

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3415

By Delegates Hansen, Petitto, Dean, Eldridge, and
Young

[Introduced March 17, 2025; referred to the
Committee on Energy and Public Works then
Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-10A-1, §22-10A-2, §22-10A-3, §22-10A-4, §22-10A-5, §22-10A-6, §22-10A-7, §22-10A-8, and §22-10A-9, relating to the creation of the Orphan Oil and Gas Well Prevention Act of 2025; preventing 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 procedures for prevention of orphaned wells; and requiring plugging money be 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 2025.

§22-10A-1. Short title.

This article shall be known as the Orphan Oil and Gas Well Prevention Act of 2025.

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

(a) The Legislature declares it to be the public policy of this state and in the public interest that an oil or gas well that does not have any present or future economic use must be plugged in order to:

(1) Prevent it from leaking gas up into the air or into groundwater;

(2) Prevent it from leaking oil and other liquids out onto the surface;

(3) Prevent it from leaking septic, animal waste or other surface or near surface pollution down into groundwater;

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

(5) Stop the devaluation of surface property arising from the very existence of the well on the surface property together with the risks associated with unplugged wells caused by the useless and unnecessary imposition on the surface landowners; and

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

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

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

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

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

§22-10A-3. New wells.

Notwithstanding any other provision of this code to the contrary, no permit may be issued for a new well pursuant to §22-6A-1 *et seq.* of this code, if the application for the permit is filed after July 1, 2025, unless the operator furnishes for each individual new well:

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

(2) A plugging money set aside escrow agreement with an escrow agent as provided in §22-10A-7.

§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) A plugging money set aside escrow account with an escrow agent as required in §22-
6 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 money set aside escrow account.

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 with an escrow agent, which account may include more
3 than one well in subaccounts for each well if provided in the agreement with the escrow agent.

4 (b) The escrow agent shall be a bank which is national banking association insured by the
5 federal government or with a similarly secure banking institution as determined by the State
6 Treasurer's Office.

7 (c) The funds shall be paid out of the account only on the order of the chief of the Office of
8 Oil and Gas and only to the person or entity that plugs the well or to the operator if the chief of the
9 Office of Oil and Gas certifies that the well has been plugged according to lawful requirements. If
10 the well becomes statutorily abandoned and no bona fide future use for the well has been
11 established all pursuant to §22-6-19 of this code, and if the operator has not plugged the well and
12 claimed the funds set aside for that well, then the chief of the Office of Oil and Gas may cause the
13 well to be plugged using the money set aside for that purpose for that well and order the escrow
14 agent to pay the funds to the State of West Virginia for that purpose and the escrow agent shall
15 make that payment on order of the chief.

16 (d) The rate of payment into the account or subaccounts by the operator of the well shall be
17 determined by the chief of the Office of Oil and Gas considering production and well life estimates
18 made by the chief of the Office of Oil and Gas, and considering estimated prices for the well's
19 products from recognized futures exchanges or, if no such estimates are available for all years,
20 then other estimates made by the chief of the Office of Oil and Gas, considering current plugging
21 costs, considering the estimated rate of inflation of plugging costs made by the chief of the Office

22 of Oil and Gas, considering net earnings projected by the escrow agent, and considering discount
23 rates from the projected future cost of plugging to a current relevant value estimated by the State
24 Treasurer. In lieu of the estimates of production of the chief of the Office of Oil and Gas, the chief
25 may consider production and well life estimates made by a registered professional reservoir
26 engineer which is supplied by the operator of the well or contracted by the chief. The payment
27 schedule shall require proportionately higher payments during the period of initial high production
28 and decreasing payments as production declines based on production and price estimates.
29 Earnings of the fund in excess of projected plugging and escrow costs shall be credited to future
30 payments or, if there are already sufficient funds in the account, given to the operator.

31 (e) The escrow agent shall invest the escrowed funds in each account or sub account
32 initially in a federated prime obligations fund and shall maintain such escrow funds in market
33 money funds that are rated not less than "AAA" by a generally accepted rating agency. The
34 escrow agent shall reinvest the proceeds of these instruments as they mature in similar
35 instruments at their then-current market rates.

36 (f) The escrow agent may charge and pay to itself from the escrowed funds an escrow fee
37 which is the lesser of (a) fifteen percent of the interest earned in each month on the deposit
38 accounts holding the escrow funds, or (b) one-half of one percent of the escrow funds. Any partial
39 month shall be on a pro-rated basis.

40 (g) The escrow agent shall deduct from the accounts, and pay to the chief of the Office of
41 Oil and Gas, the costs of administering the program, all after providing notice to the operator and
42 the chief of the Office of Oil and Gas.

43 (h) The operator of the well shall report, or cause the escrow agent to report, to the chief of
44 the Office of Oil and Gas each year, in the month of the anniversary of the first production from the
45 well, a report of the funds paid to the escrow, the payments to the escrow agent and the payments
46 to the chief of the Office of Oil and Gas in a form and format proscribed by the chief.

47 (i) Failure of the operator to comply with the provisions of this article is a violation of law

entitling the operating bond of the operator to be forfeited, thereby requiring the operator to stop production from any wells it operates.

(j) The State Treasurer has rule-making authority to carry out duties assigned to it under this article.

§22-10A-8. Plugging by drillers of new wells.

In order to obtain a permit to drill a new well, the driller shall agree to plug all orphaned and abandoned wells in the leased area that will be drained by the well. The operator applying for the permit is considered to be an interested party for the purposes of the Abandoned Well Act, §22-10-1 *et seq.* of this code. The operator may recover from the owner or operator all reasonable costs incidental to such plugging as provided in the Abandoned Well Act. The drainage area for the purposes of this section shall be presumed to be the entire length of any horizontal proposed well bore and a width determined by half the distance between the permitted or proposed permitted horizontal well bores of the applicant, but a different drainage area may be prescribed by the chief of the Office of Oil and Gas.

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

The owner of the surface where the well is located, whether or not the owner receives free gas, may sign a consent to deferral of plugging a well. The chief shall prepare a form that must be used that explains the risks of unplugged wells. The surface owner may revoke the consent for 30 days after signing it. The chief, after inspecting the well and determining that there is no significant current or imminent risk to persons, property, or the environment from the particular well, may delay the requirement or enforcement of plugging the well for as long as that owner owns the surface and for as long as the lack of significant current or imminent risk continues. If any owner, operator or lessee of the surface, oil, gas, water, coal, or other mineral resource under, on, adjacent or in close proximity to any lands upon which an abandoned well exists, and whose lands, rights or interests are or might be affected by such unplugged well objects, the requirement or enforcement of plugging the well may not be deferred.

NOTE: The purpose of this bill is to provide for the prevention of oil and gas wells being orphaned on surface owner's land with no responsible driller or operator with the resources to plug the well, to provide for the procedures for prevention of orphaned wells, and to require plugging money be set aside as escrow in the Office of the State Treasurer.

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