 producing in excess of 60 MCF of gas per day or 10 barrels of oil per day is rebuttably presumed to
8 be producing in paying quantities. The Chief of the Office of Oil and Gas may from year to year
9 establish standard costs for paying to produce, process and transport the gas from wells in paying
10 quantities for categories established by the chief. In determining whether a well is producing in
11 paying quantities the operator may use the standard costs established by the Chief of the Office of

12 Oil and Gas and published gas market prices from sources approved by the chief, or the operator
13 may submit audited statements of the relevant costs for the well and actual sales documentation.

§22-10A-8. Plugging funds set aside.

1 (a) If required to do so by this article, the operator of an oil or gas well shall establish a
2 plugging money set aside escrow account or subaccount for each well with the State Treasurer to
3 Maintain the moneys. The State Treasurer shall agree to set up that plugging money set aside
4 escrow account or subaccount if requested by the operator. The funds shall be paid out of the
5 account on the order of the chief of the Office of Oil and Gas only to the person or entity that plugs
6 the well or to the operator if the chief of the Office of Oil and Gas certifies that the well has been
7 plugged according to lawful requirements. The Treasurer shall hold the money in plugging money
8 set aside escrow account in an account or subaccounts in the State Treasury and shall invest the
9 money with the West Virginia Board of Treasury Investments.

10 (b) The rate of payment into the account or subaccounts for categories of wells shall be
11 determined by the chief of the Office of Oil and Gas considering production estimates made by the
12 chief of the Office of Oil and Gas, considering estimated prices for the product from recognized
13 futures exchanges or if no such estimates are available for all years, considering other estimates
14 made by the chief of the Office of Oil and Gas, considering current plugging costs, considering
15 estimated rate of inflation of plugging costs made by the chief of the Office of Oil and Gas,
16 considering earnings and discount rates estimated by the Treasurer, and considering the costs to
17 the Treasurer to manage the escrow account and costs to the Office of Oil and Gas to administer
18 the program. In lieu of the estimates of the operator, the chief may consider estimates made by a
19 registered professional reservoir engineer supplied by the operator of the well. The payment
20 schedule shall require proportionately higher payments during initial production and decreasing
21 payments as production declines based on production and price estimates. Earnings of the fund in
22 excess of projected plugging costs shall be credited to future payments or refunded to the
23 operator.

24 (c) The Treasurer may deduct from the accounts and pay to the credit of the treasury the
25 costs of managing the accounts, and may deduct from the accounts and to transfer, to the credit of
26 the Office of Oil and Gas of the Department of Environmental Protection, the costs of
27 administering the program, all after providing notice to the operator and the chief of the Office of Oil
28 and Gas.

29 (d) Failure of the operator to comply with the provisions of this article is a violation of law
30 entitling the operating bond of the operator to be forfeited, thereby requiring the operator to stop
31 production from any wells it operates.

32 (e) The Treasurer has rule-making authority to carry out this article.

§22-10A-9. Plugging by drillers of new wells.

1 In order to obtain a permit to drill a new well, the driller shall agree to plug all orphaned and
2 abandoned wells in the leased area that will be drained by the well. The operator applying for the
3 permit is considered to be an interested party for the purposes of the Abandoned Well Act, §22-10-
4 1 et seq. of this code. The operator may recover from the owner, the lessor, or successors to the
5 lessor all reasonable costs incidental to such plugging as provided in the Abandoned Well Act:
6 Provided, That costs recovered from the lessor or future lessors may only be recovered from the
7 lessor and the lessor's successors from future royalties payable to the lessor. The drainage area
8 for the purposes of this section shall be presumed to be the entire length of any horizontal
9 proposed well bore and a width determined by half the distance between the permitted or
10 proposed permitted horizontal well bores of the applicant, but a different drainage area may be
11 prescribed by the chief of the Office of Oil and Gas.

§22-10A-10. Surface owner consent to temporary deferral of plugging.

1 The owner of the surface where the well is located, whether the owner receives free gas,
2 may sign a consent to deferral of plugging a well. The chief shall prepare a form that must be used
3 that explains the risks of unplugged wells. The surface owner may revoke the consent for 30 days
4 after signing it. The chief, after inspecting the well and determining that there is no significant

5 current or imminent risk to persons, property, or the environment from the particular well, may
6 delay the requirement or enforcement of plugging the well for as long as that owner owns the
7 surface and for as long as the lack of significant current or imminent risk continues. If any owner,
8 operator or lessee of the surface, oil, gas, water, coal, or other mineral resource under, on,
9 adjacent or in close proximity to any lands upon which an abandoned well exists, and whose
10 lands, rights or interests are or might be affected by such unplugged well objects, the requirement
11 or enforcement of plugging the well may not be deferred.

NOTE: The purpose of this bill is to prevent oil and gas wells from being orphaned on surface owner's land with no responsible driller or operator with the resources to plug the well.

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