

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5414

By Delegates Hansen, Young, Petitto, and Dean

[Introduced February 01, 2024; Referred to the
Committee on Energy and Manufacturing then
Finance]

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, and §22-10A-9, all relating to the creation of the Orphan Oil and Gas
 4 Well Prevention Act of 2024; preventing oil and gas wells from being orphaned on surface
 5 owner’s land with no responsible driller or operator with the resources to plug the well; the
 6 procedures for prevention of orphaned wells; and requiring plugging money set aside as
 7 escrow in the office of the State Treasurer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10A. ORPHAN WELL PREVENTION ACT OF 2024.

§22-10A-1. Short title.

1 This article shall be known as the Orphan Oil and Gas Well Prevention Act of 2024.

§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 devaluation of surface property arising from the very existence of the well on
 11 the surface property together with the risks associated with unplugged wells caused by the
 12 useless and unnecessary imposition on the surface land owners; 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 of gas and oil wells in West Virginia no longer have
16 a responsible operator or have any bond in any form, and so those wells have in effect become
17 orphaned. With no operator or other person who benefitted from the wells left to plug the wells, this
18 situation leaves the effort and expense of plugging the orphaned wells to the state unless there is
19 some other citizen with the money to do so that has an interest as set out in §22-10-3(c) and §22-
20 10-7 of this code.

21 (c) The existence of these orphaned wells has been caused by the inadequacy of current
22 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.

26 (e) Improvements in the prevention of orphaned wells will assist in compliance with federal
27 efforts to plug orphaned wells.

§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, 2024, unless the operator
3 furnishes for each individual new well:

4 (1) Plugging money set aside agreement with the State Treasurer's Office to escrow funds
5 with the State Treasurer's Office as required in §22-10A-7 of this code, or

6 (2) A bond payable to the State of West Virginia conditioned on full compliance with the
7 plugging and reclamation of wells required by this code in an amount determined by the Chief of
8 the Office of Oil and Gas for a well with similar characteristics. The Department of Environmental
9 Protection has rule-making authority to determine this amount.

§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 for
 4 each individual such well either:

5 (1) Plugging money set aside agreement with the State Treasurer’s Office to escrow funds
 6 with the State Treasurer’s Office as required in §22-10A-7 of this code, or

7 (2) A bond payable to the State of West Virginia conditioned on full compliance with the
 8 plugging and reclamation of wells required by this code in an amount determined by the Chief of
 9 the Office of Oil and Gas for a well with similar characteristics. The Department of Environmental
 10 Protection has rule-making authority to determine this amount.

§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. 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 the gas from that well in paying quantities, not
 3 including the cost of drilling and completing the well, the operator shall furnish the plugging set
 4 aside moneys required in §22-10A-7 of this code in the amount of 15 cents for every MCF of gas

5 produced, one dollar for every barrel of oil produced, and one cent for every gallon of natural gas
6 liquids sold by the operator. A well paying any reduced rate of severance tax as allowed in §11-
7 13A-3a of this code is rebuttably presumed to not be producing in paying quantities.

§22-10A-7. 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. If the well becomes abandoned and no bona fide future
8 use for the well has been established all pursuant to §22-6-19 of this code, and if the operator has
9 not plugged the well and claimed the funds set aside for that well, the chief of the office of oil and
10 gas may cause the well to be plugged according to this article use the money set aside for that
11 purpose. The State Treasurer shall hold the money in the plugging money set aside escrow
12 account in an account or subaccounts in the State Treasury and shall invest the money with the
13 West Virginia Board of Treasury Investments.

14 (b) The rate of payment into the account or subaccounts for categories of wells shall be
15 determined by the chief of the Office of Oil and Gas considering production and well life estimates
16 made by the chief of the Office of Oil and Gas, considering estimated prices for the product from
17 recognized futures exchanges or if no such estimates are available for all years, then other
18 estimates made by the chief of the Office of Oil and Gas, considering current plugging costs,
19 considering estimated rate of inflation of plugging costs made by the chief of the Office of Oil and
20 Gas, considering earnings and discount rates estimated by the State Treasurer, and considering
21 the costs to the State Treasurer to manage the escrow account and costs to the Office of Oil and
22 Gas to administer the program. In lieu of the estimates of the chief of the Office of Oil and Gas, the

23 operator and the chief may consider production and well life estimates made by a registered
 24 professional reservoir engineer supplied by the operator of the well. The payment schedule shall
 25 require proportionately higher payments during initial production and decreasing payments as
 26 production declines based on production and price estimates. Earnings of the fund in excess of
 27 projected plugging costs shall be credited to future payments or refunded to the operator.

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

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

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

§22-10A-8. 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 or operator all reasonable costs
 5 incidental to such plugging as provided in the Abandoned Well Act. The drainage area for the
 6 purposes of this section shall be presumed to be the entire length of any horizontal proposed well
 7 bore and a width determined by half the distance between the permitted or proposed permitted
 8 horizontal well bores of the applicant, but a different drainage area may be prescribed by the chief
 9 of the Office of Oil and Gas.

§22-10A-9. Surface owner consent to temporary deferral of plugging.

1 The owner of the surface where the well is located, whether or not the owner receives free

2 gas, may sign a consent to deferral of plugging a well. The chief shall prepare a form that must be
3 used that explains the risks of unplugged wells. The surface owner may revoke the consent for 30
4 days 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. The bill:

-Does not make any changes in bonding requirements for wells that are not producing in paying quantities.

-Requires new wells to either post a single well, full cost plugging bond, or to start at the beginning of production to set aside money in an interest bearing account in the State Treasurer's office to plug the well at the end of its life.

-Requires transferred wells either to post a single well, full cost plugging bond or to start setting aside money in an interest bearing account in the State Treasurer's office to plug the well.

-Requires existing wells that are producing in paying quantities to set aside 15 cents per MCF in the State Treasurer's office to plug the well.

-Requires operators to plug wells that were in violation of the law before that operator transferred the well to another operator if the new owner of the well does not plug the well.

-Allows the owners of the surface where the well is located to defer the plugging of the well as long as that surface owner owns the land, and as long as the well is not causing environmental etc. problems.

-Requires an operator drilling a new well to plug all orphaned and abandoned wells in the well's drainage area, and authorizes that driller to recover the cost from any responsible operator of 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.